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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 September 30, 2004

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) 770-7000**  
(Registrant's telephone number, including area code)

**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 November 1, 2004</u>
Common stock, \$0.01 par value	90,522,817

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

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**Part I - FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**(A DEVELOPMENT STAGE COMPANY)**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
**(amounts in thousands, except share data)**

	<u>September 30,</u> 2004	<u>December 31,</u> 2003
	<u>(unaudited)</u>	
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 209,246	\$ 341,552
Restricted cash and investments	5,880	58,312
Receivables, net	145	78
Inventories	657	204
Prepaid expenses	3,152	2,201
Total current assets	<u>219,080</u>	<u>402,347</u>
Restricted cash and investments	388,287	342,120
Property and equipment, net	1,696,511	897,815
Water rights	6,400	6,400
Trademark	1,000	1,000
Deferred financing costs	58,491	59,265
Macau Concession, net	51,400	—
Other assets	48,815	24,376
Total assets	<u>\$ 2,469,984</u>	<u>\$ 1,733,323</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Current portion of long-term debt	\$ 708	\$ 41
Accounts and construction payables	80,404	49,754
Accrued interest	17,792	16,813
Accrued compensation and benefits	6,357	3,378
Accrued expenses and other current liabilities	28,891	1,190
Total current liabilities	<u>134,152</u>	<u>71,176</u>
Construction retention	55,017	23,846
Long-term debt	1,002,277	635,432
Other long-term liabilities	33,600	—
Total liabilities	<u>1,225,046</u>	<u>730,454</u>
Minority interest	—	1,054
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; 90,326,844 and 82,168,484 shares issued and outstanding	903	820
Additional paid-in capital	1,430,309	1,110,813
Deferred compensation - restricted stock	(5,309)	(9,664)
Accumulated other comprehensive income	5,854	8,793
Deficit accumulated from inception during the development stage	(186,819)	(108,947)
Total stockholders' equity	<u>1,244,938</u>	<u>1,001,815</u>
Total liabilities and stockholders' equity	<u>\$ 2,469,984</u>	<u>\$ 1,733,323</u>

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

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

	Three Months Ended September 30,		Nine Months Ended September 30,		From Inception to September 30, 2004
	2004	2003	2004	2003	
<b>Revenues:</b>					
Airplane	\$ —	\$ —	\$ —	\$ —	\$ 804
Art gallery	—	84	98	236	729
Retail	—	83	93	232	668
Water	1	5	4	10	51
<b>Total revenue</b>	<b>1</b>	<b>172</b>	<b>195</b>	<b>478</b>	<b>2,252</b>
<b>Expenses:</b>					
Pre-opening costs	21,525	12,446	52,543	32,464	141,013
Depreciation and amortization	1,904	638	3,727	4,990	30,612
(Gain) / Loss on sale of assets	63	1	575	(4)	771
Selling, general and administrative	5	193	297	445	1,924
Facility closure expenses	—	—	—	—	1,579
Cost of water	(7)	15	5	49	338
Cost of retail sales	—	40	63	114	343
Loss from incidental operations	725	113	725	328	3,239
<b>Total expenses</b>	<b>24,215</b>	<b>13,446</b>	<b>57,935</b>	<b>38,386</b>	<b>179,819</b>
<b>Operating loss</b>	<b>(24,214)</b>	<b>(13,274)</b>	<b>(57,740)</b>	<b>(37,908)</b>	<b>(177,567)</b>
<b>Other income (expense):</b>					
Interest expense, net	(336)	(4,878)	(533)	(9,031)	(11,506)
Interest income	1,844	2,694	4,975	8,105	22,833
Loss on early retirement of debt	—	—	(25,628)	—	(25,628)
<b>Other income (expense), net</b>	<b>1,508</b>	<b>(2,184)</b>	<b>(21,186)</b>	<b>(926)</b>	<b>(14,301)</b>
<b>Minority interest</b>	<b>—</b>	<b>615</b>	<b>1,054</b>	<b>2,309</b>	<b>5,049</b>
<b>Net loss accumulated during the development stage</b>	<b>(22,706)</b>	<b>(14,843)</b>	<b>(77,872)</b>	<b>(36,525)</b>	<b>(186,819)</b>
<b>Change in fair value of interest rate swaps</b>	<b>(8,925)</b>	<b>5,464</b>	<b>(2,938)</b>	<b>5,729</b>	<b>5,854</b>
<b>Comprehensive loss</b>	<b>\$ (31,631)</b>	<b>\$ (9,379)</b>	<b>\$ (80,810)</b>	<b>\$ (30,796)</b>	<b>\$ (180,965)</b>
<b>Basic and diluted earnings per common share:</b>					
<b>Net income:</b>					
Basic	\$ (0.26)	\$ (0.18)	\$ (0.92)	\$ (0.46)	\$ (3.26)
Diluted	\$ (0.26)	\$ (0.18)	\$ (0.92)	\$ (0.46)	\$ (3.26)
<b>Weighted average common shares outstanding:</b>					
Basic	88,063	80,834	84,543	78,955	57,333
Diluted	88,063	80,834	84,543	78,955	57,333

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

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

	Nine Months Ended September 30,		From Inception to September 30, 2004
	2004	2003	
<b>Cash flows from operating activities:</b>			
Net loss accumulated during the development stage	\$ (77,872)	\$ (36,525)	\$ (186,819)
Adjustments to reconcile net loss accumulated during the development stage to net cash provided by (used in) operating activities:			
Depreciation and amortization	3,727	4,990	30,612
Minority interest	(1,054)	(2,309)	(5,049)
Amortization of deferred compensation	2,738	2,413	6,199
Amortization of deferred financing costs	20,075	9,535	32,946
(Gain) / loss on sale of assets	575	(4)	771
Incidental operations	4,163	—	10,943
Increase (decrease) in cash from changes in:			
Receivables, net	(67)	(23)	7,836
Inventories and prepaid expenses	(1,404)	(522)	(2,648)
Accounts payable and accrued expenses	14,203	14,921	25,792
Net cash used in operating activities	<u>(34,916)</u>	<u>(7,524)</u>	<u>(79,417)</u>
<b>Cash flows from investing activities:</b>			
Acquisition of Desert Inn Resort and Casino, net of cash acquired	—	—	(270,718)
Capital expenditures, net of construction payables	(731,736)	(250,666)	(1,297,523)
Restricted cash and investments	6,265	211,429	(394,167)
Other assets	(22,178)	(2,417)	(38,721)
Proceeds from sale of equipment	33,868	6	43,605
Net cash used in investing activities	<u>(713,781)</u>	<u>(41,648)</u>	<u>(1,957,524)</u>
<b>Cash flows from financing activities:</b>			
Equity contributions	—	—	675,007
Equity distributions	—	—	(110,482)
Exercise of stock options	213	—	295
Proceeds from issuance of common stock	271,250	45,000	808,094
Third party fees	(3,283)	(204)	(40,841)
Macau minority contributions	—	—	5,049
Proceeds from issuance of long-term debt	480,955	250,000	1,237,289
Principal payments of long-term debt	(122,616)	(28)	(276,239)
Payment of deferred financing costs	(10,128)	(8,666)	(81,985)
Proceeds from issuance of related party loan	—	—	100,000
Principal payments of related party loan	—	—	(70,000)
Net cash provided by financing activities	<u>616,391</u>	<u>286,102</u>	<u>2,246,187</u>
<b>Cash and cash equivalents:</b>			
Increase (decrease) in cash and cash equivalents	(132,306)	236,930	209,246
Balance, beginning of period	341,552	109,644	—
Balance, end of period	<u>\$ 209,246</u>	<u>\$ 346,574</u>	<u>\$ 209,246</u>

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

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

**1. Organization and Basis of Presentation**

*Organization*

Wynn Resorts, Limited, a Nevada corporation (together with its subsidiaries, “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 acquire land and design, develop and finance the Company’s first casino resort in Las Vegas, Nevada, hereafter referred to as “Wynn Las Vegas”. In June 2002, Valvino’s majority owned indirect subsidiary, Wynn Resorts (Macau), S.A. (“Wynn Macau, S.A.”), entered into an agreement with the government of the Macau Special Administrative Region of the People’s Republic of China (“Macau”), granting Wynn Macau, S.A. the right to construct and operate one or more casino gaming properties in Macau. Wynn Macau, S.A.’s first casino resort in Macau is hereafter referred to as “Wynn Macau.”

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

*Basis of Presentation*

The Company has spent significant amounts of money in connection with its development activities, primarily for the acquisition of land and other assets and the design, financing and construction of Wynn Las Vegas, and in obtaining the gaming and land concessions in Macau, as well as the design, financing and construction of Wynn Macau. The Company has not commenced its casino resort operations and therefore revenues are minimal. Consequently, as is customary for a development stage company, the Company has incurred losses in each period from inception to September 30, 2004. Management expects these losses to continue and to increase until operations have commenced with the planned opening of Wynn Las Vegas in April 2005. The acceleration of these costs was anticipated and is included in the project budgets for Wynn Las Vegas and Wynn Macau.

As a development stage company, the Company has risks that may impact its ability to become an operating enterprise or to remain in existence. The Company is subject to many rules and regulations in the development and construction phases and in operating casino gaming facilities, including but not limited to maintaining compliance with debt covenants, receiving the appropriate permits for particular construction activities, securing state and local gaming licenses for the ownership and operation of Wynn Las Vegas and maintaining ongoing suitability requirements in Nevada and Macau, as well as fulfilling the requirements of Macau’s developing gaming regulatory framework. Completion of the Wynn Las Vegas and Wynn Macau projects is dependent upon compliance with these rules and regulations.

The accompanying consolidated financial statements include the accounts of the Company and its majority-owned subsidiaries. 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

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

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 nine months ended September 30, 2004 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 included in the Company's Annual Report on Form 10-K for the year ended December 31, 2003.

Certain amounts in the consolidated financial statements for the three and nine months ended September 30, 2003 have been reclassified to conform to the 2004 presentation. These reclassifications had no effect on the previously reported net loss accumulated during the development stage.

**2. Acquisition of Minority Interest**

In September 2004, the Company acquired all of the 17.5% indirect ownership interests in Wynn Macau, S.A. held by third parties, in exchange for 1,333,333 shares of Wynn Resorts' common stock. Mr. Wong Chi Seng, one of the third parties, retained a direct 10% voting interest in Wynn Macau, S.A. and agreed to continue to serve as Executive Director. Mr. Wong's shares provide in the aggregate a nominal preferential annual dividend and capital distribution rights of up to one Macau pataca (US\$0.12). As a result of the acquisition, Wynn Macau, S.A. effectively became a wholly-owned indirect subsidiary of Wynn Resorts.

The average price of the Company's common stock around August 31, 2004 (the deemed effective date of the acquisition), was \$38.69 per share. The excess of the purchase price of the minority interests over the net liabilities assumed plus the value of the stock exchanged, less the costs to register the shares, was approximately \$51.4 million. Because the fair value of the assets acquired and the liabilities assumed by the Company approximated their carrying value, the \$51.4 million was preliminarily allocated to the intangible asset representing the Macau gaming concession. The gaming concession intangible will be amortized over the 20-year life of the concession.

**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. Potentially dilutive securities that were excluded from the calculation of diluted EPS at September 30, 2004 because including them would have been anti-dilutive, included 2,140,750 shares under stock options, 1,328,061 shares under non-vested restricted stock grants and 10,869,550 shares under the assumed conversion of the Company's 6% convertible subordinated debentures due 2015 (the "Debentures"). At September 30, 2003, potentially dilutive but excluded securities include 1,430,000 shares under stock options, 1,328,061 shares under non-vested restricted stock grants and 10,869,550 shares under the assumed conversion of the Debentures.

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

**4. Employee Stock-Based Compensation**

As of September 30, 2004, 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).

	Three Months Ended September 30,		Nine Months Ended September 30,		Period from Inception to September 30 2004
	2004	2003	2004	2003	
Net loss as reported	\$(22,706)	\$(14,843)	\$(77,872)	\$(36,525)	\$ (186,819)
Less: total stock-based employee compensation determined under the fair-value based method for all awards	(434)	(888)	(2,690)	(1,205)	(4,992)
<b>Proforma net loss</b>	<b>\$(23,140)</b>	<b>\$(15,731)</b>	<b>\$(80,562)</b>	<b>\$(37,730)</b>	<b>\$ (191,811)</b>
<b>Basic and diluted loss per share:</b>					
As reported	\$ (0.26)	\$ (0.18)	\$ (0.92)	\$ (0.46)	\$ (3.26)
<b>Proforma</b>	<b>\$ (0.26)</b>	<b>\$ (0.19)</b>	<b>\$ (0.95)</b>	<b>\$ (0.48)</b>	<b>\$ (3.35)</b>

**5. Supplemental Disclosure of Cash Flow Information**

Amortization of deferred compensation related to employees dedicated to the construction of the Wynn Las Vegas and Wynn Macau projects and capitalized into construction in progress for the nine months ended September 30, 2004 and 2003, and for the period from inception to September 30, 2004, totaled approximately \$1.6 million, \$2.4 million and \$3.9 million, respectively.

Acquisitions during the nine months ended September 30, 2004 financed with short and long-term liabilities, are approximately \$53.8 million relating to the leasehold interest in the land on which Wynn Macau is being constructed and approximately \$4.4 million relating to production rights purchased for Avenue Q, as discussed in Note 9. Commitments and Contingencies.

Common stock issued during the nine months ended September 30, 2004 for the acquisition of the minority interest preliminarily allocated to the value of the Macau gaming concession totaled \$51.4 million.

The decrease in the fair value of interest rate swaps accounted for as cash flow hedges for the nine months ended September 30, 2004 totaled approximately \$2.9 million. The increase in the fair value of interest rate swaps accounted for as cash flow hedges for the nine months ended September 30, 2003 and for the period from inception to September 30, 2004, totaled approximately \$5.7 million and \$5.9 million, respectively.

Aircraft purchases financed by debt totaled approximately \$21.7 million, \$0 and \$50.2 million for the nine months ended September 30, 2004 and 2003, and the period from inception to September 30, 2004, respectively.



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

Advances and loans made by shareholders that were subsequently converted to contributed capital amounted to \$0, \$0 and \$32.8 million for the nine months ended September 30, 2004 and 2003, and the period from inception to September 30, 2004, respectively.

During the period from inception to September 30, 2004, the Company acquired the Desert Inn Water Company, LLC, and \$6.4 million of receivables originally recorded as due from a related party on the balance sheet were reclassified as water rights owned by the Company. No such amounts were recorded during the nine months ended September 30, 2004 and 2003.

During the period from inception to September 30, 2004, the Company reduced the recorded amount of land by approximately \$1.4 million representing the amount of excess liabilities accrued at the date of the Desert Inn Resort & Casino (the “Desert Inn”) purchase in June 2000. No such amounts were recorded during the nine months ended September 30, 2004 and 2003.

**6. Related Party Transactions**

The Company periodically incurs costs on behalf of Stephen A. Wynn, the Company’s Chairman of the Board, Chief Executive Officer and one of its principal stockholders (“Mr. Wynn”) and other executive officers of the Company, including costs with respect to their personal use of corporate aircraft. Mr. Wynn and these other officers have deposits with the Company to prepay any such items. These deposits are replenished on an ongoing basis as needed. At September 30, 2004 and December 31, 2003, the Company’s net liability to Mr. Wynn and other officers was approximately \$97,000 and \$60,000, respectively.

Until it was closed on May 6, 2004, the Company operated an art gallery at the former Desert Inn displaying The Wynn Collection, a collection of artwork owned by Mr. and Mrs. Wynn. Under the terms of the Art Rental and Licensing Agreement (the “Art Agreement”) under which The Wynn Collection was exhibited at the time the art gallery was closed, Mr. and Mrs. Wynn leased The Wynn Collection to the Company for an annual fee of one dollar (\$1), and the Company was entitled to retain all revenues from the public display of The Wynn Collection and the related merchandising revenues. The Company was responsible for all expenses incurred in exhibiting and safeguarding The Wynn Collection, including the cost of insurance (including terrorism insurance) and taxes relating to the rental of The Wynn Collection.

On August 6, 2004, the Art Agreement was amended to set forth the terms and conditions under which The Wynn Collection will be exhibited at Wynn Las Vegas effective upon the opening of the new resort (planned for April 2005). The terms of the amended Art Agreement are substantially the same as the terms under which the Company most recently had displayed The Wynn Collection in the gallery in the former Desert Inn, including an annual rental of one dollar (\$1) for all of the leased works.

On August 6, 2004, the Company also 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.

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

On August 6, 2004, the Company also extended the term of Mr. Wynn's employment agreement for an additional ten years, until October 24, 2017. The employment agreement is co-terminus with the Rights of Publicity License described above. The other material terms of Mr. Wynn's employment agreement remain unchanged.

During the three and nine months periods ended September 30, 2004 and 2003, the Company leased or rented office space, automobiles and two apartments, typically on a month-to-month basis, from certain minority investors in Wynn Macau, S.A. The office space was leased through February 2004 for approximately \$5,500 per month, the apartments were rented for approximately \$3,500 per month and automobiles were rented on an as-needed basis.

#### **7. Property and Equipment**

Property and equipment as of September 30, 2004 and December 31, 2003, consist of the following (amounts in thousands):

	<u>September 30,</u> <u>2004</u>	<u>December 31,</u> <u>2003</u>
Land	\$ 353,544	\$ 288,422
Leasehold interest in land	57,186	—
Airplanes	55,587	38,000
Buildings and improvements	—	15,879
Parking garage	1,041	1,041
Furniture, fixtures and equipment	9,328	6,455
Construction in progress	1,224,062	570,988
	<u>1,700,748</u>	<u>920,785</u>
Less: accumulated depreciation	(4,237)	(22,970)
	<u>\$ 1,696,511</u>	<u>\$ 897,815</u>

In July 2004, the Company purchased certain land and buildings across Sands Avenue from Wynn Las Vegas. The purchase price for the land and buildings was \$45 million. The current carrying value of the land of approximately \$46.2 million includes the purchase price plus transaction and other costs incurred in preparing the property for development as a parking facility.

During the third quarter of 2004, the Company began the demolition of the remaining buildings of the former Desert Inn. Accordingly, the Company wrote off \$15.8 million of both the cost and the associated accumulated depreciation of the buildings and improvements constituting the former Desert Inn. The Company also sold its Global Express aircraft in August 2004 for \$33.0 million.

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

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

**8. Long-Term Debt**

Long-term debt as of September 30, 2004 and December 31, 2003, consists of the following (amounts in thousands):

	September 30, 2004	December 31, 2003
12 % Second Mortgage Notes, net of original issue discount of approximately \$13.6 million and \$22.8 million, respectively due November 1, 2010; effective interest at approximately 12.9%	\$ 233,973	\$ 347,220
6% Convertible Subordinated Debentures, due July 15, 2015	250,000	250,000
\$250 Million Delay Draw Term Loan Facility; interest at LIBOR plus 5.5% (approximately 7.3%)	250,000	—
Land Loan; interest at LIBOR plus 5.5% (approximately 7.3%)	143,400	—
\$198.5 Million FF&E Facility; interest at LIBOR plus 4%; (approximately 5.8% and 5.2%, respectively)	70,309	38,000
\$800 Million Revolving Credit Facility; interest at LIBOR plus 4% (approximately 5.8%)	40,247	—
Note payable - Aircraft; interest at 5.67%	14,833	—
Note payable - Land Parcel; at 8%	223	253
	<u>1,002,985</u>	<u>635,473</u>
Current portion of long-term debt	(708)	(41)
	<u>\$ 1,002,277</u>	<u>\$ 635,432</u>

*Corporate Aircraft Note*

To finance certain enhancements to the aircraft purchased in May 2004, the Company borrowed an additional \$3.3 million under a previously existing 5.67% interest-bearing note. The note in the aggregate principal amount of \$15 million, requires monthly payments of principal and interest totaling approximately \$124,000 through June 2011, reducing to approximately \$27,000 for July through September 2011. There are also balloon payments due in June and September of 2011 of approximately \$7.5 and \$2.1 million, respectively. The note is secured by a lien on the aircraft.

*Wynn Las Vegas Credit Facilities*

During the third quarter of 2004, the Company drew the remaining approximately \$240.3 million of available borrowings under its \$250 million delay draw senior secured term loan facility (the "Term Loan Facility"). The proceeds were applied to Wynn Las Vegas' construction costs. The Term Loan Facility is guaranteed by Wynn Resorts as the parent company, Valvino and its subsidiaries (excluding Wynn Completion Guarantor, LLC, and Desert Inn Improvement Company, LLC) and certain of Valvino's affiliates. The Term Loan Facility also is secured by a first priority security interest in a \$50 million completion guarantee and a \$30.0 million liquidity reserve account; a first priority pledge of all equity interests in, and a first priority security interest in substantially all the assets of, Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. (together, the "Issuers") and certain of their affiliates; first mortgages on all real property constituting Wynn Las Vegas, and a second priority security interest on the furniture, fixtures and equipment securing the FF&E facility described below. The Term Loan Facility matures in October 2009 and, prior to the opening of Wynn Las Vegas, annual

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interest is charged on outstanding borrowings at the London Interbank Offered Rate (“LIBOR”) plus 5.5%. Subsequent to the opening of Wynn Las Vegas, the applicable interest rate is subject to adjustment based upon the Company’s leverage ratio.

During the third quarter of 2004, the Company amended its \$188.5 million FF&E facility (the “FF&E Facility”) to increase the available commitments thereunder to \$198.5 million and borrowed the \$10 million of increased availability to partially replenish cash balances used to purchase a corporate aircraft in June 2004. The FF&E Facility provides financing for furniture, fixtures and equipment for Wynn Las Vegas. Obligations under the FF&E Facility are guaranteed by the same guarantors as those which guarantee the obligations under the Term Loan Facility, on a senior unsecured basis. The FF&E Facility matures in October 2009, and annual interest is charged on outstanding borrowings at LIBOR plus 4%. In addition, fees are charged on the unused available borrowings at an annual rate of 4%.

During the third quarter of 2004, the Company amended its bank credit facilities to increase the \$750 million senior secured revolving credit facility (the “Revolver”) by \$50 million to finance the purchase of certain land and buildings across Sands Avenue from Wynn Las Vegas. The purchase price was \$45 million, and transaction, closing and certain other expected future costs, including interest, increased the required funding by an additional \$5 million. During the third quarter of 2004, the Company began borrowing under the Revolver. The Revolver is guaranteed by Wynn Resorts as the parent company, Valvino and its subsidiaries (excluding Wynn Completion Guarantor, LLC, and Desert Inn Improvement Company, LLC) and certain of Valvino’s affiliates. The Revolver also is secured by a first priority security interest in a \$50 million completion guarantee and a \$30.0 million liquidity reserve account; a first priority pledge of all equity interests in, and a first priority security interest in substantially all the assets of, the Issuers and certain of their affiliates; first mortgages on all real property constituting Wynn Las Vegas; and a second priority security interest on the furniture, fixtures and equipment securing the FF&E Facility described above. The Revolver matures in October 2008 and, prior to the opening of Wynn Las Vegas, annual interest is charged on outstanding borrowings at LIBOR plus 4%. Subsequent to the opening of Wynn Las Vegas, the applicable interest rate is subject to adjustment based upon the Company’s leverage ratio. In addition, fees are charged on the unused available borrowings at an annual rate of 2%.

*Wynn Las Vegas Interest Rate Swaps*

The Company seeks to manage the interest rate risk associated with its variable rate borrowings, through balancing fixed-rate and variable-rate borrowings and the use of derivative financial instruments. The Company’s interest rate swaps have been designated as cash flow hedges of its Revolver, its Term Loan Facility and its FF&E Facility in accordance SFAS No. 133, “Accounting for Derivative Instruments and Hedging Activities”. As of September 30, 2004 and December 31, 2003, the Company recorded approximately \$5.9 million and \$8.8 million in other assets, respectively, to reflect the fair value of the hedges. The \$2.9 million decrease in the fair value during the nine months ended September 30, 2004 was recorded as a component of comprehensive income. The fair value approximates the amount the Company would receive if these contracts were settled at the respective valuation date. Fair value is estimated based upon current, and predictions of future, interest rate levels along a yield curve, the remaining duration of the instruments and other market conditions, and therefore, is subject to significant estimation and a high degree of variability of fluctuation between periods.

*Wynn Macau Credit Facilities*

On September 14, 2004, the Company completed the financing for the design, development, construction and pre-opening expenses of Wynn Macau. Wynn Macau, S.A. executed a definitive credit agreement (the “CTA”) and related ancillary agreements for a senior secured bank facility of \$397 million. The senior secured

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bank facility consists of term loan facilities in the amount of \$382 million (which will be borrowed in a combination of Hong Kong and US dollars) and a revolving working capital facility of HK\$117 million (approximately US\$15 million as of September 30, 2004).

As described in more detail below, the term loans will not be drawn until previously funded base equity of \$230 million and scheduled subordinated funding of \$122 million have been expended for the construction and development of Wynn Macau. Commencing on September 14, 2007, the principal amount of the term loans is required to be repaid in quarterly installments. During the third year of the loan, 3.75% of the principal is due, during the fourth year of the loan, 10.00% of the principal is due, during the fifth year of the loan, 27.00% of the principal is due, during the sixth year of the loan, 29.00% of the principal is due, and during the seventh year of the loan, 30.25% of the principal is due. The term loans will mature on September 14, 2011, with annual interest charged at LIBOR or the Hong Kong Interbank Offered Rate (“HIBOR”) (as denominated) plus 3.5%. The working capital facility will expire on September 14, 2007 and borrowings under it are charged annual interest at HIBOR plus 2.5%.

The loans are secured by a collateral package consisting of a first priority security interest in substantially all of the assets of Wynn Macau, S.A. In addition, certain subsidiaries of Wynn Resorts that are direct or indirect shareholders of Wynn Macau, S.A. have executed a guarantee of the loans and pledged their shares in Wynn Macau, S.A. or upstream intermediate companies, as the case may be, as additional security for repayment of the loans.

To satisfy the base equity requirement, Wynn Resorts has directly contributed and, through Wynn Group Asia, Inc. (“Wynn Asia”) loaned, a total of \$230 million of cash to Wynn Macau, S.A., including amounts spent to date on Wynn Macau and \$50 million deposited with Banco National Ultramarino, S.A. (“BNU”) as collateral for a bank guarantee (See Note 9. Commitments and Contingencies). In addition, simultaneously with the loan signing, Wynn Asia, a subsidiary of Wynn Resorts, entered into a Note Purchase Agreement with Wynn Macau, S.A. pursuant to which Wynn Asia will purchase \$122 million in subordinated notes to be issued by Wynn Macau, S.A.. The subordinated notes will be secured by a third priority security interest in the collateral package described above. Proceeds of the contributions and loans and the subordinated notes must be expended for Wynn Macau project costs prior to borrowing under the term loans. In addition, the Company provided \$30 million of contingent funds that are available to pay additional costs of construction, if necessary.

The CTA contains capital spending limits and other affirmative and negative covenants, customary for a limited recourse project financing.

## **9. Commitments and Contingencies**

### *Las Vegas*

Wynn Las Vegas’ project budget, including amendments as of September 30, 2004, was approximately \$2.7 billion, including contingencies. This amount includes the cost of acquiring approximately 235 acres of land, costs of design and construction, capitalized interest, pre-opening expenses and financing fees. Also included in this amount are approximately \$61 million for a portion of the anticipated budget of a planned future expansion of the resort, which will include an additional hotel and casino and related amenities. Although the scope and design of the future expansion continues to be developed, the budget to date includes amounts for a parking addition, office relocation, demolition and certain interest and financing costs and professional fees.

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Through September 30, 2004, the Company has funded approximately \$1.8 billion of the total \$2.7 billion of budgeted project costs with equity contributions and debt. As of September 30, 2004, budgeted costs still to be incurred totaled approximately \$883 million, and the Company had availability under its existing credit agreements and long-term restricted cash available for the project of approximately \$912 million, plus \$70.9 million of the \$80 million deposited into the completion guarantee and liquidity reserve accounts. The Company anticipates incurring additional costs that will require it to use a significant portion of the remaining \$70.9 million completion guarantee and liquidity reserve in order to complete Wynn Las Vegas. As these amounts are committed for use, the project budget will increase correspondingly. In addition, the Company anticipates using all available construction contingencies. In summary, all of the anticipated project costs are covered by the \$2.7 billion budget and in the additional funds provided by the financing for Wynn Las Vegas.

At September 30, 2004, the project budget included various contractual commitments for developing, constructing and equipping Wynn Las Vegas totaling approximately \$2.4 billion, including guaranteed maximum price contracts with the three prime contractors for the construction of the hotel and casino for approximately \$1.0 billion, construction of the Wynn Las Vegas golf course for approximately \$18.0 million and construction of the parking garage for approximately \$10.1 million. The parking structure is substantially complete and is currently used for parking by construction personnel.

During the third quarter of 2004, the Company entered into an agreement to sublease certain land and purchase an approximately 21,000 square foot aircraft hangar to be constructed at the airport facilities in Las Vegas, Nevada. The purchase price of the hangar is approximately \$5 million. As of September 30, 2004, \$200,000 has been delivered in accordance with the terms of the purchase agreement and another \$800,000, payable in two installments, will be due upon completion of certain milestones in the construction of the hangar. The remaining approximately \$4 million will be due and payable upon completion of the hangar. Upon completion of this new hangar, the Company intends to terminate the lease of its current aircraft hangar.

The Company has entered into leases for six retail outlets, license and distribution agreements for five additional retail outlets, and joint venture agreements for the operation of three other retail outlets in Wynn Las Vegas. Each of these retail outlets will open concurrently with the opening of Wynn Las Vegas. In connection with these arrangements, Wynn Las Vegas has provided some of the retail tenants an allowance for improvements. These improvement allowances are included in the budgeted costs to construct Wynn Las Vegas.

In addition to the above, to accommodate its preopening efforts, the Company leases office space at three locations, a hangar for its corporate aircraft and certain warehouse facilities, all in Las Vegas. These leases expire at various dates between June 2005 and February 2007.

The Company has entered into long-term agreements with Productions Du Dragon, S.A., a creative production company (“Dragon”) and Calitri Services and Licensing Limited Liability Company, its affiliated production services company (“Calitri”), for the licensing, creation, development and executive production of the water-based production show at Wynn Las Vegas to be named “Le Rêve”. Under these agreements the Company is required to pay certain up-front creation and licensing fees, production costs and, upon opening of the production, a royalty of 10% of net ticket revenues and retail sales, and 50% of the show and retail 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, which will coincide with the opening of Wynn Las Vegas, with one five-year renewal option.

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The Company also has an option with the 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 million and any additional project will require additional funds to develop.

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, which is scheduled for completion in the second half of 2005.

At September 30, 2004 and December 31, 2003, other assets included \$26.9 million and \$8.7 million, respectively, of amounts paid or accrued for creation and development costs in conjunction with these entertainment agreements.

*Macau*

In June 2002, Wynn Macau, S.A. entered into a 20-year casino concession agreement with the government of Macau, permitting it to construct and operate one or more casinos in Macau. The casino concession agreement obligates Wynn Macau, S.A. to invest 4 billion patacas (approximately US\$500 million as of September 30, 2004) 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 billion patacas by June 26, 2009, it is obligated to invest the remaining amount in projects related to its gaming operations in Macau that the Macau government approves, or in projects of public interest designated by the Macau government. The Wynn Macau project, currently under construction, has a budget of approximately \$704 million, including contingencies but excluding approximately \$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 its first payment to the Macau government of approximately \$3.1 million under the Land Concession Contract and is required to make ten additional semi-annual payments totaling approximately \$37 million. Wynn Macau, S.A. is also required to pay approximately \$17 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 28, 2006 for a guaranteed maximum price of approximately \$285 million (including the contractors’ fee and contingency). The total design and construction costs are estimated to be approximately \$425 million. Both the contract time and guaranteed maximum price are subject to further adjustment under the circumstances specified in the contract. The

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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 September 30, 2004, Wynn Macau, S.A. has incurred approximately \$63 million of the total \$704 million of budgeted project costs. The \$63 million excludes approximately \$35 million of land rights and land concession installment payments accrued to date that will occur prior to opening Wynn Macau. As of September 30, 2004, project costs still to be incurred (including the \$35 million of scheduled land related payments) totaled approximately \$641 million. These costs 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 credit facilities described in Note 8. Long-term Debt. In addition to contingencies within the project budget, the Company has available to it \$30 million of long-term restricted cash reserved as contingent equity and a \$30 million contingent debt facility.

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 BNU for a guarantee in the amount of MOP700,000,000 (approximately US\$87 million as of September 30, 2004). 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. has deposited \$50 million of the \$230 million base equity funding with BNU, which deposit will be drawn upon by Wynn Macau, S.A., after the remainder of its base equity has been spent. 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 of not to exceed MOP12,250,000 (approximately US\$1,525,000 as of September 30, 2004).

At September 30, 2004, Wynn Macau, S.A., had total assets held in Macau of approximately \$210.2 million (including approximately \$27.2 million of design and development work included in construction in progress, \$57.2 million in a leasehold interest in land and approximately \$51.4 million allocated to the gaming concession), total liabilities of approximately \$169.3 million, and total equity of approximately \$40.9 million (including an inception to date net loss of approximately \$35.4 million).

Although Wynn Macau, S.A. continues to work with the Macau government to obtain certain determinations related to Macau tax regulations, there can be no assurance that it will obtain the desired determinations.

*Self-insurance*

The Company's domestic subsidiaries are covered under a self-insured medical plan up to a maximum of \$40,000 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.

*Employment Agreements*

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



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

*Litigation*

The Company occasionally is a party to lawsuits. As with all litigation, no assurance can be provided as to the outcome of such matters and we note that litigation inherently involves significant costs.

**10. 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 Las Vegas, LLC and Wynn Las Vegas Capital Corp. (the “Notes Issuers”) as the issuers of the 12% second mortgage notes due 2010 (the “Notes”), the Notes Guarantors (other than Wynn Resorts), Wynn Resorts Funding, LLC (the “Convertible Debentures Guarantor”) and non-guarantor subsidiaries as of September 30, 2004 and December 31, 2003, for the three- and nine-month periods ended September 30, 2004 and 2003 and for the period from inception to September 30, 2004.

Guarantors of the Notes (other than Wynn Resorts) are Valvino, Wynn Design & Development, LLC, Wynn Resorts Holdings, LLC, Palo, LLC, Desert Inn Water Company, LLC, Wynn Show Performers, LLC, Wynn Sunrise, LLC, World Travel, LLC and Las Vegas Jet, LLC. Wynn Resorts Funding, LLC is a guarantor of the Debentures but not of the Notes. Wynn Group Asia, Inc. and all of its subsidiaries; WDD-Asia, LLC; Wynn Completion Guarantor, LLC; Desert Inn Improvement Company; Rambas Marketing, LLC; Wynn International Marketing, LLC; Worldwide Wynn, LLC; Toasty, LLC, Bora, LLC, Bora Bora, LLC, World Travel G-IV, LLC, World Travel BBJ, LLC, Wynn Golf, LLC and Kevyn, LLC are not guarantors of the Notes. The Parent records the investment in its respective subsidiaries based on the equity method of accounting. Elimination of the Parent’s investment is included in the “Eliminations” column.

The following condensed consolidating financial statements are presented in the provided form because: (i) the Notes Issuers and Guarantors and the Convertible Debentures Guarantor are wholly owned subsidiaries of the Company; (ii) the guarantees are considered to be full and unconditional, that is, if the Parent or the Notes Issuers fail to make a scheduled payment, the Notes Guarantors or the Convertible Debentures Guarantor, as applicable; are obligated to make the scheduled payment immediately and, if they do not, any holder of the Notes or Debentures may immediately bring suit directly against these Guarantors for payment of all amounts due and payable; and (iii) the guarantees are joint and several.

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**(unaudited)**

	Parent	2nd Mortgage Notes Issuer Subsidiaries	2nd Mortgage Notes Guarantor Subsidiaries	Convertible Debentures Guarantor Subsidiary	Non-guarantor Subsidiaries	Eliminating Entries	Total
<b>ASSETS</b>							
Current assets:							
Cash and cash equivalents	\$ 176,012	\$ 21,794	\$ (9,797)	\$ —	\$ 21,237	\$ —	\$ 209,246
Restricted cash and investments	—	—	—	—	5,880	—	5,880
Receivables, net	—	18	107	—	20	—	145
Inventories	—	533	124	—	—	—	657
Prepaid expenses	154	1,821	679	—	498	—	3,152
<b>Total current assets</b>	<b>176,166</b>	<b>24,166</b>	<b>(8,887)</b>	<b>—</b>	<b>27,635</b>	<b>—</b>	<b>219,080</b>
Restricted cash and investments	—	79,900	23	29,598	278,766	—	388,287
Property and equipment, net	369	1,353,780	163,221	—	179,141	—	1,696,511
Water rights	—	256	6,144	—	—	—	6,400
Trademark	—	1,000	—	—	—	—	1,000
Deferred financing costs	7,857	40,611	—	—	10,023	—	58,491
Investment in subsidiaries	530,002	7,953	391,347	—	160,580	(1,089,882)	—
Macau Concession, net	—	—	—	—	51,400	—	51,400
Other assets	200	44,718	3,854	—	43	—	48,815
Intercompany balances	786,959	(768,536)	246,088	15,000	(279,511)	—	—
<b>Total assets</b>	<b>\$1,501,553</b>	<b>\$ 783,848</b>	<b>\$ 801,790</b>	<b>\$ 44,598</b>	<b>\$ 428,077</b>	<b>\$ (1,089,882)</b>	<b>\$2,469,984</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>							
Current liabilities:							
Current portion of long-term debt	\$ —	\$ —	\$ 44	\$ —	\$ 664	\$ —	\$ 708
Accounts and construction payable	445	2,042	71,491	—	6,426	—	80,404
Accrued interest	3,125	13,578	—	—	1,089	—	17,792
Accrued compensation and benefits	2,032	2,906	965	—	454	—	6,357
Accrued expenses and other	713	4,508	701	—	22,969	—	28,891
<b>Total current liabilities</b>	<b>6,315</b>	<b>23,034</b>	<b>73,201</b>	<b>—</b>	<b>31,602</b>	<b>—</b>	<b>134,152</b>
Construction retention	—	—	53,579	—	1,438	—	55,017
Long-term debt	250,000	594,528	179	—	157,570	—	1,002,277
Other long-term liabilities	—	1,600	—	—	32,000	—	33,600
<b>Total liabilities</b>	<b>256,315</b>	<b>619,162</b>	<b>126,959</b>	<b>—</b>	<b>222,610</b>	<b>—</b>	<b>1,225,046</b>
Commitments and contingencies							
Stockholders' equity:							
Common stock	903	—	—	—	18	(18)	903
Additional paid-in capital	1,430,309	237,075	893,990	44,023	338,881	(1,513,969)	1,430,309
Deferred compensation - restricted stock	(5,309)	—	(7,299)	—	—	7,299	(5,309)
Accumulated other comprehensive income	6,154	5,854	12,308	—	—	(18,462)	5,854
Deficit accumulated from inception during the development stage	(186,819)	(78,243)	(224,168)	575	(133,432)	435,268	(186,819)
<b>Total stockholders' equity</b>	<b>1,245,238</b>	<b>164,686</b>	<b>674,831</b>	<b>44,598</b>	<b>205,467</b>	<b>(1,089,882)</b>	<b>1,244,938</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$1,501,553</b>	<b>\$ 783,848</b>	<b>\$ 801,790</b>	<b>\$ 44,598</b>	<b>\$ 428,077</b>	<b>\$ (1,089,882)</b>	<b>\$2,469,984</b>

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**CONSOLIDATING BALANCE SHEET INFORMATION**  
**AS OF DECEMBER 31, 2003**  
**(amounts in thousands)**

	Parent	2nd Mortgage Notes Issuer Subsidiaries	2nd Mortgage Notes Guarantor Subsidiaries	Convertible Debentures Guarantor Subsidiary	Non-guarantor Subsidiaries	Eliminating Entries	Total
<b>ASSETS</b>							
Current assets:							
Cash and cash equivalents	\$ 328,745	\$ 18,236	\$ (7,326)	\$ —	\$ 1,897	\$ —	\$ 341,552
Restricted cash and investments	—	58,312	—	—	—	—	58,312
Receivables, net	36	10	27	—	5	—	78
Inventories	—	—	204	—	—	—	204
Prepaid expenses	204	247	1,691	—	59	—	2,201
<b>Total current assets</b>	<b>328,985</b>	<b>76,805</b>	<b>(5,404)</b>	<b>—</b>	<b>1,961</b>	<b>—</b>	<b>402,347</b>
Restricted cash and investments	—	247,508	23	44,268	50,321	—	342,120
Property and equipment, net	410	728,663	162,983	—	5,759	—	897,815
Water rights	—	256	6,144	—	—	—	6,400
Trademark	—	1,000	—	—	—	—	1,000
Deferred financing costs	8,294	50,971	—	—	—	—	59,265
Investment in subsidiaries	548,763	8,041	503,809	—	—	(1,060,613)	—
Other assets	—	18,745	5,607	—	24	—	24,376
Intercompany balances	373,669	(513,826)	190,691	—	(50,534)	—	—
<b>Total assets</b>	<b>\$1,260,121</b>	<b>\$ 618,163</b>	<b>\$ 863,853</b>	<b>\$ 44,268</b>	<b>\$ 7,531</b>	<b>\$ (1,060,613)</b>	<b>\$1,733,323</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>							
Current liabilities:							
Current portion of long-term debt	\$ —	\$ —	\$ 41	\$ —	\$ —	\$ —	\$ 41
Accounts and construction payable	—	562	48,874	—	318	—	49,754
Accrued interest	7,375	9,438	—	—	—	—	16,813
Accrued compensation and benefits	912	875	1,082	—	509	—	3,378
Accrued expenses and other	19	173	990	—	8	—	1,190
<b>Total current liabilities</b>	<b>8,306</b>	<b>11,048</b>	<b>50,987</b>	<b>—</b>	<b>835</b>	<b>—</b>	<b>71,176</b>
Construction retention	—	—	23,846	—	—	—	23,846
Long-term debt	250,000	385,220	212	—	—	—	635,432
<b>Total liabilities</b>	<b>258,306</b>	<b>396,268</b>	<b>75,045</b>	<b>—</b>	<b>835</b>	<b>—</b>	<b>730,454</b>
Minority interest	—	—	—	—	—	1,054	1,054
Commitments and contingencies							
Stockholders' equity:							
Common stock	820	—	—	—	18	(18)	820
Additional paid-in capital	1,110,813	237,075	893,989	44,024	30,027	(1,205,115)	1,110,813
Deferred compensation - restricted stock	(9,664)	—	(10,531)	—	—	10,531	(9,664)
Accumulated other comprehensive income	8,793	8,793	17,585	—	—	(26,378)	8,793
Deficit accumulated from inception during the development stage	(108,947)	(23,973)	(112,235)	244	(23,349)	159,313	(108,947)
<b>Total stockholders' equity</b>	<b>1,001,815</b>	<b>221,895</b>	<b>788,808</b>	<b>44,268</b>	<b>6,696</b>	<b>(1,061,667)</b>	<b>1,001,815</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$1,260,121</b>	<b>\$ 618,163</b>	<b>\$ 863,853</b>	<b>\$ 44,268</b>	<b>\$ 7,531</b>	<b>\$ (1,060,613)</b>	<b>\$1,733,323</b>

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**(A DEVELOPMENT STAGE COMPANY)**  
**CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION**  
**THREE MONTHS ENDED SEPTEMBER 30, 2004**  
**(amounts in thousands)**  
**(unaudited)**

	Parent	2nd Mortgage Notes Issuer Subsidiaries	2nd Mortgage Notes Guarantor Subsidiaries	Convertible Debentures Guarantor Subsidiary	Non- guarantor Subsidiaries	Eliminating Entries	Total
<b>Revenues:</b>							
Airplane	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —
Art gallery	—	—	—	—	—	—	—
Retail	—	—	—	—	—	—	—
Royalty	1,500	—	—	—	—	(1,500)	—
Water	—	—	—	—	10	(9)	1
	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
<b>Total revenues</b>	<b>1,500</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>10</b>	<b>(1,509)</b>	<b>1</b>
	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
<b>Expenses:</b>							
Pre-opening costs	6,958	12,787	(860)	—	2,642	(2)	21,525
Depreciation and amortization	20	460	492	—	932	—	1,904
(Gain) / Loss on sale of assets	—	—	63	—	—	—	63
Selling, general and administrative	—	—	4	—	1,501	(1,500)	5
Cost of water	—	1	7	—	(8)	(7)	(7)
Cost of retail sales	—	—	—	—	—	—	—
Loss from incidental operations	—	61	664	—	—	—	725
	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
<b>Total expenses</b>	<b>6,978</b>	<b>13,309</b>	<b>370</b>	<b>—</b>	<b>5,067</b>	<b>(1,509)</b>	<b>24,215</b>
	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
<b>Operating loss</b>	<b>(5,478)</b>	<b>(13,309)</b>	<b>(370)</b>	<b>—</b>	<b>(5,057)</b>	<b>—</b>	<b>(24,214)</b>
	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
<b>Other income (expense):</b>							
Interest expense, net	—	—	—	—	(838)	502	(336)
Interest income	1,557	282	—	103	404	(502)	1,844
Loss on extinguishment of debt	—	—	—	—	—	—	—
Equity in loss of subsidiaries	(18,785)	557	(24,980)	—	(96,874)	140,082	—
	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
<b>Other income (expense), net</b>	<b>(17,228)</b>	<b>839</b>	<b>(24,980)</b>	<b>103</b>	<b>(97,308)</b>	<b>140,082</b>	<b>1,508</b>
	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
<b>Minority interest</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>
	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
<b>Net loss accumulated during the development stage</b>	<b>\$(22,706)</b>	<b>\$ (12,470)</b>	<b>\$ (25,350)</b>	<b>\$ 103</b>	<b>\$ (102,365)</b>	<b>\$ 140,082</b>	<b>\$(22,706)</b>
	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**(A DEVELOPMENT STAGE COMPANY)**  
**CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION**  
**THREE MONTHS ENDED SEPTEMBER 30, 2003**  
**(amounts in thousands)**  
**(unaudited)**

	Parent	2nd Mortgage Notes Issuers	2nd Mortgage Notes Guarantors	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
<b>Revenues:</b>							
Airplane	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —
Art gallery	—	—	84	—	—	—	84
Retail	—	—	83	—	—	—	83
Royalty	1,500	—	—	—	—	(1,500)	—
Water	—	—	—	—	17	(12)	5
<b>Total revenues</b>	<b>1,500</b>	<b>—</b>	<b>167</b>	<b>—</b>	<b>17</b>	<b>(1,512)</b>	<b>172</b>
<b>Expenses:</b>							
Pre-opening costs	4,896	4,641	978	—	1,904	27	12,446
Depreciation and amortization	1	26	611	—	—	—	638
(Gain) / Loss on sale of assets	—	—	1	—	—	—	1
Selling, general and administrative	—	—	220	—	1,503	(1,530)	193
Cost of water	—	—	9	—	15	(9)	15
Cost of retail sales	—	—	40	—	—	—	40
Loss from incidental operations	—	84	29	—	—	—	113
<b>Total expenses</b>	<b>4,897</b>	<b>4,751</b>	<b>1,888</b>	<b>—</b>	<b>3,422</b>	<b>(1,512)</b>	<b>13,446</b>
<b>Operating loss</b>	<b>(3,397)</b>	<b>(4,751)</b>	<b>(1,721)</b>	<b>—</b>	<b>(3,405)</b>	<b>—</b>	<b>(13,274)</b>
<b>Other income (expense):</b>							
Interest expense, net	(3,532)	(1,234)	(5)	—	(107)	—	(4,878)
Interest income	739	1,655	8	116	176	—	2,694
Equity in loss of subsidiaries	(8,653)	7	(8,712)	—	—	17,358	—
<b>Other income (expense), net</b>	<b>(11,446)</b>	<b>428</b>	<b>(8,709)</b>	<b>116</b>	<b>69</b>	<b>17,358</b>	<b>(2,184)</b>
<b>Minority interest</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>615</b>	<b>615</b>
<b>Net loss accumulated during the development stage</b>	<b>\$(14,843)</b>	<b>\$ (4,323)</b>	<b>\$ (10,430)</b>	<b>\$ 116</b>	<b>\$ (3,336)</b>	<b>\$ 17,973</b>	<b>\$(14,843)</b>

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**(A DEVELOPMENT STAGE COMPANY)**  
**CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION**  
**NINE MONTHS ENDED SEPTEMBER 30, 2004**  
**(amounts in thousands)**  
**(unaudited)**

	Parent	2nd Mortgage Notes Issuer Subsidiaries	2nd Mortgage Notes Guarantor Subsidiaries	Convertible Debentures Guarantor Subsidiary	Non-guarantor Subsidiaries	Eliminating Entries	Total
<b>Revenues:</b>							
Airplane	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —
Art gallery	—	—	98	—	—	—	98
Retail	—	—	93	—	—	—	93
Royalty	4,500	—	—	—	—	(4,500)	—
Water	—	—	—	—	27	(23)	4
	<u>4,500</u>	<u>—</u>	<u>191</u>	<u>—</u>	<u>27</u>	<u>(4,523)</u>	<u>195</u>
<b>Expenses:</b>							
Pre-opening costs	16,515	28,663	153	4	7,173	35	52,543
Depreciation and amortization	58	904	1,693	—	1,072	—	3,727
(Gain) / Loss on sale of assets	—	—	575	—	—	—	575
Selling, general and administrative	3	—	337	—	4,499	(4,542)	297
Cost of water	—	2	16	—	3	(16)	5
Cost of retail sales	—	—	63	—	—	—	63
Loss from incidental operations	—	240	485	—	—	—	725
	<u>16,576</u>	<u>29,809</u>	<u>3,322</u>	<u>4</u>	<u>12,747</u>	<u>(4,523)</u>	<u>57,935</u>
Operating loss	<u>(12,076)</u>	<u>(29,809)</u>	<u>(3,131)</u>	<u>(4)</u>	<u>(12,720)</u>	<u>—</u>	<u>(57,740)</u>
<b>Other income (expense):</b>							
Interest expense, net	—	—	—	—	(1,219)	686	(533)
Interest income	3,342	1,254	—	335	730	(686)	4,975
Loss on extinguishment of debt	—	(25,628)	—	—	—	—	(25,628)
Equity in loss of subsidiaries	(69,138)	(87)	(108,802)	—	(96,874)	274,901	—
	<u>(65,796)</u>	<u>(24,461)</u>	<u>(108,802)</u>	<u>335</u>	<u>(97,363)</u>	<u>274,901</u>	<u>(21,186)</u>
Minority interest	—	—	—	—	—	1,054	1,054
Net loss accumulated during the development stage	<u>\$(77,872)</u>	<u>\$ (54,270)</u>	<u>\$ (111,933)</u>	<u>\$ 331</u>	<u>\$ (110,083)</u>	<u>\$ 275,955</u>	<u>\$(77,872)</u>

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**(A DEVELOPMENT STAGE COMPANY)**  
**CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION**  
**NINE MONTHS ENDED SEPTEMBER 30, 2003**  
**(amounts in thousands)**  
**(unaudited)**

	Parent	2nd Mortgage Notes Issuers	2nd Mortgage Notes Guarantors	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
<b>Revenues:</b>							
Airplane	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —
Art gallery	—	—	236	—	—	—	236
Retail	—	—	232	—	—	—	232
Royalty	7,567	—	—	—	—	(7,567)	—
Water	—	—	—	—	45	(35)	10
<b>Total revenues</b>	<b>7,567</b>	<b>—</b>	<b>468</b>	<b>—</b>	<b>45</b>	<b>(7,602)</b>	<b>478</b>
<b>Expenses:</b>							
Pre-opening costs	13,407	11,029	2,640	—	5,302	86	32,464
Depreciation and amortization	2	49	4,939	—	—	—	4,990
(Gain) / Loss on sale of assets	—	—	(4)	—	—	—	(4)
Selling, general and administrative	—	—	527	—	7,575	(7,657)	445
Cost of water	—	—	31	—	49	(31)	49
Cost of retail sales	—	—	114	—	—	—	114
Loss from incidental operations	—	233	95	—	—	—	328
<b>Total expenses</b>	<b>13,409</b>	<b>11,311</b>	<b>8,342</b>	<b>—</b>	<b>12,926</b>	<b>(7,602)</b>	<b>38,386</b>
<b>Operating loss</b>	<b>(5,842)</b>	<b>(11,311)</b>	<b>(7,874)</b>	<b>—</b>	<b>(12,881)</b>	<b>—</b>	<b>(37,908)</b>
<b>Other income (expense):</b>							
Interest expense, net	(3,532)	(5,157)	(17)	—	(325)	—	(9,031)
Interest income	1,239	6,209	12	116	529	—	8,105
Equity in loss of subsidiaries	(28,390)	(454)	(21,607)	—	—	50,451	—
<b>Other income (expense), net</b>	<b>(30,683)</b>	<b>598</b>	<b>(21,612)</b>	<b>116</b>	<b>204</b>	<b>50,451</b>	<b>(926)</b>
<b>Minority interest</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>2,309</b>	<b>2,309</b>
<b>Net loss accumulated during the development stage</b>	<b>\$(36,525)</b>	<b>\$ (10,713)</b>	<b>\$ (29,486)</b>	<b>\$ 116</b>	<b>\$ (12,677)</b>	<b>\$ 52,760</b>	<b>\$(36,525)</b>

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**(A DEVELOPMENT STAGE COMPANY)**  
**CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION**  
**FROM INCEPTION TO SEPTEMBER 30, 2004**  
**(amounts in thousands)**  
**(unaudited)**

	Parent	2nd Mortgage Notes Issuer Subsidiaries	2nd Mortgage Notes Guarantor Subsidiaries	Convertible Debentures Guarantor Subsidiary	Non-guarantor Subsidiaries	Eliminating Entries	Total
<b>Revenues:</b>							
Airplane	\$ —	\$ —	\$ 1,068	\$ —	\$ —	\$ (264)	\$ 804
Art gallery	—	—	729	—	—	—	729
Retail	—	—	668	—	—	—	668
Royalty	13,567	—	—	—	—	(13,567)	—
Water	—	—	—	—	239	(188)	51
	<u>13,567</u>	<u>—</u>	<u>2,465</u>	<u>—</u>	<u>239</u>	<u>(14,019)</u>	<u>2,252</u>
<b>Expenses:</b>							
Pre-opening costs	39,602	51,113	30,904	3	19,391	—	141,013
Depreciation and amortization	79	1,087	26,302	—	3,144	—	30,612
(Gain) / Loss on sale of assets	—	—	702	—	69	—	771
Selling, general and administrative	2	—	1,834	—	13,957	(13,869)	1,924
Facility closure expenses	—	—	1,579	—	—	—	1,579
Cost of water	—	2	322	—	163	(149)	338
Cost of retail sales	—	—	343	—	—	—	343
Loss from incidental operations	—	758	2,481	—	—	—	3,239
	<u>39,683</u>	<u>52,960</u>	<u>64,467</u>	<u>3</u>	<u>36,724</u>	<u>(14,018)</u>	<u>179,819</u>
Operating loss	(26,116)	(52,960)	(62,002)	(3)	(36,485)	(1)	(177,567)
<b>Other income (expense):</b>							
Interest expense, net	(3,532)	(6,062)	(945)	—	(1,653)	686	(11,506)
Interest income	5,536	10,379	5,446	578	1,580	(686)	22,833
Loss on extinguishment of debt	—	(25,628)	—	—	—	—	(25,628)
Equity in loss of subsidiaries	(162,707)	(3,972)	(166,667)	—	(96,874)	430,220	—
	<u>(160,703)</u>	<u>(25,283)</u>	<u>(162,166)</u>	<u>578</u>	<u>(96,947)</u>	<u>430,220</u>	<u>(14,301)</u>
Minority interest	—	—	—	—	—	5,049	5,049
Net loss accumulated during the development stage	<u>\$(186,819)</u>	<u>\$ (78,243)</u>	<u>\$ (224,168)</u>	<u>\$ 575</u>	<u>\$ (133,432)</u>	<u>\$ 435,268</u>	<u>\$(186,819)</u>



**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**(A DEVELOPMENT STAGE COMPANY)**  
**CONSOLIDATING STATEMENTS OF CASH FLOWS INFORMATION**  
**NINE MONTHS ENDED SEPTEMBER 30, 2004**  
**(amounts in thousands)**  
**(unaudited)**

	Parent	2nd Mortgage Notes Issuer Subsidiaries	2nd Mortgage Notes Guarantor Subsidiaries	Convertible Debentures Guarantor Subsidiary	Non-guarantor Subsidiaries	Eliminating Entries	Total
<b>Cash flows from operating activities:</b>							
Net loss accumulated during the development stage	\$ (77,872)	\$ (54,270)	\$ (111,933)	\$ 331	\$ (110,083)	\$ 275,955	\$ (77,872)
Adjustments to reconcile net loss accumulated during the development stage to net cash provided by (used in) operating activities:							
Depreciation and amortization	58	904	1,693	—	1,072	—	3,727
Minority interest	—	—	—	—	—	(1,054)	(1,054)
Amortization of deferred compensation	2,738	—	—	—	—	—	2,738
Amortization of deferred financing costs	542	19,533	—	—	—	—	20,075
(Gain) / Loss on sale of assets	—	—	575	—	—	—	575
Equity in loss of subsidiaries	69,138	87	108,802	—	96,874	(274,901)	—
Incidental operations	—	—	4,085	—	78	—	4,163
Increase (decrease) in cash from changes in:							
Receivables, net	36	(8)	(80)	—	(15)	—	(67)
Inventories and prepaid expenses	50	(2,107)	1,092	—	(439)	—	(1,404)
Accounts payable and accrued expenses	(1,991)	8,386	(406)	—	8,214	—	14,203
<b>Net cash provided by (used in) operating activities.</b>	<b>(7,301)</b>	<b>(27,475)</b>	<b>3,828</b>	<b>331</b>	<b>(4,299)</b>	<b>—</b>	<b>(34,916)</b>
<b>Cash flows from investing activities:</b>							
Capital expenditures, net of construction payables	(17)	(572,054)	(71,245)	—	(88,420)	—	(731,736)
Restricted cash and Investments	—	225,921	—	14,669	(234,325)	—	6,265
Other assets	(200)	(23,712)	1,753	—	(19)	—	(22,178)
Intercompany balances	(413,290)	200,743	29,355	(15,000)	198,192	—	—
Proceeds from sale of equipment	—	—	33,868	—	—	—	33,868
<b>Net cash provided by (used in) investing activities</b>	<b>(413,507)</b>	<b>(169,102)</b>	<b>(6,269)</b>	<b>(331)</b>	<b>(124,572)</b>	<b>—</b>	<b>(713,781)</b>
<b>Cash flows from financing activities:</b>							
Proceeds from issuance of common stock	271,250	—	—	—	—	—	271,250
Third party fees	(3,283)	—	—	—	—	—	(3,283)
Principal payments of long-term debt	—	(122,420)	(30)	—	(166)	—	(122,616)
Exercise of stock options	213	—	—	—	—	—	213
Proceeds from issuance of long-term debt	—	322,555	—	—	158,400	—	480,955
Deferred financing costs	(105)	—	—	—	(10,023)	—	(10,128)
<b>Net cash provided by (used in) financing activities</b>	<b>268,075</b>	<b>200,135</b>	<b>(30)</b>	<b>—</b>	<b>148,211</b>	<b>—</b>	<b>616,391</b>
<b>Cash and cash equivalents:</b>							
Increase (decrease) in cash and cash equivalents	(152,733)	3,558	(2,471)	—	19,340	—	(132,306)
Balance, beginning of period	328,745	18,236	(7,326)	—	1,897	—	341,552
<b>Balance, end of period</b>	<b>\$ 176,012</b>	<b>\$ 21,794</b>	<b>\$ (9,797)</b>	<b>\$ —</b>	<b>\$ 21,237</b>	<b>\$ —</b>	<b>\$ 209,246</b>

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

	Parent	2nd Mortgage Notes Issuers	2nd Mortgage Notes Guarantors	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
<b>Cash flows from operating activities:</b>							
Net loss accumulated during the development stage	\$ (36,525)	\$ (10,713)	\$ (29,486)	\$ 116	\$ (12,677)	\$ 52,760	\$ (36,525)
<b>Adjustments to reconcile net loss accumulated during the development stage to net cash provided by (used in) operating activities:</b>							
Depreciation and amortization.	2	49	4,939	—	—	—	4,990
Minority interest	—	—	—	—	—	(2,309)	(2,309)
Amortization of deferred compensation	2,413	—	—	—	—	—	2,413
Amortization of deferred financing costs	182	9,353	—	—	—	—	9,535
(Gain) / Loss on sale of assets	—	—	(4)	—	—	—	(4)
Equity in loss of subsidiaries	28,390	454	21,607	—	—	(50,451)	—
<b>Increase (decrease) in cash from changes in:</b>							
Receivables, net	—	12	(34)	—	(1)	—	(23)
Inventories and prepaid expenses	239	(31)	(727)	—	(3)	—	(522)
Accounts payable and accrued expenses	4,124	10,442	111	—	244	—	14,921
<b>Total adjustments</b>	<b>35,350</b>	<b>20,279</b>	<b>25,892</b>	<b>—</b>	<b>240</b>	<b>(52,760)</b>	<b>29,001</b>
<b>Net cash provided by (used in) operating activities.</b>	<b>(1,175)</b>	<b>9,566</b>	<b>(3,594)</b>	<b>116</b>	<b>(12,437)</b>	<b>—</b>	<b>(7,524)</b>
<b>Cash flows from investing activities:</b>							
Capital expenditures, net of construction payables	(92)	(246,021)	(204)	—	(4,349)	—	(250,666)
Restricted cash and Investments	—	258,835	(3,240)	(44,140)	(26)	—	211,429
Investment in subsidiaries	(44,024)	—	—	—	—	44,024	—
Other assets	—	(2,198)	13	—	(232)	—	(2,417)
Intercompany balances	9,844	(14,706)	4,695	—	167	—	—
Proceeds from sale of equipment	—	—	6	—	—	—	6
<b>Net cash provided by (used in) investing activities</b>	<b>(34,272)</b>	<b>(4,090)</b>	<b>1,270</b>	<b>(44,140)</b>	<b>(4,440)</b>	<b>44,024</b>	<b>(41,648)</b>
<b>Cash flows from financing activities:</b>							
Equity contributions	—	—	—	44,024	—	(44,024)	—
Proceeds from issuance of common stock	45,000	—	—	—	—	—	45,000
Third party fees	(204)	—	—	—	—	—	(204)
Proceeds from issuance of long-term debt	250,000	—	—	—	—	—	250,000
Principal payments of long-term debt	—	—	(28)	—	—	—	(28)
Deferred financing costs	(8,666)	—	—	—	—	—	(8,666)
<b>Net cash provided by (used in) financing activities</b>	<b>286,130</b>	<b>—</b>	<b>(28)</b>	<b>44,024</b>	<b>—</b>	<b>(44,024)</b>	<b>286,102</b>
<b>Cash and cash equivalents:</b>							
Increase (decrease) in cash and cash equivalents	250,683	5,476	(2,352)	—	(16,877)	—	236,930
Balance, beginning of period	79,234	7,508	(1,178)	—	24,080	—	109,644
<b>Balance, end of period</b>	<b>\$329,917</b>	<b>\$ 12,984</b>	<b>\$ (3,530)</b>	<b>\$ —</b>	<b>\$ 7,203</b>	<b>\$ —</b>	<b>\$ 346,574</b>

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**(A DEVELOPMENT STAGE COMPANY)**  
**CONSOLIDATING STATEMENTS OF CASH FLOWS INFORMATION**  
**FROM INCEPTION TO SEPTEMBER 30, 2004**  
**(amounts in thousands)**  
**(unaudited)**

	Parent	2nd Mortgage Notes Issuer Subsidiaries	2nd Mortgage Notes Guarantor Subsidiaries	Convertible Debentures Guarantor Subsidiary	Non-guarantor Subsidiaries	Eliminating Entries	Total
<b>Cash flows from operating activities:</b>							
Net loss accumulated during the development stage	\$ (186,819)	\$ (78,243)	\$ (224,168)	\$ 575	\$ (133,432)	\$ 435,268	\$ (186,819)
Adjustments to reconcile net loss accumulated during the development stage to net cash provided by (used in) operating activities:							
Depreciation and amortization	79	1,087	26,302	—	3,144	—	30,612
Minority interest	—	—	—	—	—	(5,049)	(5,049)
Amortization of deferred compensation	6,199	—	—	—	—	—	6,199
Amortization of deferred financing costs	905	32,041	—	—	—	—	32,946
(Gain) / Loss on sale of fixed assets	—	—	702	—	69	—	771
Equity in loss of subsidiaries	162,707	3,971	166,667	—	96,874	(430,219)	—
Incidental operations	—	—	10,865	—	78	—	10,943
Increase (decrease) in cash from changes in:							
Receivables, net	—	(18)	7,874	—	(20)	—	7,836
Inventories and prepaid expenses	(154)	(2,354)	358	—	(498)	—	(2,648)
Accounts payable and accrued expenses	6,315	19,434	(9,006)	—	9,049	—	25,792
<b>Net cash provided by (used in) operating activities</b>	<b>(10,768)</b>	<b>(24,082)</b>	<b>(20,406)</b>	<b>575</b>	<b>(24,736)</b>	<b>—</b>	<b>(79,417)</b>
<b>Cash flows from investing activities:</b>							
Acquisition of Desert Inn Resort and Casino, net of cash acquired	—	—	(270,718)	—	—	—	(270,718)
Capital expenditures, net of construction payables	(449)	(1,012,631)	(180,261)	—	(104,182)	—	(1,297,523)
Restricted cash and Investments	—	(79,899)	(23)	(29,599)	(284,646)	—	(394,167)
Investment in subsidiaries	(641,318)	(11,925)	(551,868)	—	—	1,205,111	—
Other assets	(200)	(34,664)	(3,832)	—	(25)	—	(38,721)
Intercompany balances	(786,959)	428,186	125,119	(15,000)	238,637	10,017	—
Proceeds from sale of equipment	—	—	35,688	—	7,917	—	43,605
<b>Net cash used in investing activities</b>	<b>(1,428,926)</b>	<b>(710,933)</b>	<b>(845,895)</b>	<b>(44,599)</b>	<b>(142,299)</b>	<b>1,215,128</b>	<b>(1,957,524)</b>
<b>Cash flows from financing activities:</b>							
Equity contributions	596,120	237,075	977,904	44,024	35,012	(1,215,128)	675,007
Equity distributions	—	—	(110,482)	—	—	—	(110,482)
Exercise of stock options	295	—	—	—	—	—	295
Proceeds from issuance of common stock	808,094	—	—	—	—	—	808,094
Third party fees	(30,041)	—	(10,800)	—	—	—	(40,841)
Macau minority contributions	—	—	—	—	5,049	—	5,049
Proceeds from issuance of long-term debt	250,000	703,889	125,000	—	158,400	—	1,237,289
Principal payments of long-term debt	—	(122,420)	(153,653)	—	(166)	—	(276,239)
Deferred financing costs	(8,762)	(61,735)	(1,465)	—	(10,023)	—	(81,985)
Proceeds from issuance of related party loan	—	—	100,000	—	—	—	100,000
Principal payments of related party loan	—	—	(70,000)	—	—	—	(70,000)
<b>Net cash provided by financing activities</b>	<b>1,615,706</b>	<b>756,809</b>	<b>856,504</b>	<b>44,024</b>	<b>188,272</b>	<b>(1,215,128)</b>	<b>2,246,187</b>
<b>Cash and cash equivalents:</b>							
Increase (decrease) in cash and cash equivalents	176,012	21,794	(9,797)	—	21,237	—	209,246
Balance, beginning of period	—	—	—	—	—	—	—
<b>Balance, end of period</b>	<b>\$ 176,012</b>	<b>\$ 21,794</b>	<b>\$ (9,797)</b>	<b>\$ —</b>	<b>\$ 21,237</b>	<b>\$ —</b>	<b>\$ 209,246</b>

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

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

### **Forward-Looking Statements**

The Private Securities Litigation Reform Act of 1995 provides a "safe harbor" for forward-looking statements. Certain information included in this Quarterly Report on Form 10-Q contains statements that are forward-looking, including, but not limited to, statements relating to our business strategy and development activities, including our opportunity in Macau, as well as other capital spending, financing sources, the effects of regulation (including gaming and tax regulations), expectations concerning future operations, margins, profitability and competition. Any statements contained in this Form 10-Q that are not statements of historical fact may be deemed to be forward-looking statements. Without limiting the generality of the foregoing, in some cases you can identify forward-looking statements by terminology such as "may," "will," "should," "would," "could," "believe," "expect," "anticipate," "estimate," "intend," "plan," "continue" or the negative of these terms or other comparable terminology. Such forward-looking information involves important risks and uncertainties that could significantly affect anticipated results in the future and, accordingly, such results may differ from those expressed in any forward-looking statements made by us. These risks and uncertainties include, but are not limited to, those relating to competition in the casino/hotel and resorts industry, completion of our Wynn Las Vegas and Wynn Macau casino resorts on time and within budget, 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 dependence on Stephen A. Wynn and existing management, 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, 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 such as the attacks that occurred on September 11, 2001. Further information on potential factors which could affect our financial condition, results of operations and business are included in our filings with the Securities and Exchange Commission. 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 hereof.

### **Overview**

Since inception, we have been primarily a casino resort development company. Our efforts have been devoted principally to the development and construction activities described below with respect to Wynn Las Vegas, our first casino resort in Las Vegas, Nevada, and Wynn Macau, our first casino resort in the Macau Special Administrative Region of the People's Republic of China ("Macau"). In addition, our consolidated financial statements include results from the ownership and operation of our corporate aircraft and the operations of an art gallery, through May 6, 2004, displaying works from The Wynn Collection, consisting of artwork from the personal art collection of Stephen A. and Elaine P. Wynn. Through June 2002, we also operated the golf course located on the site of the former Desert Inn Resort and Casino (the "Desert Inn") in Las Vegas.

Work on Wynn Las Vegas continues as planned and the resort is on schedule to open in April 2005. We commenced construction on Wynn Macau in June 2004, and in September 2004 obtained the financing necessary to fund its budgeted development, construction and preopening costs. We expect to open Wynn Macau in the second half of 2006. There are significant risks associated with any major construction project, and unexpected

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developments or delays could occur. We will be required to obtain a state gaming license and county gaming and liquor licenses before we are able to commence full operations in Nevada, and will be required to follow a number of developing regulatory guidelines in Macau.

### *Wynn Las Vegas*

We are constructing and will operate Wynn Las Vegas, a casino resort which, including the new golf course located behind the hotel and planned future expansion and development, will occupy approximately 235 acres on the Las Vegas Strip. Construction of Wynn Las Vegas began with groundbreaking in October 2002 and we expect Wynn Las Vegas to be completed and open to the public (excluding the second showroom and other planned future expansions) in April 2005.

Construction of Wynn Las Vegas is on schedule. For the purpose of managing the design, procurement and construction of Wynn Las Vegas, the project is divided into several design and construction components.

- Construction of the 45-story high-rise core and shell is substantially complete. Exterior glass for the main high-rise has been installed. Exterior parapet signage has been installed and is currently lighted. Furniture is in place in rooms and suites through the 33<sup>rd</sup> floor.
- The public areas are in various stages of construction. Meeting rooms and ballrooms are substantially complete. Interior work in the casino is progressing. Retail areas will be turned over to tenants for build-out in the fourth quarter of 2004.
- Construction on the Aqua Theater showroom is substantially complete.
- The guest parking garage is substantially complete and is currently used for parking by construction personnel.
- Construction of the fairway villas, consisting of 36 luxury suites, is progressing. The building structure and drywall installation is complete and work continues on the interior finishes for 18 villas. Foundation work is substantially complete for the other 18 villas.
- Construction of the golf course is proceeding according to schedule. Grassing is complete for 17 of the 18 holes. Work on the streams and lakes is substantially complete; however, work continues on the 18<sup>th</sup> green and waterfall feature.
- Construction of the lake-mountain feature continues. Landscaping and lighting is under way and water-feature pumping equipment installation continues.

Wynn Las Vegas' project budget, including amendments as of September 30, 2004 and available contingencies, was approximately \$2.7 billion, including the cost of acquiring approximately 235 acres of land, costs of design and construction, capitalized interest, pre-opening expenses and financing fees. Also included in this amount is approximately \$61 million for a portion of the anticipated budget on the planned future expansion of the resort, which will include an additional hotel tower and casino and related amenities. Although the scope and design of the future expansion continues to be developed, the budget to date includes amounts for a parking addition, office relocation, demolition and certain interest and financing costs and professional fees.

Through September 30, 2004, we have funded approximately \$1.8 billion of the total \$2.7 billion of budgeted project costs with equity contributions and debt. As of September 30, 2004, budgeted costs still to be incurred totaled approximately \$883 million, and we had availability under our existing credit agreements and long-term restricted cash available for the project of approximately \$912 million, plus \$70.9 million of the \$80 million deposited by the Company into the completion guarantee and liquidity reserve accounts. We anticipate incurring additional costs that will require us to use a significant portion of the remaining \$70.9 million completion guarantee and liquidity reserve in order to complete Wynn Las Vegas. As these amounts are committed for use, the project budget will increase correspondingly. In addition, we anticipate using all available construction contingencies. In summary, all of the anticipated project costs are covered by the \$2.7 billion budget and in the additional funds provided by the project financing.

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### *Wynn Macau*

We are constructing and will own and operate Wynn Macau, the first casino resort to be developed under a casino concession agreement between our subsidiary, Wynn Resorts (Macau), S.A. ("Wynn Macau, S.A."), and the government of Macau. Executed in June 2002, the casino concession agreement grants Wynn Macau, S.A. the right to develop, own and operate one or more casinos in Macau, as well as the right to enter into sub-concessions for others to develop, own and operate casinos in Macau. The casino concession agreement obligates Wynn Macau, S.A. to invest no less than a total of 4 billion patacas (approximately US \$500 million as of September 30, 2004) in Macau-related projects by June 2009, and to commence operations of our first Macau casino resort no later than December 2006.

In June 2004, Wynn Macau entered into a Land Concession Contract for the Wynn Macau site in Macau's inner harbor area, opposite the Hotel Lisboa, Macau's largest and best known hotel casino. Under the terms of the Land Concession Contract, Wynn Macau, S.A. is leasing 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 its first payment to the Macau government of approximately \$3.1 million under the Land Concession Contract, and is required to make ten additional payments in semi-annual installments totaling approximately \$37 million. Wynn Macau, S.A. is also required to pay approximately \$17 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.

Although the Company continues to refine the design of the resort, including potential expansion and improvements, Wynn Macau is expected to include approximately 600 hotel rooms, approximately 100,000 square feet of gaming space, seven restaurants, approximately 28,000 square feet of retail space, and a spa, salon and entertainment facilities. The total project budget is \$704 million including contingencies but excluding approximately \$20.5 million of post opening land concession payments anticipated to be funded from operating cash flows. Construction and design costs are approximately \$425 million of the total budget.

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 Wynn Macau (other than certain limited portions to be designed by an affiliate of Wynn Macau) based on an existing scope of work and design specifications. The general contractor is obligated to substantially complete the project by August 28, 2006, for a guaranteed maximum price of \$285 million (including the contractors' fee and contingency). Both the contract time and guaranteed maximum price are subject to further adjustments under 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 ten percent of the guaranteed maximum price.

Construction of Wynn Macau is on schedule to open to the public in the third quarter of 2006, and is within budget. The following list outlines some of the construction highlights since groundbreaking in June 2004:

- Utility and drainage diversion works are substantially complete;
- The footing support for the hotel tower and low-rise is substantially complete; and
- Basement excavation and footing construction has commenced.

Through September 30, 2004, Wynn Macau, S.A. has incurred approximately \$63 million of the total \$704 million of budgeted project costs. The \$63 million excludes approximately \$35 million of land rights and land concession installment payments accrued to date that will occur prior to opening Wynn Macau. As of September 30, 2004, project costs still to be incurred (including the \$35 million of scheduled land related payments) totaled approximately \$641 million. These costs will be funded from the Company's existing cash balances in the form of base equity loans and subordinated funding, as well as the available credit facilities. In addition to contingencies within the project budget, we have availability of \$30 million of long-term restricted cash reserved as contingent equity and a \$30 million contingent debt facility to complete the project.

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In September 2004, we acquired all of the 17.5% indirect ownership interests in Wynn Macau, S.A. held by third parties in exchange for 1,333,333 shares of our common stock. Mr. Wong Chi Seng, one of the third parties, retained a direct 10% voting interest in Wynn Macau, S.A. and agreed to continue to serve as Executive Director. Mr. Wong's shares provide in the aggregate a nominal preferential annual dividend and capital distribution rights of up to one Macau pataca (US\$0.12). As a result of the acquisition, Wynn Macau, S.A. effectively became a wholly-owned indirect subsidiary of Wynn Resorts.

Also in September 2004 we entered into a \$397 million senior secured bank debt facility to provide, along with funds advanced by Wynn Resorts, the necessary funding for the development and construction of Wynn Macau as well as to pay pre-opening expenses. The senior bank debt facility and the Company's funding obligations are described in more detail below under "Liquidity and Capital Resources".

The development of casinos in Macau is subject to a number of uncertainties, including risks associated with doing business in foreign locations and risks associated with Macau's developing gaming regulatory framework. The Legislative Assembly of Macau enacted legislation, effective July 1, 2004, that enables casinos operating in Macau to lawfully extend credit to gaming customers and enforce gaming debts. We continue to pursue certain favorable determinations related to Macau's tax regulations, however, we cannot ensure that we will be able to obtain the desired determinations.

### **Results of Operations**

We have not commenced operations and, therefore, revenues are minimal. Consequently, as is customary for a development stage company, we have incurred losses in each period from inception to September 30, 2004. We expect these losses to continue and to increase until operations commence with the planned opening of Wynn Las Vegas in April 2005. These losses will grow due to increasing pre-opening expenses as the Wynn Las Vegas project nears completion and construction of Wynn Macau progresses. The acceleration of these costs was anticipated and is included in the project budgets for Wynn Las Vegas and Wynn Macau. We do not expect that our operating results prior to opening Wynn Las Vegas and Wynn Macau will be indicative of operating results thereafter.

Although we ceased operations of our art gallery and the related retail store as of May 6, 2004, we intend to recommence these operations once Wynn Las Vegas resort operations have begun. Our operations will no longer include water revenues now that the last Desert Inn golf course homes have been acquired. We expect that the revenues associated with these incidental businesses will be immaterial compared to the revenues that will be associated with the lodging, gaming, dining, entertainment and other retail operations of our casino resorts.

#### *Results of operations for the three months ended September 30, 2004 compared to the three months ended September 30, 2003.*

The Company's development operations resulted in a net loss for the three months ended September 30, 2004, of approximately \$22.7 million, a 53% increase over the net loss of approximately \$14.8 million for the three months ended September 30, 2003, due to increased development activities, including staffing increases.

Our minimal revenues for the three months ended September 30, 2004 decreased compared to the same period in the prior year, primarily as a result of the closure of the art gallery and its related retail shop on May 6, 2004. Total expenses for the three months ended September 30, 2004 increased approximately \$10.8 million, or 80%, to \$24.2 million, as compared to \$13.4 million for the three months ended September 30, 2003. Preopening costs increased by \$9.1 million to \$21.5 million for the three months ended September 30, 2004 as compared to \$12.4 million for the third quarter of 2003. The increase in pre-opening costs, which consist primarily of salaries and wages and consulting and legal fees, is directly attributable to an increase in pre-opening activities, including staffing increases, as compared to the same period in the prior year. Management expects pre-opening costs to continue to increase as the development of Wynn Las Vegas and Wynn Macau progresses.

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Other income (expense), net for the three months ended September 30, 2004, increased approximately \$3.7 million to income of approximately \$1.5 million from an expense of approximately \$2.2 million for the three months ended September 30, 2003, primarily as a result of a \$4.5 million decrease in interest expense from 2003 to 2004 offset by a decrease in interest income. The decrease in interest expense is due to the increasing rate of interest capitalization as the Wynn Las Vegas project has progressed. The decrease in interest income of approximately \$850,000 results primarily from the decrease in cash from the net proceeds from equity and debt financing activity as the funds from such financings are expended to construct Wynn Las Vegas.

Comprehensive income decreased from a gain of \$5.5 million for the three months ended September 30, 2003, to a loss of approximately \$8.9 million for the three months ended September 30, 2004, due to the increase and decrease, respectively, in the fair value of our two interest rate swaps entered into during the second quarter of 2003. Our interest rate swaps have been designated by us as cash flow hedges in accordance with applicable accounting pronouncements. Accordingly, changes in the fair value are charged, to the extent the hedge is effective (as defined in the accounting pronouncements), directly to comprehensive income. The fair value approximates the amount we would pay or receive if these contracts were settled at the valuation dates. Fair value is estimated based upon current, and predictions of future, interest rate levels along a yield curve, the remaining duration of the instruments, and other market conditions, and therefore, is subject to significant estimation and a high degree of variability of fluctuation between periods.

### *Results of operations for the nine months ended September 30, 2004 compared to the nine months ended September 30, 2003.*

The Company's development operations resulted in a net loss for the nine months ended September 30, 2004, of approximately \$77.9 million, a 113% increase over the net loss of approximately \$36.5 million for the nine months ended September 30, 2003, due to increased development activities, including increased staffing and the loss on early retirement of debt, partially offset by decreased depreciation and amortization expense as most buildings of the Desert Inn, except the parking garage, were fully depreciated by June 2003.

Our minimal revenues for the nine months ended September 30, 2004 decreased compared to the same period in the prior year, primarily as a result of the closure of the art gallery and its related retail shop on May 6, 2004. Total expenses for the nine months ended September 30, 2004 increased approximately \$19.5 million, or 51%, to \$57.9 million, as compared to \$38.4 million for the nine months ended September 30, 2003. Preopening costs increased by \$20.1 million to \$52.5 million for the nine months ended September 30, 2004 as compared to \$32.5 million for 2003. The increase in pre-opening costs, which consist primarily of salaries and wages and consulting and legal fees, is directly attributable to an increase in pre-opening activities, including staffing increases as compared to the same period in the prior year. Management expects pre-opening costs to continue to increase as the development of Wynn Las Vegas and Wynn Macau progress. The increase in pre-opening expenses was partially offset by reduced depreciation expenses in the 2004 periods compared to the 2003 periods due to fully depreciated buildings in 2003 as noted above.

In addition to the above, during the nine months ended September 30, 2004, we benefited from certain significant collections of Desert Inn casino marker receivables totaling approximately \$4.2 million. The marker receivables were acquired by us as part of the Desert Inn purchase in June 2000. This gain was used to reduce the carrying value of land in this period. Other than the marker collections, incidental operations relating to the brief operation of an apartment complex purchased in July 2004 for the future development of a parking facility produced a loss of approximately \$725,000.

Other income (expense), net for the nine months ended September 30, 2004, decreased approximately \$20.3 million to an expense of approximately \$21.2 million from an expense of approximately \$926,000 for the nine months ended September 30, 2003, primarily as a result of an approximately \$25.6 million second quarter 2004 loss on the early retirement of a portion of the 12% second mortgage notes due 2010 (the "Notes") of Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. This loss is attributable to the 112% redemption premium and write-offs of unamortized original issue discount and debt issuance costs. Also, during the nine months



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ended September 30, 2004 there was a \$8.5 million decrease in interest expense, offset by an approximately \$3.1 million decrease in interest income. Lower interest income is primarily attributable to the decrease in cash from the net proceeds from equity and debt financing activity as the funds are being expended to construct Wynn Las Vegas, while the interest expense decreased due to increased capitalization of interest expense commensurate with the progress on the construction of Wynn Las Vegas.

Comprehensive income decreased from a gain of \$5.7 for the nine months ended September 30, 2003, to a loss of approximately \$2.9 million for the nine months ended September 30, 2004, due to the increase and decrease, respectively, in the fair value of our two interest rate swaps entered into during the second quarter of 2003. Our interest rate swaps have been designated by us as cash flow hedges in accordance with applicable accounting pronouncements. Accordingly, changes in the fair value are charged, to the extent the hedge is effective (as defined in the accounting pronouncements), directly to comprehensive income. The fair value approximates the amount we would pay or receive if these contracts were settled at the valuation dates. Fair value is estimated based upon current, and predictions of future, interest rate levels along a yield curve, the remaining duration of the instruments, and other market conditions, and therefore, is subject to significant estimation and a high degree of variability of fluctuation between periods.

### **Liquidity and Capital Resources**

#### *Capital Resources and Commercial Commitments*

At September 30, 2004, the Company had approximately \$209.2 million of cash and cash equivalents. In addition, the Company had approximately \$394.2 million in restricted cash and investments from the proceeds of its debt and equity financings. This amount is restricted for development and construction of Wynn Las Vegas and Wynn Macau and certain other specific costs in accordance with agreements governing the Company's debt facilities including, but not limited to \$184.5 million restricted for the development, construction and preopening expenses of Wynn Macau, \$80 million restricted for a Wynn Las Vegas liquidity reserve and completion guarantee (of which \$9.1 million has been committed to the project budget as of September 30, 2004), \$42.6 million for interest on the Notes, approximately \$29.6 million restricted for the payment of the four remaining payments on the first three years of interest on our 6% convertible subordinated debentures due 2015 (the "Debentures"), \$46.2 million restricted for Wynn Las Vegas' expansion and approximately \$11.3 million for aircraft enhancements, insurance and sales tax deposits and certain other amounts. 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.

#### *Financing for Wynn Las Vegas*

As of September 30, 2004, approximately \$1.8 billion of the total Wynn Las Vegas project cost, (including the cost of the land, capitalized interest, pre-opening expenses and all financing fees) had been expended or incurred. This was funded primarily from a combination of our cash on hand from contributed capital, proceeds from the initial public offering of our common stock, the Notes and our other available debt facilities. The remaining \$883 million of Wynn Las Vegas project costs, including certain scope changes and planned expansion elements, are to be funded from the remaining net proceeds of the Notes, the proceeds of the Land Loan (described below) and additional borrowings under our other available debt facilities.

At September 30, 2004, we had approximately \$1 billion of outstanding debt. As discussed in further detail below, during the quarter ended September 30, 2004, we received or requested a total of approximately \$380.7 million under our Wynn Las Vegas credit facilities to fund construction costs and capital purchases. Consequently, as of September 30, 2004, we have approximately \$797.8 million remaining available for future funding requests under our Wynn Las Vegas debt facilities. This availability, combined with the restricted cash available for Wynn Las Vegas, and the remaining construction contingencies, the completion guarantee and liquidity reserve will provide the funding necessary to complete the Wynn Las Vegas project. As of September 30, 2004, the Company has committed to use approximately \$9.1 million of the \$80 million completion

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guarantee and liquidity reserve. This \$9.1 million is included in the \$2.7 billion Wynn Las Vegas project budget. As additional amounts under the completion guarantee and liquidity reserve are committed for use, the Wynn Las Vegas project budget will increase correspondingly.

Any delays or further scope change orders with respect to the Wynn Las Vegas project could have a material adverse effect on our liquidity and operations. If we do not complete construction of Wynn Las Vegas by September 30, 2005, the lenders under certain of the agreements governing our credit facilities and the holders of the Notes will have the right to accelerate the indebtedness thereunder and exercise other rights and remedies against Wynn Las Vegas and the guarantors of the indebtedness. Any such acceleration would have a material adverse effect on us.

During the third quarter of 2004, we drew the remaining approximately \$240.3 million of available borrowings under our \$250 million delay draw senior secured term loan facility (the "Term Loan Facility"). The proceeds were applied to Wynn Las Vegas construction costs.

During the third quarter of 2004, we amended our \$188.5 million FF&E facility (the "FF&E Facility") to increase the available commitments thereunder to \$198.5 million, and borrowed the \$10 million of increased availability to partially reimburse cash balances used to purchase a corporate aircraft in June 2004.

During the third quarter of 2004, we amended our bank credit facilities as provided for in the documents, to increase the \$750 million senior secured revolving credit facility (the "Revolver") by \$50 million to finance the purchase of certain land and buildings adjacent to Wynn Las Vegas. The purchase price was \$45 million, and transaction, closing and certain other expected future costs increased the required funding by an additional \$5 million. During the third quarter of 2004, we borrowed approximately \$40.2 million under the Revolver, and requested an additional \$90.2 million for costs incurred through September 30, 2004, which will be funded in October 2004.

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 Wynn Las Vegas interest rate swaps have been designated as cash flow hedges of our Revolver, Term Loan Facility and FF&E Facility in accordance Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS No. 133"). As of September 30, 2004 and December 31, 2003, we recorded approximately \$5.9 million and \$8.8 million in other assets, respectively, to reflect their fair value. The \$2.9 million decrease in the fair value during the nine months ended September 30, 2004 was recorded as a component of comprehensive income. The fair value approximates the amount we would receive if these contracts were settled at the respective valuation date. Fair value is estimated based upon current, and predictions of future, interest rate levels along a yield curve, the remaining duration of the instruments and other market conditions, and therefore, is subject to significant estimation and a high degree of variability of fluctuation between periods.

### *Financing for Wynn Macau*

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 (the "Common Terms Agreement" or "CTA") and related ancillary agreements for a senior secured bank facility of \$397 million. The senior secured bank facility consists of term loan facilities in the amount of \$382 million (which will be borrowed in a combination of Hong Kong and US dollars) and a revolving working capital facility of HK\$117 million (approximately \$15 million as of September 30, 2004).

As described below, the term loans will not be drawn until previously funded base equity of \$230 million and scheduled subordinated funding of \$122 million have been expended for the construction and development of Wynn Macau. Commencing on September 14, 2007, the principal amount of the term loans is required to be repaid in quarterly installments. During the third year of the loan, 3.75% of the principal is due, during the fourth

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year of the loan, 10.00% of the principal is due, during the fifth year of the loan, 27.00% of the principal is due, during the sixth year of the loan, 29.00% of the principal is due, and during the seventh year of the loan, 30.25% of the principal is due. The term loans will mature on September 14, 2011, with annual interest charged at LIBOR or the Hong Kong Interbank Offered Rate (“HIBOR”) (as denominated) plus 3.5%. The working capital facility will expire on September 14, 2007 and borrowings under it are charged annual interest at HIBOR plus 2.5%.

The loans are secured by a collateral package consisting of a first priority security interest in substantially all of the assets of Wynn Macau, S.A. In addition, certain subsidiaries of Wynn Resorts that are direct or indirect shareholders of Wynn Macau, S.A. have executed a guarantee of the loans and pledged their shares in Wynn Macau, S.A. or upstream intermediate companies, as the case may be, as additional security for repayment of the loans.

Existing cash balances from Wynn Resorts, including amounts spent to date on Wynn Macau and \$50 million deposited with Banco National Ultramarino, S.A. (“BNU”) as collateral for a bank guarantee as discussed further below, provided the \$230 million of base equity to Wynn Macau, S.A. required under the financing documents. In addition, simultaneously with the loan signing, Wynn Group, Asia, Inc. (“Wynn Asia”), a subsidiary of Wynn Resorts, entered into a Note Purchase Agreement with Wynn Macau, S.A. pursuant to which Wynn Asia will purchase \$122 million in subordinated notes to be issued by Wynn Macau, S.A.. The subordinated notes will be secured by a third priority security interest in the collateral package. Proceeds of the contributions and loans and the subordinated notes must be expended for Wynn Macau project costs prior to borrowing under the term loans. In addition, Wynn Resorts provided \$30 million of contingent funds that is available to pay additional costs of construction, if necessary.

The CTA contains capital spending limits and other affirmative and negative covenants, customary for a limited recourse project financing, as well as restrictions on the use of up-front premia derived from subconcessions.

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 BNU for a guarantee in the amount of MOP700,000,000 (approximately US\$87 million as of September 30, 2004). 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. has deposited \$50 million of the \$230 million base equity funding with BNU, which deposit will be drawn upon by Wynn Macau, S.A., after the remainder of its base equity has been spent. 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. The guarantee is further secured by a second priority security interest in the senior lender collateral package. BNU will be paid an annual fee for the guarantee of not to exceed MOP12,250,000 (approximately US\$1,525,000 as of September 30, 2004).

### *Other Liquidity Matters*

New business developments or other unforeseen events may occur, which could result in the need to raise additional funds. We continue to explore opportunities to develop additional gaming or related businesses in Las Vegas and other international and domestic markets, whether through acquisition, investment or development. Any such development would require us to obtain additional financing. Furthermore, if completion of the Wynn Las Vegas or Wynn Macau projects is delayed, then our debt service obligations accruing prior to the actual opening of our casino resorts will increase correspondingly, thus requiring additional financing. In addition, we intend to continue our periodic efforts to refinance all or a portion of our indebtedness when market conditions are appropriate. However, we cannot assure you that we will be able to refinance any of our 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.

The amount of outstanding borrowings under the various debt instruments is expected to increase now that the proceeds of the initial public offerings of our common stock and the Notes have substantially been used in the construction of Wynn Las Vegas and as the Wynn Macau project evolves. Consistent with our obligation under agreements governing our variable-rate debt facilities to obtain interest rate protection for at least \$325 million of borrowings thereunder, in May and June 2003, we entered into two interest rate swap arrangements to hedge the underlying interest rate risk on our expected future variable-rate borrowings. The swap notional amounts gradually increase correspondingly with the amounts and timing of our expected borrowings, to a total of \$825 million during the period from March 2004 through December 2006.

Our swap instruments have been designated by us as cash flow hedges in accordance with applicable accounting pronouncements, and as of September 30, 2004 and December 31, 2003, we recorded approximately \$5.9 million and \$8.8 million in other assets, respectively, to reflect their fair value. The \$2.9 million decrease in the fair value during the nine months ended September 30, 2004 was recorded as a component of comprehensive income. The fair value approximates the amount we would receive if these contracts were settled at the respective valuation date. Fair value is estimated based upon current, and predictions of future, interest rate levels along a yield curve, the remaining duration of the instruments and other market conditions, and therefore, is subject to significant estimation and a high degree of variability of fluctuation between periods.

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

For the three and nine months ended September 30, 2004, we incurred approximately \$28.9 million and \$83.9 million in interest. Approximately \$504 million of our outstanding indebtedness at September 30, 2004 was based upon a variable, LIBOR rate plus a premium. It is estimated that a 1% increase in the LIBOR would have increased our interest cost by approximately \$900,000 and \$1.2 million, for the three and nine month periods ended September 30, 2004, respectively.

#### *Foreign Currency Risks*

The currency used in Wynn Macau S.A.'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 governmental policies and international economic and political developments.

Because Wynn Macau S.A.'s payment and expenditure obligations under the concession agreement are in Macau patacas, in the event of unfavorable Macau pataca or Hong Kong dollar rate changes, Wynn Macau's obligations, as denominated in U.S. dollars, would increase. In addition, because we expect that most of the revenue for any casino that Wynn Macau S.A. operates in Macau will be in Hong Kong dollars, we are subject to foreign exchange risk with respect to the exchange rate between the Hong Kong dollar and the U.S. dollar.

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Wynn Macau S.A. intends to spend any Macau patacas received on local casino operating expenses. Also, if any of our Macau-related entities incur U.S. dollar-denominated debt, fluctuations in the exchange rates of the Macau pataca or the Hong Kong dollar, in relation to the U.S. dollar, could have adverse effects on Wynn Macau S.A.'s ability to service its debt, its results of operations and its financial condition.

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

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

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

**Part II—OTHER INFORMATION**

**Item 1. Legal Proceedings**

The Company occasionally is a party to lawsuits. As with all litigation, no assurance can be provided as to the outcome of such matters and we note that litigation inherently involves significant costs.

**Item 2. Unregistered Sales of Securities and Use of Proceeds**

*Proceeds from our Initial Public Offering of Common Stock*

In October 2002, we completed the initial public offering of our common stock and concurrently issued the Notes. Of the \$465.3 million net proceeds from the initial public offering of our common stock (including the exercise of the over-allotment option) approximately \$40 million has been deposited with our subsidiary, Wynn Group Asia, Inc. to help finance Wynn Macau. Another \$80 million was placed into liquidity reserve and completion guarantee accounts required by the Wynn Las Vegas financing. The temporary investment of funds from the initial public offering earned approximately \$9 million in interest, thus increasing the available funds from the offering of our common stock. All of the approximately \$354.3 million of available funds from the proceeds of the offering of our common stock (excluding the \$40 million deposited with Wynn Group Asia, Inc. for the development, construction and preopening expenses of Wynn Macau and the \$80 million on deposit in the completion guarantee and liquidity reserve accounts), have been expended or incurred in the design, development and construction of Wynn Las Vegas.

Of the \$354.3 million, approximately \$144.6 million has been spent or incurred under the terms of the guaranteed maximum price contract with Wynn Las Vegas' prime construction contractor and another \$84.9 million was spent under other contracts or purchase orders for designing, developing, constructing and equipping Wynn Las Vegas or paying pre-opening expenses. In addition, approximately \$86 million in transaction fees and expenses has been spent or incurred in obtaining our various other debt facilities and \$38.8 million of interest costs have been incurred. We expended all of the proceeds of our common stock offering available for the Wynn Las Vegas project and began using the proceeds of the offering of the Notes for Wynn Las Vegas' construction in November 2003.

*Proceeds from the offering of the Notes*

In October 2002, concurrent with the initial public offering of our common stock, we issued the Notes. We began using the \$328.9 million in net proceeds of the Notes, after discount and commissions, in November 2003. Through September 30, 2004, we had expended or incurred approximately \$301.4 million and received approximately \$15.1 million of interest and other common stock offering proceeds to pay the Notes offering costs. As a result, at September 30, 2004 all but approximately \$42.6 million of the Notes proceeds were exhausted. These remaining funds are required to be held for interest payments on the Notes.

Of the \$301.4 million expended or incurred through September 30, 2004, approximately \$184.4 million has been spent or incurred under the terms of the guaranteed maximum price contract with Wynn Las Vegas' prime construction contractor and another \$74.1 million was spent under other contracts or purchase orders for designing, developing, constructing and equipping Wynn Las Vegas or paying pre-opening expenses. In addition, \$39.5 million of interest costs and \$3.4 million in transaction fees and expenses in obtaining our various other debt facilities, have been incurred. The remaining net proceeds set aside for interest payments are temporarily invested in government-backed debt securities. Other than the interest reserve described above, we have utilized all the available proceeds of the Notes.

**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	Registration Rights Agreement, dated as of August 28, 2004, by and between S.H.W. & Co. Limited and Wynn Resorts, Limited (3)
4.2	Registration Rights Agreement, dated as of September 1, 2004, by and between Classic Wave Limited and Wynn Resorts, Limited (3)
4.3	Registration Rights Agreement, dated as of September 1, 2004, by and between L'Arc de Triomphe Limited and Wynn Resorts, Limited (3)
4.4	Registration Rights Agreement, dated as of September 1, 2004, by and between SKKG Limited and Wynn Resorts, Limited (3)
*10.1	Third Amendment to Credit Agreement and Other Loan Documents, dated as of July 14, 2004, among Wynn Las Vegas, LLC as the Borrower, the Wynn Amendment Parties (as defined) and Deutsche Bank Trust Company Americas, as administrative agent on behalf of the lenders to such credit agreement.
*10.2	Surname Rights Agreement, dated as of August 6, 2004, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.
*10.3	Rights of Publicity License, dated as of August 6, 2004, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.
*10.4	Termination Agreement, dated as of August 6, 2004, by and between Stephen A. Wynn and Valvino Lamore, LLC.
*10.5	Trademark Assignment, dated as of August 6, 2004, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.
*10.6	First Amendment to Employment Agreement, dated as of August 6, 2004, by and between Stephen A. Wynn and Wynn Resorts, Limited.
*10.7	Third Amended and Restated Art Rental and Licensing Agreement, dated as of August 6, 2004, by and between Stephen A. Wynn and Wynn Las Vegas, LLC.
10.8	Exchange Agreement, dated as of August 28, 2004, by and among Wong Chi Seng, S.H.W. & Co. Limited, Wynn Resorts, Limited and Wynn Resorts International, Ltd. (3)
10.9	Exchange Agreement, dated as of September 1, 2004, by and among Kwan Yan Ming, Classic Wave Limited, Wynn Resorts, Limited and Wynn Resorts International, Ltd. (3)
10.10	Exchange Agreement, dated as of September 1, 2004, by and among Kwan Yan Ming, L'Arc de Triomphe Limited, Wynn Resorts, Limited and Wynn Resorts International, Ltd. (3)
10.11	Exchange Agreement, dated as of September 1, 2004, by and among Wong Chi Seng, SKKG Limited, Wynn Resorts, Limited and Wynn Resorts International, Ltd. (3)
10.12	Fourth Amendment to Loan Agreement, dated as of July 21, 2004, among Wynn Las Vegas, LLC, Wells Fargo Bank, National Association and the lenders named therein. (4)

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<u>Exhibit No.</u>	<u>Description</u>
10.13	Acknowledgment and Agreement, dated as of September 1, 2004, among Wynn Las Vegas, LLC, Wells Fargo Bank, National Association and the lenders named therein. (4)
*10.14	Change Order No. 5 to Agreement for Guarantee Maximum Price Construction Services, dated as of August 30, 2004, by and between Marnell Corrao Associates, Inc. and Wynn Las Vegas, LLC.
*10.15	Common Terms Agreement, dated as of September 14, 2004, among Wynn Resorts (Macau), S.A., certain financial institutions as Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, Deutsche Bank AG, Hong Kong Branch and Societe Generale Asia Limited as Global Coordinating Lead Arrangers and Societe Generale Asia Limited as Hotel Facility Agent, Project Facility Agent, Intercreditor Agent and Security Agent.
*10.16	Hotel Facility Agreement, dated as of September 14, 2004, among Wynn Resorts (Macau), S.A., Societe Generale Asia Limited as Hotel Facility Agent and the several Hotel Facility Lenders named therein.
*10.17	Project Facility Agreement, dated as of September 14, 2004, among Wynn Resorts (Macau), S.A., Societe Generale Asia Limited as Project Facility Agent and the several Project Facility Lenders named therein.
*10.18	Revolving Credit Facility Agreement, dated as of September 14, 2004, among Wynn Resorts (Macau), S.A. and the several Revolving Credit Facility Lenders named therein.
*10.19	Deed of Appointment and Priority, dated as of September 14, 2004, among Wynn Resorts (Macau), S.A., certain financial institutions as Original First Ranking Lenders, Banco Nacional Ultramarino, S.A. as Second Ranking Finance Party, Wynn Group Asia, Inc. as Third Ranking Finance Party, Societe Generale -Hong Kong Branch as Security Agent, Societe Generale Asia Limited as Intercreditor Agent and Hotel Facility Agent and Project Facility Agent and others.
*10.20	Unofficial English translation of Mortgage, dated September 14, 2004 between Wynn Resorts (Macau), S.A. as borrower and Societe Generale, Hong Kong Branch as security agent.
*10.21	Land Security Assignment, dated September 14, 2004, between Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as the Security Agent.
*10.22	Assignment of Rights, dated September 14, 2004 between Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as the Security Agent.
*10.23	Assignment of Insurances, dated September 14, 2004 between Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as the Security Agent.
*10.24	Assignment of Reinsurances, dated September 14, 2004 between Companhia De Seguros De Macau, S.A. as Assignor and Societe Generale, Hong Kong Branch as the Security Agent.
*10.25	Floating Charge (unofficial English Translation), dated September 14, 2004 between Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as the Security Agent.
*10.26	Debenture, dated September 14, 2004 between Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as the Security Agent.
*10.27	Wynn Resorts Support Agreement, dated September 14, 2004 between Wynn Resorts, Limited, Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as the Security Agent.
*10.28	Wynn Pledgors' Guarantee, dated September 14, 2004 between Wynn Group Asia, Inc., Wynn Resorts International, Ltd., Wynn Resorts (Macau) Holdings, Ltd. and Wynn Resorts (Macau), Ltd. as Guarantors; and Societe Generale, Hong Kong Branch as the Security Agent.



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<u>Exhibit No.</u>	<u>Description</u>
*10.29	Sponsors' Subordination Deed, dated September 14, 2004 between Wynn Resorts (Macau), S.A., Wynn Group Asia, Inc., Wynn Resorts International, Ltd., Wynn Resorts (Macau) Holdings, Ltd. and Wynn Resorts (Macau), Ltd. as the Wynn Companies and Societe Generale, Hong Kong Branch as the Security Agent.
*10.30	Bank Guarantee Reimbursement Agreement, dated September 14, 2004, between Wynn Resorts (Macau), S.A. and Banco Nacional Ultramarino.
*10.31	Note Purchase Agreement dated September 14, 2004, by and among Wynn Resorts (Macau), S.A. and Wynn Group Asia, Inc.
*10.32	Amended and Restated Shareholders Agreement, dated as of September 16, 2004 by and among Wynn Resorts (Macau), Ltd., Wong Chi Seng and Wynn Resorts (Macau), S.A.
23.1	Consent of Independent Registered Accounting Firm. (3)
23.2	Opinion of Schreck Brignone. (3)
24.1	Power of Attorney of officers and directors of Wynn Resorts, Limited. (3)
*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).
- (2) Previously filed with the Quarterly Report on Form 10-Q filed by the Registrant on December 9, 2002.
- (3) Previously filed with the Registration Statement on Form S-3 filed by the Registrant on September 1, 2004 (File No. 333-118741).
- (4) Previously filed with the Current Report on Form 8-K filed by the Registrant on September 8, 2004

**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: November 4, 2004

By \_\_\_\_\_ /s/ JOHN STRZEMP

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

**THIRD AMENDMENT TO  
CREDIT AGREEMENT AND OTHER LOAN DOCUMENTS**

THIS THIRD AMENDMENT TO CREDIT AGREEMENT AND OTHER LOAN DOCUMENTS (this "Third Amendment"), dated as of July 14, 2004 and effective as of the Effective Date (as hereinafter defined), is made and entered into among WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "Borrower"), the Wynn Amendment Parties (as hereinafter defined) and DEUTSCHE BANK TRUST COMPANY AMERICAS, as Administrative Agent (in such capacity, the "Administrative Agent") on behalf of the Lenders (as hereinafter defined).

RECITALS

A. The Borrower and the Administrative Agent are parties to that certain Credit Agreement dated as of October 30, 2002 as amended by that certain First Amendment to Credit Agreement and Other Loan Documents dated as of May 28, 2003 and that certain Second Amendment to Credit Agreement and Limited Waiver dated as of May 3, 2004 (as further amended, modified or supplemented from time to time, the "Credit Agreement") among the Borrower, the Administrative Agent, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent, JPMorgan Chase Bank, as joint documentation agent, and the several banks and other financial institutions or entities from time to time parties thereto (the "Lenders").

B. In connection with the Credit Agreement:

(i) the Borrower, Valvino Lamore, LLC, a Nevada limited liability company ("Valvino"), Wynn Las Vegas Capital Corp., a Nevada corporation ("Capital Corp."), Palo, LLC, a Delaware limited liability company ("Palo"), Desert Inn Water Company, LLC, a Nevada limited liability company ("Desert Inn Water"), Wynn Resorts Holdings, LLC, a Nevada limited liability company ("Wynn Resorts Holdings"), Wynn Design & Development, LLC, a Nevada limited liability company ("Wynn Design"), World Travel, LLC, a Nevada limited liability company ("World Travel"), Wynn Show Performers, LLC, a Nevada limited liability company ("Show Performers"), Las Vegas Jet, LLC, a Nevada limited liability company ("Las Vegas Jet"), and Administrative Agent have executed that certain Guarantee and Collateral Agreement dated as of October 30, 2002 (as amended, modified or supplemented from time to time, the "Guarantee and Collateral Agreement");

(ii) Wynn Resorts, Limited, a Nevada corporation ("Wynn Resorts"), has executed that certain Parent Guaranty dated as of October 30, 2002 (as amended, modified or supplemented from time to time, the "Wynn Resorts Guaranty") in favor of the Administrative Agent;

(iii) the Borrower has executed that certain Amended and Restated Deed of Trust, Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of October 30, 2002 (as amended, modified or supplemented from time to time, the "Borrower Mortgage I") in favor of Nevada Title Company for the benefit of the Administrative Agent;

(iv) the Borrower has executed that certain Deed of Trust, Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of May 3, 2004 (as amended, modified or supplemented from time to time, the "Borrower Mortgage II") in favor of Nevada Title Company for the benefit of the Administrative Agent;

(v) Palo has executed that certain Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of October 30, 2002 (as amended, modified or supplemented from time to time, the "Palo Mortgage") in favor of Nevada Title Company for the benefit of the Administrative Agent;

(vi) Wynn Resorts Holdings has executed that certain Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of October 30, 2002 (as amended, modified or supplemented from time to time, the "Wynn Resorts Holdings Mortgage") and, together with the Borrower Mortgage I, the Borrower Mortgage II and the Palo Mortgage, the "Wynn Mortgages") in favor of Nevada Title Company for the benefit of the Administrative Agent; and

(vii) Bora, LLC, a Nevada limited liability company ("Bora" and, together with Valvino, Capital Corp., Palo, Desert Inn Water, Wynn Resorts Holdings, Wynn Design, World Travel, Show Performers, Las Vegas Jet and Wynn Resorts, the "Wynn Amendment Parties"), has executed that certain Pledge and Security Agreement (Pledged Equity Interests) dated as of May 3, 2004 (as amended, modified or supplemented from time to time, the "Bora Pledge") in favor of the Administrative Agent.

C. The Borrower has requested that the Lenders agree, subject to the conditions and on the terms set forth in this Third Amendment, to amend certain provisions of the Credit Agreement and certain other Loan Documents in order to, among other things, permit the future increase of the Total Revolving Credit Commitments by an amount up to \$50,000,000, in each case as set forth below.

D. The Lenders are willing to agree to such amendments, subject to the conditions and on the terms set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower, the Administrative Agent on behalf of the Lenders and, with respect to Section 7 only, the Wynn Amendment Parties, agree as follows:

1. Definitions. Except as otherwise expressly provided herein, capitalized terms used in this Third Amendment shall have the meanings given in the Credit Agreement, and the rules of interpretation set forth in the Credit Agreement shall apply to this Third Amendment.

2. Increase of Total Revolving Credit Commitments and Apartment Building Purchase.

(a) Provided that no Default or Event of Default shall have occurred and be continuing and the Revolving Credit Commitments have not been terminated, the Borrower shall be entitled, at any time during the period commencing on the Effective Date and ending on the date of the initial borrowing of Revolving Credit Loans under the Credit Agreement, without any consent from the Lenders (except the Revolving Credit Lender(s) (or any Eligible Assignee(s) reasonably acceptable to the Administrative Agent who desires to become a Revolving Lender(s) in accordance with Section 10.1(b) of the Credit Agreement) providing all or part of such increased amount (each such Person, a "Revolving Commitment Increase Lender")), to request a one time increase in the Total Revolving Credit Commitments in an aggregate amount not to exceed \$50,000,000 (the "Revolving Commitment Increase").

(b) Neither the Administrative Agent nor any other Lender shall have any liability to the Borrower as a result of the failure to successfully syndicate the Revolving Commitment Increase and nothing contained in this Third Amendment is intended, nor shall it be construed, to be a commitment or otherwise create an obligation on behalf of any Lender to increase its Commitment.

(c) No approval or consent other than the consent of the Administrative Agent and any Revolving Commitment Increase Lender shall be necessary to effectuate the Revolving Commitment Increase, and the Credit Agreement and other Loan Documents may be amended by an agreement between the Borrower and the Administrative Agent, without the need for any further approval or consent from the Lenders, to the extent the Administrative Agent determines necessary to effectuate the Revolving Commitment Increase. In furtherance of the foregoing, as of the effective date of the Revolving Commitment Increase:

(i) Section 6.11(a) of the Credit Agreement shall be amended by replacing the terms "\$968,490,525 (or, during such times as the conditions set forth in Section 3.3.22(b) of the Disbursement Agreement have not been satisfied or waived, \$963,490,525)" in such section with a number equal to the sum of \$968,490,525 plus the amount of the Revolving Commitment Increase actually obtained by the Borrower;

(ii) each of the Wynn Mortgages shall be amended by replacing the term "\$1,000,000,000" where it appears in such Wynn Mortgages with a number equal to the sum of \$1,000,000,000 plus the amount of the Revolving Commitment Increase actually obtained by the Borrower and, in each case, such amendments will be recorded in the appropriate real property records of the State of Nevada;

(iii) the applicable Wynn Amendment Parties shall have obtained and delivered to the Administrative Agent appropriate endorsements or supplements to each of the Title Policies with respect to the Wynn Mortgages, or a commitment to issue such endorsements or supplements, in each case in form and substance reasonably satisfactory to the Administrative Agent, ensuring the Lenders that the amendments to the Credit Agreement and other Loan Documents made pursuant to the Revolving Commitment Increase do not adversely affect the Lender's title and extended coverage insurance contained in such Title Policies;

(iv) (A) each Revolving Commitment Increase Lender, the Borrower and the Administrative Agent shall have executed and delivered to the Administrative Agent a lender addendum substantially in the form of Exhibit A hereto (x) evidencing the Revolving Commitment Increase and (y) pursuant to which such Revolving Commitment Increase Lender shall become a party to the Credit Agreement as a Revolving Credit Lender (to the extent not previously a party thereto), and each such lender addendum shall be deemed a "Lender Addendum" under the Credit Agreement, (B) the Administrative Agent shall have recorded, in accordance with Section 10.6(d) of the Credit Agreement, appropriate information in the Register in order to reflect the acquisition of the Revolving Commitment Increase by the Revolving Commitment Increase Lenders and (C) to the extent requested by any Revolving Commitment Increase Lender, the Borrower shall have executed and delivered to such Revolving Commitment Increase Lender, in accordance with Section 2.8(e) of the Credit Agreement, a Revolving Credit Commitment Note in the principal amount of such Revolving Commitment Increase Lender's portion of the Revolving Commitment Increase;

(v) the representations and warranties contained in Section 5 of this Third Amendment shall be true and correct in all material respects; and

(vi) the Borrower shall have delivered to the Administrative Agent legal opinions of counsel to the Borrower and each of the Wynn Amendment Parties as to the matters set forth in Sections 5(a), (b), (c)(i), (c)(ii), (c)(iv)(with respect to the FF&E Facility Agreement and the Mortgage Notes Indenture only) and (d) hereof and such other matters as the Administrative Agent may reasonably request, all in form and substance reasonably satisfactory to the Administrative Agent.

(d) Section 2(j) of the Second Amendment to Credit Agreement and Limited Waiver dated as of May 3, 2004 between the Borrower and the Administrative Agent is hereby deleted in its entirety. With respect to the contributions required to be made under Section 7.5(m)(ii) of the Credit Agreement and the Revolving Commitment Increase, Borrower shall use the increase in Available Funds resulting from such contributions and the Revolving Commitment Increase in a manner reasonably consistent with the purposes and the amounts set forth on Exhibit B to this Third Amendment and in accordance with the Operative Documents.

(e) To the extent the Borrower requests Increased Revolving Commitments in an amount greater than the sum of (i) amounts payable by the Borrower or a Wholly Owned Subsidiary of the Borrower that is a Guarantor for the purchase of that certain apartment building

complex, located at 283 and 301 Sands Avenue, Las Vegas, Nevada (the "Apartment Building") to be purchased by the Borrower or a Wholly Owned Subsidiary of the Borrower that is a Guarantor pursuant to an assignment of that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of April 8, 2004 (the "Purchase Contract"), (ii) management fees to be paid to McKinley Associates Inc. pursuant to the Purchase Contract at the closing of the purchase of the Apartment Building, (iii) costs related to the relocation of tenants in the Apartment Building in order to transition the Apartment Building to its intended use as a parking facility for the Project, (iv) costs related to certain initial improvements at the Apartment Building in order to transition the Apartment Building to its intended use as a parking facility for the Project (including demolition and parking lot and related amenities engineering, procurement and construction) and (v) in each case, the reasonable transaction and closing costs (including attorney fees) related thereto (collectively, the "Apartment Building Acquisition"), the Borrower shall be required to obtain the consent of the Administrative Agent with respect to the proposed use of the increase in Available Funds resulting from such excess, such consent not to be unreasonably withheld.

(f) Neither the Purchase Price (as defined in the Purchase Contract) nor any other material monetary terms of the Purchase Contract or the Property Management Agreement (as defined in the Purchase Contract) shall be amended, modified or supplemented without the consent of the Administrative Agent, such consent not to be unreasonably withheld.

(g) Concurrently with the purchase of the Apartment Building by the Borrower or a Wholly Owned Subsidiary of the Borrower that is a Guarantor, the Borrower shall, or shall cause such Wholly Owned Subsidiary to, take all actions required pursuant to Section 6.10 of the Credit Agreement with respect to the Apartment Building and any other Property acquired pursuant to the Purchase Agreement (in each case, notwithstanding and without regard to any additional time periods for such actions permitted pursuant to Section 6.10 of the Credit Agreement).

(h) Notwithstanding anything to the contrary contained in the Credit Agreement or the other Loan Documents, including without limitation Section 6.11(b) of the Credit Agreement and Section 5.2 of the Guarantee and Collateral Agreement, until the earlier of (x) the effective transition of the Apartment Building to its intended use as a parking facility for the Project and (y) March 31, 2005, (i) income and receipts of the applicable Loan Party derived from the ownership and operation of the Apartment Building shall not be required to be deposited into an Account and (ii) to the extent solely related to the applicable Loan Party's ownership and operation of the Apartment Building, the management accounts and other accounts associated with the applicable Loan Party's ownership and operation of the Apartment Building (whether containing income and receipts, tenant security deposits or other funds related thereto) shall not be deemed "Collateral" or required to be subject to the Lien of the Secured Parties so long as no more than \$500,000 in the aggregate (without taking into account tenant security deposits related to the Apartment Building) is on deposit at any one time in such management and other accounts.

3. Credit Agreement Clean-Up Amendments.

(a) Section 1 of the Credit Agreement is amended by deleting the definition of "Collection Account" and adding the following definition in appropriate alphabetical order:

"Disbursement Account": as defined in the Disbursement Agreement."

(b) Sections 2.5(a) and 2.5(d) of the Credit Agreement are amended by deleting the terms "Collection Account" where they appear therein and replacing such terms with the terms "Disbursement Account".

(c) Section 7.27 of the Credit Agreement is amended by deleting the section reference "5.9.2" to the Disbursement Agreement contained therein and replacing such reference with the section reference "5.8.3" to the Disbursement Agreement.

4. Disbursement Agreement Amendment. The Administrative Agent is hereby directed to execute that certain First Amendment to Disbursement Agreement (the "Disbursement Agreement Amendment") substantially in the form attached hereto as Exhibit C on behalf of the Lenders.

5. Representations and Warranties. To induce the Lenders to agree to this Third Amendment, the Borrower represents to the Administrative Agent and the Lenders that as of the Effective Date and as of the effective date of the Revolving Commitment Increase:

(a) the Borrower and each of the Wynn Amendment Parties has all power and authority to enter into this Third Amendment, the Disbursement Agreement Amendment and the amendments to the Credit Agreement and the other Loan Documents to be entered into pursuant to Section 2(c) of this Third Amendment (collectively, the "Third Amendment Documents"), and to carry out the transactions contemplated by, and to perform its obligations under or in respect of, the Third Amendment Documents;

(b) the execution and delivery of Third Amendment Documents and the performance of the obligations of the Borrower and each of the Wynn Amendment Parties under or in respect of the Third Amendment Documents have been duly authorized by all necessary action on the part of the Borrower and each of the Wynn Amendment Parties;

(c) the execution and delivery of the Third Amendment Documents and the performance of the obligations of the Borrower and each of the Wynn Amendment Parties under or in respect of the Third Amendment Documents do not and will not conflict with or violate (i) any provision of the articles or certificate of incorporation or bylaws (or similar constituent documents) of the Borrower or any Wynn Amendment Party, (ii) any Requirement of Law, (iii) any order, judgment or decree of any court or other governmental agency binding on the Borrower or any Wynn Amendment Party, or (iv) any indenture, agreement or instrument to which the Borrower or any Wynn Amendment Party is a party or by which the Borrower or any



Wynn Amendment Party, or any property of any of them, is bound, and do not and will not require any consent or approval of any Person, except the consents and approvals of the FF&E Lenders under the FF&E Facility Agreement with respect to the Disbursement Agreement Amendment (the "FF&E Consent"), which has been duly obtained;

(d) the Third Amendment Documents that have been entered into by the Borrower and each of the Wynn Amendment Parties as of the date this representation is being made have been duly executed and delivered by the Borrower and each of the Wynn Amendment Parties party thereto and are the legal, valid and binding obligations of the Borrower and each of the Wynn Amendment Parties, enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law);

(e) after giving effect to the Third Amendment Documents, no event has occurred and is continuing or will result from the execution and delivery of the Third Amendment Documents that would constitute a Default or an Event of Default;

(f) since the Closing Date, no event has occurred that has resulted, or could reasonably be expected to result, in a Material Adverse Effect; and

(g) each of the representations and warranties made by the Borrower in or pursuant to the Loan Documents shall be true and correct in all material respects on and as of the Effective Date as if made on and as of such date, except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date.

6. Conditions to Effectiveness of this Third Amendment. This Third Amendment shall be effective only if and when signed by the Borrower, the Wynn Amendment Parties and the Administrative Agent on behalf of the Lenders and each of the following conditions shall have been satisfied (the date upon which all such conditions have been satisfied, the "Effective Date"):

(a) the representations and warranties contained in Section 5 of this Third Amendment shall be true and correct in all respects as of the Effective Date; and

(b) the Borrower shall have obtained the FF&E Consent and provided the Administrative Agent written evidence thereof.

7. Acknowledgments. By executing this Third Amendment each of the Wynn Amendment Parties (a) consents to this Third Amendment, the Disbursement Agreement Amendment and the Revolving Commitment Increase, (b) acknowledges that notwithstanding the execution and delivery of this Third Amendment and the Disbursement Agreement

Amendment and the Revolving Commitment Increase, the obligations of each of the Wynn Amendment Parties under the Guarantee and Collateral Agreement, Bora Pledge Agreement and the Wynn Resorts Guaranty, as applicable, are not impaired or affected and the Guarantee and Collateral Agreement, Bora Pledge and the Wynn Resorts Guaranty continue in full force and effect and (c) affirms and ratifies, to the extent it is a party thereto, the Guarantee and Collateral Agreement, the Bora Pledge and the Wynn Resorts Guaranty.

8. Miscellaneous. **THIS THIRD AMENDMENT, AND ANY INSTRUMENT OR AGREEMENT REQUIRED HEREUNDER (TO THE EXTENT NOT OTHERWISE EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAW RULES THEREOF (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW)**. This Third Amendment may be executed in one or more duplicate counterparts and when signed by all of the parties listed below shall constitute a single binding agreement. Except as amended hereby, all of the provisions of the Credit Agreement and the other Loan Documents shall remain in full force and effect except that each reference to the "Credit Agreement", or words of like import in any Loan Document, shall mean and be a reference to the Credit Agreement as amended hereby. This Third Amendment shall be deemed a "Loan Document" as defined in the Credit Agreement. Section 10.12 of the Credit Agreement shall apply to this Third Amendment and all past and future amendments to the Credit Agreement and other Loan Documents as if expressly set forth therein.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Third Amendment to be duly executed by their officers or partners thereunto duly authorized as of the day and year first above written, to be effective as of the Effective Date.

WYNN LAS VEGAS, LLC,  
a Nevada limited liability company,

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

By: Valvino Lamore, LLC,  
a Nevada limited liability company,  
its sole member

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

By:                         /s/ RONALD J. KRAMER  
Name: **Ronald J. Kramer**  
Title: **President**

PALO, LLC,  
a Delaware limited liability company,

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

By: Valvino Lamore, LLC,  
a Nevada limited liability company,  
its sole member

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

By:                         /s/ RONALD J. KRAMER  
Name: **Ronald J. Kramer**  
Title: **President**

VALVINO LAMORE, LLC,  
a Nevada limited liability company,

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

By:                         /s/ RONALD J. KRAMER  
Name: **Ronald J. Kramer**  
Title: **President**

WYNN DESIGN & DEVELOPMENT, LLC,  
a Nevada limited liability company,

By: Valvino Lamore, LLC,  
a Nevada limited liability company,  
its sole member

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

By:                         /s/ RONALD J. KRAMER  
Name: **Ronald J. Kramer**  
Title: **President**

DESERT INN WATER COMPANY, LLC,  
a Nevada limited liability company,

By: Valvino Lamore, LLC,  
a Nevada limited liability company,  
its sole member

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

By: \_\_\_\_\_ /s/ RONALD J. KRAMER  
Name: **Ronald J. Kramer**  
Title: **President**

WORLD TRAVEL, LLC,  
a Nevada limited liability company,

By: Wynn Las Vegas, LLC,  
a Nevada limited liability company,  
its sole member

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

By: Valvino Lamore, LLC,  
a Nevada limited liability company,  
its sole member

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

By: \_\_\_\_\_ /s/ RONALD J. KRAMER  
Name: **Ronald J. Kramer**  
Title: **President**

WYNN LAS VEGAS CAPITAL CORP.,  
a Nevada corporation,

By: \_\_\_\_\_ /s/ RONALD J. KRAMER  
Name: **Ronald J. Kramer**  
Title: **President**

WYNN RESORTS HOLDINGS, LLC,  
a Nevada limited liability company,

By: Valvino Lamore, LLC,  
a Nevada limited liability company,  
its sole member

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

By: \_\_\_\_\_ /s/ RONALD J. KRAMER  
Name: **Ronald J. Kramer**  
Title: **President**

LAS VEGAS JET, LLC,  
a Nevada limited liability company,

By: Wynn Las Vegas, LLC,  
a Nevada limited liability company,  
its sole member

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

By: Valvino Lamore, LLC,  
a Nevada limited liability company,  
its sole member

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

By: \_\_\_\_\_ /s/ RONALD J. KRAMER  
Name: **Ronald J. Kramer**  
Title: **President**

WYNN RESORTS, LIMITED,  
a Nevada corporation,

By: \_\_\_\_\_ /s/ RONALD J. KRAMER  
Name: **Ronald J. Kramer**  
Title: **President**



## SURNAME RIGHTS AGREEMENT

This Surname Rights Agreement (“Agreement”) is made and entered into this 6th day of August, 2004 (“Effective Date”), by and between STEPHEN A. WYNN, an individual (hereinafter “Wynn”) and WYNN RESORTS HOLDINGS, LLC, a Nevada limited liability company, with offices at 3145 Las Vegas Boulevard South, Las Vegas, Nevada ( “Holdings”). Initially capitalized terms each have the respective meaning defined herein.

## R E C I T A L S

- A. Wynn, as the former CEO of Golden Nugget Las Vegas and Mirage Resorts, developed an international reputation for building and operating beautiful and sophisticated resort hotel gaming properties known for their world-class aesthetics, amenities, and services.
- B. Holdings is a wholly-owned subsidiary of Wynn Resorts, Limited (the “Company”). Holdings was formed for the purpose of holding and administering various rights that have been and will be developed and used by the Company, its subsidiaries, its affiliates, and any joint ventures in which any of them may be participants (the Company and such entities, the “Affiliates”). Wynn is CEO of the Company.
- C. Wynn has previously granted to Holdings, pursuant to written and oral agreements, rights to use Wynn’s surname in association with the activities of the Affiliates engaged in the resort hotel casino industry.
- D. Holdings owns rights in and pending trademark and service mark applications for marks incorporating the name and mark WYNN (the “WYNN Mark”) in association with hotel/casino and stand-alone hotel or casino (including Internet and similar or successor media gaming) businesses, including businesses or amenities conducted (and merchandise offered) in connection therewith, such as facilities, meeting spaces, retail shopping, spas, golf courses, tennis facilities, and art galleries and products and services related thereto (“Resorts”). Wynn executed a consent to register the name of a living person, dated January 8, 2002, in connection with Holdings’ filings for the WYNN Mark, and Wynn has prior to or simultaneously with the execution hereof executed an assignment of the right, title, and interest that Wynn possesses in the WYNN Mark in association with Resorts.
- E. Wynn and Holdings desire to supersede and replace herein their prior agreements with respect to, and to expressly set forth the terms and conditions of use of, the WYNN Mark to ensure that Holdings may successfully use such rights in association with (including to advertise and promote) the Company’s world-class destination Resorts.

Based upon the terms and conditions set forth herein, the parties agree as follows:

1. Acknowledgement of Rights.

1.1 Company Name Rights. Wynn acknowledges that Holdings is the owner of the WYNN Mark in association with Resorts, and that Holdings has the exclusive right to use and/or license the use of the WYNN Mark as or as part of a company name, trademarks and service marks, and as a stock symbol for purposes of publicly traded stock of the Company.

1.2 Trademark and Service Mark Use and Registration Rights. Wynn hereby consents to Holdings' filing for and obtaining state, federal, and foreign registrations in the WYNN Mark for use in association with the design, development, construction, and operation of Resorts throughout the world.

1.3 Additional Registration Rights. Wynn hereby acknowledges that Holdings has the right to use and register the WYNN Mark in conjunction with signs, logos, trade dress, prefix or suffix words, slogans, and phrases in association with the design, development, construction, and operation of Resorts throughout the world, together with the right to maintain and enforce such rights and registrations.

1.4 Scope of Rights. Holdings agrees that it shall grant licenses to the WYNN Mark solely to the Affiliates or for advertising, promoting, or marketing the Resorts ("Licensees"), provided that such licenses shall terminate automatically upon Holdings' termination of this Agreement or, with respect to an Affiliate, if the Licensee ceases to be an Affiliate.

1.5 Retained Rights of Wynn. The parties acknowledge that Wynn retains rights in the WYNN Mark other than in association with Resorts. Wynn shall not use or register, nor grant other persons or entities rights to use or register, the WYNN Mark, or any variation or derivative thereof, in a manner that is confusingly similar to Holdings' use and registration hereunder, or in a manner that is likely to negatively reflect upon such use or registration by Holdings.

1.6 Expansion of WYNN Marks by Holdings Into Other Business Areas. In the event that Holdings wishes to use the WYNN Marks other than in connection with a Resort business, Holdings may propose the terms of such use to Wynn who will engage in good faith negotiations with Holdings to enter a separate agreement covering such proposed use.

1.7 Holdings' Right to Terminate. Holdings may at any time terminate this Agreement by providing Wynn written notice of its decision to cease and to not recommence use and licensing of the WYNN Mark. This Agreement shall also automatically terminate if Holdings ceases (without intent to resume) all use and licensing of the WYNN Mark, upon which occurrence Holdings shall assign all of its right, title, and interest in the WYNN Mark to Wynn.

2. Term. The term of the rights granted or acknowledged herein shall be perpetual and shall survive Wynn.
3. Consideration. Wynn acknowledges and agrees that the rights granted or acknowledged herein are paid in full, and that adequate consideration has been received by Wynn for the rights granted or acknowledged herein.
4. Gaming Licenses. If (a) Holdings or any Licensee is denied or otherwise unable to obtain any necessary approval from any government regulating gaming authority ("Gaming Authorities"), or (b) any Gaming Authority prevails in any suit or proceeding against Holdings or any Licensee, and if the result of the foregoing clause (a) or (b) has or would have an adverse effect on Holdings or its Licensee (all of the foregoing such events, a "Denial"), Holdings or such Licensee shall cease use of the WYNN Mark in association with the Resort or other business activity that is subject to the Denial in the jurisdiction to which such Denial applies, promptly upon written notice by Wynn to Holdings; provided, however, that Holdings and the Licensee shall have no such obligation to cease such use if Wynn is primarily responsible for such Denial. Holdings and its Licensees shall promptly, and in all events within any time limit established by law, regulation, or such Gaming Authority, furnish each Gaming Authority any information rightfully requested by such Gaming Authority and shall otherwise reasonably cooperate with all Gaming Authorities. Holdings represents to Wynn that neither Holdings nor, to Holdings' knowledge, any intended Licensee, is unwilling to file any necessary applications to obtain whatever approvals may be required of such persons or entities in connection with this Agreement. To Holdings' knowledge, neither Holdings nor any intended Licensee has ever engaged in any conduct or practices that any of the foregoing persons or entities should reasonably believe would cause such person or entity to receive a Denial.
5. Quality Control. In order to ensure that the public continues to associate the WYNN Mark with high quality services in the Resort industry, Holdings agrees to maintain and enforce quality control standards, as follows:
  - 5.1 Creation of Standards. For so long as Wynn is CEO of the Company, he will have principal responsibility for overseeing the quality control standards for all Resorts which bear in its name or otherwise use as a principal brand the WYNN Mark (the "Quality Control Standards").
  - 5.2 Enforcement of Quality Standards. At such time that Wynn is not the CEO of the Company, Wynn shall have a right to reasonably object to Holdings regarding the Quality Control Standards if at any time such Quality Control Standards, to the extent applicable, are not at least equivalent to those Quality Control Standards maintained immediately prior to Wynn's departure as CEO of the Company, subject to reasonable wear and tear to the Resorts following Wynn's departure as CEO of the Company.



6. Arbitration.

6.1 Arbitration of Disputes. All unresolved disputes, controversies, or claims arising out of or relating to this Agreement, or the breach, termination, or validity thereof ("Disputes") shall be submitted to arbitration before a panel, composed of no less than three neutral and impartial individuals having no affiliation or association with Holdings, the Company, any Licensee, or any member of the Wynn family. One arbitrator shall be selected by Wynn and one arbitrator shall be selected by Holdings within thirty (30) days of receipt by respondent of the demand for arbitration and the two selected arbitrators shall select a third arbitrator within twenty (20) days of the appointment of the second arbitrator. The arbitration shall be held in Las Vegas, Nevada.

6.2 Arbitration Procedure. The three arbitrators shall review the Dispute, receive evidence, and issue a written decision and award indicating specifically what measures, if any, must be taken to comply with the arbitration panel's decision. In rendering an award, the arbitrators shall follow the law of the State of Nevada and the provisions of this Agreement. The arbitrators may award injunctive relief, specific performance, and actual, direct damages with respect to the subject matter underlying the Dispute. The arbitrators may not award punitive, exemplary, consequential, or treble damages. The parties agree that the arbitration panel shall have authority to hire an individual, or expert, to monitor compliance with the arbitration panel's directives to ensure that any required changes are implemented in accordance with the timetable set forth in the arbitration panel's decision. The award shall be in writing and shall briefly state the findings of fact and conclusions of law on which it is based. The arbitration panel shall have the authority to award reasonable attorneys' fees and costs to the prevailing party.

6.3 Governing Rules. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association ("AAA"). The parties shall not be obligated to choose an arbitrator from a AAA panel unless the two arbitrators selected pursuant to Section 6.1 have not selected the third arbitrator within twenty (20) days of the appointment of the second arbitrator, in which case such third arbitrator shall be appointed in accordance with the listing, ranking, and striking provisions of the Rules.

6.4 Enforcement. The arbitration panel's decision shall be conclusive and binding in all instances and shall not be subject to appeal or judicial review, and may be entered and enforced by any court of competent jurisdiction.

7. Notices: Any notice to be given pursuant to this Agreement by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid, with return receipt requested, or 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 its address by written notice in accordance with this paragraph. Notices delivered personally shall be

**To Wynn:**

Stephen A. Wynn  
1 Shadow Creek Drive  
North Las Vegas, Nevada 89031

**To Holdings:**

Wynn Resorts Holdings, LLC  
3145 Las Vegas Boulevard South  
Las Vegas, Nevada 89109

(Copy to):

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

8. Miscellaneous.

8.1 Choice of Law. This Agreement shall be deemed to be made and shall be construed in accordance with the laws of the State of Nevada, without reference to its conflict of laws provisions.

8.2 Headings. The headings contained in this Agreement are for convenience of reference only and are not to be given any legal effect and shall not affect the meaning or interpretation of this Agreement.

8.3 Severability. If any portion of this Agreement is in conflict with any applicable federal or state law now in force or hereafter enacted, such provision shall become inoperative, but all other provisions of this Agreement shall remain in full force and effect.

8.4 Assignment. Holdings may assign or otherwise transfer this Agreement only to an Affiliate or to the successor of all or a substantial portion of the business of Holdings relating to this Agreement, and Wynn may assign or otherwise transfer this Agreement only to his heir(s) or other person or entity that succeeds to any rights that Wynn retains with respect to the WYNN Mark (which rights are expressly set forth herein), which successor(s) in either such case shall thereafter be deemed substituted for Holdings or Wynn, respectively, hereunder effective upon such assignment.

8.5 Construction. For purposes of construction of this Agreement, the language herein shall be deemed to be the language of all parties, and no party shall be deemed to be the drafting party.

8.6 Written Amendments. This Agreement may be amended only by written agreement, executed by both parties.

8.7 Entire Agreement. This Agreement constitutes the entire understanding between the parties, and supersedes and replaces any and all prior written and oral agreements. There are no other terms and conditions except those set forth herein. Wynn shall execute any documents reasonably requested by Holdings to secure, perfect, or confirm the rights of Holdings in the WYNN Mark.

In Witness Whereof, the parties have caused this Agreement to be duly executed as of the Effective Date.

**WYNN:**

/s/ STEPHEN A. WYNN

Stephen A. Wynn

**HOLDINGS:**

**WYNN RESORT HOLDINGS, LLC**

By VALVINO LAMORE, LLC

Its Sole Member

By WYNN RESORTS, LIMITED

Its Sole Member

By /s/ MARC SCHORR

Its C.O.O.

## RIGHTS OF PUBLICITY LICENSE

This Rights of Publicity License ("Agreement") is made and entered into this 6th day of August, 2004 ("Effective Date"), by and between STEPHEN A. WYNN, an individual ("Licensor") and WYNN RESORTS HOLDINGS, LLC, a Nevada limited liability company, with offices at 3145 Las Vegas Boulevard South, Las Vegas, Nevada ("Licensee"). Initially capitalized terms each have the respective meaning defined herein.

## R E C I T A L S

- A Licensor, as the former CEO of Golden Nugget Las Vegas and Mirage Resorts developed an international reputation for building and operating beautiful and sophisticated resort hotel gaming properties known for their world-class aesthetics, amenities and services. Licensor has regularly appeared in commercials advertising such properties and in print and publicity photographs. To promote the Bellagio Art Collection and the Wynn Art Collection, Licensor recorded the narration for gallery exhibits and tours. As a result of his activities, Licensor has become well known as a popular hotelier and gaming entrepreneur.
- B Licensee is a wholly-owned subsidiary of Wynn Resorts, Limited (the "Company"). Licensee was formed for the purpose of holding and administering various rights that have been and will be developed and used by the Company, its subsidiaries, its affiliates, and any joint ventures in which any of them may be participants (the Company and such entities, the "Affiliates"). Licensor is CEO of the Company.
- C Licensor has previously granted to Licensee, pursuant to written and oral agreements, rights to use Licensor's full name, photograph, image, and signature in association with the activities of the Affiliates engaged in the resort hotel casino industry.
- D Licensee wishes to use Licensor's Rights of Publicity in advertising, marketing, and promoting the Resorts and associated amenities operated by one or more of the Affiliates.
- E Licensor and Licensee desire to supersede and replace herein their prior agreements with respect to, and to expressly set forth the terms and conditions of use of, Licensor's Rights of Publicity to ensure that Licensee may successfully use such rights in association with, and to advertise and promote, the world-class destination Resorts.

Based upon the terms and conditions set forth herein, the parties agree as follows:

1. Grant of Rights.

1.1 Use in Association with Resorts. Licensor hereby grants to Licensee the exclusive, royalty-free, worldwide right to use Licensor's full name, photograph, likeness, image, voice, signature, distinctive mannerisms, unique characteristics, persona rights, and other personal elements that make up his public image ("Rights of Publicity") in connection with hotel/casino and stand-alone hotel or casino (including Internet and similar or successor media gaming) businesses, including businesses or amenities conducted (and merchandise offered) in connection therewith, such as facilities, meeting spaces, retail shopping, spas, golf courses, tennis facilities, and art galleries and products and services related thereto ("Resorts"), whether as contemplated as of the Effective Date or hereafter constructed, acquired, or operated by one or more of the Affiliates, in any medium now known or hereinafter devised or created. For purposes of clarification and without limitation to any other rights granted hereunder, the foregoing license includes the right to use the Rights of Publicity in connection with advertising, promotion, marketing, and public relations of such Resort businesses.

1.2 Use in Media. Licensor grants to Licensee the royalty-free right to use photographs, film, recordings, or video footage of Licensor in connection with Resorts businesses of the Affiliates throughout the world and in all media and mediums now known or hereinafter devised or created. At Licensee's reasonable request and cost for out-of-pocket expenses, Licensor shall make himself available and otherwise reasonably cooperate with Licensee for purposes of producing appropriate photographs, film, recordings, and video footage of Licensor for use by Licensee in accordance with this Agreement.

1.3 Sublicense Right. Licensor grants Licensee the right to sublicense the rights granted to Licensee in this Article 1, to Affiliates or for advertising, promoting, or marketing the Resorts ("Sublicensees"), provided that such sublicenses shall terminate automatically at the end of the Term or, with respect to an Affiliate, if the Sublicensee ceases to be an Affiliate.

2. Term. The term of this Agreement shall commence on the Effective Date and expire October 24, 2017, unless earlier terminated pursuant to this Agreement (the "Term"). Following the Term, Licensee may continue to use the Rights of Publicity hereunder if the parties agree in writing to a royalty to be paid by Licensee to Licensor for such continued use.

2.1 Licensee's Right to Terminate. Licensee may at any time terminate this Agreement by providing Licensor written notice of its decision to cease and not to recommence use and sublicensing of all such rights. This Agreement shall also automatically terminate if Licensee ceases all (without intent to resume) use and licensing of the WYNN Mark (as defined in the Surname Rights Agreement between Licensor and Licensee executed concurrently with this Agreement (the "Surname Agreement")).

2.2 Conveyance of Materials. Upon termination of this Agreement, Licensee shall deliver to Licensor all copies of prototypes, photographs, film footage, videos, and recordings that Licensor has previously provided to Licensee that incorporate or use the Licensor's Rights of Publicity.

3. Approval of Advertising, Marketing, and Promotional Materials. During the Term, Licensor will oversee and approve the use of all advertising, marketing, and promotional materials which incorporate the Rights of Publicity. In the event Licensor is not employed by the Company at any time during the Term, Licensee may continue to use the Rights of Publicity in the same manner such rights were used during the Term, but any new proposed usages of the Rights of Publicity shall be subject to approval pursuant to Section 4.

4. Procedures Upon Disapproval or Objection to Use. After Licensor is no longer employed by the Company, new proposed usages of the Rights of Publicity by Licensee shall be subject to the prior written consent of Licensor, such consent not to be unreasonably withheld or delayed. For avoidance of doubt, it shall be unreasonable for Licensor to withhold such consent if the new proposed usage is consistent in nature and form with previous usages hereunder and does not otherwise tarnish or bring into disrepute Licensor or his image or reputation. All objections shall specifically state the basis of the objection and shall be delivered to the CEO of the Company, and the Chairman of the Audit Committee of the Board of Directors of the Company, with a copy to the Company's General Counsel. The Company shall have 30 days following receipt of the objections or requests to respond. Thereafter, Licensor and Licensee shall meet, either personally or through representatives, in an effort to resolve the issues. If the issues cannot be resolved, they shall be submitted to binding arbitration pursuant to Section 5.

5. Arbitration.

5.1 Arbitration of Disputes. All unresolved disputes, controversies, or claims arising out of or relating to this Agreement, or the breach, termination, or validity thereof ("Disputes") shall be submitted to arbitration before a panel, composed of no less than three neutral and impartial individuals having no affiliation or association with Licensee, the Company, or any member of the Wynn family. One arbitrator shall be selected by Licensor and one arbitrator shall be selected by Licensee within thirty (30) days of receipt by respondent of the demand for arbitration and the two selected arbitrators shall select a third arbitrator within twenty (20) days of the appointment of the second arbitrator. The arbitration shall be held in Las Vegas, Nevada.

5.2 Arbitration Procedure. The three arbitrators shall review the Dispute, receive evidence, and issue a written decision and award indicating specifically what measures, if any, must be taken to comply with the arbitration panel's decision. In rendering an award, the arbitrators shall follow the law of the State of Nevada and the provisions of this Agreement. The arbitrators may award injunctive relief, specific performance, and actual, direct damages with respect to the subject matter underlying the Dispute. The arbitrators may not award punitive, exemplary, consequential, or

treble damages. The parties agree that the arbitration panel shall have authority to hire an individual, or expert, to monitor compliance with the arbitration panel's directives to ensure that any required changes are implemented in accordance with the timetable set forth in the arbitration panel's decision. The award shall be in writing and shall briefly state the findings of fact and conclusions of law on which it is based. The arbitration panel shall have the authority to award reasonable attorneys' fees and costs to the prevailing party.

5.3 Governing Rules. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The parties shall not be obligated to choose an arbitrator from a AAA panel unless the two arbitrators selected pursuant to Section 5.1 have not selected the third arbitrator within twenty (20) days of the appointment of the second arbitrator, in which case such third arbitrator shall be appointed in accordance with the listing, ranking, and striking provisions of the Rules.

5.4 Enforcement. The arbitration panel's decision shall be conclusive and binding in all instances and shall not be subject to appeal or judicial review, and may be entered and enforced by any court of competent jurisdiction.

## 6. Related Rights.

6.1 Expansion of the Rights of Publicity Into Other Business Areas. In the event that Licensee wishes to use the Rights of Publicity other than in connection with a Resort business, Licensee may propose the terms of such license to Licensor who will engage in good faith negotiations with Licensee to enter a separate licensing agreement covering such proposed use.

6.2 Use of Rights Exception. The Rights of Publicity are Licensor's personal rights, and Licensor may use those rights other than in connection with Resorts.

7. Gaming Licenses. If (a) Licensee or any Sublicensee is denied or otherwise unable to obtain any necessary approval from any government regulating gaming authority ("Gaming Authorities"), or (b) any Gaming Authority prevails in any suit or proceeding against Licensee or any Sublicensee, and if the result of the foregoing clause (a) or (b) has or would have an adverse effect on Licensee or its Sublicensee (all of the foregoing such events, a "Denial"), Licensor may terminate this Agreement with respect to Licensee or such Sublicensee in connection with the Resort or other business activity that is subject to the Denial in the jurisdiction to which such Denial applies, by written notice to Licensee; provided, however, that Licensor shall have no such termination right if Licensor is primarily responsible for such Denial. Licensee and its Sublicensees shall promptly, and in all events within any time limit established by law, regulation, or such Gaming Authority, furnish each Gaming Authority any information rightfully requested by such Gaming Authority and shall otherwise reasonably cooperate with all Gaming Authorities. Licensee represents to Licensor that neither Licensee nor, to Licensee's knowledge, any intended Sublicensee, is unwilling

to file any necessary applications to obtain whatever approvals may be required of such persons or entities in connection with this Agreement. To Licensee's knowledge, neither Licensee nor any intended Sublicensee has ever engaged in any conduct or practices that any of the foregoing persons or entities should reasonably believe would cause such person or entity to receive a Denial.

8. Notices: Any notice to be given pursuant to this Agreement by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid, with return receipt requested, or 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 its address by written notice in accordance with this Section. Notices delivered personally shall be deemed communicated as of actual receipt; facsimile notices (with a concurrent mailing) shall be deemed communicated three (3) days after mailing.

**To Licensor:**

Stephen A. Wynn  
1 Shadow Creek Drive  
North Las Vegas, Nevada 89031

**To Licensee:**

Wynn Resorts Holdings, LLC  
3145 Las Vegas Boulevard South  
Las Vegas, Nevada 89109

(Copy to):

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

9. Miscellaneous.

9.1 Choice of Law. This Agreement shall be deemed to be made and shall be construed in accordance with the laws of the State of Nevada, without reference to its conflict of laws provisions.

9.2 Headings. The headings contained in this Agreement are for convenience of reference only and are not to be given any legal effect and shall not affect the meaning or interpretation of this Agreement.

9.3 Severability. If any portion of this Agreement is in conflict with any applicable federal or state law now in force or hereafter enacted, such provision shall become inoperative, but all other provisions of this Agreement shall remain in full force and effect.



9.4 Assignment. Licensee may assign or otherwise transfer this Agreement only to an Affiliate or to the successor of all or a substantial portion of the business of Licensee relating to this Agreement, and Licensor may assign or otherwise transfer this Agreement only to his heir(s) or other person or entity that succeeds to the Right of Publicity, which successor(s) in either such case shall thereafter be deemed substituted for Licensee or Licensor, respectively, hereunder effective upon such assignment.

9.5 Construction. For purposes of construction of this Agreement, the language herein shall be deemed to be the language of all parties, and no party shall be deemed to be the drafting party.

9.6 Written Amendments. This Agreement may be amended only by written agreement, executed by both parties.

9.7 Entire Agreement. This Agreement and the Surname Agreement constitute the entire understanding between the parties, and supersede and replace any and all prior written and oral agreements. There are no other terms and conditions except those set forth herein. In the event of a conflict between the provisions of this Agreement or the rights granted herein and the Surname Agreement or the rights granted therein, the provisions of the Surname Agreement and the rights granted therein shall control. The parties acknowledge that the Rights of Publicity under this Agreement do not include the WYNN Mark (as defined in the Surname Agreement), which WYNN Mark shall be governed by the Surname Agreement.

In Witness Whereof, the parties have caused this Agreement to be duly executed as of the Effective Date.

**LICENSOR:**

**LICENSEE:**

/s/ STEPHEN A. WYNN  
Stephen A. Wynn

**WYNN RESORT HOLDINGS, LLC**  
By VALVINO LAMORE, LLC  
Its Sole Member  
By WYNN RESORTS, LIMITED  
Its Sole Member

By \_\_\_\_\_ /s/ MARC SCHORR

Its \_\_\_\_\_ C.O.O.

TERMINATION AGREEMENT

This Termination Agreement (“Termination Agreement”) is made and entered into this 6th day of August, 2004 (“Effective Date”), by and between STEPHEN A. WYNN, an individual (hereinafter “Wynn”) and VALVINO LAMORE, LLC, a Nevada limited liability company, with offices at 3145 Las Vegas Boulevard South, Las Vegas, Nevada (“Valvino”).

RECITALS

- A. Wynn and Wynn Resorts Holdings, LLC (“Holdings”) are entering into a Surname Rights Agreement, dated the date hereof (the “Surname Rights Agreement”), which Surname Rights Agreement addresses the use and registration of the WYNN Mark in connection with Resorts (each, as defined in the Surname Rights Agreement). Pursuant to the Surname Rights Agreement, Wynn has agreed to assign, and Holdings has agreed to acquire, all right, title, and interest that Wynn possesses worldwide in the WYNN Mark in connection with Resorts. Valvino is an affiliate of Holdings.
- B. Pursuant to a Trademark Consent Agreement between Wynn and Valvino, dated January 8, 2002 (the “Trademark Consent Agreement”), Valvino and its subsidiaries were granted rights to use and register certain WYNN Marks.
- C. In connection with the execution of the Surname Rights Agreement, Wynn and Valvino desire to terminate the Trademark Consent Agreement, as Valvino will obtain rights to use WYNN Marks directly from Holdings.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Wynn and Valvino hereby terminate the Trademark Consent Agreement.

In Witness Whereof, the parties have caused this Termination Agreement to be duly executed as of the Effective Date.

WYNN:

\_\_\_\_\_  
/s/ STEPHEN A. WYNN  
Stephen A. Wynn

Valvino:

VALVINO LAMORE, LLC  
By WYNN RESORTS, LIMITED  
Its Sole Member

By \_\_\_\_\_ /s/ MARC SCHORR

Its \_\_\_\_\_ C.O.O.

TRADEMARK ASSIGNMENT

This Trademark Assignment ("Assignment") is made and entered into this 6th day of August, 2004 ("Effective Date"), by and between STEPHEN A. WYNN, an individual (hereinafter "Wynn") and WYNN RESORTS HOLDINGS, LLC, a Nevada limited liability company, with offices at 3145 Las Vegas Boulevard South, Las Vegas, Nevada ("Holdings").

RECITALS

- A. Wynn and Holdings are entering into a Surname Rights Agreement, dated the date hereof (the "Surname Rights Agreement"), which Surname Rights Agreement addresses the use and registration of the WYNN Mark in connection with Resorts (each, as defined in the Surname Rights Agreement).
- B. Pursuant to the Surname Rights Agreement, Wynn has agreed to assign, and Holdings has agreed to acquire, all right, title, and interest that Wynn possesses worldwide in the WYNN Mark in connection with Resorts.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Wynn hereby transfers, assigns, conveys, delivers, and sets over to Holdings all of Wynn's right, title, and interest worldwide in and to the WYNN Mark in association with Resorts, all goodwill associated therewith, and all causes of action (either in law or equity), and the right to sue, counterclaim, and recover for past, present, and future infringement, dilution, or misappropriation of the Wynn Mark in connection with Resorts, and all rights corresponding thereto throughout the world. Wynn further agrees to cause to be performed such lawful acts and to execute such further assignments and other documents as Holdings may request to effectuate fully this Assignment and to enable this Assignment to be recorded in any and all jurisdictions throughout the world.

In Witness Whereof, the parties have caused this Assignment to be duly executed as of the Effective Date.

WYNN:

/s/ STEPHEN A. WYNN  
Stephen A. Wynn

HOLDINGS:

WYNN RESORT HOLDINGS, LLC  
By VALVINO LAMORE, LLC,  
Its Sole Member  
By WYNN RESORTS, LIMITED  
Its Sole Member

By /s/ MARC SCHORR

Its C.O.O.

**FIRST AMENDMENT TO  
EMPLOYMENT AGREEMENT**

This FIRST AMENDMENT TO EMPLOYMENT AGREEMENT (this "**Amendment**") is entered into as of the 6th day of August 2004, by and between Wynn Resorts, Limited ("**Employer**") and Stephen A. Wynn ("**Employee**"). Capitalized terms that are not defined herein shall have the meanings ascribed to them in the Agreement (as defined below).

**RECITALS**

WHEREAS, Employer and Employee have entered into that certain Employment Agreement, dated as of October 4, 2002 (the "**Agreement**"); and

WHEREAS, the Effective Date of the Agreement is October 25, 2002; and

WHEREAS, the Term of the Agreement expires on the fifth anniversary of the Effective Date; and

WHEREAS, Employer and Employee desire to extend the Term of the Agreement under the terms and pursuant to the conditions set forth herein, and otherwise clarify the terms and conditions of the Agreement;

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Amendment, the parties hereto agree as follows:

1. Amendments.

(a) Section 1(j) of the Agreement is hereby amended to read as follows:

"(j) "**Separation Payment**" - means an amount equal to the sum of (A) Employee's Base Salary (as defined in Subparagraph 8(a) of this Agreement) for the remainder of the Term (up to a maximum of four (4) years but not less than one (1) year of Base Salary), plus (B) the bonus that was paid to Employee under Subparagraph 8(b) for the preceding bonus period, projected over the remainder of the Term (up to a maximum of four (4) years but not less than the preceding bonus that was paid projected over one (1) year).

(b) Section 6 of the Agreement is hereby amended to read as follows:

“6. **TERM.** Unless sooner terminated as provided in this Agreement, the term of this Agreement (the “**Term**”) shall commence on the Effective Date of this Agreement and expire on October 24, 2017.”

(c) Subsection 8(a) of the Agreement is hereby amended to read as follows:

“(a) **BASE SALARY.** Employer hereby covenants and agrees to pay to Employee, and Employee hereby covenants and agrees to accept from Employer, a base salary at the rate of no less than (i) One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) per annum during the first year of the Term; (ii) One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) per annum during the second year of the Term; (iii) Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00) per annum during the third year of the Term; (iv) Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000.00) per annum during the fourth and fifth years of the Term; and (v) no less than Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000.00) per annum during each of the remaining years of the Term (the “**Base Salary**”). Employee’s Base Salary shall be payable in such weekly, bi-weekly or semi-monthly installments as shall be convenient to Employer. Employee’s Base Salary shall be exclusive of and in addition to any other benefits which Employer, in its sole discretion, may make available to Employee, including, but not limited to, those benefits described in Subparagraphs 8(b) through (g) of this Agreement. Employee’s benefits, taken as a whole, shall be no less favorable than any other executive employed by Employer or any of its Affiliates. Employee’s Base Salary shall be subject to merit review by Employer’s Board of Directors upon the opening of the Wynn Las Vegas resort in Las Vegas, and periodically before and after such opening, and may be increased, but not decreased, as a result of any such review.”

(d) Subsection 8(h) of the Agreement is hereby amended to read as follows:

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

2. Other Provisions of Agreement. The parties acknowledge that the Agreement is being modified only as set forth above, and agree that nothing else in the Agreement shall be affected by this Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date first written above.

**WYNN RESORTS, LIMITED**

**EMPLOYEE**

By: \_\_\_\_\_ /s/ MARC SCHORR

\_\_\_\_\_ /s/ STEPHEN A. WYNN  
Stephen A. Wynn

Name: \_\_\_\_\_ Marc Schorr

Its: \_\_\_\_\_ C.O.O

**THIRD AMENDED AND RESTATED**

**ART RENTAL**

**AND**

**LICENSING AGREEMENT**

**between**

**STEPHEN A. WYNN**

**(Lessor)**

**and**

**WYNN LAS VEGAS, LLC**

**(Lessee)**

**Dated August 6, 2004**

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

This Third Amended and Restated Art Rental and Licensing Agreement (“Agreement”), is entered into this 6th day of August, 2004, by and between STEPHEN A. WYNN (“Lessor”) and WYNN LAS VEGAS, 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 in the Lessee’s 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.

Based upon the foregoing and the following terms and conditions, the parties hereto agree as follows:

1. Rental. Upon the terms and subject to the conditions of this Agreement, and effective upon the Resort opening to the public (the “Effective Date”), 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 location of the Gallery in the Resort, and 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 NRS 361.068, 361.186, 374.291, 374.2911, and agrees to comply with NRS 597.720, et seq., and other applicable law.

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 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, Lessee is specifically provided with a six-month period to discontinue sales and use of merchandise. The parties shall amend Exhibit A 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, 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) Lessee or any of Wynn Resorts’ other subsidiary companies makes an assignment for the benefit of creditors, is adjudicated bankrupt, files a voluntary petition or answer seeking any relief under bankruptcy or insolvency laws, has filed against it an involuntary petition under such laws, or applies for or permits the appointment of a receiver or trustee for all or a substantial portion of its assets; 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, 10, or any other provision that can be fulfilled only after the termination date.

7. Insurance. Lessee shall reimburse Lessor for the actual cost of insuring the Works on a “wall-to-wall” basis, for the full rental period hereunder (including packing and shipping, and including terrorism insurance), for the value of the Works as stipulated in writing by Lessor, less the costs of insurance for the dates the Works are not on display or in transit to or from the Gallery. 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 reimbursement required by this Section 7. Lessee shall be named as an additional insured on Lessor’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 Lessor to Lessee, and shall be subject to Lessor’s reasonable approval as to form and content (including 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 loss, damage, or destruction incurred during packing or crating or while in transit), 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 been reimbursed by its insurance, 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 agrees to and does 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 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 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, 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 may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid, with return receipt requested, or 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; facsimile notices (with a concurrent mailing) shall be deemed communicated three (3) days after mailing. Notices shall be given as follows:

Wynn Las Vegas, LLC  
Legal Department  
3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
Telephone: 702-770-2111  
Fax: 702-770-1020

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 the 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 consent. Subject to the preceding, 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 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.

WYNN LAS VEGAS, LLC

/s/ STEPHEN A. WYNN  
\_\_\_\_\_  
Stephen A. Wynn

/s/ MARC D. SCHORR  
\_\_\_\_\_  
Marc D. Schorr  
Chief Executive Officer and President

**AGREEMENT FOR GUARANTEE MAXIMUM PRICE  
CONSTRUCTION SERVICES**

**CHANGE ORDER**

**30 August 2004**

**Project: Wynn Las Vegas**

**Change Order No.: 5**

**“Contractor”:**

MARNELL CORRAO ASSOCIATES, INC.  
222 Via Marnell Way  
Las Vegas, Nevada 89119

**“Owner”:**

WYNN LAS VEGAS, LLC  
3131 Las Vegas Boulevard So.  
Las Vegas, Nevada 89109

That certain **Agreement for Guaranteed Maximum Price Construction Services between Owner and Contractor for Wynn Las Vegas** dated as of June 4, 2002 (“**Contract**”) is hereby modified as follows:

**1. SCOPE OF WORK**

The Scope of Work is changed as follows:

LAKE MOUNTAIN FEATURE

- (i) *Description* – Increase contract scope to include all Work associated with the Lake Mountain Feature as depicted by the Contract Documents issued as of 29 July 2004. Said work includes the Lake Feature, Mountain Feature, Lake Feature Theatrical Elements and all Equipment Rooms and Support Areas. This Change Order reconciles the Work with the values carried in the current Guaranteed Maximum Price Breakdown including the Mountain Feature Construction Allowance.
- (ii) Increase to Guaranteed Maximum Price – Total increase per MCA Change Order No. 5 summary dated 30 August 2004.

Guaranteed Maximum Price Increase	\$44,803,884.00
<b>Total Scope of Work Change Order No. 5 amount</b>	<b>\$44,803,884.00</b>



**A. INCREASE TO GUARANTEED MAXIMUM PRICE.**

The Guaranteed Maximum Price set forth in Section 3.1 of the Contract is, by this Change Order, hereby increased from \$992,672,640.00 to \$1,037,476,524.00, based on the Changes described in Paragraph 1 above. The detailed breakdown of the foregoing increase is contained in the Revised Contractors Work and Guaranteed Maximum Price Breakdown labeled as Revised Exhibit F and dated 31 August 2004, and attached to this Change Order. Accordingly, the original Guaranteed Maximum Price Breakdown attached as Exhibit F to the Contract is hereby deleted and substituted therefore is the Revised Contractors Work and Guaranteed Maximum Price Breakdown attached hereto. From and after the date of this Change Order, all references in the Contract Documents to the "Guaranteed Maximum Price Breakdown" attached as Exhibit F to the Contract, shall mean and refer to the Revised Contractors Work and Guaranteed Maximum Price Breakdown attached hereto as Revised Exhibit F. From and after the date of this Change Order, any and all references in the Contract Documents to the "Guaranteed Maximum Price" shall mean the amount of \$1,037,476,524.00.

**B. PROJECT SCHEDULE**

The current Project Schedule for the base contract scope dated 31 August 2003 and attached as Exhibit B to the Contract shall remain unchanged. The Contract Time of 910 calendar days from Date of Commencement, and the Guaranteed Date of Substantial Completion, as defined in Section 4.1 of the Contract, remain unchanged by this Change Order.

As previously incorporated into the Agreement via Change Order No. 4 the scheduled Completion Date for the Showroom Addition (Showroom #1) extends beyond the base contract scope. The Guaranteed Date of Substantial Completion for the Showroom Addition is 26 August 2005.

All initial capitalized terms used in this Change Order shall have the meaning ascribed to them in the Contract, unless otherwise defined herein. This Change Order is effective as of 31 August 2004.

**OWNER:**

WYNN LAS VEGAS, LLC,  
a Nevada limited liability company,

By: \_\_\_\_\_ /s/ TODD NISBET  
Name: Todd Nisbet  
Its: Assistant Secretary

**CONTRACTOR:**

MARNELL CORRAO ASSOCIATES, INC.,  
a Nevada corporation

By: \_\_\_\_\_ /s/ PERRY EIMAN  
Name: Perry Eiman  
Its: President

**ARCHITECT:**

BUTLER/ASHWORTH ARCHITECTS, LLC

By: \_\_\_\_\_ /s/ GLEN ASHWORTH  
Name: Glen Ashworth  
Its: Vice President and Secretary

DATED 14 SEPTEMBER 2004

**WYNN RESORTS (MACAU) S.A.**  
the Company

**CERTAIN FINANCIAL INSTITUTIONS**  
as Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders

**DEUTSCHE BANK AG, HONG KONG BRANCH**  
**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**  
as Global Coordinating Lead Arrangers

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**  
as Hotel Facility Agent and Project Facility Agent

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**  
as Intercreditor Agent

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**  
as Security Agent

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COMMON TERMS AGREEMENT

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**THIS AGREEMENT** is made on the 14th day of September 2004

**BETWEEN:**

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (2) **THE FINANCIAL INSTITUTIONS** defined below as Hotel Facility Lenders;
- (3) **THE FINANCIAL INSTITUTIONS** defined below as Project Facility Lenders;
- (4) **THE FINANCIAL INSTITUTIONS** defined below as Revolving Credit Facility Lenders;
- (5) **DEUTSCHE BANK AG, HONG KONG BRANCH** and **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in their capacities as global coordinating lead arrangers of the Facilities (the “**Global Coordinating Lead Arrangers**” or “**GCLAs**”);
- (6) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Hotel Facility Agent;
- (7) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Project Facility Agent;
- (8) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Intercreditor Agent; and
- (9) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as Security Agent.

**WHEREAS:**

- (A) The Senior Secured Creditors have agreed, subject to the terms and conditions contained in the Senior Finance Documents, to make available to the Company certain loan facilities for the purpose of the Projects and/or to enter into other agreements or arrangements associated therewith.
- (B) The parties have agreed to enter into this Agreement to set out certain terms and conditions which are common to all the Facility Agreements and to agree certain terms and conditions upon and subject to which the Senior Secured Creditors shall or may enjoy, exercise or enforce their rights, discretions and remedies under the Senior Finance Documents.

**NOW IT IS HEREBY AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, except as otherwise defined herein or to the extent the context otherwise requires, capitalised terms used shall have the following meanings:

“**Account**” means each of the Operating Accounts and the other accounts specified in sub-paragraphs 1.1(a) through (o) of Schedule 6 (*Accounts*).

“**Account Bank**” means, in relation to an Account, the bank with which the Account is maintained.

“**Account Bank Notices and Acknowledgements**” mean the notices and acknowledgements to be delivered to and executed by each Account Bank in respect of each Account in accordance with the Charges over Accounts and this Agreement.

“**Additional Lender**” means a party who has agreed to provide the Company with a term loan facility permitted by paragraph 2(f) of Part B of Schedule 5 (*Covenants*) and who has executed and delivered to the Intercreditor Agent:

- (a) a duly completed Additional Lender’s Accession Deed executed by such party; and
- (b) a duly completed Finance Party Accession Undertaking executed by such party, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent),

each of which the Intercreditor Agent shall promptly copy to the Company and the other Senior Secured Creditors.

“**Additional Lender Facility**” means, in relation to an Additional Lender, the term loan facility provided by the Additional Lender to the Company.

“**Additional Lender Facility Agreement**” means, in relation to an Additional Lender, the agreement between the Additional Lender and the Company for the provision of that Additional Lender’s Additional Lender Facility.

“**Additional Lender’s Accession Deed**” means a deed of accession in substantially the form set out in Schedule 14 (*Form of Additional Lender’s Accession Deed*).

“**Additional Operating Account**” has the meaning given in paragraph 4.2 of Schedule 6 (*Accounts*).

“**Advance**” means an advance (as from time to time reduced by repayment or prepayment) made or to be made under a Facility.

“**Advance Date**” means the date on which an Advance is required to be made.

“**Advance Request**” means, in relation to an Advance under the Term Loan Facilities, a request for an Advance in substantially the form set out in Schedule 3 (*Form of Advance Request*) and, in relation to an Advance under the Revolving Credit Facility, in substantially the form set out in schedule 2 to the Revolving Credit Facility Agreement.

“**Advisers**” means the Technical Adviser, the Insurance Adviser, the Market Adviser and the Tax Adviser.

“**Affiliate**” as applied to any Person, means any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by,” and “under common control with”) as applied to any Person means the power, directly or indirectly, to (a) vote 10% or more of the shares



or other securities having ordinary voting power for the election of the Board of Directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise (*provided* that Mr Wong Chi Seng shall not, by virtue of fulfilling either of these requirements alone as a result of the shares held by him in the Company as at the Signing Date or as a result of his role as executive director of the Company, be an Affiliate of the Company).

“**Affiliate Agreement**” means any agreement entered into by the Company with an Affiliate of the Company involving expenditures by any party thereto or any other flow of funds of not less than USD1,000,000 (or its equivalent) and including any agreement relating to the receipt and payment of amounts referred to in paragraph 4.2(c) of Schedule 6 (*Accounts*).

“**Affiliated Offshore Account**” has the meaning given in paragraph 4.2 of Schedule 6 (*Accounts*).

“**Agent**” means the Intercreditor Agent or a Facility Agent, as the case may be.

“**Agent’s Deed of Accession**” means a deed of accession in substantially the form of Part A of Schedule 11 (*Transfers and Accession*).

“**Agreed Form**” means, in relation to any document, the form initialled for the purposes of identification as such by the Company and the Intercreditor Agent on or before the date of this Agreement with such changes as the Intercreditor Agent may agree with the Company.

“**A. M. Best**” means A.M. Best Company or its successor company.

“**Ancillary Finance Documents**” means:

- (a) the Fee Letters; and
- (b) the Underwriting Agreement.

“**Approved IP Fees**” means the IP Fees as set out in the IP Agreement in the Agreed Form, without regard to any subsequent amendment, variation or supplement, whether pursuant to the terms of the IP Agreement or otherwise.

“**Approved List**” means the list of entities agreed between the GCLAs and the Company as a condition precedent to the CP Satisfaction Date.

“**Asset Sale**” means any Disposition of Property other than:

- (a) the granting of any Lien permitted by paragraph 3 of Part B of Schedule 5 (*Covenants*);
- (b) any Disposition permitted by paragraph 5 of Part B of Schedule 5 (*Covenants*) (*provided* that, in the case of paragraph 5(a) of Part B of Schedule 5 (*Covenants*), Dispositions of Property thereunder shall be considered “Asset

Sales” to the extent of any proceeds thereof not applied to the replacement of Property pursuant to paragraph 5(a)(ii) of Part B of Schedule 5 (Covenants)).

“**Assignment of Rights**” means the assignment so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

“**Assignment of Insurances**” means the Assignment of Onshore Insurance Policies dated on or about the date of this Agreement between the Company and the Security Agent.

“**Assignments of Reinsurances**” means each assignment of Reinsurance so entitled between the relevant Direct Insurer and the Security Agent.

“**Auditors**” means Deloitte & Touche LLP or such other firm of independent accountants of international recognised standing as may be appointed by the Company.

“**Availability Period**” means, as the case may be, the Hotel Facility Availability Period, the Project Facility Availability Period or the Revolving Credit Facility Availability Period.

“**Available Commitment**”, in relation to each Lender (other than an Additional Lender) under each Facility Agreement, has the meaning given in that Facility Agreement.

“**Available Funding**” means, on any date, the aggregate (without double counting) US dollar equivalent of:

- (a) the undrawn and uncanceled Available Commitments under the Term Loan Facilities of each Lender (other than any Lender in breach of any obligation under the Senior Finance Documents to fund or maintain its participation in any Advance thereunder *provided* in the event that a Lender is in breach of its obligation to fund any Advance, its Available Commitment shall not be discounted in calculating Available Funding for the purpose of the making of the Advance which such Lender has failed to fund, but shall be discounted for any subsequent Advance for so long as such Lender remains in breach);
- (b) the aggregate amount of the undrawn Base Equity Commitment, the undrawn Subordinated Funding and any undrawn Contingent Equity Commitment;
- (c) the amount standing to the credit of the Accounts to the extent such balances are available to meet Project Costs;
- (d) the proceeds of any delay in start-up Insurance which the Intercreditor Agent is reasonably satisfied will be received by the Company during the stated indemnity period in the policy or, if earlier, during the period before the estimated date of Construction Completion used for determining the amount of Remaining Project Costs;
- (e) delay liquidated damages payable by the Prime Contractor under the Construction Contract which the Intercreditor Agent is reasonably satisfied will be received by the Company during the relevant indemnity period or, if earlier, during the period before the estimated date of Construction Completion used for determining the amount of Remaining Project Costs;

- (f) any other committed funds comprised in Financial Indebtedness permitted pursuant to paragraph 2(f) of Part B of Schedule 5 (*Covenants*) or under any agreement which has been approved by the Intercreditor Agent under paragraph 2(h) of Part B of Schedule 5 (*Covenants*) and which are, in each case, unconditionally available to be drawn down to meet Remaining Project Costs; and
- (g) funds held in the Upfront Premium Account that are or can be used by the Company pursuant to paragraph 17(d)(ii)(B) of Part B of Schedule 5 (*Covenants*) and to the extent not otherwise required to be retained or applied pursuant to, or used or irrevocably committed for, any of the other purposes specified in paragraph 17(d) of Part B of Schedule 5 (*Covenants*).

“**Base Debt Facility**” means the Hotel Base Debt Facility or the Project Base Debt Facility.

“**Base Equity**” means Equity (other than advances under the Subordinated Funding Agreement) in an amount of USD230,000,000 or its equivalent paid up or advanced pursuant to the Base Equity Commitment and including the US dollar equivalent of a minimum of MOP200,000,000 paid up by the Shareholders by way of subscription for shares in the Company.

“**Base Equity Commitment**” means the commitment by Wynn Resorts to ensure the provision of Base Equity to the Company pursuant to clause 2.2.2 of the Wynn Resorts Support Agreement.

“**Base Project Costs**” means the equivalent of USD704,000,000.

“**Board of Directors**” means:

- (a) with respect to a corporation, the board of directors of the corporation;
- (b) with respect to a limited partnership, the board of directors of the general partner of the partnership; and
- (c) with respect to any other Person, the board or committee of such Person serving a similar function.

“**Break Costs**” means the amount (if any) by which:

- (a) the additional interest which a Lender should have received for the period from the date of receipt by such Lender of all or any part of its participation in an Advance or Unpaid Sum to the last day of the current Interest Period in respect of that Advance or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the London interbank market (or, in the case of any principal

amount or Unpaid Sum denominated in HK dollars, the Hong Kong interbank market) for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period,

*provided* that Break Costs shall not include any loss of margin.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in the Macau SAR, Hong Kong, London, Tokyo and New York.

“**Capital Contributions Account**” means the Accounts so designated in Schedule 6 (*Accounts*).

“**Capital Contributions Account Control Agreement**” means the Capital Contributions Account control agreement dated on or about the date of this Agreement between the Company, the Security Agent and another.

“**Capital Expenditure**” means, in relation to the Company, for any period, the aggregate of all expenditures by the Company for the acquisition or leasing (pursuant to a capital lease or a finance lease) of fixed or capital assets (including, without limitation, real property) or additions to equipment (including replacements, capitalized repairs and improvements during such period) which should be capitalized under applicable GAAP *provided* that the amount of Capital Expenditures in respect of fixed or capital assets or additions to equipment in any Fiscal Year shall not include:

- (a) to the extent applied during such Fiscal Year to the replacement of Property pursuant to paragraph 5(a)(ii) of Part B of Schedule 5 (*Covenants*), the Net Cash Proceeds received by the Company from the Disposition of Property pursuant to paragraph 5(a) of Part B of Schedule 5 (*Covenants*);
- (b) the Insurance Proceeds and/or Eminent Domain Proceeds received by the Company for any casualties to, or Taking of, fixed or capital assets and applied during such Fiscal Year to the repair or replacement of fixed or capital assets in accordance with the terms of this Agreement;
- (c) any payment made or owed by the Company pursuant to the Land Concession Contract; or
- (d) any other such amount approved by the Intercreditor Agent.

Notwithstanding the foregoing, any Project Costs that otherwise would have constituted Capital Expenditures by virtue of the foregoing shall be excluded from this definition.

“**Capital Lease Obligations**” means, as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or finance leases under applicable GAAP, and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with applicable GAAP.

“**Capital Stock**” means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all classes of membership interests in a limited liability company, any and all classes of partnership interests in a partnership, any and all equivalent ownership interests in a Person and any and all warrants, rights or options to purchase any of the foregoing.

“**Cash Flow Available for Debt Service**” or “**CFADS**” means, in relation to the Company for any period, EBITDA of the Company for such period *plus*, without duplication, the sum of:

- (a) decreases in Working Capital for such period; and
- (b) any other non-cash charges,

and *minus*, without duplication, the sum of:

- (c) increases in Working Capital for such period;
- (d) any other non-cash credits;
- (e) the aggregate amount actually paid by the Company in cash during such period on account of Capital Expenditures made pursuant to paragraph 7(b) of Part B of Schedule 5 (*Covenants*) (excluding the principal amount of any Financial Indebtedness and any Equity used to fund such expenditures and any such expenditures financed with the proceeds of any Reinvestment Deferred Amount);
- (f) the aggregate amount actually paid by the Company in cash during such period on account of any accrued charges from any prior period; and
- (g) Tax paid by the Company during such period.

“**Certificate of Final Completion**” has the meaning given to it in the Construction Contract.

“**Certificate of Substantial Completion**” has the meaning given to it in the Construction Contract.

“**Change of Control**” means the occurrence of any of the following:

- (a) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of any Wynn Obligor to any Person (except as may be permitted by this Agreement or any Security Document);
- (b) the adoption of a plan relating to the liquidation or dissolution of any Wynn Obligor or any successor thereto; or
- (c) a Wynn Event.

“**Change Order No 1**” means the change order and amendment between the Company and the Prime Contractor in the Agreed Form.

“**Charge over HK Accounts**” means the charge so entitled between the Company and the Security Agent in the Agreed Form.

“**Charges over Accounts**” means the Pledge over Onshore Accounts, the Charge over HK Accounts, the Capital Contributions Account Control Agreement and the documents granting the Liens referred to in paragraph 4.2(e)(i)(2) (*Additional Operating Accounts*) of Schedule 6 (*Accounts*).

“**Code**” means the Internal Revenue Code of 1986 of the United States of America, as amended from time to time.

“**Commonly Controlled Entity**” means an entity, whether or not incorporated, which is under common control with any Loan Party within the meaning of section 4001 of ERISA or is part of a group that includes such Person and that is treated as a single employer under section 414 of the Code.

“**Company Share Pledge**” means the pledge over shares in the Company dated on or about the date of this Agreement between Wynn HK, Wynn International, the Company and the Security Agent.

“**Company’s CP Satisfaction Date Certificate**” has the meaning given in paragraph 6 of Part A of Schedule 2 (*Conditions Precedent*).

“**Compensation Proceeds Account**” means the accounts so designated in Schedule 6 (*Accounts*).

“**Compliance Certificate**” means a certificate in substantially the form set out in Schedule 15 (*Form of Compliance Certificate*).

“**Concession Contract**” means the concession contract dated 24 June 2002 between the Macau SAR and the Company for the operation of games of chance and other games in casinos in the Macau SAR.

“**Concession Contract Performance Bond**” means the guarantee to be provided under article 61 of the Concession Contract.

“**Confidentiality Undertaking**” means a confidentiality undertaking in substantially the form set out in Part C of Schedule 11 (*Transfers and Accession*) or any other form agreed between the Company and the Intercreditor Agent.

“**Construction Completion**” shall occur when the following conditions precedent to such completion are, in the reasonable opinion of the Intercreditor Agent, satisfied:

- (a) Substantial Completion has been achieved and the Certificate of Substantial Completion has been issued in accordance with the Construction Contract and this Agreement;

- (b) all Project Costs (other than Project Costs consisting of (i) Retainage Amounts, and other amounts, that are being withheld from the Contractors in accordance with the provisions of the Project Documents; (ii) amounts being contested in good faith by the Company so long as, where such amounts (other than those sought by way of claims against the Company which the Technical Adviser has certified as being spurious, vexatious or otherwise without foundation) exceed, in aggregate, USD5,000,000 or its equivalent, adequate reserves have been established; (iii) amounts payable in respect of Project Punchlist Items to the extent not covered by the foregoing sub-paragraph (i); and (iv) amounts incurred by the Prime Contractor or any other Contractors under a Major Project Document within the last 30 days and to be paid under any Advance Request which has been submitted but not yet disbursed) have been paid in full;
- (c) all documents relating to construction of the Projects which are required under articles 13(1), 35(4), 35(11), 36(1), 37(3), 37(4), 37(5), 37(6), 37(7), 67, 85(3) of the Concession Contract have been submitted by the Prime Contractor to the Company;
- (d) the Opening Date has been achieved, the Opening Conditions have been satisfied and the Projects are open for business;
- (e) the Licensor has notified in writing its approval of the facilities referred to in section 4.01 of the IP Agreement to the Company;
- (f) Macau SAR approval and classification of the casino and gaming zones comprised in the Projects as required by article 9 of the Concession Contract;
- (g) delivery by the Company of the list and inventory required to be delivered under articles 10 and 44 of the Concession Contract in accordance with the provisions thereof;
- (h) definitive registration with the Macau Real Estate Registry has been completed in respect of the first phase land (referred to in the Land Concession Contract) which land shall include the multi-storey car park contemplated by Change Order No 1 and the second phase land (referred to in the Land Concession Contract) comprised therein; and
- (i) registration with the Commercial and Movables Property Registry of the Macau SAR of the "Pledge List" referred to in the Pledge over Gaming Equipment and Utensils as at the Opening Date in accordance with the provisions thereof.

**"Construction Completion Date"** means the date upon which Construction Completion occurs.

**"Construction Contract"** means the construction contract dated 10 May 2004 between the Prime Contractor and the Company for the construction of the Projects, as amended by the Deed of Confirmation and Variation and Change Order No 1, together with the Deed of Confirmation and Variation.

“**Construction Contract Direct Agreement**” means the agreement so entitled between the Prime Contractor, the Company and the Security Agent in the Agreed Form.

“**Construction Period Insurances**” means the insurances identified as such in Appendix 1 (*Construction Period Insurances*) to Schedule 7 (*Insurance*) and effected in accordance with the terms of Schedule 7 (*Insurance*).

“**Contingent Debt Facility**” means the Hotel Contingent Debt Facility or the Project Contingent Debt Facility.

“**Contingent Equity**” means Equity, in addition to Base Equity and advances under the Subordinated Funding Agreement, in an amount equal to the sum of:

- (a) USD30 million;
- (b) any Securities Account Shortfall; and
- (c) the Subconcession Premia Clawback Amount,

paid up or advanced pursuant to the Contingent Equity Commitment.

“**Contingent Equity Commitment**” has the meaning given in the Wynn Resorts Support Agreement.

“**Contractors**” means any architects, consultants, designers, contractors, suppliers or any other Persons party to a Major Project Document and engaged by the Company in connection with the design, engineering, development, construction, installation, maintenance or operation of either Project (including the Prime Contractor).

“**Contractual Obligation**” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound.

“**Controlled Group**” means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Company, are treated as a single employer under section 414(b) or 414(c) of the Internal Revenue Code of 1986 of the United States of America, as amended.

“**CP Satisfaction Date**” means the date on which all conditions precedent set out in Part A of Schedule 2 (*Conditions Precedent*) have been satisfied in accordance with sub-clause 2.1.2 of Clause 2.1 (*Conditions Precedent to the CP Satisfaction Date*).

“**Current Assets**” means, at any date, all amounts (other than cash) which would, in conformity with applicable GAAP, be set forth opposite the caption “total current assets” (or any like caption) on a balance sheet of the Company at such date.

“**Current Liabilities**” means, at any date, all amounts that would, in conformity with applicable GAAP, be set forth opposite the caption “total current liabilities” (or any like caption) on a balance sheet of the Company at such date, but excluding:

- (a) the current portion of any Funded Debt of the Company; and



(b) without duplication of paragraph (a) above, all Financial Indebtedness consisting of Revolving Credit Facility Advances to the extent otherwise included therein.

“**Debenture**” means the debenture so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

“**Debt Service**” means, in relation to the Company for any period, all principal repayments under the Facilities and all Financing Costs payable or accrued during such period.

“**Debt Service Accounts**” means the USD Debt Service Account and the HKD Debt Service Account.

“**Debt Service Cover Ratio**” means, in relation to the Company for any period, the ratio of CFADS to Debt Service for such period.

“**Decision**” means the giving of a consent, the making of an agreement or the exercise of any other right, power, discretion or determination in respect of any matter which, under this Agreement or any other Senior Finance Document, requires such consent, agreement or exercise to be given or made by more than one Senior Secured Creditor or by the Required Lenders.

“**Decision Date**” has the meaning given in Clause 33.1 (*Notices of Required Decisions*).

“**Deed of Appointment and Priority**” means the deed so entitled dated on or about the date of this Agreement between the Lenders, the Subordinated Funding Provider, the Performance Bond Provider, the Company, the Agents and the Security Agent.

“**Deed of Confirmation**” means the deed so entitled between Leighton Holdings Limited, China Overseas Holdings Limited and the Company in the Agreed Form.

“**Deed of Confirmation and Variation**” means the deed so entitled between the Prime Contractor and the Company in the Agreed Form.

“**Default**” means an Event of Default or any event or circumstance specified in Schedule 10 (*Events of Default*) hereto which would become (with the expiry of a grace period, the giving of notice, the making of any determination as permitted under the Senior Finance Documents or any combination of any of the foregoing) an Event of Default.

“**Derivatives Counterparty**” has the meaning given in paragraph 6 of Part B of Schedule 5 (*Covenants*).

“**Direct Agreements**” means each of the following documents:

- (a) the Gaming Concession Consent Agreement;
- (b) the Land Concession Consent Agreement;
- (c) the Construction Contract Direct Agreement;
- (d) the IP Direct Agreement;

- (e) the PASA Direct Agreement;
- (f) the Account Bank Notices and Acknowledgements; and
- (g) the Insurer Notices and Acknowledgements.

“**Direct Insurances**” means a contract or policy of insurance of any kind from time to time taken out or effected by, on behalf of or in favour of the Company (whether or not in conjunction with any other person) with one or more insurers in accordance with the terms of Schedule 7 (*Insurance*).

“**Direct Insurer**” means the insurer(s) with whom a Direct Insurance is placed from time to time in accordance with Schedule 7 (*Insurance*).

“**Disbursement Accounts**” means the Hotel Facility USD Disbursement Account, the Hotel Facility HKD Disbursement Account, the Project Facility USD Disbursement Account and the Project Facility HKD Disbursement Account.

“**Disposition**” means, with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof (whether legal or equitable); and the terms “Dispose” and “Disposed of” shall have correlative meanings.

“**Disqualified Stock**” means any Capital Stock or other ownership or profit interest of any Obligor that any Obligor is or, upon the passage of time or the occurrence of any event, may become obligated to redeem, purchase, retire, defease or otherwise make any payment in respect thereof for consideration other than Capital Stock (other than Disqualified Stock).

“**EBITDA**” means, in relation to the Company for any period, the Net Income of the Company for such period *plus*, without duplication and to the extent reflected as a charge in its statement of such Net Income for such period, the sum of:

- (a) income Tax expense (whether or not paid during such period) other than Tax on gross gaming revenue;
- (b) amortization or write-off of debt discount and debt issuance costs and interest, commissions, discounts and other fees and charges associated with Financial Indebtedness (including the Advances);
- (c) depreciation and amortization expense;
- (d) amortization of intangibles (including goodwill);
- (e) an amount equal to the aggregate net non-cash loss on the Disposition of Property by the Company during such period (other than sales of inventory in the ordinary course of business); and
- (f) any extraordinary expenses or losses,

and *minus*, without duplication and to the extent included in the statement of such Net Income for such period, the sum of:

- (g) interest income;

- (h) an amount equal to the aggregate net non-cash gain on the Disposition of Property by the Company during such period (other than sales of inventory in the ordinary course of business);
- (i) any extraordinary income or gains; and
- (j) any upfront premium or similar income or gains derived from, or in connection with the grant of, any Subconcession, all as determined in accordance with applicable GAAP.

“**ECF Percentage**” means, with respect to any Fiscal Year:

- (a) 75% of the Excess Cash Flow if the Leverage Ratio as of the last day of such Fiscal Year is 3:1 or more;
- (b) 50% of the Excess Cash Flow if the Leverage Ratio as of the last day of such Fiscal Year is less than 3:1; or
- (c) 25% of the Excess Cash Flow if, as of the last day of such Fiscal Year:
  - (i) the aggregate principal amount outstanding under the Term Loan Facilities is less than USD150,000,000 or its equivalent; and
  - (ii) the Leverage Ratio is less than 2:1.

“**Eminent Domain Proceeds**” means all amounts and proceeds (including monetary instruments) received in respect of any Event of Eminent Domain relating to either Project less any costs or expenses incurred by the Company or its agents in collecting such amounts and proceeds.

“**Enforcement Notice**” has the meaning given in the Deed of Appointment and Priority.

“**Enforcement Proceeds**” means all moneys received or recovered by the Security Agent after the Security has become enforceable in accordance with the terms of the Security Documents from the exercise or enforcement of the Security.

“**Environment**” means land, including any natural or man-made structures; water; and air.

“**Environmental Claim**” means any formal claim by any Person as a result of or in connection with any material violation of Environmental Law which claim could reasonably be expected to give rise to any remedy or penalty (whether interim or final) or liability for the Company or any Senior Secured Creditor (in its capacity as such in the transactions contemplated by the Senior Finance Documents).

“**Environmental Law**” means any law or regulation of the Macau SAR with regard to:

- (a) harm to the health of humans; or
- (b) the pollution or protection of the Environment.

**“Environmental Licence”** means any material permit, licence, approval, registration, notification, exemption or any other authorisation required under any Environmental Law.

**“Equator Principles”** means the voluntary set of guidelines for determining, assessing and managing environmental and social risk in project financing promoted and published by the International Finance Corporation and first adopted by other financial institutions on or about 4 June 2003.

**“Equity”** means, at any time, the aggregate of the US dollar equivalents of:

- (a) the amounts paid up by the Shareholders by way of subscription for shares in the Company; and
- (b) the amounts advanced to the Company and outstanding at such time under the Subordinated Funding or by way of Shareholder Loans.

**“Equity Issuance”** means:

- (a) any allotment or issuance (or the entering into by the Company of any agreement to allot or issue), or any grant to any Person of any right (whether conditional or unconditional) to call for or require the allotment or issuance of, any share or equity interest, or other securities (including without limitation bonds, notes, debentures, stock or similar instrument) which are convertible (whether at the option of the holder(s) thereof, the Company or otherwise) into shares or equity interests in the Company, or any depositary receipt(s) in respect of any such share or equity interest; or
- (b) any grant of any option, warrant or other right of acquisition in respect of any such share, equity interest, other security or depositary receipt, *provided* that for the avoidance of doubt, “Equity Issuance” shall not include any secondary sales of any shares, equity interests or other securities of the Company by any or all of the holders of such shares, equity interests or other securities.

**“Equity Issuance Proceeds”** means the amount of the proceeds (if not in cash, the monetary value thereof) of any Equity Issuance after deducting:

- (a) fees and expenses reasonably incurred in connection with such Equity Issuance by the Company; and
- (b) any Taxes incurred or required to be paid by the Company in connection with such Equity Issuance (as reasonably determined by the Company, on the basis of existing rates and taking account of any available credit, deduction or allowance).

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

**“Event of Default”** means any event or circumstance set out in Schedule 10 (*Events of Default*).

**“Event of Eminent Domain”** means, with respect to any Property:

- (a) any compulsory transfer or taking by condemnation, seizure, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking or confiscation of such Property or the requisition of the use of such Property, by any agency, department, authority, commission, board, instrumentality or political subdivision of any Governmental Authority having jurisdiction; or
- (b) any settlement in lieu of paragraph (a) above.

**“Event of Loss”** means, with respect to any property or asset (tangible or intangible, real or personal), any of the following:

- (a) any loss, destruction or damage of such property or asset;
- (b) any actual condemnation, seizure or taking by exercise of the power of eminent domain or otherwise of such property or asset, or confiscation of such property or asset or the requisition of the use of such property or asset; or
- (c) any settlement in lieu of paragraph (b) above.

**“Excess Cash Flow”** means, in relation to the Company, for any Fiscal Year, CFADS for such Fiscal Year *plus*, without duplication and to the extent included in Net Income for such Fiscal Year, the US dollar equivalent of interest income received by the Company during such Fiscal Year *minus*, without duplication, the US dollar equivalents of:

- (a) the aggregate amount of Financing Costs paid by the Company in cash during such Fiscal Year;
- (b) the aggregate amount of interest under the Subordinated Funding Agreement paid by the Company in cash during such Fiscal Year;
- (c) the aggregate amount of all prepayments of Revolving Credit Facility Advances during such Fiscal Year to the extent accompanying permanent voluntary reductions of the Revolving Credit Facility Commitments and all voluntary prepayments of Term Loan Facility Advances during such Fiscal Year;
- (d) the aggregate amount of all scheduled principal payments of the Company under the Facility Agreements made during such Fiscal Year (other than in respect of the Revolving Credit Facility to the extent there is not an equivalent permanent reduction in commitments thereunder such that after giving effect to such commitment reduction the Company would not be able to reborrow all or any of the amount so prepaid); and
- (e) the net change (if any) over such Fiscal Year in the balance maintained by the Company in each of the Debt Service Accounts and the Reserve Accounts (which net change shall, for the avoidance of doubt, be subtracted from CFADS if positive and added if negative).

**“Facility”** means any of:

- (a) the Term Loan Facilities; or
- (b) the Revolving Credit Facility.

**“Facility Agents”** means the Hotel Facility Agent and the Project Facility Agent.

**“Facility Agreements”** means:

- (a) the Hotel Facility Agreement;
- (b) the Project Facility Agreement;
- (c) the Revolving Credit Facility Agreement; and
- (d) each Additional Lender Facility Agreement.

**“Facility Office”** means the office or offices notified by a Senior Secured Creditor to the relevant Facility Agent under the Facilities and by the relevant Facility Agent (or, in the case of the Revolving Credit Facility, the Revolving Credit Facility Lenders and, in the case of each Additional Lender Facility, the relevant Additional Lender) to the Company and the Intercreditor Agent in writing on or before the date it becomes a Senior Secured Creditor (or, following that date, by not less than 10 Business Days’ written notice) as the office or offices through which it shall perform its obligations under the relevant Facility.

**“Fee Letters”** means each of the fee letters between the Company on the one hand and the Agents and the Security Agent on the other hand, each dated on or about the date of this Agreement.

**“Final Completion”** has the meaning given in the Construction Contract.

**“Final Completion Costs”** means such Project Costs as are required to be incurred following Substantial Completion to achieve Final Completion (other than insofar as they may relate to the operation, equipping or provision of inventory of either Project, rather than its design, development or construction), including Project Costs required to be incurred to complete Project Punchlist Items.

**“Final Completion Date”** means the date on which Final Completion occurs.

**“Final Repayment Date”**, in relation to each of the Hotel Facility and the Project Facility, means the seventh anniversary of the Signing Date.

**“Finance Party Accession Undertaking”** has the meaning given in the Deed of Appointment and Priority.

**“Financial Indebtedness”** means, in relation to any Person at any date, without duplication:

- (a) all indebtedness of such Person for borrowed money;
- (b) all obligations of such Person for the purchase price of Property or services to the extent the payment of such obligations is deferred for a period in excess of

- 90 days (other than trade payables incurred in the ordinary course of such Person's business);
- (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments;
  - (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (unless the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property);
  - (e) all Capital Lease Obligations (to the extent treated as finance or capital lease obligations in accordance with applicable GAAP) or Synthetic Lease Obligations of such Person;
  - (f) any indebtedness of such Person for or in respect of receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis or on a basis where recourse is limited solely to warranty claims relating to title or objective characteristics of the relevant receivables);
  - (g) any indebtedness of such Person in respect of any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
  - (h) all indebtedness of such Person, contingent or otherwise, as an account party under acceptance, letter of credit, completion guaranties, performance bonds or similar facilities;
  - (i) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Capital Stock of such Person;
  - (j) all obligations of such Person in respect of Swap Agreements or any other derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price;
  - (k) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in paragraphs (a) through (j) above;
  - (l) all obligations of the kind referred to in paragraphs (a) through (k) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation; and
  - (m) the liquidation value of any preferred Capital Stock of such Person or its Subsidiaries held by any Person other than such Person and its Wholly Owned Subsidiaries.

**"Financial Model"** means the computer model, stored on computer disc(s), and consisting of algorithms as set out on the print-out from such disc(s), each to be initialled

at the Signing Date by the Intercreditor Agent and the Company for the purposes of identification.

**“Financing Costs”** means:

- (a) interest, fees, commissions, costs and expenses payable by the Company under the Senior Finance Documents;
- (b) interest, fees, commissions, costs and expenses payable by the Company under the Performance Bond Facility;
- (c) amounts payable by the Company under Clause 10 (*Changes to the Calculation of Interest*), Clause 11 (*Tax Gross Up and Indemnities*), Clause 12 (*Increased Costs*) and Clause 13 (*Currency and Other Indemnities*);
- (d) net amounts payable by the Company under any Hedging Agreement; and
- (e) any value added or other taxes payable by the Company in respect of paragraphs (a) through (d) above and, save to the extent already included in paragraph (c) above, any withholding tax on a party under a Senior Finance Document or the Performance Bond Facility in respect of which the Company has an obligation to gross up.

**“First Repayment Date”** means, in relation to each of the Term Loan Facilities, the third anniversary of the Signing Date.

**“Fiscal Quarter”** means any one of the four consecutive three calendar month periods comprised in a Fiscal Year.

**“Fiscal Year”** means the fiscal year of the Company and the other Wynn Obligors ending on 31 December of each calendar year.

**“Floating Charge”** means the charge so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

**“Forecast Funding Shortfall”** means, at any given time, the amount, if any, by which Remaining Project Costs exceed Available Funding.

**“Fundamental Term”** means, in respect of a Senior Finance Document:

- (a) the lists of documents comprising Senior Finance Documents and Security Documents set out in the definitions thereof and the definitions of Required Lenders and Fundamental Term in Clause 1.1;
- (b) the provisions setting out the date for, or the amount of, or the currency of, any payment of principal or interest under a Senior Finance Document or any interest rate hedging payment to a Hedging Counterparty;
- (c) Clause 2.1 (*Conditions Precedent to the CP Satisfaction Date*) (save in relation to paragraph 30 of Part A of Schedule 2 (*Conditions Precedent*));



- (d) the provisions setting out the amount of a Lender's Available Commitment under a Facility (otherwise than by a transfer in accordance with the terms of this Agreement) or the duration of its availability or any additional obligation on a Lender to lend money or provide any other form of credit;
- (e) a term which expressly requires the consent of each Lender or Senior Secured Creditor;
- (f) the provisions dealing with the conditions under which assets may be released from the Security or the priority or ranking thereof;
- (g) the provisions dealing with the order of distribution on partial payment by the Company or the proceeds of Security;
- (h) paragraph 2(f) of Part B of Schedule 5 (*Covenants*), the provisions setting out the priority and ranking of the Secured Obligations (and any other provisions which, if amended, would have the effect of changing the priority or ranking thereof) and the provisions dealing with the designation of a document as a Senior Finance Document (to the extent it involves any sharing in the Security or the granting, creating or sharing in any other Lien over the Project Security and is not a document necessary for the purposes of incurring the Financial Indebtedness referred to in paragraph 2(f) of Part B of Schedule 5 (*Covenants*)) and any provision which, if amended, would have the effect of permitting such a designation;
- (i) the provisions dealing with the amount and timing for payment of any amount payable by Wynn Resorts under the Wynn Resorts Support Agreement;
- (j) Clause 25 (*Sharing Among the Senior Secured Creditors*);
- (k) Clause 33 (*Intercreditor Arrangements*); and
- (l) Schedule 17 (*Payment Waterfall*) and any provision of this Agreement, the Sponsors' Subordination Deed or the Deed of Appointment of Priority which, if amended, would change the payment waterfall outlined in Schedule 17 (*Payment Waterfall*).

**"Funded Debt"** means, in relation to any Person, all Financial Indebtedness of such Person of the types described in sub-clauses (a) through (g) of the definition of "Financial Indebtedness" in this Clause.

**"GAAP"** means, in respect of the Company, the International Accounting Standards issued by the International Accounting Standards Board or its successor and, in respect of any Wynn Obligor, generally accepted accounting principles in the United States of America as in effect from time to time.

**"Gaming Concession Consent Agreement"** means the Agreement Relating to Security (with the Exclusion of Land Concession and Immovable Property) dated on or about the date of this Agreement between the Government of the Macau SAR, the Company and the Security Agent.

**“Global Coordinating Lead Arrangers”** or **“GCLAs”** means Deutsche Bank AG, Hong Kong Branch and Société Générale Asia Limited acting as such under the Senior Finance Documents.

**“Governing Documents”** means, collectively, as to any Person, the certificate of incorporation, the memorandum and articles of association or bylaws, any shareholders agreement, certificate of formation, limited liability company agreement, partnership agreement or other formation or constituent documents of such Person.

**“Governmental Authority”** means, as to any Person, the government of the Macau SAR, any other national, state, provincial or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, in each case having jurisdiction over such Person, or any arbitrator with authority to bind such Person at law.

**“Guaranteed Date of Substantial Completion”** has the meaning given in the Construction Contract.

**“Guarantee Obligation”** means any guarantee, indemnity, letter of credit or other legally binding assurance against financial loss granted by one Person in respect of any Financial Indebtedness of another Person, or any agreement to assume any Financial Indebtedness of any other Person or to supply funds or to invest in any manner whatsoever in such other Person by reason of Financial Indebtedness of such Person; *provided, however*, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing Person shall be deemed to be the lower of (1) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (2) the maximum amount for which such guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation (unless such primary obligation and the maximum amount for which such guaranteeing Person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing Person’s maximum reasonably anticipated liability in respect thereof as determined by the Company in good faith).

**“Hazardous Substance”** means radioactive materials, asbestos and other substances defined as “hazardous” or of a similar nature under any Environmental Law.

**“Hedging Agreements”** means any agreement entered into by the Company in accordance with the Hedging Arrangements.

**“Hedging Arrangements”** means the requirements concerning interest rate hedging set out in Schedule 8 (*Hedging Arrangements*).

**“Hedging Counterparties”** means the parties, other than the Company, to the Hedging Agreements and who have executed a Hedging Counterparty’s Deed of Accession.

“**Hedging Counterparty’s Deed of Accession**” means a deed of accession in substantially the form set out in Appendix 1 to Schedule 8 (*Hedging Arrangements*).

“**Hedging Voting Right Event**” means, in relation to any Hedging Counterparty, the occurrence and continuation of both of the following events:

- (a) the serving of any notice given by the Intercreditor Agent pursuant to sub-clause 19.2.2 of Clause 19.2 (*Remedies following an Event of Default*); and
- (b) a Realised Hedge Loss is not paid when due under the Hedging Agreement to which such Hedging Counterparty is party.

“**HIBOR**” in relation to any Facility Agreement, has the meaning given in such Facility Agreement.

“**HKD**” or “**HK dollars**” denotes the lawful currency of the Hong Kong SAR.

“**HKD Debt Service Account**” means the account so designated in Schedule 6 (*Accounts*).

“**HKD Debt Service Reserve Account**” means the account so designated in Schedule 6 (*Accounts*).

“**HKD Operating Account**” means the Account so designated in Schedule 6 (*Accounts*).

“**Holding Company**” in relation to a Person, means an entity of which that Person is a Subsidiary.

“**Hong Kong SAR**” means the Hong Kong Special Administrative Region.

“**Hotel Base Debt Facility**” has the meaning given in the Hotel Facility Agreement.

“**Hotel Contingent Debt Facility**” has the meaning given in the Hotel Facility Agreement.

“**Hotel Facility**” means the term loan facilities provided pursuant to the Hotel Facility Agreement.

“**Hotel Facility Agent**” means Société Générale Asia Limited as facility agent for the Hotel Facility Lenders or its successor appointed in accordance with this Agreement.

“**Hotel Facility Agreement**” means the agreement so entitled between the Company, the Hotel Facility Agent and the Hotel Facility Lenders.

“**Hotel Facility Availability Period**” means the period specified in Clause 4.1 (*Hotel Facility Availability Period*).

“**Hotel Facility HKD Disbursement Account**” means the account so designated in Schedule 6 (*Accounts*).

“**Hotel Facility Lender**” means a lender identified as such in Part A of Schedule 1 (*Hotel Facility Lenders*) or a Transferee in respect of the Hotel Facility.

**“Hotel Facility USD Disbursement Account”** means the account so designated in Schedule 6 (*Accounts*).

**“Hotel Lending Group”** means the Hotel Facility Lenders, acting as a lending group in accordance with, and subject to the decision making rules under, the Hotel Facility Agreement.

**“Hotel Project”** means the design, development and construction in accordance with the Construction Contract of a luxury hotel resort, retail and entertainment complex on land leased to the Company under the Land Concession Contract and the ownership, operation and maintenance thereof by the Company but shall not include the design, development, construction, ownership, operation or maintenance by the Company of a casino pursuant to the Concession Contract nor the purchase of any associated gaming equipment or utensils.

**“Hotel Project Costs”** means such Project Costs as relate to the Hotel Project.

**“Increased Costs”** has the meaning given in Clause 12 (*Increased Costs*).

**“Information Memorandum”** means the information memorandum prepared by the Company in relation to the Projects for the purposes of the financing of any or all of the Facilities dated June 2004.

**“Initial Advance”** means the first Advance made under each of the Facilities.

**“Insolvency of a Multiemployer Plan”** has the meaning given in section 4245(6) of ERISA.

**“Insurance”** means a Direct Insurance or a Reinsurance.

**“Insurance Adviser”** means, as the case may be:

- (a) JLT Risk Solutions Asia as the insurance adviser acting on behalf of all Senior Secured Creditors pursuant to the engagement letter dated 15 September 2003;
- (b) the insurance adviser acting on behalf of all Senior Secured Creditors according to the scope of work and fees agreed by the Senior Secured Creditors and approved by the Company (such approval not to be unreasonably withheld or delayed) before the CP Satisfaction Date; or
- (c) the insurance adviser appointed by the Intercreditor Agent and, unless an Event of Default has occurred and is continuing, approved by the Company (such approval not to be unreasonably withheld or delayed) from time to time after the CP Satisfaction Date to act on behalf of the Senior Secured Creditors as and when required to advise the Senior Secured Creditors in respect of Projects.

**“Insurance Broker’s Letter of Undertaking”** means a letter of undertaking in substantially the form set out in Appendix 5 to Schedule 7 (*Insurance*) or in such other form as may be approved by the Intercreditor Agent, such approval not to be unreasonably withheld.

**“Insurance Proceeds”** means all amounts and proceeds (including monetary instruments) paid under any insurance policy maintained by the Company (including, without limitation, any insurance policy required to be maintained by the Company under any Transaction Document but excluding any public liability, third party liability, workers compensation and legal liability insurances and also excluding any other insurance the proceeds of which are payable to the employees of the Company) less any costs or expenses incurred by the Company or its agents in collecting such amounts and proceeds.

**“Insurance Requirements”** means all material terms of any insurance policy required pursuant to the Senior Finance Documents (including Schedule 7 (*Insurance*)).

**“Insurer”** means a Direct Insurer or a Reinsurer.

**“Insurer Notices and Acknowledgements”** means the notices and acknowledgements to be delivered to and executed by each Insurer and Reinsurer in accordance with the Assignment of Insurances and the Assignments of Reinsurances, respectively (including those referred to in paragraphs 2.3.2 and 2.4.2 of Schedule 7 (*Insurance*)).

**“Intellectual Property”** means the collective reference to all rights, priorities and privileges relating to intellectual property, including copyrights, patents, trademarks, service-marks, technology, know-how and processes, formulas, trade secrets or licenses (under which the applicable Person is licensor or licensee) relating to any of the foregoing and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

**“Intercreditor Agent”** means Société Générale Asia Limited in its capacity as intercreditor agent for the Senior Secured Creditors or its successor appointed in accordance with this Agreement.

**“Interest Coverage Ratio”** means, in relation to the Company for any period, the ratio of EBITDA to Financing Costs for such period.

**“Interest Payment Date”** means each date on which an Interest Period ends.

**“Interest Period”** means, in relation to any Advance, each period for the calculation of interest in respect thereof ascertained in accordance with Clause 9 (*Interest, Interest Periods and Default Interest*).

**“Investment Income”** means any interest, dividends or other income arising from or in respect of a Permitted Investment.

**“Investment Proceeds”** means any net proceeds received upon any disposal, realisation or redemption of a Permitted Investment, but excluding any Investment Income.

**“Investments”** has the meaning given to it in paragraph 8 of Part B of Schedule 5 (*Covenants*).

**“IP Agreement”** means the intellectual property licence agreement between the Licensor and the Company in the Agreed Form (which may be a single agreement comprising the terms of each agreement making up such Agreed Form and any amendments set out

therein) amended as required to reflect the requirements of paragraph 29(b) of Part A of Schedule 2 (*Conditions Precedent*) in relation to the Licensor.

“**IP Fees**” means “Licensing Fee” as defined in the IP Agreement.

“**IP Direct Agreement**” means the agreement so entitled between the Licensor, the Company and the Security Agent in the Agreed Form.

“**ISDA Master Agreement**” has the meaning given in Schedule 8 (*Hedging Arrangements*).

“**ISDA Schedule**” means the schedule to the ISDA Master Agreement in form and substance reasonably satisfactory to the Intercreditor Agent.

“**Land Concession Contract**” means the land concession contract agreed to by the Company with the Macau SAR on 4 June 2004 which forms an integral part of Dispatch number 81/2004.

“**Land Concession Consent Agreement**” means the Agreement relating to Security under the Land Concession Contract dated on or about the date of this Agreement between the Government of the Macau SAR, the Company and the Security Agent.

“**Land Security Assignment**” means the assignment so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

“**Legal Requirements**” means all laws, statutes, orders, decrees, injunctions, licenses, permits, approvals, agreements and regulations of any Governmental Authority having jurisdiction over the matter in question.

“**Lender**” means a Hotel Facility Lender, a Project Facility Lender, a Revolving Credit Facility Lender or an Additional Lender.

“**Lending Group**” means the Hotel Lending Group or the Project Lending Group.

“**Leverage Ratio**” means, in relation to the Company for any period, the ratio of Total Debt on the last day of such period to EBITDA for such period.

“**LIBOR**”, in relation to any Facility Agreement, has the meaning given in such Facility Agreement.

“**Licensor**” has the meaning given in the IP Agreement

“**Lien**” means, with respect to any Property, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such Property, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the UCC (or equivalent statutes of any jurisdiction)).

**“Line Item”** means each of the following line item categories of the Project Budget:

- (a) Hard Construction Costs
  - (iii) Construction and Building
  - (iv) Interior Furnishings and Equipment
  - (v) Design Fees
  - (vi) Contractor’s Fees
  - (vii) Construction Contingency
  - (viii) Owner’s Contingency
- (b) Pre-Opening Costs
  - (i) Payroll
  - (ii) Direct Expenses
  - (iii) Corporate Expenses
- (c) Owner Furniture, Fittings and Equipment
  - (i) Casino
  - (ii) Hotel
  - (iii) Food and Beverage
  - (iv) Others
- (d) Land Cost
- (e) Pre-Opening Working Capital
- (f) Capitalised Interest and Commitment Fees
  - (i) Base Debt Facility and Contingent Debt Facility
  - (ii) Revolving Credit Facility
  - (iii) Subordinated Funding
  - (iv) Performance Bond Facility
- (g) Tax, Fees and Expenses
- (h) Contingency

**“Liquidated Damages”** means any liquidated damages paid pursuant to any obligation, default or breach under the Project Documents (other than any Termination Proceeds), in each case net of costs and expenses incurred by the Company or its agent pursuant to arm’s length transactions in connection with adjustment or settlement thereof and taxes paid with respect thereto.

“**Livrança Covering Letter**” means the letter from the Company to the Security Agent dated on or about the date of this Agreement in relation to the Livranças.

“**Livranças**” means the promissory notes dated on or about the date of this Agreement issued by the Company, endorsed and payable to the Security Agent.

“**Loss Proceeds**” means all amounts and proceeds (including monetary instruments) in respect of any Event of Loss, including proceeds of any insurance policy required to be maintained by the Company under this Agreement, less any costs and expenses incurred by the Company or its agents in collecting such amounts and proceeds.

“**Macau Gaming Laws**” means Law No. 16/2001 and Administrative Regulation No. 26/2001, as amended from time to time, and other laws promulgated by any Governmental Authority of the Macau SAR and applying to gaming operations in the Macau SAR.

“**Macau SAR**” means the Macau Special Administrative Region.

“**Major Project Document**” means any of:

- (a) the Concession Contract;
- (b) the Land Concession Contract;
- (c) the Construction Contract;
- (d) the Prime Contractor’s Completion Guarantee;
- (e) the Prime Contractor’s Performance Bond;
- (f) the Project Administration Services Agreement;
- (g) the IP Agreement;
- (h) the Subordinated Funding Agreement;
- (i) the Performance Bond Facility Agreement;
- (j) the Concession Contract Performance Bond; and
- (k) any other Project Document with a total contract price payable by the Company (or expected aggregate amount to be paid by the Company in the case of “cost plus” contracts) or which may otherwise involve liabilities, actual or contingent, of the Company in each case in an amount in excess of USD15,000,000 or its equivalent.

“**Major Project Participants**” means:

- (a) each Obligor;
- (b) the Macau SAR;



- (c) the Prime Contractor (for so long as it has any actual or contingent liabilities under the Construction Contract);
- (d) Leighton Holdings Limited and China Overseas Holdings Limited (for so long as, in each case, it has any actual or contingent liabilities under the Prime Contractor's Completion Guarantee);
- (e) the PASA Agent (for so long as it has any actual or contingent liabilities under the PASA); and
- (f) each other Person who is party to a Major Project Document.

“**Market Adviser**” means The Innovation Group as the market adviser acting on behalf of all Senior Secured Creditors pursuant to the engagement letter dated 26 November 2003.

“**Market Disruption Event**” has the meaning given in Clause 10.2 (*Market disruption*).

“**Material Adverse Effect**” means a material adverse condition or material adverse change in or affecting:

- (a) the business, assets, liabilities, property, condition (financial or otherwise), results of operations, prospects, value or management of the Company or the Company and the Wynn Obligors (other than Wynn Resorts following the Sponsor Support Release Date), taken as a whole, or that calls into question in any material respect the Projections or any of the material assumptions on which the Projections were prepared;
- (b) any of the Projects;
- (c) the ability of the Company to achieve Substantial Completion on or prior to the Guaranteed Date of Substantial Completion;
- (d) the validity or enforceability of any Senior Finance Document;
- (e) the validity, enforceability or priority of any the Liens purported to be created under any of the Security Documents; or
- (f) the rights and remedies of any Secured Creditor under any Senior Finance Document.

“**Minimum Net Worth**” means, in relation to the Company in respect of:

- (a) the first Quarterly Date, the sum of:
  - (i) USD300,000,000 or its equivalent;
  - (ii) 100% of the negative amount (if any) of the Net Income of the Company through to the Opening Date; and
  - (iii) 50% or, if the Leverage Ratio of the Company determined in accordance with paragraph 1(a) of Part B of Schedule 5 (*Covenants*) in respect of the

period ending on such Quarterly Date is less than or equal to 2.00, 25%, of the amount of Net Income (whether positive or negative) of the Company from the Opening Date through to such Quarterly Date; and

- (b) any subsequent Quarterly Date, the sum of:
  - (i) the Minimum Net Worth of the Company for the immediately preceding Quarterly Date; and
  - (ii) 50% or, if the Leverage Ratio of the Company determined in accordance with paragraph 1(a) of Part B of Schedule 5 (*Covenants*) in respect of the period ending on such Quarterly Date is less than or equal to 2.00, 25%, of the amount of Net Income (whether positive or negative) of the Company for the Fiscal Quarter ending on such Quarterly Date.

“**Monthly Construction Period Report**” has the meaning given in paragraph 2(b) of Part A of Schedule 5 (*Covenants*).

“**Monthly Construction Progress Report**” means each of the monthly reports prepared by the Prime Contractor under section 7.5 of the Construction Contract.

“**Moody’s**” means Moody’s Investors Service, Inc or its successor.

“**MOP Operating Account**” means the Account so designated in Schedule 6 (*Accounts*).

“**Mortgage**” means the mortgage so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

“**Mr Wynn**” means Mr Stephen A. Wynn.

“**Multiemployer Plan**” means a Plan that is a multiemployer plan as defined in section 3(37) or 4001(a)(3) of ERISA.

“**Net Cash Proceeds**” means:

- (a) in connection with any Asset Sale, the proceeds thereof in the form of cash (including any such proceeds received by way of deferred payment of principal pursuant to a note or instalment receivable or purchase price adjustment receivable or otherwise, but only as and when received) of such Asset Sale, net of attorneys’ fees, accountants’ fees, investment banking fees, amounts required to be applied to the repayment of Financial Indebtedness secured by a Lien expressly permitted hereunder on any asset which is the subject of such Asset Sale (other than any Lien pursuant to a Security Document) and other fees and expenses, in each case, to the extent actually incurred in connection with such Asset Sale and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any tax credits or deductions and any tax sharing arrangements, in each case reducing the amount of taxes so paid or estimated to be payable); and
- (b) in connection with any issuance or sale of debt securities or instruments or the incurrence of loans, the cash proceeds received from such issuance or

incurrence, net of attorneys' fees, investment banking fees, accountants' fees, underwriting discounts and commissions and other fees and expenses, in each case, to the extent actually incurred by the Company in connection therewith.

**"Net Income"** means, in relation to the Company for any period, the net income (or loss) of the Company for such period, determined in accordance with GAAP and before any reduction in respect of preferred equity dividends.

**"Net Worth"** means, in relation to the Company at any date, the sum of:

- (a) all amounts that would, in conformity with GAAP, be included on a balance sheet of the Company under stockholders' equity;
  - (b) the amount of principal of any outstanding Subordinated Funding; and
  - (c) the amount of principal of any outstanding Shareholder Loans,
- as at such date.

**"Notice to Proceed"** has the meaning given to such term in the Construction Contract.

**"Notional Amount"**, in relation to a Hedging Agreement, has the meaning referred to in paragraph 9 of Schedule 8 (*Hedging Arrangements*).

**"Novation Certificate"** means a novation certificate in substantially the form set out in Part B of Schedule 11 (*Transfers and Accession*).

**"Obligations"** means:

- (a) all loans, advances, debts, liabilities and obligations howsoever arising, owed by the Company or any other Obligor under the Senior Finance Documents to any Senior Secured Creditors of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, pursuant to the terms of the Senior Finance Documents or any of the other Transaction Documents, including all interest (including interest accruing after the maturity of any Advance and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Obligor, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), fees, premiums, if any, and any charges, expenses, attorneys' fees and accountants' fees, in each case chargeable to any Obligor in connection with its dealings with such Obligor and payable by such Obligor thereunder;
- (b) any and all sums advanced by any Agent or any Lender in order to preserve the Project Security or preserve any Senior Secured Creditor's security interest in the Project Security as permitted by the Senior Finance Documents; and
- (c) in the event of any proceeding for the collection or enforcement of the Obligations after issuance of an Enforcement Notice, the expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or

realising on the Project Security, or of any exercise by any Senior Secured Creditor of its rights under the Security Documents, together with attorneys' fees and court costs, in each case as permitted by the Senior Finance Documents.

**"Obligors"** means the Company, the Wynn Obligors, any other Transferee Shareholder, the Licensor, any assignee or transferee of the Licensor under the IP Agreement and the IP Direct Agreement, the Subordinated Funding Provider and any party to a Senior Finance Document referred to in paragraph (f) of the definition of Senior Finance Document (other than a Secured Party or a Person who is solely party to an acknowledgement of Security).

**"Opening Conditions"** means, collectively, the following:

- (a) the Intercreditor Agent shall have received from the Company a certificate, substantially in the form set out in Part A of Schedule 19 (*Forms of Opening Conditions Certificates*), pursuant to which the Company certifies that:
- (i) furnishings, fixtures and equipment necessary to use and occupy the various portions of each Project for their intended uses shall have been installed and shall be operational;
  - (ii) all the Project Certificates of Occupancy shall have been issued and (other than any Permit made or issued by or with a Governmental Authority the failure of which to obtain could not reasonably be expected to affect the operations of the Projects in any material respect) each other Permit made or issued by or with a Governmental Authority required under applicable Legal Requirements to be obtained prior to the Opening Date shall have been obtained;
  - (iii) both Projects (other than the premises to be occupied by individual retail and restaurant tenants in the Projects) shall be fully open for business to the general public; *provided* that in all events at least 80% of all rooms shall be ready for occupancy, at least 80% of restaurant outlets shall be open for business and at least 80% of the floor space comprised in the Projects and designated in the Plans and Specifications for retail tenants has been occupied (save for facilities which by their nature are not open to the general public in the ordinary course of business but are operating);
  - (iv) the remaining work on the Projects shall be such that it will not interfere with or disrupt the operation of either Project for its intended purposes other than to an immaterial extent;
  - (v) the failure to complete the remaining work would not interfere with or disrupt the operation of the Projects for their intended purposes other than to an immaterial extent; and
  - (vi) the Company shall have available a fully trained staff to operate both Projects including the hotel and casino; and

(b) the Intercreditor Agent shall have received from the Technical Adviser a certificate, substantially in the form set out in Part B of Schedule 19 (*Forms of Opening Conditions Certificates*), confirming each of the matters referred to in paragraphs (a)(i) through (v) above.

“**Opening Date**” means the date on which all the Project Certificates of Occupancy have been issued.

“**Operating Accounts**” means:

- (a) the USD Operating Account, the HKD Operating Account and the MOP Operating Account;
- (b) each additional operating account in respect of which the conditions set out in sub-paragraphs 1.1(i) through (iv) of Schedule 6 (*Accounts*) have been satisfied;
- (c) each “HK Account” designated as such pursuant to paragraph (c) of the definition thereof in the Charge over HK Accounts and each “Onshore Account” designated as such pursuant to paragraph (c) of the definition thereof in the Pledge over Onshore Accounts and, in each case, in respect of which the Security Agent has received an Account Bank Notice and Acknowledgement executed by the relevant Account Bank; and
- (d) each Additional Operating Account.

“**Operation Period Insurances**” means the insurances listed in Appendix 2 to Schedule 7 (*Insurance*) and effected in accordance with the terms of Schedule 7 (*Insurance*).

“**Operatives**” means a shareholder, officer, employee, servant, controlling Person, executive, director, agent, authorised representative or Affiliate of any of the Obligors.

“**PASA Agent**” means the “Agent” as defined in the PASA.

“**PASA Direct Agreement**” means the agreement so entitled between the PASA Agent, the Company and the Security Agent in the Agreed Form.

“**Patacas**” or “**MOP**” denotes the lawful currency of the Macau SAR.

“**Payment and Performance Bond**” means any payment and performance bond delivered under any Major Project Document in favour of the Company and supporting the Contractor’s obligations under any such Major Project Document (including the Prime Contractor’s Completion Guarantee and the Prime Contractor’s Performance Bond).

“**PBGC**” means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

“**Performance Bond Facility**” means a facility extended to the Company by the Performance Bond Provider in accordance with the terms of the Performance Bond Facility Agreement for the issuance of the Concession Contract Performance Bond and

subordinated to amounts owed to the Senior Secured Creditors under the Senior Finance Documents in accordance with the Deed of Appointment and Priority.

**“Performance Bond Facility Agreement”** means the agreement dated on or about the date of this Agreement between the Performance Bond Provider and the Company in the Agreed Form.

**“Performance Bond Provider”** means Banco Nacional Ultramarino, S.A. or such other Person as may be acceptable to the Intercreditor Agent.

**“Permits”** means all approvals, licences, consents, permits, authorisations, registrations and filings, necessary in connection with the execution, delivery or performance, admission into evidence or enforcement of the Transaction Documents and all material approvals, licences, consents, permits, authorisations, registrations and filings required for the development, construction, ownership or operation of the Projects as contemplated under the Transaction Documents, including those listed in Schedule 12 (*Permits*).

**“Permitted Businesses”** means the Projects, including:

- (a) the operation of casino games of chance or other forms of gaming permitted under the Concession Contract;
- (b) the development, construction, ownership and operation of a hotel resort and casino as contemplated in the Concession Contract; and
- (c) food and beverage, spa, entertainment production, convention, retail, foreign exchange, ground transportation and outsourcing of in-house facilities businesses which are necessary for, incident to, arising out of, supportive of or connected to the development, construction, ownership or operation of such hotel resort and casino.

**“Permitted Financial Indebtedness”** has the meaning given in paragraph 2 of Part B of Schedule 5 (*Covenants*).

**“Permitted Investments”** means the following:

- (a) securities issued, or directly and fully guaranteed or insured, by the United States government or any agency or instrumentality of the United States government (as long as the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than nine months from the date of acquisition;
- (b) securities issued, or directly and fully guaranteed or insured, by the government of the Hong Kong SAR or any agency or instrumentality of the government of the Hong Kong SAR (as long as the full faith and credit of the Hong Kong SAR is pledged in support of those securities) having maturities of not more than nine months from the date of acquisition;
- (c) interest-bearing demand or time deposits (which may be represented by certificates of deposit) issued by banks having general obligations rated (on the

date of acquisition thereof) at least "A" or the equivalent by S&P or Moody's or, if not so rated, secured at all times, in the manner and to the extent provided by law, by collateral security in paragraph (a) or (b) above, of a market value of no less than the amount of monies so invested;

- (d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in paragraphs (a), (b) and (c) above entered into with any financial institution meeting the qualifications specified in paragraph (c) above;
- (e) commercial paper having a rating of A-1 or P-1 from S&P or Moody's respectively and in each case maturing within nine months after the date of acquisition; and
- (f) money market funds or mutual funds at least 95% of the assets of which constitute Permitted Investments of the kinds described in paragraphs (a) through (e) above.

**"Permitted Liens"** means the collective reference to:

- (a) in the case of any Property other than any Pledged Stock, Liens permitted by paragraph 3 of Part B of Schedule 5 (*Covenants*) hereto (but only of the priority and to the extent of coverage expressly set forth in paragraph 3 of Part B of Schedule 5 (*Covenants*) hereto); and
- (b) in the case of any Property consisting of Pledged Stock, non-consensual Liens permitted by paragraph 3 of Part B of Schedule 5 (*Covenants*) hereto to the extent arising by operation of law.

**"Person"** means any natural person, corporation, partnership, firm, association, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

**"Plan"** means, at a particular time, any employee benefit plan that is subject to the requirements of section 412 of the Code or that is a Single Employer Plan and which any Loan Party or any Commonly Controlled Entity maintains, administers, contributes to or is required to contribute to or under which any Loan Party or any Commonly Controlled Entity could reasonably be expected to incur any liability.

**"Plans and Specifications"** means the plans, specifications, design documents, schematic drawings and related items for the design, architecture and construction of the Projects provided to the Technical Adviser in accordance with paragraph 28 of Part A of Schedule 2 (*Conditions Precedent*) as may be amended in accordance with any variation permitted pursuant to paragraph 15 of Part B of Schedule 5 (*Covenants*).

**"Pledge over Gaming Equipment and Utensils"** means the pledge so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

**"Pledge over Intellectual Property"** means the pledge so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

**“Pledge over Onshore Accounts”** means the pledge so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

**“Pledged Stock”** means any Property expressed to be subject to any Lien created or purported to be created under all and any of the Company Share Pledges, the Wynn International Share Charge and the Wynn HK Share Charge.

**“Power of Attorney”** means the irrevocable power of attorney dated on or about the date of this Agreement granted by the Company in favour of the Security Agent in connection with the Mortgage.

**“Prime Contractor”** means Leighton Contractors (Asia) Limited, China Construction Engineering (Macau) Company Limited and China State Construction Engineering (Hong Kong) Limited.

**“Prime Contractor’s Completion Guarantee”** means the guarantee dated 18 June 2004 given by Leighton Holdings Limited and China Overseas Holdings Limited to the Company in support of the Prime Contractor’s obligations under the Construction Contract, together with the Deed of Confirmation.

**“Prime Contractor’s Performance Bond”** means the Payment and Performance Bond in an amount of not less than USD25,550,000 (which amount shall be increased to USD28,514,815.90 in connection with the execution of Change Order No 1) to be delivered to the Company in support of the Prime Contractor’s obligations under the Construction Contract.

**“Proceedings”** has the meaning given to it in paragraph 12 (i) of Part A of Schedule 5 (*Covenants*) hereto.

**“Project”** means:

- (a) the Hotel Project; or
- (b) the design, development and construction in accordance with the Concession Contract and the Construction Contract of a casino on land leased to the Company under the Land Concession Contract, the ownership, operation and maintenance thereof by the Company and the purchase of associated gaming equipment and utensils,

and **“Projects”** means both of them.

**“Project Administration Services Agreement”** (or **“PASA”**) means the agreement so entitled between the PASA Agent and the Company in the Agreed Form.

**“Project Base Debt Facility”** has the meaning given in the Project Facility Agreement.

**“Project Budget”** means the budget referred to in paragraph 24 of Part A of Schedule 2 (*Conditions Precedent*) as updated from time to time in accordance with paragraph 4 of sub-section I of Part B of Schedule 2 (*Conditions Precedent*) or paragraph 2 of Part A of Schedule 5 (*Covenants*).



**“Project Certificates of Occupancy”** means the permanent licence(s) of utilization for the Projects issued by the Macau SAR pursuant to applicable Legal Requirements, which certificate(s) of occupancy shall permit the Projects to be used for their intended purposes.

**“Project Contingent Debt Facility”** has the meaning given in the Project Facility Agreement.

**“Project Costs”** means all costs incurred, or to be incurred in accordance with the Project Budget, which costs shall include, without double counting:

- (a) all costs incurred under the Construction Contract;
- (b) interest, commissions or other Financing Costs payable under the Senior Finance Documents prior to the Opening Date;
- (c) commitment commission payable under the Performance Bond Facility prior to the Opening Date;
- (d) interest payable prior to the Opening Date in accordance with the Project Budget under the Subordinated Funding Agreement;
- (e) guarantee fees, legal fees and expenses, financial advisory fees and expenses, technical fees and expenses (including fees and expenses of the Technical Adviser and the Insurance Advisor), commitment fees, management fees and corporate overhead agency fees (including fees and expenses of the Agents), interest, taxes (including value added tax) and other out-of-pocket expenses payable by the Company under any documents related to the financing and administration of the Projects and in accordance with the Project Budget prior to the Opening Date;
- (f) the costs of acquiring Permits for the Projects prior to the Opening Date;
- (g) costs incurred in settling insurance claims in connection with Events of Loss and collecting Loss Proceeds at any time prior to the Opening Date;
- (h) working capital costs incurred in accordance with the Pre-Opening Working Capital Line Item in the Project Budget prior to the Opening Date; and
- (i) cash to collateralise commercial letters of credit to the extent that payment of any such cash amount to the vendor or materialman who is the beneficiary of such letter of credit would have constituted a “Project Cost” *provided* that the aggregate amount of all such letters of credit outstanding at any one time shall not, without the prior written consent of the Intercreditor Agent, exceed USD25,000,000 or its equivalent.

**“Project Documents”** means:

- (a) the Concession Contract, the Land Concession Contract, the Construction Contract, the Prime Contractor’s Completion Guarantee, the Prime Contractor’s Performance Bond, the Project Administration Services Agreement, the IP

Agreement, the Subordinated Funding Agreement, each Payment and Performance Bond issued to the Company and each Affiliate Agreement; and

(b) each other document or agreement entered into by the Company (other than the Senior Finance Documents) with a total contract price payable by the Company (or expected aggregate amount to be paid by the Company in the case of “cost plus” contracts) or which may otherwise involve liabilities, actual or contingent, in each case in an amount in excess of USD2,500,000 or its equivalent,

each as the same may be amended from time to time in accordance with the terms and conditions of this Agreement and thereof.

“**Project Facility**” means the term loan facilities provided pursuant to the Project Facility Agreement.

“**Project Facility Agent**” means Société Générale Asia Limited as facility agent for the Project Facility Lenders or its successor appointed in accordance with this Agreement.

“**Project Facility Agreement**” means the agreement so entitled between the Company, the Project Facility Agent and the Project Facility Lenders.

“**Project Facility Availability Period**” means the period specified in Clause 4.2 (*Project Facility Availability Period*).

“**Project Facility HKD Disbursement Account**” means the account so designated in Schedule 6 (*Accounts*).

“**Project Facility Lender**” means a lender identified as such in Part B of Schedule 1 (*Project Facility Lenders*) or a Transferee in respect of the Project Facility.

“**Project Facility USD Disbursement Account**” means the account so designated in Schedule 6 (*Accounts*).

“**Project Lending Group**” means the Project Facility Lenders, acting as a lending group in accordance with, and subject to the decision making rules under, the Project Facility Agreement.

“**Project Punchlist Items**” means minor or insubstantial details of construction or mechanical adjustment, the non-completion of which, when all such items are taken together, will not interfere in any material respect with the use or occupancy of the Site Facilities for their intended uses or the ability of the owner, sub-concessionaire or master lessee, as applicable, of any portion of the Site Facilities (or any tenant thereof) to perform work that is necessary or desirable to prepare such portion of the Site Facilities for such use or occupancy *provided* that, in all events, “Project Punchlist Items” shall include (to the extent not already completed), without limitation, the items set forth in the punchlist to be delivered by the Company in connection with “Substantial Completion” under the Construction Contract.

“**Project Revenues**” means all income and receipts of the Company, including those derived from the ownership or operation of the Projects or the Permitted Businesses, including payments received by the Company under any Project Document, net

payments, if any, received under Hedging Agreements, Liquidated Damages, Insurance Proceeds, Eminent Domain Proceeds, together with any receipts derived from the sale of any property pertaining to the Projects or the Permitted Businesses or incidental to the operation of the Projects or the Permitted Businesses, all as determined in conformity with cash accounting principles, and the proceeds of any condemnation awards relating to the Projects or the Permitted Businesses.

**“Project Security”** means any Property expressed to be subject to any Lien created or purported to be created under any of the Security Documents.

**“Project Schedule”** means the schedule referred to in paragraph 25 of Part A of Schedule 2 (*Conditions Precedent*) as updated from time to time in accordance with paragraph 4 of sub-section I of Part B of Schedule 2 (*Conditions Precedent*) or paragraph 2 of Part A of Schedule 5 (*Covenants*).

**“Project Works”** means the design, development and construction of the Projects and any other works contemplated by the Construction Contract.

**“Projections”** has the meaning given in paragraph 2(c) of Part A of Schedule 5 (*Covenants*).

**“Property”** means any property or assets including without limitation any right or interest (whether legal or equitable) in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

**“Quarterly Date”** means:

- (a) with respect to the first Quarterly Date, the last day of the first Fiscal Quarter of the Company which ends not less than 6 months after the Construction Completion Date; and
- (b) with respect to each subsequent Quarterly Date, the last day of the next succeeding Fiscal Quarter of the Company.

**“Quotation Day”** means, in relation to any period for which an interest rate is to be determined, two Business Days before the first day of that period or, in the case of any interest rate determined using HIBOR, the first day of that period.

**“Realised Hedge Loss”** has the meaning given in paragraph 6 of Schedule 8 (*Hedging Arrangements*).

**“Recovering Senior Secured Creditor”** has the meaning given in Clause 25.1 (*Payments to Senior Secured Creditors*).

**“Reference Banks”**, in relation to any Facility Agreement, has the meaning given in such Facility Agreement.

**“Reinsurance”** means any contract or policy of reinsurance from time to time required by paragraph 1.2 of Schedule 7 (*Insurance*) to be taken out or effected in respect of any Direct Insurance.

**“Reinsurance Broker’s Letter of Undertaking”** means a letter of undertaking in substantially the form set out in Appendix 6 to Schedule 7 (*Insurance*) or in such other form as may be approved by the Intercreditor Agent, such approval not to be unreasonably withheld.

**“Reinsurer”** means an international reinsurer of good standing and responsibility with whom a Reinsurance is placed from time to time in accordance with Schedule 7 (*Insurance*).

**“Reinvestment Deferred Amount”** means, with respect to any Reinvestment Event, the aggregate Net Cash Proceeds received by the Company in connection therewith that are not applied to prepay the Advances under the Term Loan Facilities pursuant to paragraph 2 of Schedule 9 (*Mandatory Prepayment*) as a result of the delivery of a Reinvestment Notice.

**“Reinvestment Event”** means any Asset Sale in respect of which the Company has delivered a Reinvestment Notice.

**“Reinvestment Notice”** means, in relation to any Asset Sale referred to in paragraph 5(a) of Part B of Schedule 5 (*Covenants*), a written notice executed by a Responsible Officer of the Company and delivered to the Intercreditor Agent within 30 days after such Asset Sale, stating that no Event of Default has occurred and is continuing and that the Company intends and expects to use all or a specified portion of the Net Cash Proceeds of such Asset Sale to acquire assets permitted pursuant to paragraph 5(a)(ii) of Part B of Schedule 5 (*Covenants*).

**“Reinvestment Prepayment Amount”** means, with respect to any Reinvestment Notice, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to acquire assets permitted pursuant to paragraph 5(a)(ii) of Part B of Schedule 5 (*Covenants*).

**“Reinvestment Prepayment Date”** means, with respect to any Reinvestment Event in respect of which a Reinvestment Notice is served, the earlier of:

- (a) the date occurring three months after such Reinvestment Event (or, if the contemplated acquisition of assets in connection with the corresponding Reinvestment Notice cannot be completed within such three month period but is reasonably expected to be completed within six months after such Reinvestment Event, nine months after such Reinvestment Event); and
- (b) the date on which the Company shall have determined not to acquire assets permitted pursuant to paragraph 5(a)(ii) of Part B of Schedule 5 (*Covenants*) with all or any portion of the relevant Reinvestment Deferred Amount.

**“Related Party”** means:

- (a) any 80% (or more) owned Subsidiary, heir, estate, lineal descendent or immediate family member of Mr Wynn; and

- (b) any trust, corporation, partnership or other entity, the beneficiaries, equity holders, partners, owners or Persons directly or indirectly beneficially holding an 80% or more controlling interest of which consist of Mr Wynn and/or such other Persons referred to in paragraph (a) above.

**“Release Date”** means the date on which the Intercreditor Agent notifies the Company that the following conditions have been satisfied:

- (a) receipt by the Intercreditor Agent of confirmation from each Agent, Revolving Credit Facility Lender, Additional Lender and Hedging Counterparty that all liabilities to its Lending Group or, as the case may be, to it have been discharged in full under the Senior Finance Documents; and
- (b) unless the discharge in paragraph (a) above is effected using the proceeds of Financial Indebtedness incurred pursuant to sub-paragraph 2(g) of Part B of Schedule 5 (*Covenants*), receipt by the Intercreditor Agent of a legal opinion from the Lenders’ Macanese counsel in a form satisfactory to the Intercreditor Agent on the basis of which the Intercreditor Agent is able to determine that the risk of the discharge of the Financial Indebtedness owed by the Company to the Senior Secured Creditors in accordance with the Senior Finance Documents not being recognised or deemed to be discharged under the insolvency laws of the Macau SAR is acceptable to the Intercreditor Agent.

**“Relevant Party”** means a Person (other than a Substantial Shareholder or, in respect only of his direct shareholding in the Company as at the Signing Date, Mr Wong Chi Seng) who, legally or beneficially, directly or indirectly, owns or holds any of the outstanding Capital Stock of the Company other than directly or indirectly through Wynn International.

**“Relevant Party’s Undertaking”** means the undertakings set out in paragraph 3 of schedule 4 of the Term Sheet.

**“Remaining Costs”** means, at any given time for any Line Item category or Line Item, the “Balance to Complete” set forth in respect of that Line Item in the Project Budget (as in effect from time to time).

**“Remaining Project Costs”** means, at any given time (and without double counting), the sum of all Remaining Costs at that time.

**“Reorganization”** means, with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of section 4241 of ERISA.

**“Repair Plan”** has the meaning given in paragraph 5 of Schedule 9 (*Mandatory Prepayment*).

**“Repayment Date”** means, in relation to a Term Loan Facility:

- (a) the First Repayment Date for such Facility; and
- (b) each subsequent date falling three months thereafter.

**“Reportable Event”** means any of the events set forth in section 4043(c) of ERISA, other than those events as to which the thirty day notice period is waived under regulations under ERISA.

**“Required Lenders”** means:

- (a) in relation to any Decision other than on a Fundamental Term, Lenders (and, after the occurrence and continuation of a Hedging Voting Right Event in relation to any Hedging Counterparty, that Hedging Counterparty) who:
  - (i) have notified the Intercreditor Agent of their vote in respect of such Decision within the time required by the Intercreditor Agent pursuant to this Agreement; and
  - (ii) hold, in aggregate, more than 50% of the Voting Entitlements of all such Senior Secured Creditors who have so notified their votes; and
- (b) in relation to a Decision on a Fundamental Term, all Lenders (and, after the occurrence of a Hedging Voting Rights Event in relation to a Hedging Counterparty that is continuing, that Hedging Counterparty).

**“Reserve Accounts”** means the USD Debt Service Reserve Account and the HKD Debt Service Reserve Account.

**“Responsible Officer”** means, as to any Person in respect of any matter, the chief executive officer, president, managing director, chief financial officer, chief operating officer or treasurer of such Person duly authorised in respect of such matter, but in any event, with respect to financial matters, the chief financial officer or treasurer of such Person. Unless otherwise qualified, all references to a “Responsible Officer” shall refer to a Responsible Officer of the Company.

**“Restricted Payments”** has the meaning given to it in paragraph 6 of Part B of Schedule 5 (*Covenants*) hereto.

**“Retainage Amounts”** means, at any given time, amounts which have accrued and are owing to a Contractor under the terms of a Project Document (other than the IP Agreement) for work or services already provided but which at such time (and in accordance with the terms of such Project Document) are being withheld from payment to the Contractor, until certain subsequent events (e.g. completion benchmarks) have been achieved under the Project Document.

**“Revolving Credit Facility”** means the loan facility to be provided under the Revolving Credit Facility Agreement.

**“Revolving Credit Facility Agreement”** means the agreement so entitled between the Company and the Revolving Credit Facility Lenders.

**“Revolving Credit Facility Availability Period”** means the period specified in Clause 4.3 (*Revolving Credit Facility Availability Period*).

**“Revolving Credit Facility Lender”** means a lender identified as such in Part C of Schedule 1 (*Revolving Credit Facility Lenders*) or a Transferee in respect of the Revolving Credit Facility.

**“Revolving Credit Facility Termination Date”** means, in relation to the Revolving Credit Facility, the third anniversary of the Signing Date or such later date as may be agreed in accordance with the Revolving Credit Facility Agreement.

**“SEC”** means the Securities and Exchange Commission (or successors thereto) of the United States of America.

**“Secured Parties”** has the meaning given in the Deed of Appointment and Priority.

**“Securities Account”** has the meaning given in the Wynn Resorts Support Agreement.

**“Securities Account Control Agreement”** means the bank account control agreement dated on or about the date of this Agreement between Wynn Asia, the Security Agent and another.

**“Securities Account Shortfall”** has the meaning given in the Wynn Resorts Support Agreement.

**“Security”** means the Liens created or purported to be created under the Security Documents.

**“Security Agent”** means Société Générale, Hong Kong Branch in its capacity as agent and security trustee for the Secured Parties or its successor appointed in accordance with the Deed of Appointment and Priority.

**“Security Documents”** means:

- (a) the Mortgage;
- (b) the Power of Attorney;
- (c) the Land Security Assignment;
- (d) the Assignment of Rights;
- (e) the Pledge over Gaming Equipment and Utensils;
- (f) the Pledge over Onshore Accounts;
- (g) the Assignment of Insurances;
- (h) the Assignment(s) of Reinsurances;
- (i) the Pledge over Intellectual Property;
- (j) the Floating Charge;
- (k) the Livranças and the Livrança Covering Letter;
- (l) the Debenture;

- (m) the Wynn Resorts Support Agreement;
- (n) the Capital Contributions Account Control Agreement;
- (o) the Securities Account Control Agreement;
- (p) the Wynn Pledgors' Guarantee;
- (q) the Wong Share Pledge and the Wong Consent;
- (r) the Company Share Pledge;
- (s) the Wynn International Share Charge;
- (t) the Wynn HK Share Charge;
- (u) the Sponsors' Subordination Deed;
- (v) the Deed of Appointment and Priority;
- (w) each Direct Agreement;
- (x) any other document from time to time creating, evidencing or entered into as security for or guaranteeing the Obligations of the Company or any other Obligor (including, if and when entered into, the Charge over HK Accounts) and any documents entered into pursuant to any of the documents referred to in this definition, including any such document notifying or acknowledging the granting or creation of such security, entered into by a Transferee Shareholder or creating or evidencing security over an Additional Operating Account; and
- (y) any document entered into pursuant to any further assurance provisions set out in any of the documents referred to in this definition which the Intercreditor Agent and the Company (both acting reasonably) agree to designate as a Security Document.

**“Senior Debt”** means, at any date, the sum of all outstanding Advances made under the Facilities as at such date.

**“Senior Finance Documents”** means:

- (a) each Facility Agreement;
- (b) this Agreement;
- (c) each Security Document;
- (d) the Ancillary Finance Documents;
- (e) each Hedging Agreement; and
- (f) any other document entered into which the Intercreditor Agent and the Company (both acting reasonably) agree to designate as a Senior Finance Document.



“**Senior Secured Creditors**” means the GCLAs, the Agents, the Security Agent, the Lenders and the Hedging Counterparties.

“**Senior Secured Indebtedness**” means all Financial Indebtedness (actual or contingent) of the Company to the Senior Secured Creditors under the Senior Finance Documents together with all other amounts payable by the Company to the Senior Secured Creditors (or any of them) under or arising out of the Senior Finance Documents.

“**Shareholder Guarantees**” means the Wynn Pledgors’ Guarantee and the Wong Share Pledge.

“**Shareholder Loans**” means Financial Indebtedness (other than the Subordinated Funding) advanced by one or more of the Shareholders, the Wynn Obligors or Affiliates of the Wynn Obligors to the Company that is subordinated in accordance with the terms provided by the Sponsors’ Subordination Deed.

“**Shareholders**” means Wynn HK, Wynn International and Mr Wong Chi Seng.

“**Shareholders’ Agreement**” means the amended and restated shareholders’ agreement entered or to be entered into between the Shareholders and the Company in the Agreed Form.

“**Sharing Payment**” has the meaning given in Clause 25.1 (*Payments to Senior Secured Creditors*).

“**Signing Date**” means the date of signing of this Agreement.

“**Single Employer Plan**” means any Plan that is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

“**Site**” means the land described in the Land Concession Contract.

“**Site Easements**” the easements appurtenant, easements in gross, licence agreements and other rights running for the benefit of the Company and/or appurtenant to the Site.

“**Site Facilities**” means

- (a) the Site; and
- (b) the Project Works (whether completed or uncompleted).

“**Solvent**” means, when used with respect to any Person, as of any date of determination, (a) the amount of the “present fair saleable value” of the assets of such Person will, as of such date, exceed the amount of all “liabilities of such Person, contingent or otherwise”, as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, (d) such Person will be able to pay its debts as they mature, and (e) such Person is not insolvent

within the meaning of any applicable Legal Requirements. For purposes of this definition, (i) “debt” means liability on a “claim”, and (ii) “claim” means any (A) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, legal, equitable, secured or unsecured or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, secured or unsecured.

“**Special Gaming Tax Account**” means the account so designated in Schedule 6 (*Accounts*).

“**Sponsor Support Release Date**” has the meaning given in the Wynn Resorts Support Agreement.

“**Sponsors’ Subordination Deed**” means the deed so entitled dated on or about the date of this Agreement between the Wynn Obligors (other than Wynn Resorts), the Company and the Security Agent.

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

“**Subconcession**” means any subconcession for the operation of games of chance and other games in casinos in the Macau SAR granted by the Company under the Concession Contract with the approval of Macau SAR and in accordance with paragraph 17 of Part B of Schedule 5 (*Covenants*).

“**Subconcession Premia Clawback Amount**” means an amount equivalent to the sum of any amounts of upfront premia or similar payments paid or received in respect of the grant or entry into any Subconcessions and applied pursuant to paragraph 17(d)(ii) of Part B of Schedule 5 (*Covenants*).

“**Subcontract**” means any subcontract or purchase order entered into with any Subcontractor.

“**Subcontractor**” means any direct or indirect subcontractor of any tier under any Project Document.

“**Subordinated Debt**” means Financial Indebtedness that is subordinated in accordance with the terms provided by the Sponsors’ Subordination Deed.

“**Subordinated Funding**” means the amount of not less than USD122 million to be subscribed by the Subordinated Funding Provider to the Company for notes under the Subordinated Funding Agreement.

“**Subordinated Funding Agreement**” means the note purchase agreement dated on or about the date of this Agreement between the Subordinated Funding Provider and the Company (and including the notes contemplated to be issued thereunder) in the Agreed Form.

“**Subordinated Funding Provider**” means the Purchaser as defined in the Subordinated Funding Agreement.

“**Subsidiary**” means as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person.

“**Substantial Completion**” has the meaning given in the Construction Contract.

“**Substantial Shareholder**” means any Person (other than in respect only of his direct shareholding in the Company as at the Signing Date, Mr Wong Chi Seng) who, legally or beneficially, directly or indirectly, owns or holds 5% or more of the outstanding Capital Stock of the Company other than directly or indirectly through Wynn International.

“**Substantial Shareholder’s Undertaking**” means the undertakings set out in paragraph 2 of schedule 4 of the Term Sheet.

“**Swap Agreements**” means interest rate swaps, caps or collar agreements or similar arrangements providing for protection against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies.

“**Synthetic Lease Obligations**” means all monetary obligations of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations which do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the Financial Indebtedness of such Person (without regard to accounting treatment).

“**Taking**” means a taking or voluntary conveyance of all or part of any of the Project Security, or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any condemnation or other eminent domain proceeding by any Governmental Authority affecting any of the Project Security or any portion thereof.

“**Tax**” means any tax (including, without limitation, value-added and income), levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

“**Tax Adviser**” means Ernst & Young as the tax adviser acting on behalf of all Senior Secured Creditors pursuant to the engagement letter dated 10 June 2004.

“**Tax Credit**” means a credit against, relief or remission for, or repayment of any Tax.

“**Tax Deduction**” means any deduction or withholding for or on account of Tax.

“**Tax Payment**” means an increased payment made by the Company to a Senior Secured Creditor under Clause 11.2 (*Tax gross-up*) or a payment under Clause 11.3 (*Tax indemnity*).

“**Technical Adviser**” means, as the case may be:

- (a) Mott Connell Ltd. as the technical adviser acting on behalf of all Senior Secured Creditors pursuant to the engagement letter dated 3 February 2004;
- (b) the technical adviser acting on behalf of all Senior Secured Creditors according to the scope of work and fees agreed by the Senior Secured Creditors and approved by the Company (such approval not to be unreasonably withheld or delayed) before the CP Satisfaction Date; or
- (c) the technical adviser appointed by the Intercreditor Agent and, unless an Event of Default has occurred and is continuing, approved by the Company (such approval not to be unreasonably withheld or delayed) from time to time after the CP Satisfaction Date to act on behalf of the Senior Secured Creditors as and when required to advise the Senior Secured Creditors in respect of the Projects.

“**Technical Adviser’s Advance Certificate**” has the meaning given in paragraph 5 of sub-section I of Part B of Schedule 2 (*Conditions Precedent*).

“**Technical Adviser’s Monthly Report**” means a monthly status report, in form and substance acceptable to the Intercreditor Agent, delivered to the Intercreditor Agent on or before the fifteenth day of each calendar month up to and including the calendar month immediately following the Final Completion Date and describing in reasonable detail the progress of the construction of the Projects, including reviews and assessments of the Project Budget, the Project Schedule and the Monthly Construction Period Report and each of its attachments delivered during the preceding calendar month.

“**Term Loan Facilities**” means each of the term loan facilities provided pursuant to the Term Loan Facilities Agreements.

“**Term Loan Facilities Agreements**” means the Hotel Facility Agreement, the Project Facility Agreement and each Additional Lender Facility Agreement.

“**Term Loan Facility Lender**” means a Hotel Facility Lender or a Project Facility Lender.

“**Term Sheet**” has the meaning given in the Underwriting Agreement.

“**Termination Event**” has the meaning given in paragraph 12 (*Notices*) of Part A of Schedule 5 (*Covenants*).

“**Termination Proceeds**” means compensation or other proceeds paid by the Macau SAR in relation to the termination or rescission of the Concession Contract.

“**Total Debt**” means, in relation to the Company at any date, the aggregate principal amount of all Financial Indebtedness of the Company at such date other than Financial Indebtedness arising in respect of:

- (a) paragraph (j) of the definition thereof (save in relation to any Realised Hedge Loss);

- (b) the Performance Bond Facility (save in relation to any drawing under the Concession Contract Performance Bond);
- (c) the Subordinated Funding; or
- (d) any Shareholder Loans.

“**Transaction Document**” means a Senior Finance Document or a Major Project Document.

“**Transfer Date**” means, in relation to a Transferee, the later of:

- (a) the proposed Transfer Date specified in the Novation Certificate; and
- (b) the date on which the Intercreditor Agent executes the Novation Certificate.

“**Transferee**” means a Person to whom the rights and obligations of a Lender under the Senior Finance Documents to which that Lender is a party are transferred in accordance with Clause 21.6 (*Transfers by Lenders*).

“**Transferee Shareholder**” has the meaning given in the Wynn Resorts Support Agreement.

“**UCC**” means the Uniform Commercial Code of any State in the United States of America, as in effect from time to time.

“**Underwriting Agreement**” means the underwriting agreement between Wynn Resorts, the Company and the GCLAs dated 4 June 2004.

“**Unpaid Sum**” means any sum due and payable by an Obligor but unpaid under the Senior Finance Documents.

“**Upfront Premium Account**” means the account so designated in Schedule 6 (*Accounts*).

“**USD**” or “**US dollars**” denotes the lawful currency of the United States of America.

“**USD Debt Service Account**” means the account so designated in Schedule 6 (*Accounts*).

“**USD Debt Service Reserve Account**” means the account so designated in Schedule 6 (*Accounts*).

“**USD Operating Account**” means the Account so designated in Schedule 6 (*Accounts*).

“**Voting Entitlement**” means, in respect of a Decision:

- (a) in relation to a Lender, the sum of the US dollar equivalent amounts, as at the Decision Date for such Decision, of the outstanding Advances and the aggregate undrawn Available Commitments of such Lender under the Term Loan Facilities and, where such Decision Date falls after the commencement of the Revolving Credit Facility Availability Period, the Revolving Credit Facility;

(b) in relation to each Hedging Counterparty (after a Hedging Voting Right Event has occurred in relation to such Hedging Counterparty and is continuing), the US dollar equivalent value, as at the Decision Date for such Decision, of the Realised Hedge Loss due and payable but unpaid by the Company to such Hedging Counterparty under the Hedging Agreement to which such Hedging Counterparty is party.

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

“**Wholly Owned Subsidiary**” means, as to any Person, any other Person all of the Capital Stock of which (other than directors’ qualifying shares required by any Legal Requirement) is beneficially owned by such Person directly and/or through other Wholly Owned Subsidiaries.

“**Wong Consent**” means the written consent dated 2 September 2004 given by Mrs Cheung Wai Hing in relation to the obligations of Mr Wong Chi Seng under and the Security granted pursuant to the Wong Share Pledge.

“**Wong Option Agreement**” means the option agreement between Mr Wong Chi Seng, Wynn International and the Company in substantially the Agreed Form.

“**Wong Share Pledge**” means the document so entitled dated on or about the date of this Agreement between Mr Wong Chi Seng and the Security Agent.

“**Working Capital**” means, at any date, an amount equal to Current Assets on such date minus Current Liabilities on such date.

“**Wynn Asia**” means Wynn Group Asia, Inc.

“**Wynn Event**” means:

- (a) the first day on which
  - (i) Mr Wynn and his Related Parties as a group control less than 20% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than size of equity interests (excluding, for purposes of calculating the outstanding Voting Stock of Wynn Resorts pursuant to this paragraph (a)(i), shares of Voting Stock issued in a primary issuance by Wynn Resorts in one or more bona fide public offerings of additional Voting Stock of Wynn Resorts); or
  - (ii) Mr Wynn and his Related Parties as a group control less than 10% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than size of equity interests;
- (b) the first day on which Mr Wynn does not act as either the Chairman of the Board of Directors of Wynn Resorts or the Chief Executive Officer of Wynn Resorts, other than:
  - (i) as a result of death or disability; or

- (ii) if the Board of Directors of Wynn Resorts, exercising their fiduciary duties in good faith, removes or fails to re-appoint Mr Wynn as Chairman of the Board of Directors of Wynn Resorts or Chief Executive Officer of Wynn Resorts;
- (c) the first day on which Wynn Resorts ceases to beneficially own, directly or indirectly:
  - (iii) at any time prior to the Sponsor Support Release Date, at least that percentage of the outstanding Capital Stock of the Company (measured by both voting power and size of equity interests) as it so owned as at the date of this Agreement or at any time thereafter; or
  - (iv) at any time thereafter, 51% of the outstanding Capital Stock of the Company (measured by both voting power and size of equity interests); or
- (d) Wynn Resorts otherwise ceases to have, directly or indirectly, the ability or the right to direct or procure the direction of the management and policies of the Company.

“**Wynn HK**” means Wynn Resorts (Macau), Limited.

“**Wynn HK Share Charge**” means the share charge so entitled dated on or about the date of this Agreement between Wynn Holdings and the Security Agent.

“**Wynn Holdings**” means Wynn Resorts (Macau) Holdings, Ltd.

“**Wynn International**” means Wynn Resorts International, Ltd.

“**Wynn International Share Charge**” means the share charge so entitled dated on or about the date of this Agreement between Wynn Asia and the Security Agent.

“**Wynn Obligor**” means Wynn Resorts, Wynn Holdings, Wynn Asia, Wynn International, Wynn HK and any Transferee Shareholder which is an Affiliate of Wynn Resorts.

“**Wynn Pledgors’ Guarantee**” means the guarantee so entitled dated on or about the date of this Agreement between Wynn Asia, Wynn Holdings, Wynn HK, Wynn International and the Security Agent.

“**Wynn Resorts**” means Wynn Resorts, Limited.

“**Wynn Resorts Support Agreement**” means the agreement so entitled dated on or about the date of this Agreement between Wynn Resorts, the Company and the Security Agent.

## 1.2 Principles of Construction

Any reference in this Agreement to:

“**continuing**”, in relation to a Default or an Event of Default, shall be construed as a reference to a Default or an Event of Default which has not been remedied or waived;

the “**equivalent**” of one currency (the “**original currency**”) in another currency (the “**conversion currency**”) shall (unless otherwise specified) be determined by the Intercreditor Agent or such Person nominated by the Intercreditor Agent for that purpose by reference to its spot rate of exchange in Hong Kong for the purchase of the conversion currency with the original currency at or about 11:00 a.m. on the date of the determination or if no such spot rate of exchange exists on that date, by such other method as the Intercreditor Agent (in consultation with the Company) shall reasonably determine;

“**including**” is without limitation;

a “**month**” is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next succeeding calendar month save that:

- (a) if any such numerically corresponding day is not a Business Day, such period shall end on the immediately succeeding Business Day to occur in that next succeeding calendar month or, if none, it shall end on the immediately preceding Business Day; and
- (b) if there is no numerically corresponding day in that next succeeding calendar month, that period shall end on the last Business Day in that next succeeding calendar month,

(and references to “**months**” shall be construed accordingly);

“**repay**” (or any derivative form thereof) shall, subject to any contrary indication, be construed to include “**prepay**” (or, as the case may be, the corresponding derivative form thereof); and

a document being in “**substantially the Agreed Form**” or in substantially a specified form shall (save in the case of the definitions of “Shareholders’ Agreement” and “Wong Option Agreement” in Clause 1.1 (*Definitions*)) be construed as meaning such document being in the same form as the Agreed Form or the specified form save for the insertion of information left in blank or typographical errors.

## 1.3 Rules of Interpretation

In this Agreement, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include every gender;
- (c) references to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, novated or replaced from time to time;
- (d) references to this Agreement are references to this Agreement and the Schedules;



- (e) references to clauses and Schedules are references to clauses of, and Schedules to, this Agreement;
- (f) headings are for convenience only and shall be ignored in construing this Agreement;
- (g) references to any party to this Agreement include references to its respective successors, permitted transferees and permitted assigns;
- (h) references to law shall be construed as references to any constitutional provision, treaty, decree, convention, statute, act, regulation, rule, ordinance, subordinate legislation, rule of common law and of equity and judgement;
- (i) references to any law are references to that law as amended, consolidated, supplemented or replaced from time to time;
- (j) references to any judgement include references to any order, injunction, decree, determination or award of any court or tribunal; and
- (k) a time of day is a reference to Hong Kong time unless otherwise stated.

#### 1.4 **Conflict with a Senior Finance Document**

In the case of any conflict between:

- 1.4.1 the terms of this Agreement and the terms of any other Senior Finance Document (save for the Facility Agreements and the Deed of Appointment and Priority), the terms of this Agreement shall prevail;
- 1.4.2 the terms of this Agreement and the terms of any Facility Agreement, the terms of that Facility Agreement shall prevail (save in the case of Clause 33 (*Intercreditor Arrangements*) which shall prevail over the terms of the Facility Agreement);
- 1.4.3 the terms of this Agreement and the terms of the Deed of Appointment and Priority, the terms of the Deed of Appointment and Priority shall prevail;  
or
- 1.4.4 the terms of the Deed of Appointment and Priority and the terms of any Facility Agreement, the terms of the Deed of Appointment and Priority shall prevail.

#### 1.5 **Third party rights**

1.5.1 The Contracts (Rights of Third Parties) Act 1999 applies to:

- (a) sub-clause 3.2.5 of Clause 3.2 (*Completion of an Advance Request*) but only for the benefit of the relevant officer of the Company;
- (b) Clause 23.10 (*No Actions*) but only for the benefit of any director, officer or employee of any of the Agents or any of the GCLAs;
- (c) paragraph 5 of Part A of Schedule 2 (*Conditions Precedent*) but only for the benefit of the relevant Responsible Officer;

(d) paragraph 1 of Part A of Schedule 5 (*Covenants*) but only for the benefit of the relevant Responsible Officers of the Company; and

(e) Clause 28 (*Non-Recourse Liability*) but only for the benefit of the Operatives, subject always to the terms of Clause 37 (*Governing Law*) and Clause 38 (*Jurisdiction*).

1.5.2 Except as provided in sub-clause 1.5.1 above, a Person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

1.5.3 Notwithstanding any term of any Senior Finance Document, the consent of any Person who is not a party to this Agreement is not required to rescind or vary this Agreement.

## 1.6 **Advisers**

Where this Agreement contemplates the doing of any act or thing by an Adviser, the Intercreditor Agent shall use its reasonable endeavours to ensure that such act or thing is done by such Adviser in a timely manner.

## 2. **CONDITIONS PRECEDENT**

### 2.1 **Conditions Precedent to the CP Satisfaction Date**

2.1.1 The right of the Company to submit an Advance Request for the Initial Advance is subject to the Company having satisfied the conditions precedent set out in Part A of Schedule 2 (*Conditions Precedent*) in form and substance acceptable to the Intercreditor Agent.

2.1.2 In relation to each Facility, the Company shall be deemed to have satisfied:

(a) the conditions precedent set out in

- (i) paragraph 1(a) (in respect only of the Concession Contract, the Land Concession Contract and the Concession Contract Performance Bond);
- (ii) paragraph 2(b);
- (iii) paragraph 3(b);
- (iv) paragraph 3(c);
- (v) paragraph 3(d);
- (vi) paragraph 16;
- (vii) paragraph 17(a)(i);
- (viii) paragraph 17(a)(iv);

- (ix) paragraph 17(a)(v);
- (x) paragraph 17(a)(vii);
- (xi) paragraph 17(b);
- (xii) paragraph 18(a);
- (xiii) paragraph 18(b);
- (xiv) paragraph 18(c);
- (xv) paragraph 22;
- (xvi) paragraph 24;
- (xvii) paragraph 25; and
- (xviii) paragraph 28

of Part A of Schedule 2 (*Conditions Precedent*) following execution and delivery of this Agreement by each of the Persons expressed to be a party hereto; and

- (b) the remaining conditions precedent in this Clause 2.1 if, prior to the date of the Advance Request for the Initial Advance, the Intercreditor Agent has notified the Company, the Facility Agents and the Revolving Credit Facility Lenders accordingly.

2.1.3 Notwithstanding anything in this Agreement to the contrary, the Company may, from time to time prior to the CP Satisfaction Date, but no more frequently than once every two months, submit or resubmit to the Intercreditor Agent for approval (if such approval is required) additional documents, instruments, agreements, certificates and other items listed under conditions precedent in Part A of Schedule 2 (*Conditions Precedent*) that were not deemed satisfied under Clause 2.1.2(a). The Intercreditor Agent agrees to promptly review and, where it considers appropriate under the terms of the Senior Finance Documents, determine whether to approve any such submittals or resubmittals by the Company (or, if it considers it not appropriate to make such determination acting on its own, the Intercreditor Agent agrees promptly to forward to the relevant Senior Secured Creditors such submittals or resubmittals for approval). Upon approval (whether by the Intercreditor Agent or the Required Lenders, as the case may be), the Intercreditor Agent shall notify the Company, the Facility Agents and the Revolving Credit Facility Lenders accordingly, and the item(s) so submitted (or resubmitted) and notified approved shall be deemed to have been satisfied with the same effect as the conditions precedent enumerated in Clause 2.1.2(a) as of the date of such notification.

## 2.2 **Conditions Precedent to each Advance**

The obligation of each Lender to participate in each Advance under a Term Loan Facility and the Initial Advance under the Revolving Credit Facility is subject to the Company having satisfied the conditions set out in Part B of Schedule 2 (*Conditions Precedent*) in respect of such Facility in form and substance acceptable to the Intercreditor Agent.

## 2.3 **Independent rights and obligations of Lenders**

2.3.1 The obligations of each Senior Secured Creditor under the Senior Finance Documents are several. Failure by a Senior Secured Creditor to perform its obligations under the Senior Finance Documents does not affect the obligations of any other party under the Senior Finance Documents. No Senior Secured Creditor is responsible for the obligations of any other Senior Secured Creditor under the Senior Finance Documents.

2.3.2 The rights of each Senior Secured Creditor under or in connection with the Senior Finance Documents are separate and independent rights and any debt arising under the Senior Finance Documents to a Senior Secured Creditor from an Obligor shall be a separate and independent debt.

2.3.3 A Senior Secured Creditor may, except as otherwise stated in the Senior Finance Documents, separately enforce its rights under the Senior Finance Documents.

2.3.4 Notwithstanding any other provision of the Senior Finance Documents, no Lender under a Term Loan Facility shall be obliged to make or participate in an Advance on a proposed Advance Date if drawdowns under another Term Loan Facility have been withheld, suspended or cancelled in accordance with the Senior Finance Documents.

## 3. **DRAWDOWN OF ADVANCES**

### 3.1 **Drawdown conditions**

Subject to the terms of this Agreement and the Facility Agreements, the Company may request, and the relevant Lending Group (or, as the case may be, the Revolving Credit Facility Lenders) shall make, Advances under a Facility if:

3.1.1 not later than 11:00 a.m. on the fifteenth Business Day before the proposed Advance Date (in the case of the Initial Advance under the Term Loan Facilities), the seventh Business Day (in the case of each subsequent Advance under the Term Loan Facilities) or the fifth Business Day (in the case of an Advance under the Revolving Credit Facility), the Intercreditor Agent and the relevant Facility Agent or, as the case may be, the Revolving Capital Facility Lenders have received a completed Advance Request; and

3.1.2 in the case of the Term Loan Facilities, no other Advance Request has been served by the Company in respect of any Term Loan Facility in the same month.

### 3.2 Completion of an Advance Request

Each Advance Request is irrevocable and shall not be regarded as having been completed unless:

- 3.2.1 it is signed by a Responsible Officer of the Company whose specimen signature has been delivered to the Intercreditor Agent and who is identified as being authorised to so sign on behalf of the Company by a resolution of its Board of Directors, a copy of which, together with a certification in relation thereto by a Responsible Officer in substantially the form set out in paragraph 3(ii) of Part C of Schedule 2 (*Conditions Precedent*), has also been delivered to the Intercreditor Agent;
- 3.2.2 the proposed Advance Date is a Business Day within the relevant Availability Period;
- 3.2.3 it specifies:
  - (a) the amount and (in the case of Advances under the Term Loan Facilities) currency of the Advances to be made;
  - (b) (in the case of Advances under the Term Loan Facilities) the Facility under which each such Advance shall be made;
  - (c) the first Interest Period for such Advances (which shall be the same for each such Advance requested under a Term Loan Facility); and
  - (d) (in the case of Advances under the Term Loan Facilities) the purpose for which such Advances shall be applied (which shall be, in the case of Advances under the Hotel Facility, to pay or refinance payment of Hotel Project Costs and, in the case of Advances under the Project Facility, to pay or refinance payment of Project Costs which have, in each case, been incurred and paid or are due and payable, or which will or the Company reasonably expects might be incurred and be due and payable, prior to the date falling 30 days after the proposed Advance Date);
- 3.2.4 the amount requested under each Facility is not more than the aggregate for the time being of each Lender's Available Commitment under such Facility and, in the case of:
  - (a) any Term Loan Facility, the amount requested is either a minimum amount of USD5,000,000 or its equivalent which is less than the aggregate for the time being of each Lender's Available Commitment under such Facility or, if less than such minimum amount, equal to this latter amount;
  - (b) the Hotel Facility, the US dollar equivalent of the amount requested, when aggregated with the US dollar equivalent amounts of all other Advances under the Hotel Facility, is no greater than the US dollar equivalent amount of the aggregate of all Hotel Project Costs incurred and paid by the Company or which will or the Company reasonably expects might be

incurred and be due and payable by it prior to the date falling 30 days after the proposed Advance Date; and

- (c) the Revolving Credit Facility, the amount requested is either a minimum amount of HKD5,000,000 or its equivalent which is less than the aggregate for the time being of each Lender's Available Commitment under such Facility or, if less than such minimum amount, equal to this latter amount; and

3.2.5 it certifies, among other things and without any personal liability on the part of the officer of the Company signing such Advance Request, that:

- (a) (in the case of Advances under the Term Loan Facilities) the proceeds of any Advance under the Hotel Facility shall be applied to pay or refinance payment of Hotel Project Costs;
- (b) (in the case of Advances under the Term Loan Facilities) the US dollar equivalent amount of any Advance under the Hotel Facility, when aggregated with the US dollar equivalent amounts of all other Advances under the Hotel Facility, is no greater than the US dollar equivalent amount of the aggregate of all Hotel Project Costs incurred and paid by the Company or which will or the Company reasonably expects might be incurred and be due and payable by it prior to the date falling 30 days after the proposed Advance Date;
- (c) no Default (or, in the case of any Rollover Advance (as defined in the Revolving Credit Facility Agreement), Event of Default) is continuing or would result from the proposed Advances; and
- (d) the representations and warranties contained in Schedule 4 (*Representations and Warranties*) which are repeated by the Company at the Advance Date are true and correct in all material respects with reference to the facts and circumstances existing on the date of the Advance Request.

#### 4. AVAILABILITY PERIODS

##### 4.1 Hotel Facility Availability Period

Subject to other terms of the Senior Finance Documents, the Hotel Facility shall be made available from the Signing Date until the earliest of:

- 4.1.1 the date falling 90 days after the Construction Completion Date;
- 4.1.2 the cancellation of the Available Commitments of the Lenders thereunder pursuant to Clause 7 (*Special Drawdowns*);
- 4.1.3 the date upon which it has been fully drawn and the Available Commitments of the Lenders thereunder reduced to zero;

4.1.4 the date upon which the Advances thereunder are declared to be immediately due and payable pursuant to Clause 19.2 (*Remedies following an Event of Default*); and

4.1.5 28 February 2007.

**4.2 Project Facility Availability Period**

Subject to other terms of the Senior Finance Documents, the Project Facility shall be made available from the Signing Date until the earliest of:

4.2.1 the date falling 90 days after the Construction Completion Date;

4.2.2 the cancellation of the Available Commitments of the Lenders thereunder pursuant to Clause 7 (*Special Drawdowns*);

4.2.3 the date upon which it has been fully drawn and the Available Commitments of the Lenders thereunder reduced to zero;

4.2.4 the date upon which the Advances thereunder are declared to be immediately due and payable pursuant to Clause 19.2 (*Remedies following an Event of Default*); and

4.2.5 28 February 2007.

**4.3 Revolving Credit Facility Availability Period**

Subject to other terms of the Senior Finance Documents, the Revolving Credit Facility shall be made available from the date of issue of the first Project Certificate of Occupancy until the earliest of:

(a) the Termination Date (as defined in the Revolving Credit Facility Agreement); and

(b) the date upon which the Advances thereunder are declared to be immediately due and payable pursuant to Clause 19.2 (*Remedies following an Event of Default*).

**5. PURPOSE**

**5.1 Purpose - General**

The Company shall apply the proceeds of each Advance under a Facility in accordance with the relevant Facility Agreement and this Agreement.

**5.2 No Obligation to be Concerned with Application**

None of the Senior Secured Creditors shall be obliged to concern themselves with the application of proceeds of the Facilities.

6. **PRO RATA DRAWINGS**

Subject to Clause 7.2 (*Rebalancing between Debt and Equity*), the Company shall ensure that:

- (a) where an Advance is requested under a Project Facility or a Hotel Facility, an Advance in an amount *pro rata* with that requested has also been requested to be made on the same Advance Date under the equivalent Hotel Facility or Project Facility respectively; and
- (b) where an Advance is requested under one of the US dollar or HK dollar tranches of the Base Debt Facilities or the Contingent Debt Facilities, an Advance in a US dollar equivalent amount *pro rata* with that requested has also been requested to be made on the same Advance Date under the other HK dollar or US dollar tranche of such Base Debt Facility or Contingent Debt Facility.

7. **SPECIAL DRAWDOWNS**

7.1 **Final Completion Costs**

7.1.1 Following Substantial Completion, the Company may, notwithstanding Clause 3.1.2 (*Drawdown conditions*) and Clauses 3.2.3(d) and 3.2.4(a) (*Completion of an Advance Request*), deliver an Advance Request requesting an Advance under the Hotel Facility and the Project Facility to be applied by the Company towards Final Completion Costs.

7.1.2 Subject to the other terms of this Agreement and the relevant Facility Agreement, such an Advance shall be made *provided* that:

- (a) any additional conditions to the making of such Advances specified in Part B of Schedule 2 (*Conditions Precedent*) have been satisfied in accordance with Clause 2.2 (*Conditions Precedent to each Advance*); and
- (b) save for any Advances made pursuant to Clauses 7.2 (*Rebalancing between Debt and Equity*), no further Advance may be made under the Hotel Facility or the Project Facility following the making of such an Advance Request and any Available Commitment of the Lenders under each such Facility shall be cancelled accordingly.

7.2 **Rebalancing between Debt and Equity**

7.2.1 Following Construction Completion and subject to compliance with any applicable Legal Requirements, the Company may, notwithstanding Clause 3.1.2 (*Drawdown Conditions*) and Clauses 3.2.3(d) and 3.2.4(a) (*Completion of an Advance Request*), deliver an Advance Request requesting an Advance under the Hotel Facility and the Project Facility to be made on the last day of the Availability Period for such Facility and applied by the Company towards repayment of Equity.



- 7.2.2 Subject to the other terms of this Agreement and the relevant Facility Agreement, such an Advance shall be made under this Clause 7.2 *provided* that:
- (a) where the Advance is requested under a Base Debt Facility, its amount is such that, as at the proposed Advance Date, the ratio of:
    - (i) the sum of the US dollar equivalents of all Advances which have or may be made under the Base Debt Facilities (including this Advance and any such Advance which may be made pursuant to any Advance Request delivered by the Company pursuant to Clause 7.1 (*Final Completion Costs*)); to
    - (ii) the sum of the US dollar equivalents of all Base Equity and amounts advanced or subscribed under the Subordinated Funding Agreement less the amount of the Advance,would not exceed 50:50;
  - (b) where the Advance is requested under a Contingent Debt Facility, its amount is such that, as at the proposed Advance Date, the ratio of:
    - (i) the sum of the US dollar equivalent of all Advances which have or may be made under the Contingent Debt Facilities (including this Advance and any such Advance which may be made pursuant to any Advance Request delivered by the Company pursuant to Clause 7.1 (*Final Completion Costs*)); to
    - (ii) the sum of the US dollar equivalents of all Contingent Equity described in sub-paragraph (a) of the definition thereof paid up or advanced less the amount of the Advance,would not exceed 50:50;
  - (c) for the purposes of an Advance under a Contingent Debt Facility, the Company need only satisfy the condition set out in paragraph 2 of sub-section II of Part B of Schedule 2 (*Conditions Precedent*) in relation to such amount of Contingent Equity as has actually been paid up or advanced (and used for the purposes of calculating the ratio referred to in paragraph (b) of this Clause 7.2.2) rather than the full amount of Contingent Equity contemplated by the definition thereof in Clause 1.1 (*Definitions*) and the terms of this Agreement and the relevant Facility Agreement shall apply accordingly;
  - (d) where the Advance is requested under the Hotel Facility, its US dollar equivalent amount, when aggregated with the US dollar equivalent amounts of all other Advances under the Hotel Facility, is no greater than the US dollar equivalent amount of all Hotel Project Costs paid by the Company; and
  - (e) subject to Clauses 7.1 (*Final Completion Costs*), no further Advance may be made under the Hotel Facility or the Project Facility following the making of such an Advance Request and any Available Commitment of the Lenders under each such Facility shall be cancelled accordingly.

## 8. REPAYMENTS, PREPAYMENTS AND CANCELLATION

### 8.1 Repayments

The Company may repay principal amounts falling due under any Facility Agreement only in accordance with that Facility Agreement and this Agreement.

### 8.2 Voluntary Prepayment of the Term Loan Facilities

8.2.1 Subject to the other provisions of this Clause 8 and any applicable terms in the Facility Agreements, the Company may, on at least 30 days' prior written notice to the Intercreditor Agent (which notice shall, if not withdrawn prior thereto, become irrevocable on the tenth Business Day prior to the proposed Advance Date), make voluntary prepayments under the Term Loan Facilities on the last day of any Interest Period, *provided* that for each voluntary prepayment, the amount prepaid under the Term Loan Facilities must:

- (a) if prepaid prior to the Construction Completion Date (other than in the case of paragraph (b)(i) below), equal the balance of the principal amount owing to all Term Loan Facility Lenders (and each of the Term Loan Facilities (and any Available Commitments thereunder) shall be automatically cancelled); or
- (b) if prepaid:
  - (i) using only the proceeds of Shareholder Loans not forming part of Base Equity, Contingent Equity or any other Equity required to be paid up or advanced in accordance with the terms of the Senior Finance Documents; or
  - (ii) following the Construction Completion Date, exceed an aggregate of USD10,000,000 or its equivalent or, if less, the balance of the principal amount owing to all Term Loan Facility Lenders.

8.2.2 Amounts prepaid under sub-clause 8.2.1 above shall be applied on the Interest Payment Date on which they are made *pro rata* between the Advances outstanding under the Term Loan Facilities and applied *pro rata* against the repayment instalments of those Advances.

### 8.3 Mandatory Prepayment

8.3.1 The Company shall prepay Advances outstanding under the Term Loan Facilities on the dates and in the amounts specified in Schedule 9 (*Mandatory Prepayment*).

8.3.2 Any amount prepaid under this Clause 8.3 and Schedule 9 (*Mandatory Prepayment*) shall be applied:

- (a) *pro rata* between the Advances outstanding under the Term Loan Facilities; and

- (b) in the case of any amount prepaid pursuant to paragraph 6 of Schedule 9 (*Mandatory Prepayment*), *pro rata* against the repayment instalments of those Advances and, otherwise, against the repayment instalments of those Advances in inverse order of maturity.

8.3.3 Each of the Facilities (and any Available Commitments thereunder) shall be automatically cancelled upon the Company being required to make prepayment pursuant to paragraph 7 of Schedule 9 (*Mandatory Prepayment*).

#### 8.4 **Voluntary Cancellation**

Save as provided in Clause 8.5 (*Prepayment and Cancellation of Individual Lenders*) and Clause 14 (*Illegality*):

- (a) the Company may only cancel the whole or any part (being a minimum amount of USD10,000,000 or its equivalent) of the Available Commitments under the Hotel Facility or the Project Facility after the Construction Completion Date in accordance with the terms of the relevant Facility Agreement and the other provisions of this Clause 8 and if:
    - (i) it gives not less than fifteen days' irrevocable notice of cancellation to the Intercreditor Agent; and
    - (ii) the Available Commitments under each US dollar and HK dollar Facility are cancelled *pro rata* to their US dollar equivalent amounts; and
  - (b) the Company may only cancel the whole or any part (being a minimum amount of HKD10,000,000) of the Available Commitments under the Revolving Credit Facility Agreement on not less than 15 days' prior irrevocable written notice to the Intercreditor Agent and the Revolving Credit Facility Lenders and, prior to the third anniversary of the Signing Date, with the prior written consent of the Intercreditor Agent,
- in all cases without penalty or payment of fees or charges save as provided for in Clause 8.6.2 (*Restrictions*) or the relevant Facility Agreement.

#### 8.5 **Prepayment and Cancellation of Individual Lenders**

If:

- (a) any sum payable to any Lender by the Company is required to be increased under Clause 11.2 (*Tax gross-up*); and/or
- (b) any Lender claims indemnification from the Company under Clause 11.3 (*Tax Indemnity*) or Clause 12 (*Increased costs*); and/or
- (c) a Market Disruption Event occurs in relation to any Advance for any Interest Period pursuant to Clause 10.2 (*Market disruption*); and/or
- (d) any Lender withholds its consent to the incurrence of any Financial Indebtedness by the Company such that the Intercreditor Agent is unable to

approve the incurrence of additional Financial Indebtedness in accordance with sub-paragraph 2(h) of Part B of Schedule 5 (*Covenants*) or the amendment or waiver of paragraph 2 of Part B of Schedule 5 (*Covenants*),

then, the Company may, subject to the other provisions of this Clause 8 and, in the case of paragraph (d) above, whilst the circumstances described therein continue, and on giving at least fifteen days' prior irrevocable written notice to the Intercreditor Agent:

(i) prepay that Lender's participation in the Advances outstanding under the relevant Facility Agreement on the Interest Payment Date which immediately ends after the Company's notice; and/or

(ii) cancel that Lender's undrawn and uncanceled Commitments under the relevant Facility Agreement,

*provided* that no Forecast Funding Shortfall (determined without taking account of any amount of Contingent Equity or any amount of the Contingent Debt Facilities) shall result.

## 8.6 Restrictions

8.6.1 Any notice of cancellation or prepayment given under this Clause 8 shall be irrevocable and shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of the cancellation or prepayment.

8.6.2 Any prepayment or cancellation pursuant to this Clause 8 shall be made together with accrued interest and fees on the amount prepaid or cancelled and without premium or penalty, save that the Company shall pay any Break Costs and any other fees specified in the relevant Facility Agreement.

8.6.3 The Company shall not repay or prepay all or any part of the Advances or cancel all or any part of the Available Commitments under any Facility Agreement except in accordance with that Facility Agreement and this Clause 8.

8.6.4 The Company may not reborrow any part of the Term Loan Facilities which is prepaid.

8.6.5 No amount of the Available Commitments cancelled under this Clause 8 may be subsequently reinstated.

8.6.6 If the Intercreditor Agent receives a notice under this Clause 8, it shall promptly forward a copy of that notice to either the Company or the affected Lender (or the Facility Agent acting for such Lender), as appropriate.

8.6.7 If, following any prepayment pursuant to this Clause 8, the US dollar equivalent of the aggregate of the Notional Amounts of the Hedging Agreements is more than 125% of the US dollar equivalent of the aggregate of the Advances outstanding under the Term Loan Facilities following such prepayment, the Company shall reduce each such Notional Amount *pro rata* so that their US dollar equivalent is, in aggregate, not less than 50% and not more than 125% of

the US dollar equivalent of the aggregate of such Advances (and, if the Term Loan Facilities are prepaid in full, the Company shall, subject to Schedule 8 (*Hedging Arrangements*), unwind all remaining transactions under the Hedging Agreements).

## 8.7 **Replacement of Lender**

If any Lender:

- (a) claims any amounts from the Company under Clauses 11.2, 11.3 or 12 hereof;
- (b) fails to make its portion of any Advance to be made by it on the relevant Advance Date; or
- (c) withholds its consent in any of the circumstances contemplated in Clause 8.5(d),

(an “**Affected Lender**”), the Company may (after paying all amounts then due under Clauses 11.2, 11.3 and 12 hereof to the Affected Lender and, in the case of paragraph (c) above, whilst the circumstances referred to therein continue) designate a non-Affected Lender, any commercial bank, an entity on the Approved List or any other financial institution or bank reasonably satisfactory to the Intercreditor Agent (the “**Replacement Lender**”) to accept a transfer in accordance with Clause 21.6 of the Affected Lender’s rights, benefits and obligations hereunder, and, promptly following such designation, the Affected Lender shall be obliged to execute the Novation Certificate required for such transfer in accordance with Clause 21.6 and the non-Affected Lender may, but shall not be obliged to, execute such Novation Certificate and, if it does so, shall be obliged to accept such transfer in accordance with Clause 21.6.

## 9. **INTEREST, INTEREST PERIODS AND DEFAULT INTEREST**

### 9.1 **Calculation of interest**

The Company shall pay interest under each Facility Agreement at the rate specified in that Facility Agreement.

### 9.2 **Payment of interest**

Interest on each Advance shall be due on each Interest Payment Date relating to that Advance.

### 9.3 **Interest Periods**

The duration of each Interest Period shall be determined as follows:

- 9.3.1 Each Interest Period for a Term Loan Facility Advance shall start on the Advance Date for such Advance or (if already made) on the last day of its preceding Interest Period. A Revolving Credit Facility Advance has one Interest Period only.
- 9.3.2 Subject to this Clause 9, the duration of each Interest Period for each Advance under a Facility shall be one, two or three months, in each case as the Company may, by not less than ten Business Days’ prior notice to the Facility Agent for

such Facility (or, as the case may be, the Revolving Credit Facility Lenders), select. Term Loan Facility Advances with the same Advance Date shall have the same Interest Period.

9.3.3 If the Company fails to give such notice of its selection in relation to an Interest Period, the duration of such Interest Period shall, subject to this Clause 9, be 3 months.

9.3.4 Any Interest Period which would otherwise extend beyond:

- (a) a Repayment Date (in the case of any Interest Period relating to an Advance under the Hotel Facility or the Project Facility); or
- (b) the Revolving Credit Facility Termination Date (in the case of any Interest Period relating to an Advance under the Revolving Credit Facility),

shall be of such duration that it shall end on such date.

9.3.5 If two or more Interest Periods relating to Advances in the same currency under the same Term Loan Facility end at the same time, then, on the last day of such Interest Periods, such Advances shall be consolidated into and treated as a single Advance.

9.3.6 The Company shall at all times select the duration of Interest Periods so as to ensure that, in respect of such of the Advances outstanding under the Facilities as is from time to time equal to the Notional Amounts specified in the Hedging Agreements, the Interest Payment Dates for such Advances coincide with (and are no more frequent than) the selected dates for payment of amounts to the Company under the Hedging Agreements.

9.3.7 Any Interest Period which would end on a day which is not a Business Day shall be extended to the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

9.3.8 Interest on an Advance shall accrue from and including the first day of an Interest Period relating to such Advance up to but excluding the last day of such Interest Period.

#### 9.4 **Default interest**

9.4.1 If the Company fails to pay any amount payable by it under a Senior Finance Document on its due date, interest shall accrue on such Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to sub-clause 9.4.2 below, is 2% higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted an Advance under the relevant Facility Agreement in the currency of the overdue amount (or, where there is no such relevant Facility Agreement, an Advance in the relevant currency under the Hotel Facility Agreement) for successive Interest Periods, each of a duration selected by the relevant Facility Agent or Revolving Credit Lenders (each acting reasonably).

Any interest accruing under this sub-clause 9.4.1 shall be immediately payable by the Company on demand in writing by the Intercreditor Agent or the relevant Facility Agent.

9.4.2 If any Unpaid Sum consists of all or part of an Advance which became due on a day which was not the last day of an Interest Period relating to that Advance:

- (a) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to that Advance; and
- (b) the rate of interest applying to the Unpaid Sum during that first Interest Period shall be 2% per annum higher than the rate which would have applied if the overdue amount had not become due.

9.4.3 Default interest (if unpaid) arising on an Unpaid Sum shall be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but shall remain immediately due and payable.

## 10. CHANGES TO THE CALCULATION OF INTEREST

### 10.1 Absence of quotations

Subject to Clause 10.2 (*Market disruption*), if LIBOR or HIBOR is to be determined by reference to the Reference Banks under any Facility Agreement but a Reference Bank does not supply a quotation on the Quotation Day under such Facility Agreement, the applicable LIBOR or HIBOR for the purpose of such Facility Agreement shall be determined on the basis of the quotations of the remaining Reference Banks under such Facility Agreement. Where LIBOR or HIBOR is to be determined by reference to the Reference Banks under any Facility Agreement and none or only one Reference Bank supplies a quotation, then LIBOR or, as the case may be, HIBOR shall be treated as incapable of being determined under such Facility Agreement.

### 10.2 Market disruption

10.2.1 If a Market Disruption Event occurs in relation to an Advance under a Facility for any Interest Period, the relevant Facility Agent or, as the case may be, the Revolving Credit Facility Lender, shall promptly notify the Intercreditor Agent of the fact and that this Clause 10.2 is in operation and the Intercreditor Agent shall promptly notify the Company and the other Lenders.

10.2.2 For the purpose of this Clause 10.2, "**Market Disruption Event**" means:

- (a) in the case of a US dollar Advance:
  - (i) it is not possible, in respect of the Facility under which such Advance is made, to determine LIBOR in accordance with the provisions of the relevant Facility Agreement and Clause 10.1 (*Absence of quotations*); or

- (ii) before the close of business in London on the Quotation Day for the relevant Interest Period, the Intercreditor Agent has been notified by a Lender or Lenders (whose participations in such Advance exceed 50 per cent of the Advance) that the cost to it/them of obtaining matching deposits in the London interbank market would be in excess of LIBOR;
- (b) in the case of a HK dollar Advance:
  - (i) it is not possible, in respect of the Facility under which such Advance is made, to determine HIBOR in accordance with the provisions of the relevant Facility Agreement and Clause 10.1 (*Absence of quotations*); or
  - (ii) before the close of business in Hong Kong on the Quotation Day for the relevant Interest Period, the Intercreditor Agent has been notified by a Lender or Lenders (whose participations in such Advance exceed 50 per cent of the Advance) that the cost to it/them of obtaining matching deposits in the Hong Kong interbank market would be in excess of HIBOR.

10.2.3 Within five Business Days of the Intercreditor Agent notifying the Company in accordance with sub-clause 10.2.1 above, the Company and the Intercreditor Agent shall enter into good faith negotiations for a period of up to thirty days with a view to agreeing an alternative basis for determining the rate of interest applicable to the relevant Advances. Any alternative basis agreed shall be binding on all parties hereto until (subject to the terms of such agreement) the Market Disruption Event referred to in sub-clause 10.2.1 above is at an end and the Intercreditor Agent has notified the Facility Agents, the Revolving Credit Facility Lenders and the Company accordingly.

10.2.4 If no alternative basis is agreed pursuant to sub-clause 10.2.3 above by the earlier of (i) the thirty-day period provided in sub-clause 10.2.3 above and (ii) the Advance Date (where the notification under sub-clause 10.2.1 applies to any Advance which has not been made) or the last day of the Interest Period (where the notification under sub-clause 10.2.1 applies to an Advance which is outstanding), then each Lender participating in the relevant Advance shall, acting reasonably, certify an alternative basis for maintaining its participation in the relevant Advance which may include an alternative method of fixing the interest rate, alternative Interest Periods or alternative currencies but such alternative basis must reflect its cost of funding its participation in the relevant Advance from whatever sources it may in good faith select plus the applicable interest margin applicable to that Lender's participation in the relevant Advance. Each alternative basis so certified shall be binding on the Company and the certifying Lender and treated as part of this Agreement and the relevant Facility Agreement.



### 10.3 Break Costs

10.3.1 The Company shall, within three Business Days of demand by a Senior Secured Creditor, pay to that Senior Secured Creditor its Break Costs attributable to all or any part of an Advance or Unpaid Sum being paid by the Company on a day other than an Interest Payment Date for that Advance or Unpaid Sum.

10.3.2 Each Lender shall, as soon as reasonably practicable after a demand by the Intercreditor Agent or the Company, provide a certificate confirming the amount and providing reasonable supporting evidence of its Break Costs for any Interest Period in which they accrue.

## 11. TAX GROSS UP AND INDEMNITIES

### 11.1 Construction

Unless a contrary indication appears, in this Clause 11 a reference to “determines” or “determined” means a determination made in the absolute discretion of the Person making the determination.

### 11.2 Tax gross-up

11.2.1 The Company shall make all payments to be made by it under the Senior Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.

11.2.2 The Company or a Senior Secured Creditor shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Intercreditor Agent accordingly. Similarly, a Senior Secured Creditor shall notify the Intercreditor Agent on becoming so aware in respect of a payment payable to that Senior Secured Creditor. If the Intercreditor Agent receives such notification from a Senior Secured Creditor it shall promptly notify the Company.

11.2.3 If a Tax Deduction is required by law to be made by the Company, the amount of the payment due from the Company shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the amount which would have been due if no Tax Deduction had been required.

11.2.4 If the Company is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

11.2.5 After making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Company shall, if so requested in writing by the Intercreditor Agent, deliver to the Intercreditor Agent the payment evidence reasonably satisfactory to the relevant Senior Secured Creditor that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority (*provided* that the Company shall not be obliged to provide any such evidence from a Governmental Authority to the extent that it is not provided by such Governmental Authority).

### 11.3 Tax indemnity

11.3.1 The Company shall (within fifteen days of demand by the Intercreditor Agent) pay to a Senior Secured Creditor an amount equal to the loss, liability or cost which that Senior Secured Creditor determines has been (directly or indirectly) suffered for or on account of Tax by that Senior Secured Creditor in respect of a Senior Finance Document including Tax arising on payment of any premia or other sums payable on an Ancillary Finance Document whether or not such payment is required to be made by such Senior Secured Creditor.

11.3.2 Sub-clause 11.3.1 above shall not apply:

- (a) with respect to any Tax assessed on a Senior Secured Creditor:
  - (i) under the law of the jurisdiction in which that Senior Secured Creditor is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Senior Secured Creditor is treated as resident for tax purposes; or
  - (ii) under the law of the jurisdiction in which that Senior Secured Creditor's Facility Office is located in respect of amounts received or receivable in that jurisdiction,  
if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Senior Secured Creditor; or
- (b) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 11.2 (*Tax gross-up*).

11.3.3 A Senior Secured Creditor making, or intending to make a claim under sub-clause 11.3.1 above shall promptly notify the Intercreditor Agent of the event which shall give, or has given, rise to the claim, following which the Intercreditor Agent shall promptly notify the Company.

11.3.4 A Senior Secured Creditor shall, on receiving a payment from the Company under this Clause 11.3, notify the Intercreditor Agent.

11.3.5 Each Senior Secured Creditor shall, as soon as practicable after a demand by the Intercreditor Agent, provide a certificate confirming the amount of the loss, liability or cost referred to in sub-clause 11.3.1 above and the basis thereof.

### 11.4 Tax Credit

If the Company makes a Tax Payment and the relevant Senior Secured Creditor determines that:

11.4.1 a Tax Credit is attributable to that Tax Payment; and

11.4.2 that Senior Secured Creditor has obtained, utilised and retained that Tax Credit,

that Senior Secured Creditor shall pay an amount to the Company which that Senior Secured Creditor determines shall leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been made by the Company.

#### 11.5 Stamp taxes

The Company shall pay and, within fifteen days of demand, indemnify each Senior Secured Creditor against any cost, loss or liability that a Senior Secured Creditor incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Senior Finance Document.

### 12. INCREASED COSTS

#### 12.1 Increased costs

12.1.1 Subject to Clause 12.3 (*Exceptions*), the Company shall, within fifteen days of a demand by the Intercreditor Agent, pay for the account of a Lender the amount of any Increased Costs incurred by that Lender or any Affiliate of that Lender as a result of:

- (a) the introduction of or change in (or in the interpretation, administration or application of) any law or regulation after the Signing Date; or
- (b) compliance with any request or requirement relating to the maintenance of capital or any other request from or requirement of any central bank or other fiscal, monetary, regulatory or other authority.

12.1.2 In this Agreement “**Increased Costs**” means:

- (a) a reduction in the rate of return from a Facility or on a Lender’s (or its Affiliate’s) overall capital (including as a result of any reduction in the rate of return on capital brought about by more capital being required to be allocated by such Lender or Affiliate);
- (b) an additional or increased cost; or
- (c) a reduction of any amount due and payable under any Senior Finance Document,

which is incurred or suffered by a Lender or any of its Affiliates to the extent that it is attributable to that Lender’s having entered into or maintaining its commitment or funding or performing its obligations under any Senior Finance Document.

#### 12.2 Increased cost claims

12.2.1 When a Senior Secured Creditor intends to make a claim pursuant to Clause 12.1 (*Increased costs*), it shall notify the Intercreditor Agent of the event giving rise to the claim, following which the Intercreditor Agent shall promptly notify the Company.

12.2.2 Each Senior Secured Creditor shall, as soon as practicable after a demand by the Intercreditor Agent, provide a certificate confirming the amount of its Increased Costs and the basis thereof.

### 12.3 Exceptions

Clause 12.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

12.3.1 attributable to a Tax Deduction required by law to be made by the Company;

12.3.2 compensated for by Clause 11.3 (*Tax indemnity*) (or would have been compensated for under Clause 11.3 (*Tax indemnity*) but was not so compensated solely because one of the exclusions in sub-clause 11.3.2 of Clause 11.3 (*Tax indemnity*) applied); or

12.3.3 attributable to the wilful breach by the relevant Senior Secured Creditor or their Affiliates of any law or regulation.

## 13. CURRENCY AND OTHER INDEMNITIES

### 13.1 Currency Indemnity

If any Senior Secured Creditor receives an amount in respect of the Company's liability to that Senior Secured Creditor under any Senior Finance Document or if that liability is converted into a claim, proof, judgment or order in a currency other than the currency (the "**contractual currency**") in which the amount is expressed to be payable under that Senior Finance Document:

13.1.1 the Company shall indemnify that Senior Secured Creditor as an independent obligation against any costs, loss or liability arising out of or as a result of the conversion; and

13.1.2 if the amount received by that Senior Secured Creditor, when converted into the contractual currency at a market rate in the usual course of its business is less than the amount owed in the contractual currency and such is specified to the Company in reasonable detail, the Company shall, within 3 Business Days of its receipt of a written demand by such Senior Secured Creditor, pay to that Senior Secured Creditor an amount in the contractual currency equal to the deficit.

### 13.2 Other Indemnities

The Company shall, within fifteen days of demand, indemnify each Senior Secured Creditor against any cost, loss or liability incurred by that Senior Secured Creditor as a result of:

13.2.1 the occurrence of any Event of Default;

13.2.2 funding, or making arrangements to fund, its participation in an Advance requested by the Company in an Advance Request but not made by reason of the operation of any one or more of the provisions of the Senior Finance Documents (other than by reason of default or negligence by that Senior Secured Creditor alone);

13.2.3 an Advance (or part of an Advance) not being prepaid in accordance with a notice of prepayment given by the Company; and  
13.2.4 any claim concerning either Project and its participation therein to the extent that loss or liability is suffered or incurred by that Senior Secured Creditor (other than by reason of default or negligence by a Senior Secured Creditor),  
*provided that*, prior to the delivery of an Enforcement Notice, any such cost, loss or liability shall be reasonable.

**13.3 Indemnity to the Agents**

The Company shall, within fifteen days of demand, indemnify each of the Agents against any cost, loss or liability incurred by such Agent (acting reasonably) as a result of:

13.3.1 investigating any event which it reasonably believes is a Default; or

13.3.2 acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised,  
*provided that*, prior to the delivery of an Enforcement Notice, any such cost, loss or liability shall be reasonable.

**14. ILLEGALITY**

If it becomes, or shall become, unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by the Senior Finance Documents to which it is a party or to fund or maintain its participation in any Advance:

14.1.1 that Lender shall promptly notify the Company through the Intercreditor Agent and the relevant Facility Agent upon becoming aware of that event; and

14.1.2 by the latest date necessary to ensure compliance with the relevant law or regulation:

- (a) if the relevant Facility Agent or Revolving Credit Facility Lender so requires, the Company shall prepay that Lender's participation in all the Advances (or such lesser amount if required to comply with the relevant law or regulation) together with all other relevant amounts payable by it to that Lender under the Senior Finance Documents to which it is a party; and
- (b) that Lender's undrawn Available Commitment (or such lesser amount if permitted by the relevant law or regulation) shall be cancelled.

**15. MITIGATION BY THE SENIOR SECURED CREDITORS**

**15.1 Mitigation**

15.1.1 Each Lender shall, in consultation with the Company, take all reasonable steps to mitigate or remove any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to,

any of Clause 10 (*Changes to the calculation of interest*), Clause 11 (*Tax Gross Up and Indemnities*), Clause 12 (*Increased Costs*) or Clause 14 (*Illegality*) including (but not limited to) transferring its rights and obligations under the Senior Finance Documents to another Affiliate or Facility Office.

15.1.2 Sub-clause 15.1.1 above does not in any way limit the obligations of any Obligor under the Senior Finance Documents.

## 15.2 **Indemnity by Company**

15.2.1 The Company shall indemnify each Senior Secured Creditor for all costs and expenses reasonably incurred by that Senior Secured Creditor as a result of steps taken by it under Clause 15.1 (*Mitigation*).

15.2.2 A Senior Secured Creditor is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Senior Secured Creditor (acting reasonably), to do so might be prejudicial to it.

## 16. **FEES, COSTS AND EXPENSES**

### 16.1 **Agency Fees**

The Company shall pay to each Agent for its own account a fee in amounts and on dates separately agreed between that Agent and the Company in the relevant Fee Letter.

### 16.2 **Transaction expenses**

The Company shall, within fifteen days of receipt of a written demand, pay the Agents the amount of all reasonable costs and expenses (including legal fees) incurred by any of them in connection with the review, negotiation, preparation, printing and execution of:

- (a) this Agreement, the other Senior Finance Documents and any other documents referred to herein or therein; and
- (b) any other Senior Finance Documents executed after the Signing Date,

in accordance with, in the case of any fees, costs and expenses of the Technical Adviser, Insurance Adviser and legal advisers appointed on or prior to the Signing Date, the appointment or engagement letters (if any) executed by the Company on or prior to the Signing Date.

### 16.3 **Amendment costs**

If the Company requests an amendment, waiver or consent under any Senior Finance Document, the Company shall, within thirty days of demand, reimburse the Agents for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agents in responding to, evaluating, negotiating or complying with that request.

### 16.4 **Enforcement costs**

The Company shall, within fifteen days of written demand, pay to each Senior Secured Creditor the amount of all costs and expenses (including legal fees) incurred by that

Senior Secured Creditor in connection with the enforcement of, or the preservation of, any rights under and in accordance with any Senior Finance Document *provided* that, prior to the delivery of an Enforcement Notice, such costs and expenses shall be reasonable.

**17. REPRESENTATIONS AND WARRANTIES**

**17.1 Matters represented**

The Company makes the representations and warranties set out in Schedule 4 (*Representations and Warranties*) to each Senior Secured Creditor as at each of the dates specified in Clause 17.2 (*Timing*).

**17.2 Timing**

Unless otherwise stated to have been made as of a specific date, each of the representations and warranties set out in Schedule 4 (*Representations and Warranties*) is made by the Company on the Signing Date and the CP Satisfaction Date and is deemed to be repeated by the Company on each subsequent Advance Date with reference to the facts and circumstances then existing.

**18. COVENANTS**

**18.1 Content**

The Company undertakes to each of the Senior Secured Creditors that it shall comply with the covenants set out in Schedule 5 (*Covenants*).

**18.2 Duration**

The covenants in Schedule 5 (*Covenants*) shall remain in force from the Signing Date until the Senior Secured Indebtedness has been fully discharged.

**19. EVENTS OF DEFAULT**

**19.1 Events of Default**

Each of the events set out in Schedule 10 (*Events of Default*) is an Event of Default.

**19.2 Remedies following an Event of Default**

Upon the occurrence of an Event of Default and at any time thereafter whilst it is continuing or following issuance of an Enforcement Notice (as the case may be), the Intercreditor Agent shall, if so instructed by the Required Lenders, by written notice to the Company:

19.2.1 declare that the Available Commitments under any of the Facility Agreements be cancelled or suspended, whereupon they shall be cancelled or suspended;

19.2.2 declare that all or any part of the Advances, together with accrued interest, and all other amounts accrued or outstanding under the Senior Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;

- 19.2.3 declare that all or part of the Advances be payable on demand, whereupon they shall immediately become payable on demand by the Intercreditor Agent;
- 19.2.4 notify the Security Agent that an Event of Default has occurred and is continuing and instruct the Security Agent to issue an Enforcement Notice;
- 19.2.5 following the issue of an Enforcement Notice, require the Security Agent to require payment of any Contingent Equity Commitment remaining on the date of such notice in accordance with the Wynn Resorts Support Agreement, whereupon such payment shall be made in accordance with such provisions;
- 19.2.6 following the issue of an Enforcement Notice, require the Security Agent to take action to enforce all or any part of the Security or all or any of the Wynn Resorts Support Agreement and the Shareholder Guarantees (subject to the expiration of any cure periods contained therein), whereupon any such action shall be taken;
- 19.2.7 following the issue of an Enforcement Notice, instruct the Security Agent to require the perfection of the Liens granted pursuant to the Land Security Assignment and the Assignment of Rights;
- 19.2.8 following the issue of an Enforcement Notice, give (or require the Security Agent to give) notices regarding the payment of insurance proceeds in accordance with the terms of the Senior Finance Documents;
- 19.2.9 following the issue of an Enforcement Notice, give (or require the Security Agent to give) notice to any Account Bank in relation to the operation of the Accounts in accordance with paragraph 11.3 (*Default*) of Schedule 6 (*Accounts*); and/or
- 19.2.10 exercise any or all other remedies available at law not inconsistent with the foregoing,  
*provided* that the foregoing shall not in any way affect the Intercreditor Agent's or the Security Agent's right to separately enforce its rights under the Senior Finance Documents.

### 19.3 Remedies following a Wong Event

Without prejudice to Clause 19.2 (*Remedies following an Event of Default*) or in any way affecting the Intercreditor Agent's or the Security Agent's right to separately enforce its rights under the Senior Finance Documents, upon the occurrence of a Wong Event (as defined in the Wong Share Pledge) and at any time thereafter whilst it is continuing or following issuance of an Enforcement Notice (as the case may be), the Intercreditor Agent shall, if so instructed by the Required Lenders, require the Security Agent to take action to enforce all or any part of the Security granted pursuant to the Wong Share Pledge.



**20. APPLICATION OF ENFORCEMENT PROCEEDS**

After delivery of an Enforcement Notice and notwithstanding the provisions of Schedule 6 (*Accounts*), all Enforcement Proceeds shall be applied in accordance with the Deed of Appointment and Priority and Clause 33.6 (*Application of Enforcement Proceeds*).

**21. CHANGES TO THE PARTIES**

**21.1 Binding Agreement**

This Agreement shall be binding upon and enure to the benefit of each party hereto and its or any subsequent successors and transferees.

**21.2 Assignment and Transfer by the Company or the GCLAs**

21.2.1 The Company may not assign, transfer, novate or dispose of any of its rights or obligations under this Agreement or the other Senior Finance Documents.

21.2.2 The GCLAs may not assign or transfer its rights and/or obligations under this Agreement without the prior written consent of the Company.

**21.3 Assignment and Transfer by Agents**

Each Agent may assign or transfer any of its rights and obligations under any Senior Finance Document to which it is party only in accordance with its voluntary or requested resignation under and subject to the relevant Senior Finance Document and this Agreement and then only if it first procures that its assignee or transferee executes a duly completed Agent's Deed of Accession and Finance Party Accession Undertaking (also executed, in the case of the latter, by such Agent, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent) and promptly delivered by the Intercreditor Agent to the Security Agent) and enters into such other acknowledgements as may be necessary or desirable to protect the Security.

**21.4 Assignment and Transfer by Lenders**

21.4.1 Subject to the provisions of the Facility Agreement to which it is a party and execution and delivery by the assignee or Transferee of a Finance Party Accession Undertaking, any Lender may, at any time, assign in accordance with Clause 21.5 (*Assignments by Lenders*) all or any of its rights and benefits under the Senior Finance Documents or transfer in accordance with Clause 21.6 (*Transfers by Lenders*) all or any of its rights, benefits and obligations under the Senior Finance Documents to:

- (a) another Lender or an Affiliate of a Lender;
- (b) any commercial bank;
- (c) an entity on the Approved List; or
- (d) any other entity with the consent of the Company (such consent not to be unreasonably withheld or delayed and which consent shall not be required

in respect of any assignment or transfer after the occurrence of an Event of Default which is continuing),  
*provided* that all transactional costs of such assignment or transfer shall be borne by the relevant Lender or assignee or Transferee except for any transfer in connection with the syndication of the Facilities the costs of which (as set forth in Clause 21.7 (*Assignment and Transfer Fees*)) shall be borne by the Company.

21.4.2 Any assignment or transfer of a Lender's participations in Advances outstanding or, as the case may be, Available Commitments under:

- (a) the Hotel Facility or the Project Facility shall be in a minimum amount of USD5,000,000 or its equivalent or, if less, equal to the aggregate of such Lender's participations or Available Commitments under such Facility; or
- (b) the Revolving Credit Facility shall be in a minimum amount of HKD5,000,000 or its equivalent or, if less, equal to the aggregate of such Lender's participations or Available Commitments under such Facility.

#### 21.5 **Assignments by Lenders**

If any Lender assigns all or any of its rights and benefits under the Senior Finance Documents in accordance with Clause 21.4 (*Assignment and Transfer by Lenders*), then, unless and until the assignee has delivered:

- (a) a notice to the Intercreditor Agent (which the Intercreditor Agent shall promptly copy to the Company and the other Senior Secured Creditors) confirming in favour of the Senior Secured Creditors that it shall be under the same obligations towards each of them as it would have been under if it had been an original party hereto as a Lender and to the relevant Facility Agreement as a Hotel Facility Lender, Project Facility Lender or Revolving Credit Facility Lender (as the case may be); and
- (b) a duly completed Finance Party Accession Undertaking executed by such Lender, such assignee, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent),

(whereupon such assignee shall become a party hereto as a "Lender" or thereto as a "Hotel Facility Lender", "Project Facility Lender" or "Revolving Credit Facility Lender"), the Company and the Senior Secured Creditors shall not be obliged to recognise such assignee as having the rights against each of them which it would have had if it had been such a party hereto or thereto.

#### 21.6 **Transfers by Lenders**

If any Lender wishes to transfer all or any of its rights, benefits and/or obligations under this Agreement and the corresponding rights, benefits and/or obligations under the other Senior Finance Documents as contemplated in Clause 21.4 (*Assignment and Transfer by*

Lenders), then such transfer shall only be effective if the procedure set out in this Clause 21.6 is complied with. Such transfer shall be effected by the delivery to the Intercreditor Agent (which the Intercreditor Agent shall promptly copy to the Company and the other Senior Secured Creditors) of:

- (a) a duly completed Novation Certificate executed by such Lender, the relevant Transferee, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent); and
- (b) a duly completed Finance Party Accession Undertaking executed by such Lender, the relevant Transferee, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent),

in which event, on the later of the Transfer Date specified in such Novation Certificate and the fifth Business Day after (or such earlier Business Day endorsed by the Intercreditor Agent on such Novation Certificate falling on or after) the date of delivery of such Novation Certificate and Finance Party Accession Undertaking to the Intercreditor Agent:

21.6.1 to the extent that in such Novation Certificate the Lender party thereto seeks to transfer by novation its rights, benefits and obligations under this Agreement and the corresponding rights, benefits and obligations under the other Senior Finance Documents, the Company and such Lender shall be released from further obligations towards one another under this Agreement and the corresponding rights, benefits and/or obligations under the other Senior Finance Documents and their respective rights against one another shall be cancelled (such rights and obligations being referred to in this Clause 21.6 as “**discharged rights and obligations**”);

21.6.2 each of the Company and the Transferee shall assume obligations towards one another and/or acquire rights against one another which differ from such discharged rights and obligations only insofar the Company and such Transferee have assumed and/or acquired the same in place of such other party and such Lender;

21.6.3 the Agents, the GCLAs, such Transferee and the other Lenders shall acquire the same rights and benefits and assume the same obligations between themselves as they would have acquired and assumed had such Transferee been an original party to this Agreement and the other relevant Senior Finance Documents as a Lender with the rights, benefits and/or obligations acquired or assumed by it as a result of such transfer and to that extent the Agents, the GCLAs and the relevant Lender shall each be released from further obligations to each other under this Agreement and the other relevant Senior Finance Documents; and

21.6.4 such Transferee shall become a party hereto as a “Lender” and to the relevant Facility Agreement as a “Hotel Facility Lender”, “Project Facility Lender” or “Revolving Credit Facility Lender” (as the case may be).

**21.7 Assignment and Transfer Fees**

On the date upon which an assignment takes effect pursuant to Clause 21.5 (*Assignments by Lenders*) or a transfer takes effect pursuant to Clause 21.6 (*Transfers by Lenders*), the relevant assignee or Transferee shall pay to the Intercreditor Agent for its own account a fee of USD1,500.

**21.8 Disclosure of Information**

Any Senior Secured Creditor may disclose to any Person:

21.8.1 to (or through) whom such Senior Secured Creditor assigns or transfers (or may potentially assign or transfer) all or any of its rights, benefits and obligations in accordance with the Senior Finance Documents;

21.8.2 in the case of a Lender, with (or through) whom such Lender enters into (or may potentially enter into) any sub-participation in relation to the Senior Finance Documents or any Obligor; or

21.8.3 to whom information may be required to be disclosed by any applicable law or pursuant to any regulatory or stock exchange requirement; such information about any Obligor, the Projects and the Senior Finance Documents as such Senior Secured Creditor may consider appropriate, *provided* that the Person to whom such information is provided under sub-clause 21.8.1 or 21.8.2 first enters into a Confidentiality Undertaking (or, in the case of the Security Agent, the confidentiality undertaking referred to in clause 18.9 (*Disclosure of Information by Security Agent*) of the Deed of Appointment and Priority) and that the Company has received an original copy of such signed undertaking.

**21.9 Change of Facility Office**

Any Lender may change its Facility Office *provided* that the Company shall have no liability (or no increase in liability) under Clause 11 (*Tax gross-up and Indemnities*) or Clause 12 (*Increased costs*) which would not exist as at the date of such change but for such change, unless such change was requested by the Company pursuant to Clause 15 (*Mitigation by the Senior Secured Creditors*).

**22. HEDGING COUNTERPARTIES**

**22.1 Accession**

Each Hedging Counterparty shall execute and deliver to the Intercreditor Agent a Hedging Counterparty’s Deed of Accession and shall execute and deliver to the Security Agent in accordance with the Deed of Appointment and Priority a Finance Party Accession Undertaking. A Hedging Counterparty may, at any time, assign all or any of its rights and benefits or transfer all or any of its rights, benefits and obligations under

and in accordance with the Senior Finance Documents subject to delivery to the Intercreditor Agent of a duly completed:

- (a) Hedging Counterparty's Deed of Accession executed by the assignee or transferee; and
- (b) Finance Party Accession Undertaking executed by the assignee or transferee, the Hedging Counterparty, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent).

## 22.2 Interest in the Security

The obligations of the Company owed to each Hedging Counterparty shall be secured by the Security and each Hedging Counterparty shall be entitled to share in the Enforcement Proceeds in accordance with the Deed of Appointment and Priority and Clause 33.6 (*Application of Enforcement Proceeds*).

## 22.3 Voting rights

Nothing in this Clause 22 nor any other provisions of any Senior Finance Document shall be deemed to entitle any Hedging Counterparty in its capacity as such under any Hedging Agreement to exercise any voting, consent, approval or similar right under the Senior Finance Documents (other than the Hedging Agreements) including any right to participate in any Decision *provided that*:

22.3.1 each Hedging Counterparty shall have the right to participate in all Decisions after the occurrence of a Hedging Voting Right Event in relation to such Hedging Counterparty that is continuing; and

22.3.2 the consent of all Hedging Counterparties shall be required for any change to the matters referred to in paragraphs (a), (b), (f), (g), (h), (i), (j), (k) and (l) in the definition of "Fundamental Term" in Clause 1.1 (*Definitions*) and for any amendment to Clause 33.6 (*Application of Enforcement Proceeds*) and this Clause 22.

## 22.4 Restrictions on Amendment

Each Hedging Counterparty agrees that, except with the prior written consent of the Intercreditor Agent, no amendment may be made to a Hedging Agreement to an extent which would result in:

22.4.1 any payment under that Hedging Agreement being required to be made by the Company on any date other than the dates originally provided for in that Hedging Agreement; or

22.4.2 the Company becoming liable to make an additional payment under any Hedging Agreement which liability does not arise from the original provisions of that Hedging Agreement; or

22.4.3 the Company becoming liable to make any payment under that Hedging Agreement in any currency other than in the currency provided for under the original provisions of that Hedging Agreement.

**22.5 Restrictions on Termination**

No Hedging Counterparty may terminate a hedging facility or close out any hedging transaction under a Hedging Agreement prior to its stated maturity except in accordance with the terms of the ISDA Master Agreement and the ISDA Schedule (each as may be amended pursuant to paragraph 4 of Schedule 8 (*Hedging Arrangements*)).

**22.6 Termination at request of Intercreditor Agent**

After a notice has been given by the Intercreditor Agent pursuant to sub-clause 19.2.2 of Clause 19.2 (*Remedies following an Event of Default*), a Hedging Counterparty shall, at the written request of the Intercreditor Agent, terminate the hedging facility or close out any hedging transaction under the Hedging Agreement to which it is party in accordance with the terms of such Hedging Agreement.

**23. AGENTS AND GLOBAL COORDINATING LEAD ARRANGERS**

**23.1 Appointment and duties of the Agents**

23.1.1 Each of:

- (a) the Senior Secured Creditors appoints the Intercreditor Agent;
- (b) the Hotel Facility Lenders appoints the Hotel Facility Agent; and
- (c) the Project Facility Lenders appoints the Project Facility Agent,

to act as its agent under and in connection with the Senior Finance Documents and irrevocably authorises it on its behalf to perform the duties and to exercise the rights, powers and discretions that are specifically delegated to it under or in connection with the Senior Finance Documents, together with any other incidental rights, powers and discretions.

23.1.2 None of the Agents may begin any legal action or proceeding in the name of a Senior Secured Creditor (other than itself) without that Senior Secured Creditor's consent.

23.1.3 Each Agent has only those duties which are expressly specified in the Senior Finance Documents, and those duties are solely of a mechanical and administrative nature.

**23.2 Relationship**

23.2.1 The relationship between each Agent and the relevant Senior Secured Creditors is that of principal and agent only. Nothing in this Agreement constitutes any Agent as trustee or fiduciary for any other Person and no Agent need hold in trust any moneys paid to it for a Person or be liable to account for interest on

those moneys except to the extent expressly stated in a Senior Finance Document.

23.2.2 No Agent shall in any respect be the agent of the Company by virtue of this Agreement.

23.2.3 No Agent shall be liable to the Company for any breach by any other Senior Secured Creditor of any Senior Finance Document or be liable to any other Secured Creditor for any breach by the Company of the Senior Finance Documents.

### 23.3 **Role of the GCLAs**

Except as specifically provided in the Senior Finance Documents, none of the GCLAs has any obligations of any kind to any other Party under or in connection with any Senior Finance Document.

### 23.4 **Delegation**

Each Agent may act through its personnel and agents.

### 23.5 **Instructions**

23.5.1 Unless otherwise expressly provided in the Senior Finance Documents, the Intercreditor Agent shall act (and shall be fully protected if it so acts) in accordance with the instructions of the Required Lenders in connection with the exercise of any right, power or discretion under or in connection with the Senior Finance Documents.

23.5.2 Each Facility Agent shall be fully protected if it acts in accordance with the instructions of its Lending Group in connection with the exercise of any right, power or discretion under or in connection with any matter not expressly provided for in the Senior Finance Documents.

23.5.3 In the absence of such instructions each Agent may act, subject to the terms of the Senior Finance Documents, as that Agent, in its sole discretion, considers to be in the best interests of all the Senior Secured Creditors or, in the case of each Facility Agent, its Lending Group.

### 23.6 **Discretions**

Notwithstanding any provision of the Senior Finance Documents, each Agent may:

23.6.1 assume, unless it has, in its capacity as Agent, received written notice to the contrary from any other Party, that (a) any representation made or deemed to be made by an Obligor in connection with the Senior Finance Documents is true, (b) no Default has occurred, (c) no Obligor is in breach of or default under its obligations under the Senior Finance Documents and (d) any right, power, authority or discretion vested in the Senior Finance Documents upon the Required Lenders, a Lending Group, the Lenders or any other Person or group of Persons has not been exercised;

- 23.6.2 assume that (a) the Facility Office of each Lender is that notified to it by such Lender in writing and (b) the information provided by each Lender pursuant to Clause 29 (*Notices*) is true and correct in all respects until it has received from such Lender notice of a change to the Facility Office or any such information and act upon any such notice until the same is superseded by a further notice;
- 23.6.3 engage and pay for the advice or services of any lawyers, accountants, surveyors or other experts whose advice or services may to it seem necessary, expedient or desirable and rely upon any advice so obtained;
- 23.6.4 rely as to any matters of fact which might reasonably be expected to be within the knowledge of an Obligor upon a certificate signed by or on behalf of such Obligor;
- 23.6.5 rely upon any communication or document believed by it to be genuine;
- 23.6.6 refrain from exercising any right, power or discretion vested in it as Agent under the Senior Finance Documents unless and until instructed as described in Clause 23.5 (*Instructions*) as to whether or not such right, power or discretion is to be exercised and, if it is to be exercised, as to the manner in which it should be exercised;
- 23.6.7 refrain from acting in accordance with any instructions to begin any action or proceeding arising out of or in connection with the Senior Finance Documents until it shall have received such security as it may require (whether by way of payment in advance or otherwise) for all costs, claims, losses, expenses (including legal fees) and liabilities which it shall or may expend or incur in complying with such instructions;
- 23.6.8 refrain from acting where to do so would put it in breach of an applicable Legal Requirement;
- 23.6.9 treat each Facility Agent as the duly appointed and authorised agent of the relevant Lenders until it receives written notice to the contrary from the relevant Lenders; and
- 23.6.10 (in the case of the Intercreditor Agent) in applying any moneys received by it under any Security Document under Clause 33.6 (*Application of Enforcement Proceeds*), rely on any certificate made by the relevant Facility Agent, Revolving Credit Facility Lender or Hedging Counterparty as to the identity of, and the amounts owing to, any of the Senior Secured Creditors and shall be protected in so relying.

**23.7 Agents' Obligations**

23.7.1 Each Agent shall:

- (a) promptly inform each Senior Secured Creditor (in the case of the Intercreditor Agent) or the Intercreditor Agent and the Lenders in its Lending Group (in the case of each Facility Agent) of the contents of any



notice or document received by it pursuant to the terms of any Senior Finance Document in its capacity as Agent from the Security Agent or an Obligor under the Senior Finance Documents; and

- (b) promptly notify each Senior Secured Creditor (in the case of the Intercreditor Agent) or the Intercreditor Agent and the Lenders in its Lending Group (in the case of each Facility Agent) of the occurrence of any Event of Default or any default by an Obligor in the due performance of or compliance with its obligations under the Senior Finance Documents of which such Agent has notice from any other party.

23.7.2 The Intercreditor Agent shall promptly inform the Security Agent of the occurrence of the Release Date.

### **23.8 Excluded Obligations**

Notwithstanding anything to the contrary expressed or implied herein, none of the Agents nor any of the GCLAs shall:

23.8.1 be bound to enquire as to (a) whether or not any representation made or deemed to be made by an Obligor in connection with the Senior Finance Documents is true, (b) the occurrence or otherwise of any Default, (c) the performance by an Obligor of its obligations under the Senior Finance Documents or (d) any breach of or default by an Obligor of or under its obligations under the Senior Finance Documents;

23.8.2 be bound to account to any Senior Secured Creditor for any sum or the profit element of any sum received by it for its own account;

23.8.3 be bound to disclose to any other Person any information relating to any Obligor, any party to a Project Document or any of their respective related entities if (a) such Person, on providing such information, expressly stated to such Agent or, as the case may be, such GCLA, that such information was confidential or (b) such disclosure would or might in its opinion constitute a breach of any law or be otherwise actionable at the suit of any Person; or

23.8.4 be under any obligations other than those for which express provision is made herein or in any other Senior Finance Document to which such Agent or GCLA is a party.

### **23.9 Exclusion of Liabilities**

None of the Agents and the GCLAs accepts any responsibility:

23.9.1 for the adequacy, accuracy and/or completeness of the Information Memorandum or any other information supplied by the Agents or the GCLAs, by an Obligor or by any other Person in connection with the Senior Finance Documents, the transactions therein contemplated or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents;

23.9.2 for the legality, validity, effectiveness, adequacy or enforceability of the Senior Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents; or

23.9.3 for the exercise of, or the failure to exercise, any judgement, discretion or power given to any of them by or in connection with the Senior Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents.

Accordingly, none of the Agents and the GCLAs shall be under any liability (whether in negligence or otherwise) in respect of such matters.

**23.10 No Actions**

Each of the Lenders and the Hedging Counterparties agrees that it shall not assert or seek to assert against any director, officer or employee of any of the Agents or any of the GCLAs any claim it might have against any of them.

**23.11 Business with the Obligors**

Each Agent and GCLA may accept deposits from, lend money to and generally engage in any kind of banking or other business with any of the Obligors or their Affiliates.

**23.12 Resignation**

23.12.1 An Agent may resign its appointment hereunder at any time without assigning any reason therefor by giving not less than 25 Business Days' prior notice to that effect to the Senior Secured Creditors and the Company, in which case:

- (a) the Required Lenders (in the case of the Intercreditor Agent) may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of the Required Lenders and the Company or, failing such agreement within 15 Business Days after such notice of resignation, the Required Lenders may appoint a successor Agent on the same terms and conditions as previously applied to the outgoing Agent; and
- (b) the relevant Lending Group under a Facility (in the case of a Facility Agent for that Facility) may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of such Lending Group and the Company or, failing such agreement within 15 Business Days after such notice of resignation, the Lending Group may appoint a successor Agent on the same terms and conditions as previously applied to the outgoing Agent.

23.12.2 If the Required Lenders have not, within 15 Business Days after notice of resignation, appointed a successor Intercreditor Agent which accepts the

- appointment, the outgoing Agent may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of the Intercreditor Agent and the Company or, failing such agreement within 25 Business Days after notice of resignation, the Intercreditor Agent may appoint a successor Agent on the same terms and conditions as previously applied to it.
- 23.12.3 If a Lending Group has not, within 15 Business Days after notice of resignation appointed a successor Facility Agent which accepts the appointment, the outgoing Facility Agent may appoint a successor Facility Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of the outgoing Facility Agent and the Company or, failing such agreement within 25 Business Days after notice of resignation, the outgoing Facility Agent may appoint a successor Facility Agent on the same terms and conditions as previously applied to it.
- 23.12.4 If, at the time of expiry of the period specified in sub-clause 23.12.2 or, as the case may be, sub-clause 23.12.3 above, the outgoing Agent cannot find a successor owing to the unwillingness of any proposed successor to accept the terms and conditions which apply to the outgoing Agent, the Company shall offer to any proposed successor such terms and conditions as are consistent with the role to be performed, taking into account the current market for the performance of such duties and the then existing circumstances of the Projects.
- 23.12.5 If the Agent has not been paid an amount due to it under the Senior Finance Documents and gives notice thereof as its reason for resigning together with its notice pursuant to Clause 23.12.1, it shall not be obliged to appoint a successor. If, at the time of expiry of the period specified in clause 23.12.1, the Required Lenders or, as the case may be, the relevant Lending Group, cannot find a successor owing to the unwillingness of any proposed successor to accept the terms and conditions which apply to the outgoing Agent, the Company shall offer to any proposed successor such terms and conditions as are consistent with the role to be performed, taking into account the current market for the performance of such duties and the then existing circumstances of the Projects.
- 23.12.6 The resignation of an Agent and the appointment of any successor Agent shall both become effective only upon the successor Agent executing an Agent's Deed of Accession *provided* that, where the Agent has notified the reason for its resignation pursuant to Clause 23.12.5, its resignation shall become effective upon the expiry of the period notified by it pursuant to Clause 23.12.1. Upon the execution of an Agent's Deed of Accession, the successor Agent shall succeed to the position of the retiring Agent (as the case may be) under the Senior Finance Documents and the term "Agent" shall mean the successor Agent.
- 23.12.7 The Intercreditor Agent agrees that it shall, if so requested in writing by the Required Lenders, tender its resignation in accordance with this Clause 23.12.

- 23.12.8 Each Facility Agent agrees that it shall, if so requested in writing by its Lending Group, tender its resignation in accordance with this Clause 23.12.
- 23.12.9 Upon the appointment of a successor (or, as the case may be, its resignation becoming effective), the retiring Agent shall be discharged from any future (but not accrued) obligations in respect of the Senior Finance Documents but shall remain entitled to the benefit of Clause 13.2 (*Other Indemnities*) and sub-clauses 23.1, 23.2, 23.5.2, 23.5.3, 23.6.10, 23.8, 23.9, 23.10 and 23.15 of this Clause 23.

**23.13 Own Responsibility**

It is understood and agreed by each Senior Secured Creditor that at all times it has itself been, and shall continue to be, solely responsible for making its own independent appraisal of and investigation into all risks arising under or in connection with the Senior Finance Documents including, but not limited to:

- 23.13.1 the financial condition, creditworthiness, condition, affairs, status and nature of the Projects and each Obligor;
- 23.13.2 the legality, validity, effectiveness, adequacy and enforceability of the Senior Finance Documents and any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents;
- 23.13.3 whether such Senior Secured Creditor has recourse, and the nature and extent of that recourse, against an Obligor or any other Person or any of their respective assets under or in connection with the Senior Finance Documents, the transactions therein contemplated or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents; and
- 23.13.4 the adequacy, accuracy and/or completeness of the Information Memorandum and any other information provided by the Agents or the GCLAs, an Obligor, or by any other Person in connection with the Senior Finance Documents, the transactions contemplated therein or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents.

Accordingly, each Senior Secured Creditor acknowledges to the Agents and the GCLAs that it has not relied on and shall not hereafter rely on the Agents and the GCLAs or any of them in respect of any of these matters.

**23.14 Agency Division Separate**

In acting as Agent under the Senior Finance Documents, each of the Agents shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments and, notwithstanding the foregoing provisions of this Clause 23, any information received by some other division or

department of such Agent may be treated as confidential and shall not be regarded as having been given to such Agent's agency division.

#### **23.15 Indemnity to Intercreditor Agent**

- 23.15.1 Each Senior Secured Creditor shall rateably in accordance with its entitlement to the Senior Secured Indebtedness (or, in the case of each Lender, if no Advances have been made, in the proportion borne by its share of the aggregate undrawn Available Commitments of all Lenders to the aggregate undrawn Available Commitments of all Lenders) for the time being (or, if all Advances have been repaid or all Available Commitments reduced to zero, immediately prior to the repayment thereof or, as the case may be, such reduction), indemnify the Intercreditor Agent, within fifteen days of demand (accompanied by reasonable written certification), against cost, loss or liability incurred by the Intercreditor Agent (other than by reason of the fraud, negligence or wilful misconduct of the Intercreditor Agent) in acting as Intercreditor Agent in accordance with the terms of the Senior Finance Documents (unless the Intercreditor Agent has been reimbursed by, or indemnified to its satisfaction by, an Obligor pursuant to a Senior Finance Document or otherwise in writing). For the purposes of this Clause 23.15.1:
- (a) each Hedging Counterparty shall, in respect of each Hedging Agreement entered into by it, be deemed to have made an Advance to the Company in an amount equal to the Realised Hedge Loss (if any) under the Hedging Agreement to which such Hedging Counterparty is party; and
  - (b) "Available Commitment" shall mean, in relation to an Additional Lender, the available commitment under its Additional Lender Facility Agreement and the Available Commitments of all Lenders shall be determined accordingly.
- 23.15.2 Clause 23.15.1 shall not apply to the extent that the Intercreditor Agent is otherwise actually indemnified or reimbursed by any Party under any other provision of the Senior Finance Documents.
- 23.15.3 Provided that the Company is required to reimburse or indemnify the Intercreditor Agent for such cost, loss or liability in accordance with the terms of the Senior Finance Documents, the Company shall, within fifteen days of demand in writing by any Senior Secured Creditor, indemnify such Senior Secured Creditor in relation to any payment actually made by such Senior Secured Creditor pursuant to sub-clause 23.15.1 above.

#### **24. CONDUCT OF BUSINESS BY THE SENIOR SECURED CREDITORS**

No provision of the Senior Finance Documents shall:

- 24.1.1 interfere with the right of any Senior Secured Creditor to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

- 24.1.2 subject to Clause 15 (*Mitigation by Senior Secured Creditors*), oblige any Senior Secured Creditor to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- 24.1.3 oblige any Senior Secured Creditor to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## 25. SHARING AMONG THE SENIOR SECURED CREDITORS

### 25.1 Payments to Senior Secured Creditors

If a Senior Secured Creditor (a “**Recovering Senior Secured Creditor**”) receives or recovers any amount from an Obligor other than in accordance with the provisions of the Senior Finance Documents (excluding any such provision which permits the setting off of obligations owed by such Obligor against obligations owed to it by such Recovering Senior Secured Creditor but allowing, for the avoidance of doubt, any such provision in any Hedging Agreement permitting netting off between transactions under such Hedging Agreement) and applies that amount to a payment due under the Senior Finance Documents then:

- 25.1.1 the Recovering Senior Secured Creditor shall, within 5 Business Days, notify details of the receipt or recovery, to the Intercreditor Agent;
- 25.1.2 the Intercreditor Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Senior Secured Creditor would have been paid had the receipt or recovery been received and distributed in accordance with this Agreement, without taking account of any Tax which would be imposed on that Agent in relation to the receipt, recovery or distribution; and
- 25.1.3 the Recovering Senior Secured Creditor shall, within 10 Business Days of demand by the Intercreditor Agent, pay to the Intercreditor Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Intercreditor Agent determines may be retained by the Recovering Senior Secured Creditor as its share of any payment to be made, in accordance with this Agreement.

### 25.2 Redistribution of payments

The Intercreditor Agent shall treat the Sharing Payment as if it had been paid by the Company and distribute it between the Senior Secured Creditors (other than the Recovering Senior Secured Creditor) in accordance with this Agreement.

### 25.3 Recovering Senior Secured Creditor’s Rights

- 25.3.1 On a distribution by the Intercreditor Agent under 25.2 (*Redistribution of payments*), the Recovering Senior Secured Creditor shall be subrogated to the rights of the Senior Secured Creditors which have shared in the redistribution.
- 25.3.2 If and to the extent that the Recovering Senior Secured Creditor is not able to rely on its rights under sub-clause 25.3.1 above, the Company shall be liable to

the Recovering Senior Secured Creditor for a debt equal to the Sharing Payment which is immediately due and payable.

#### 25.4 **Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Senior Secured Creditor becomes repayable and is repaid by such Recovering Senior Secured Creditor, then:

- 25.4.1 each Senior Secured Creditor which has received a share of such Sharing Payment pursuant to Clause 25.2 (*Redistribution of payments*) shall, upon request of the Intercreditor Agent, pay to the Intercreditor Agent for account of that Recovering Senior Secured Creditor an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Senior Secured Creditor for its proportion of any interest on the Sharing Payment which that Recovering Senior Secured Creditor is required to pay); and
- 25.4.2 that Recovering Senior Secured Creditor's rights of subrogation in respect of any reimbursement shall be cancelled and the Company shall be liable to the reimbursing Senior Secured Creditor for the amount so reimbursed.

#### 25.5 **Exceptions**

This Clause 25 shall not apply to the extent that the Recovering Senior Secured Creditor would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.

#### 25.6 **Benefit**

The provisions of this Clause 25 are for the sole benefit of the Senior Secured Creditors and may be waived or amended by the Required Lenders without the consent of the Company provided there is no increase in the liability of the Company as a result.

### 26. **PAYMENT MECHANICS**

#### 26.1 **Payments under the Senior Finance Documents**

##### 26.1.1 ***Prior to an Event of Default***

Unless and until an Event of Default has occurred and is continuing:

- (a) all payments to be made by the Company to or for the account of any Lender under the Facility Agreement to which that Lender is a party shall be made to the relevant Facility Agent (or, in the case of a Revolving Credit Facility Lender, to such Revolving Credit Facility Lender) under that Facility Agreement for the account of that Lender, in the manner stipulated in the relevant Facility Agreement; and
- (b) all payments to be made by a Lender under a Facility Agreement shall be made to the relevant Facility Agent, not later than the time (if any) specified in the relevant Facility Agreement, to its account at such office

or bank as it may notify to that Lender from time to time for this purpose (or, in the case of a Revolving Credit Facility Lender, by such Revolving Credit Facility Lender directly).

#### 26.1.2 *After the occurrence of an Event of Default*

Subject to the Deed of Appointment and Priority, after the occurrence of an Event of Default that is continuing and unless the Intercreditor Agent agrees in writing that payment should continue to be made in accordance with sub-clause 26.1.1 (*Prior to an Event of Default*):

- (a) all payments to be made by the Company to or for the account of any Senior Secured Creditor or under any Senior Finance Document shall be made to the Intercreditor Agent (other than any such payments to be made to or for the account of the Security Agent which shall continue to be made to the Security Agent);
- (b) all payments to be made by any Lender under any Senior Finance Document (whether pursuant to Clause 25 (*Sharing Among the Senior Secured Creditors*) or otherwise) shall be paid to the Intercreditor Agent; and
- (c) all payments received by the Intercreditor Agent under this sub-clause 26.1.2 shall be distributed in accordance with Clause 33.6 (*Application of Enforcement Proceeds*) to the Person(s) specified therein or, where any such Person is a Hotel Facility Lender or a Project Facility Lender, to the relevant Facility Agent for the account of that Lender.

#### 26.2 **Payments by an Agent**

- 26.2.1 Save as otherwise provided herein, each payment received by an Agent as agent for or otherwise for the benefit of another Person shall, subject to Clause 26.3 (*Distributions to an Obligor*) and Clause 26.4 (*Clawback*), be made available by that Agent to the Person entitled to receive such payment for value the same day by transfer to such account of such Person with such bank in the principal financial centre of the country of the relevant currency as such Person shall have previously notified to that Agent.
- 26.2.2 A payment shall be deemed to have been made by an Agent on the date on which it is required to be made under the Senior Finance Documents if such Agent has, on or before that date, taken steps to make that payment in accordance with the regulations or operating procedures of the clearing or settlement system used by such Agent in order to make the payment.

#### 26.3 **Distributions to an Obligor**

Each Agent may (with the consent of the relevant Obligor or in accordance with Clause 27 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor



under the Senior Finance Documents or in or towards purchase of any amount of any currency to be so applied at a market rate of exchange in its usual course of business.

#### **26.4 Clawback**

- 26.4.1 Where a sum is to be paid to an Agent under the Senior Finance Documents for another Person, that Agent is not obliged to pay that sum to that Person until it has been able to establish to its satisfaction that it has actually received that sum.
- 26.4.2 If an Agent pays an amount to another Person and it proves to be the case that that Agent had not actually received that amount, then the Person to whom that amount was paid by that Agent shall on demand refund the same to that Agent together with interest on that amount from the date of payment to the date of receipt by that Agent, calculated by that Agent to reflect its cost of funds.

#### **26.5 No Set-off by Obligors**

All payments to be made by an Obligor under the Senior Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

#### **26.6 Business Days**

- 26.6.1 Any payment which is due to be made under any Senior Finance Document on a day that is not a Business Day shall be made on the next Business Day in the calendar month (if there is one) or the preceding Business Day (if there is not).
- 26.6.2 During any extension of the due date for payment of any principal pursuant to sub-clause 26.6.1 above, interest is payable on that principal at the rate payable on the original due date.

#### **26.7 Currency of account**

- 26.7.1 A repayment of an Advance or Unpaid Sum or a part of an Advance or Unpaid Sum shall be made in the currency in which the Advance or Unpaid Sum is denominated on its due date.
- 26.7.2 Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.
- 26.7.3 Each payment in respect of costs, expenses or Taxes under the Senior Finance Documents shall be made in the currency in which the costs, expenses or Taxes are incurred.
- 26.7.4 Any other amount payable under any of the Senior Finance Documents is, except as otherwise provided elsewhere in the Senior Finance Documents, payable in US dollars.

27. **SET-OFF**

Without prejudice to the provisions of Schedule 6 (*Accounts*) and subject to the terms of Clause 25 (*Sharing Among the Senior Secured Creditors*) and Clause 33 (*Intercreditor Arrangements*), a Senior Secured Creditor may, upon the occurrence of an Event of Default and for so long as it is continuing, set off any matured obligations owed by the Company under the Senior Finance Documents (to the extent beneficially owned by that Senior Secured Creditor) against any obligation (which, for the purpose of this provision only, shall be treated as due and payable, save for unmatured obligations under the Hedging Agreements) owed by that Senior Secured Creditor to the Company, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Senior Secured Creditor may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

28. **NON-RECOURSE LIABILITY**

Notwithstanding any provision in the Senior Finance Documents to the contrary no Operative shall be personally liable for payments due hereunder or under any of the Senior Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Senior Finance Document to which such Operative is party. The sole recourse of the Senior Secured Creditors for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Senior Finance Documents shall be against the Obligors, and not against any assets or property of any Operative save to the extent such Operative is party to a Senior Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

29. **NOTICES**

29.1 **Communications in Writing**

Any notice, demand or other communication (each, for the purposes of this Clause 29, a “**communication**”) to be made under or in connection with the Senior Finance Documents shall be made in writing but, unless otherwise stated, may be made by fax or letter.

29.2 **Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with the Senior Finance Documents is:

29.2.1 in the case of the Company, each of the GCLAs and each of the Agents, identified with its name below; and

29.2.2 in the case of each other Lender and each other Obligor, that notified in writing to the Intercreditor Agent prior to the date it becomes a party to the Senior Finance Documents,

or any substitute address, fax number or department or officer as the party may notify to the Intercreditor Agent (or the Intercreditor Agent may notify to the other parties, if a change is made by the Intercreditor Agent) by not less than 10 Business Days' notice.

### 29.3 Delivery

- 29.3.1 Any communication or document made or delivered by one Person to another under or in connection with the Senior Finance Documents shall only be effective:
- (a) if delivered personally or by overnight courier, when left at the relevant address;
  - (b) if by way of fax, when received in legible form; or
  - (c) if by way of letter, when it has been left at the relevant address or 10 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,
- and, if a particular department or officer is specified as part of its address details provided under Clause 29.2 (*Addresses*), if addressed to that department or officer.
- 29.3.2 Any communication or document to be made or delivered to an Agent shall be effective only when actually received by that Agent and then only if it is expressly marked for the attention of the department or officer identified with that Agent's signature below (or any substitute department or officer as that Agent shall specify for this purpose).
- 29.3.3 All notices to an Obligor shall be sent through a Facility Agent or the Intercreditor Agent (but always with a copy to the Intercreditor Agent). All notices from an Obligor under the Senior Finance Documents shall be sent to the Intercreditor Agent who shall distribute them to the Senior Secured Creditors.

### 29.4 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 29.2 (*Addresses*) or changing its own address or fax number, the Intercreditor Agent shall notify the other parties.

### 29.5 Electronic communication

- 29.5.1 Any communication to be made between an Agent and a Lender or between an Agent and another Agent under or in connection with the Senior Finance Documents may be made by electronic mail or other electronic means, if that Agent and the relevant Lender or Agent:
- (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

(b) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

(c) notify each other of any change to their address or any other such information supplied by them.

29.5.2 Any electronic communication made between an Agent and a Lender or another Agent shall be effective only when actually received in readable form and in the case of any electronic communication made by a Lender to an Agent or by an Agent to another Agent only if it is addressed in such a manner as the relevant Agent shall specify for this purpose.

#### 29.6 **English language**

29.6.1 Any notice given under or in connection with any Senior Finance Document must be in English.

29.6.2 All other documents provided under or in connection with any Senior Finance Document must be in English or, if not in English, and if so required by the relevant Agent, accompanied by a certified English translation and, in this case, the English translation shall prevail unless the document is a constitutional, statutory or other official document.

### 30. **CALCULATIONS AND CERTIFICATES**

#### 30.1 **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Senior Finance Document, the entries made in the accounts maintained by a Senior Secured Creditor are *prima facie* evidence of the matters to which they relate.

#### 30.2 **Certificates and Determination**

Any certification or determination by a Senior Secured Creditor of a rate or amount under any Senior Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

#### 30.3 **Day count convention**

Any interest, commission or fee accruing under a Senior Finance Document shall accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days (where due in US dollars) and 365 days (where due in HK dollars).

### 31. **PARTIAL INVALIDITY**

If, at any time, any provision of the Senior Finance Documents is or becomes illegal, invalid, or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

### 32. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Senior Secured Creditor, any right or remedy under the Senior Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Senior Finance Documents are cumulative and not exclusive of any rights or remedies provided by law.

### 33. INTERCREDITOR ARRANGEMENTS

#### 33.1 Notices of Required Decisions

33.1.1 If, at any time, a matter requiring a Decision comes to the notice of a Senior Secured Creditor, that Senior Secured Creditor shall promptly inform the Intercreditor Agent and, where relevant, its Facility Agent in writing.

33.1.2 If, at any time, a matter requiring a Decision comes to the notice of the Intercreditor Agent, the Intercreditor Agent shall promptly notify in writing each Facility Agent, the Revolving Credit Facility Lenders, each Additional Lender (and, after the occurrence of a Hedging Voting Right Event in relation to any Hedging Counterparty that is continuing, that Hedging Counterparty) of that matter specifying:

- (i) whether the matter concerns a Fundamental Term and, if not, which Senior Secured Creditors may vote in respect of the Decision and the aggregate Voting Entitlement required for the Decision to be made;
- (ii) the date and time by which the Intercreditor Agent requires receipt of all votes in respect of the Decision (the “**Decision Date**”); and
- (iii) following a Hedging Voting Right Event, the identity of the relevant Hedging Counterparty.

#### 33.2 Notice of Votes

Each Senior Secured Creditor shall copy notice of its vote to the Intercreditor Agent, to each Facility Agent and, as appropriate, the Revolving Capital Facility Lenders, each Additional Lender and each Hedging Counterparty notified by the Intercreditor Agent pursuant to Clause 33.1.2(iii) (*Notices of Required Decisions*).

#### 33.3 Decisions under the Senior Finance Documents

Subject to the other provisions of this Agreement, the exercise of any right, power, discretion or determination which has been delegated to the Intercreditor Agent under the Senior Finance Documents (save for any such right, power, discretion or determination to be exercised by any such party for its own account) shall require the consent or agreement of the Required Lenders *provided* that the Intercreditor Agent may exercise any such right, power, discretion or determination (including giving instructions to the Security Agent) without requiring any Decision which the Intercreditor Agent, acting reasonably, considers is a minor, administrative or technical matter which does not

adversely affect the rights of the Senior Secured Creditors under the Senior Finance Documents.

#### 33.4 **Restrictions On Remedies**

Subject to this Clause 33 (*Intercreditor Arrangements*), no Senior Secured Creditor may, at any time:

- 33.4.1 set off, or purport to set off, at any time, any amount owing to it under the Senior Finance Documents against any amount payable by it to an Obligor (except that any Hedging Counterparty may net off between transactions under a single Hedging Agreement);
- 33.4.2 take any action or commence any legal proceedings of whatsoever nature against an Obligor under or in respect of a Senior Finance Document to which that Obligor is a party including taking any steps or legal proceedings for the winding-up, dissolution or administration of any of the Obligors or for the appointment of a receiver, administrator, administrative receiver, conservator, custodian, trustee or similar officer of any of the Obligors or of any or all of its assets or revenues; or
- 33.4.3 foreclose on, or enforce or seek an order of the court to enforce all or any of the Security.

#### 33.5 **Notice of Default**

- 33.5.1 If any Lender has actual knowledge of a Default which has occurred, it shall so advise the Intercreditor Agent and, where relevant, its Facility Agent in writing.
- 33.5.2 If any Facility Agent has actual knowledge, or has received notice, of a Default which has occurred, it shall so advise the Intercreditor Agent and, where relevant, each Lender in its Lending Group in writing.
- 33.5.3 If the Intercreditor Agent has actual knowledge, or has received notice, of a Default which has occurred, it shall notify each Facility Agent, each Revolving Credit Facility Lender, each Additional Lender and each Hedging Counterparty in writing and, in the case of an Event of Default, it shall issue a notice under Clause 33.1 (*Notices of Required Decisions*) in respect of that Event of Default.

#### 33.6 **Application of Enforcement Proceeds**

Following the delivery of an Enforcement Notice, all Enforcement Proceeds paid to the Intercreditor Agent in accordance with the Deed of Appointment and Priority shall be applied by it (together with any other payments received by it pursuant to Clause 26.1.2 (*Payments under the Senior Finance Documents*)) in the following order:

- (i) first, in payment of all costs and expenses incurred by or on behalf of the Intercreditor Agent in connection with such enforcement or recovery and which have been certified, in writing, as having been incurred by the Intercreditor Agent;

- (ii) second, in payment *pro rata* of all costs and expenses incurred by or on behalf of the Facility Agents in connection with such enforcement or recovery and which have been certified, in writing, as having been incurred by the Facility Agent seeking recovery;
- (iii) third, in payment *pro rata* of all amounts paid by the Senior Secured Creditors under Clause 23.15 (*Indemnity to Intercreditor Agent*) of the Common Terms Agreement but which have not been reimbursed by the Company;
- (iv) fourth, in payment *pro rata* of all amounts paid by the Hotel Facility Lenders under clause 15.3 (*Indemnity to Hotel Facility Agent*) of the Hotel Facility Agreement or the Project Facility Lenders under clause 15.3 (*Indemnity to Project Facility Agent*) of the Project Facility Agreement but which have not been reimbursed by the Company;
- (v) fifth, in payment *pro rata* of all costs and expenses incurred by or on behalf of each Senior Secured Creditor in accordance with the Senior Finance Documents in connection with such enforcement and which have been certified, in writing, as having been incurred by the Senior Secured Creditor seeking recovery;
- (vi) sixth, in payment *pro rata* of all accrued and unpaid fees owing to the Agents under the Senior Finance Documents;
- (vii) seventh, in payment *pro rata* of all accrued and unpaid fees and commissions due to the Lenders under the Senior Finance Documents;
- (viii) eighth, in payment *pro rata* of all accrued but unpaid interest (including default interest) due under the Facility Agreements and all sums due under the Hedging Agreements;
- (ix) ninth, in payment *pro rata* of all principal instalments due under the Facility Agreements;
- (x) tenth, in payment *pro rata* of all other amounts owing to the Senior Secured Creditors due and payable under the Senior Finance Documents; and
- (xi) eleventh, in payment of the surplus (if any) to the Security Agent in accordance with the Deed of Appointment and Priority or to its order, *provided that*, following the giving of any notice by the Intercreditor Agent pursuant to sub-clause 19.2.2 of Clause 19.2 (*Remedies following an Event of Default*), the amounts referred to in paragraphs (viii) and (ix) above shall rank *pari passu*.

### 33.7 Representations and Warranties

Each Senior Secured Creditor party hereto represents and warrants to the other Senior Secured Creditors Party hereto that:

33.7.1 it is duly organised and validly existing under the laws of the jurisdiction in which it is incorporated;

33.7.2 it has power to enter into and has duly authorised the execution, delivery and performance of this Agreement;

33.7.3 the obligations expressed to be assumed by it hereunder are legal and valid obligations binding on it and enforceable against it in accordance with the terms hereof; and

33.7.4 it is not the beneficiary of any Liens in respect of any Financial Indebtedness owed to it by the Company other than under the Senior Finance Documents.

33.8 The provisions of this Clause 33 (*Intercreditor Arrangements*) are for the sole benefit of the Senior Secured Creditors and may be waived or amended without the consent or agreement of the Company provided there is no increase in the liability of the Company as a result.

#### **34. AMENDMENTS AND WAIVERS**

##### **34.1 Amendment and waiver of common terms**

Subject to Clause 25.6 (*Benefit*) and to Clause 34.2 to Clause 34.4 below, any term of, or matter dealt with under, this Agreement and any other Senior Finance Document may be amended, waived or supplemented with the agreement of the Company and/or the other Obligors which are a party to that Senior Finance Document and/or, as the case may be, the Required Lenders.

##### **34.2 Amendment and waiver of Facility Agreements**

Subject to Clause 34.3 and Clause 34.4 below, any term of, or matter dealt with under, a Facility Agreement may be amended, waived or supplemented with the agreement of the Company and/or, as the case may be, the required Senior Secured Creditors as specified in that Facility Agreement.

##### **34.3 Amendment and waiver of Fundamental Terms**

A Fundamental Term may only be amended or waived by agreement between the Obligors which are a party to the Senior Finance Document which contains that Fundamental Term and each Lender (and, in the case of the provisions referred to in paragraphs (a), (b), (f), (g), (h), (i), (j), (k) and (l) of the definition of Fundamental Term, each Hedging Counterparty).

##### **34.4 Amendment and waiver affecting Agents**

An amendment or waiver of any term of the Senior Finance Documents which relates to the rights and/or obligations of any Agent may not be effected without the prior written consent of that Agent.

#### **35. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.



36. **LANGUAGE**

The English language shall be the only official and recognised language of this Agreement. If for any reason a translation of this Agreement is required, such translation shall in the event of any dispute be secondary to the original English version which shall take precedence.

37. **GOVERNING LAW**

This Agreement shall be governed by English law.

38. **JURISDICTION**

38.1 **Jurisdiction of English courts**

38.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) (a “**Dispute**”).

38.1.2 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they shall not argue to the contrary.

38.1.3 This Clause 38.1 is for the benefit of the Senior Secured Creditors only. As a result, no Senior Secured Creditor shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Senior Finance Documents, the Senior Secured Creditors may take concurrent proceedings in any number of jurisdictions.

38.2 **Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Company:

38.2.1 irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and

38.2.2 agrees that failure by a process agent to notify the Company of the process shall not invalidate the proceedings concerned.

39. **CONFIDENTIALITY**

Subject to Clause 40 (*Gaming Authorities*), each of the Senior Secured Creditors agrees to keep confidential all non-public information of a proprietary or confidential nature provided to it by any Obligor pursuant to this Agreement *provided* that nothing herein shall prevent any Senior Secured Creditor from disclosing any such information:

(a) to any other Senior Secured Creditor, or any Affiliate thereof that is bound by confidentiality obligations;

- (b) to any other Person pursuant to Clause 21.8 (*Disclosure of Information*) or clause 18.9 (*Disclosure of Information by Security Agent*) of the Deed of Appointment and Priority;
- (c) to any of its or its Affiliates' employees, directors, agents, auditors, attorneys, accountants and other professional advisors who or that is bound by confidentiality obligations;
- (d) upon the request or demand of any Governmental Authority having jurisdiction over it;
- (e) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Legal Requirement or the rules of any stock exchange on which the shares or other securities of such Senior Secured Creditor or any Affiliate thereof are listed or by any other competent supervisory or regulatory body;
- (f) if required to do so in connection with any litigation or similar proceeding;
- (g) that has been publicly disclosed other than in breach of this Clause; or
- (h) in connection with the exercise of any remedy hereunder or under any other Senior Finance Document.

40. **GAMING AUTHORITIES**

Each of the Senior Secured Creditors agrees to cooperate, having regard to its internal procedures and policies, with the reasonable requests of any and all gaming authorities in connection with the administration of their regulatory jurisdiction over the Company or any Obligor, to the extent not inconsistent with any applicable legal, regulatory or contractual restrictions (including any duties of confidentiality) or the terms of the Senior Finance Documents, *provided* that the Senior Secured Creditors are indemnified for any cost, loss or liabilities incurred in connection with such cooperation.

**SCHEDULE 2**  
**CONDITIONS PRECEDENT**

**Part A**

**Conditions Precedent to the CP Satisfaction Date**

**1. Project Documents**

- (a) Receipt by the Intercreditor Agent of a copy of each of the Project Documents and Affiliate Agreements entered into as of the CP Satisfaction Date duly executed by all parties thereto and certified by a Responsible Officer of the Company to be a true, complete and up-to-date copy, to be in full force and effect and, in the case of each Affiliate Agreement, the transactions contemplated therein comply with the requirements of paragraph 10 of Part B of Schedule 5 (*Covenants*).
- (b) (i) Each Major Project Document has been duly authorised, executed and delivered by the parties thereto and duly filed, recorded, stamped and registered as necessary; and  
(ii) all conditions precedent to the effectiveness thereof (other than any such conditions relating to the occurrence of the CP Satisfaction Date) have been satisfied or waived in accordance with their respective terms and each such Major Project Document is in full force and effect accordingly.
- (c) The Notice to Proceed and the Prime Contractor's Performance Bond (in an amount of not less than USD28,514,815.90) have been duly issued in accordance with the terms of the Construction Contract.

**2. Senior Finance Documents**

- (a) Receipt by the Intercreditor Agent of an original of each of the following Senior Finance Documents duly executed by the parties thereto:
  - (i) each Facility Agreement;
  - (ii) the Common Terms Agreement;
  - (iii) each Security Document (in the case of any Operating Account referred to in paragraphs (b), (c) or (d) of the definition thereof or any Reinsurance, required to be entered into prior to the CP Satisfaction Date);
  - (iv) any other Senior Finance Documents (other than any Ancillary Finance Document) entered into prior to the CP Satisfaction Date; and
  - (v) any other document entered into which the Intercreditor Agent and the Company agree prior to the CP Satisfaction Date to designate as a Senior Finance Document.

- (b) Each of the Ancillary Finance Documents has been duly executed by the parties thereto.
- (c)
  - (i) Save in respect of the authorisation by the Macau SAR required to be given in accordance with the Land Concession Consent Agreement in relation to the Land Security Assignment and the notice required to be given to the Macau SAR in relation to the Assignment of Rights, each Senior Finance Document referred to in this paragraph 2 has been duly authorised, executed and delivered by such of the Obligors, the Performance Bond Provider and the other Major Project Participants as are party thereto and duly filed, notified, recorded, stamped and registered as necessary;
  - (ii) all conditions precedent to the effectiveness thereof (other than any such conditions relating to the occurrence of the CP Satisfaction Date) have been satisfied or waived in accordance with their respective terms and each such Senior Finance Document (save as provided in this sub-paragraph (c)) is in full force and effect accordingly; and
  - (iii) none of such of the Obligors, the Performance Bond Provider or the other Major Project Participants as is party to any such Senior Finance Document is or, but for the passage of time and/or giving of notice will be, in breach of any obligation thereunder.

3. **Advisers' Reports and Certificates**

Receipt by the Intercreditor Agent of the following reports and other documents and, in the case of each report, confirmed by the relevant adviser to be the final report prior to the CP Satisfaction Date:

- (a) the Technical Adviser's report in relation to the Projects (including confirmation that the Projects constitute Category C projects under the Equator Principles);
- (b) the Insurance Adviser's report in relation to the Insurances;
- (c) the Market Adviser's report in relation to the Projects; and
- (d) the Financial Model and the Tax Adviser's report in relation to the Projects.

4. **Approved List**

Receipt by the Intercreditor Agent of a copy of the agreement between the GCLAs and the Company approving the Approved List.

5. **Due establishment, authority and certification**

- (a) In relation to the Company, receipt by the Intercreditor Agent of a certificate in substantially the form set out in Part C (*Form of Company's Due Establishment CP Satisfaction Date Certificate*) of this Schedule 2 signed by a Responsible Officer of the Company and which:
  - (i) attaches a copy of the Company's Governing Documents; and

- (ii) attaches a board resolution approving the execution, delivery and performance of the Transaction Documents to which it is a party and the terms and conditions thereof and authorising a named person or persons to sign such Transaction Documents and any document to be delivered by the Company pursuant to any Transaction Documents.
- (b) In relation to each of the Wynn Obligors, the Performance Bond Provider and the other Major Project Participants (other than the Macau SAR), receipt by the Intercreditor Agent of a certificate signed by a Responsible Officer of each such Person in substantially the form set out in Part D (*Form of Major Project Participant's CP Satisfaction Date Certificate*) of this Schedule 2 attaching copies of:
  - (i) its Governing Documents; and
  - (ii) a board resolution approving the execution, delivery and performance of the Transaction Documents to which it is a party and the terms and conditions thereof and authorising a named person or persons to sign such Transaction Documents and any document to be delivered by it pursuant thereto.

6. **Project Documents and Permits**

Receipt by the Intercreditor Agent of a certificate, in substantially the form set out in Part G (*Form of Company's CP Satisfaction Date Certificate*) of this Schedule 2 (the "**Company's CP Satisfaction Date Certificate**") signed by a Responsible Officer of the Company and which, amongst other things:

- (a) certifies that copies of documents delivered in satisfaction of other conditions precedent in this Part A remain, save to the extent of any subsequent amendments made in accordance with the Senior Finance Documents, true, complete and up-to-date copies in full force and effect as at the CP Satisfaction Date;
- (b) attaches copies of any such amendments referred to in sub-paragraph (a) above and certifies that such copies are true, complete and up-to-date and in full force and effect as at the CP Satisfaction Date; and
- (c) confirms that:
  - (i) all Permits described in Part A of Schedule 12 (*Permits*) shall have been issued and be in full force and effect and not subject to current legal proceedings or to any unsatisfied conditions (that are required to be satisfied by the CP Satisfaction Date) that could reasonably be expected to materially adversely modify any Permit, to revoke any Permit, to restrain or prevent the construction or operation of the Projects or otherwise impose adverse conditions on either Project or the financing contemplated

under the Senior Finance Documents and all applicable appeal periods with respect thereto shall have expired;

- (ii) with respect to any of the Permits described in Part B of Schedule 12 (*Permits*), (i) each such Permit is of a type that is routinely granted on application and compliance with the conditions for issuance and (ii) the Company is not aware of any facts or circumstances which indicate that any such Permit will not be timely obtainable without undue expense or delay by the Company or the applicable Person, respectively, prior to the time that it becomes required; and
- (iii) all other Permits have been obtained or effected to the extent they are required as of the date of the certificate and, as far as the Company is aware, no reasonable basis exists for it to believe that the Permits which are not required at such date will not be obtained when they are required,

and, in the case of the Permits described in Part A of Schedule 12 (*Permits*), attaching a copy of each such Permit.

7. **[Not used]**

8. **Security**

Receipt by the Intercreditor Agent of evidence that:

- (a) save in respect of the authorisation by the Macau SAR required to be given in accordance with the Land Concession Consent Agreement in relation to the Land Security Assignment and the notice required to be given to the Macau SAR in relation to the Assignment of Rights, each Security Document has been duly filed, notified, recorded, stamped and registered as necessary and all other actions necessary in the reasonable opinion of the Intercreditor Agent or the Security Agent to perfect the Security have been carried out; and
- (b) the Securities Account has been established in accordance with the Wynn Resorts Support Agreement and is fully funded as provided therein.

9. **Insurance**

- (a) Receipt by the Intercreditor Agent of a certificate addressed to it from the Insurance Adviser in substantially the form set out in Part E (*Form of Insurance Adviser's CP Satisfaction Date Certificate*) of this Schedule 2 certifying that all Construction Period Insurances required by the Senior Finance Documents to be in effect at the CP Satisfaction Date are in full force and effect and all premia (if any) due and payable as at the CP Satisfaction Date have been paid and the Secured Creditors have been named as co-insureds under those insurances in accordance with Schedule 7 (*Insurance*).
- (b) Receipt by the Intercreditor Agent of certified copies of all insurance policies, cover notes or insurance slips then available in respect of Insurances then required to be maintained by the Company.

- (c) Receipt by the Intercreditor Agent of a Reinsurance Broker's Letter of Undertaking from each of the brokers referred to in paragraph 2.2 of Schedule 7 (*Insurance*) through whom Reinsurances have been effected.
- (d) Receipt by the Intercreditor Agent of confirmation from the Licensor that:
  - (i) the Insurances set out in Schedule 7 (*Insurance*) satisfy the insurance requirements set out in Section 8.01 of the IP Agreement; and
  - (ii) the insurers with whom such Insurances are effected are acceptable to the Licensor.

10. **Accounts**

Each of the Accounts specified in paragraph 1.1 of Schedule 6 (*Accounts*) has been established.

11. **Financials**

Receipt by the Intercreditor Agent of:

- (a) pro forma statement of the Company's assets and liabilities as at a date not more than one month prior to the CP Satisfaction Date; and
- (b) the most recent quarterly and annual financial statements of the type and in respect of the Persons specified in paragraph 1 of Part A of Schedule 5 (*Covenants*), together with certificates from a Responsible Officer of each such Person certifying such financial statements and stating that no material adverse change in the assets, liabilities, operations or financial condition of each such Person has occurred since the dates of the respective financial statements, except as otherwise provided in such certificate.

12. **Process agents**

Where such appointment is required under any Senior Finance Document, process agent acceptance of its appointment by the Company and each of such of the other Obligors, the Performance Bond Provider and the other Major Project Participants as is party to such Senior Finance Document for the acceptance of legal proceedings.

13. **Specimen signatures**

Receipt by the Intercreditor Agent of specimen signatures of all Responsible Officers of the Company who shall be issuing Advance Requests.

14. **Legal opinions**

Receipt by the Intercreditor Agent of legal opinions from:

- (a) Mr Henrique Saldanha, Macanese legal adviser to the Senior Secured Creditors;
- (b) Mr Alexandre Correia da Silva, Macanese legal adviser to the Company;

- (c) Lovells, English legal advisers to the Company in relation to the Major Project Documents governed by English law and referred to in subparagraphs (c) and (d) of the definition thereof;
- (d) Lionel Sawyer & Collins, Nevada legal adviser to the Senior Secured Creditors;
- (e) Schreck Brignone, Nevada legal adviser to Wynn Resorts;
- (f) Mann and Partners, Isle of Man legal adviser to the Senior Secured Creditors in the Agreed Form;
- (g) Clifford Chance, Hong Kong SAR legal advisers to the Senior Secured Creditors in the Agreed Form;
- (h) Clifford Chance, English legal advisers to the Senior Secured Creditors in the Agreed Form;
- (i) Mallesons Stephen Jaques, Hong Kong SAR legal advisers to Leighton Contractors (Asia) Limited;
- (j) Mallesons Stephen Jaques, Hong Kong SAR legal advisers to China State Construction Engineering (Hong Kong) Limited;
- (k) Mr Leonel A. Alves, Macanese legal adviser to China Construction Engineering (Macau) Company Limited;
- (l) Mallesons Stephen Jaques, Australian legal advisers to Leighton Holdings Limited;
- (m) Mallesons Stephen Jaques, Hong Kong SAR legal advisers to China Overseas Holdings Limited;
- (n) Skadden, Arps, Slate, Meagher & Flom LLP, New York legal advisers to the Company;
- (o) Mr Leonel A. Alves, Macanese legal adviser to Banco Nacional Ultramarino, S.A.; and
- (p) Mr Leonel A. Alves, Macanese legal adviser to Companhia de Seguros de Macau, S.A.

15. **Fees and expenses**

Receipt by the Intercreditor Agent of evidence that:

- (a) all taxes, fees and other costs payable in connection with the execution, delivery, filing, recording, stamping and registering of the documents referred to in this Part A; and
- (b) all fees, costs and expenses due to the Secured Creditors (including all amounts payable pursuant to any Fee Letter) and their advisers under the Senior Finance Documents on or before the CP Satisfaction Date,



have been paid or shall be paid out of the proceeds of the Initial Advance (to the extent that such amounts have been duly invoiced).

**16. Performance Bond**

Receipt by the Intercreditor Agent of evidence that the Concession Contract Performance Bond has been issued under the Performance Bond Facility as required by Article 61 of the Concession Contract.

**17. Concession Contract**

(a) Receipt by the Intercreditor Agent of evidence that:

- (i) the capital requirement under Article 15 of the Concession Contract has been complied with;
- (ii) the procedural requirements under Article 16 of the Concession Contract relevant to the creation of security over shares have been complied with;
- (iii) the Company has notified the Macau SAR regarding the Facilities and the Security granted in favour of the Secured Creditors and produced copies of the Senior Finance Documents to the Macau SAR pursuant to Articles 34(2) and (3) of the Concession Contract;
- (iv) expenditure of the total Project Costs referred to in the Project Budget which will be included in the calculation of the investment amount of MOP 4 billion will cause the Company to satisfy the requirement under the Concession Contract of expending MOP 4 billion within seven years after the date of the Concession Contract;
- (v) legislation has been enacted by the Macau SAR which provides for casino operators such as the Company to be the grantors of credit to casino patrons;
- (vi) the letter agreements dated 1 May 2002 between the Company and Banco Nacional Ultramasino and the Company and the Macau SAR in relation to the termination of the Concession Contract are of no force or effect; and
- (vii) each area in which any operation of casino games of chance or other forms of gaming will be carried out following the opening of the Projects has been classified by the Macau SAR as a casino or gaming zone in accordance with article 9 of the Concession Contract.

(b) Receipt by the Intercreditor Agent of copies of all documents submitted to the Macau SAR as required under Article 21 of the Concession Contract and evidence reasonably satisfactory to the Intercreditor Agent that approval of the Company's delegation of management authority (including the appointment of the executive director, the scope of power of the executive director and term of authorisation) has been granted by the Macau SAR pursuant to Article 21 of the Concession Contract.

- (c) Receipt by the Intercreditor Agent of a letter from Macau SAR in relation to the granting of extension of time for completion of the Projects from 31 December 2006.

**18. Land and Land Concession Contract**

Receipt by the Intercreditor Agent of evidence that:

- (a) the Land Concession Contract is registered with the Macau Real Estate Agency;
- (b) the Land Concession Contract has been published in the Official Bulletin; and
- (c) the amount payable to Sociedade de Empreendimentos Nam Van S.A.R.L. for the surrendering by Sociedade de Investimento Imobiliario Hang Keng Van, S.A.R.L., Sociedade de Investimento Imobiliario Lok Keng Van, S.A.R.L. and Sociedade de Investimento Imobiliario Hei Keng Van, S.A.R.L. of their respective interests in the land registered with the Macau Real Estate Registry with registration numbers 22322, 22324 and 22325 does not exceed MOP 140,000,000.

**19. Auditors**

Receipt by the Intercreditor Agent of evidence that the Company has appointed the Auditors and the Auditors have accepted such appointment.

**20. Continued Appointment of Advisers**

The Insurance Adviser and the Technical Adviser have been appointed to act after the Signing Date in accordance with a scope of work as agreed by the Company and the Intercreditor Agent.

**21. No Material Adverse Effect**

Receipt by the Intercreditor Agent of a certificate, in substantially the form of the Company's CP Satisfaction Date Certificate, from the Company confirming that, as at the CP Satisfaction Date, no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur.

**22. Projections**

Receipt by the Intercreditor Agent of Projections for the Company for the period from 1 October 2006 to 31 December 2007 and which:

- (a) demonstrate compliance with paragraph 1 of Part B of Schedule 5 (*Covenants*);
- (b) otherwise comply with the requirements of paragraph 2(c) of Part A of Schedule 5 (*Covenants*).

**23. Litigation**

Receipt by the Intercreditor Agent of a certificate, in substantially the form of the Company's CP Satisfaction Date Certificate, from the Company confirming that no

action, suit, proceeding or investigation of any kind shall have been instituted or, to the Company's knowledge, threatened, including actions or proceedings of or before any Governmental Authority, to which the Company, either Project or, to the knowledge of the Company, any other Obligor, the Performance Bond Provider or other Major Project Participant, is a party or is subject, or by which any of them or any of their properties or either Project are bound, in each case, that could reasonably be expected to have a Material Adverse Effect, nor is the Company aware of any reasonable basis for any such action, suit, proceeding or investigation and no injunction or other restraining order shall have been issued and no hearing to cause an injunction or other restraining order to be issued shall be pending or noticed with respect to any action, suit or proceeding if the same reasonably could be expected to have a Material Adverse Effect.

**24. Project Budget**

Receipt by the Intercreditor Agent at or prior to the Signing Date of a budget in the form of Schedule 13 (*Form of Project Budget*) which:

- (a) includes such other information and supporting data as any of the Senior Secured Creditors or the Technical Adviser may reasonably require; and
- (b) demonstrates, without taking account of any amount of Contingent Equity or any amount of the Contingent Debt Facilities, no Forecast Funding Shortfall.

**25. Project Schedule**

Receipt by the Intercreditor Agent at or prior to the Signing Date of a schedule for construction and completion of the Projects in the Agreed Form which demonstrates that Substantial Completion will occur and the Opening Conditions specified in paragraph (a) of the definition thereof will have been satisfied on or before 31 December 2006.

**26. Schedule of Values**

Receipt by the Intercreditor Agent of the "Schedule of Values" (as defined in the Construction Contract) submitted and approved in accordance with section 5.1 of the Construction Contract.

**27. Representations and Warranties**

Receipt by the Intercreditor Agent of a certificate, in substantially the form of the Company's CP Satisfaction Date Certificate, from the Company confirming that the representations and warranties of:

- (a) the Company, each Wynn Obligor and the Licensor set forth in Schedule 4 (*Representations and Warranties*) or in any of the other Transaction Documents is true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date); and
- (b) to the Company's knowledge, the Performance Bond Provider, any Obligor and each other Major Project Participant (in each case other than the Company, any Wynn Obligor or the Licensor) set forth in any of the Transaction Documents is

true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date), unless the failure of any such representation and warranty referred to in this sub-paragraph (b) to be true and correct could not reasonably be expected to have a Material Adverse Effect.

**28. Plans and Specifications**

The Company shall have delivered to the Technical Adviser or (on such terms as the Technical Adviser may reasonably require) made available to it in Hong Kong or Macau all plans, specifications, design documents, schematic drawings and related items for the design, architecture and construction of the Projects.

**29. PASA and IP Agreement**

- (a) The PASA and PASA Direct Agreement have been entered into with a Person as PASA Agent who is, directly or indirectly, a wholly owned Subsidiary of Wynn Resorts and otherwise reasonably acceptable to the Intercreditor Agent and the Intercreditor Agent has received such legal opinions, in form and substance reasonably satisfactory to it, concerning the entry by such Person into the PASA and PASA Direct Agreement, the efficacy thereof and such other matters as it may reasonably require.
- (b) The IP Agreement and IP Direct Agreement have been entered into with a Person as Licensor who is Wynn Resorts and/or, directly or indirectly, a wholly owned Subsidiary of Wynn Resorts and otherwise reasonably acceptable to the Intercreditor Agent and the Intercreditor Agent has received such legal opinions, in form and substance reasonably satisfactory to it, concerning the entry by such Person into the IP Agreement and the IP Direct Agreement, the efficacy thereof and such other matters as it may reasonably require.
- (c) The Licensor has acceded to the Sponsors' Subordination Deed in accordance with the terms thereof.

**30. Shareholder Reorganisation**

- (a) Receipt by the Intercreditor Agent of a Substantial Shareholder's Undertaking in form and substance satisfactory to it from each Substantial Shareholder (if any) as at the CP Satisfaction Date.
- (b) Receipt by the Intercreditor Agent of a Relevant Party's Undertaking in form and substance satisfactory to it from each Relevant Party (if any) as at the CP Satisfaction Date.
- (c) Receipt by the Intercreditor Agent of evidence that, as at the CP Satisfaction Date, all shares in Wynn Holdings not legally and beneficially owned by Wynn International as at the Signing Date are either legally and beneficially owned by Wynn International or their original owners (direct and indirect) as at the Signing Date.

**Part B**

**(I) Conditions Precedent to each Advance under the Term Loan Facilities**

**1. No Default**

No Default shall have occurred and be continuing.

**2. Representations and Warranties**

The representations and warranties contained in Schedule 4 (*Representations and Warranties*) which are repeated by the Company pursuant to Clause 17.2 (*Timing*) are true and correct in all material respects with reference to the facts and circumstances existing on the Advance Date.

**3. No Forecast Funding Shortfall; Project Schedule**

None of the Project Budget (or any update thereof), the Project Schedule (or any update thereof) or any other report, certificate or other document required to be delivered to the Intercreditor Agent pursuant to Part A or this Part B of this Schedule 2 indicate:

- (a) a Forecast Funding Shortfall (determined, in the case of the Initial Advance under the Term Loan Facilities, without taking account of any amount of Contingent Equity or any amount of the Contingent Debt Facilities) has occurred and is continuing or could reasonably be expected to result from such Advance; or
- (b) that Substantial Completion will not be achieved and the Opening Conditions specified in paragraph (a) of the definition thereof satisfied by (in the case of the Initial Advance under the Term Loan Facilities) 31 December 2006, or (in the case of each subsequent Advance) 28 February 2007.

**4. Advance Request and Certificate**

Receipt by the Intercreditor Agent and the relevant Facility Agent of an Advance Request containing all attachments, exhibits and certificates required thereby, all appropriately completed and duly executed by a Responsible Officer of the Company, including:

- (a) in the case of the Initial Advance under the Term Loan Facilities, a statement of all payments made in respect of Project Costs prior to the date of the Advance Request broken down by Line Item and supported, in the case of any payment exceeding USD1,000,000 or its equivalent, to the reasonable satisfaction of the Intercreditor Agent, by invoices, receipts and other documentary evidence attached to the Advance Request;
- (b) a statement of the specific purposes to which each Advance shall be applied, including:
  - (i) whether payment (or refinancing of payment) for Hotel Project Costs or other Project Costs; and

- (ii) a break down by Line Item of each such category of Project Costs supported:
  - (A) in the case of any payment exceeding USD1,000,000 or its equivalent, to the reasonable satisfaction of the Intercreditor Agent, by invoices, receipts and other documentary evidence attached to the Advance Request; and
  - (B) in the case of any progress payment claimed pursuant to the Construction Contract, to the reasonable satisfaction of the Intercreditor Agent, by the relevant approved "Application for Progress Payment" and "Contractor's Certificate" (each as defined in the Construction Contract) and supporting documentary evidence delivered by the Prime Contractor in accordance with article V of the Construction Contract attached to the Advance Request;
- (c) insofar as any previous Advance was requested for the purpose of payments which, at the time of its Advance Date, were not yet payable, a statement of such payments made since the last Advance Request supported, in the case of any payment exceeding USD1,000,000 or its equivalent, to the reasonable satisfaction of the Intercreditor Agent, by invoices, receipts and other documentary evidence attached to the Advance Request;
- (d) certification that each Advance is required for the purpose specified and that, where such purpose comprises payment (or refinancing of payment) for Project Costs, there are no amounts standing to the credit of (or required to be deposited to) any of the Accounts available to meet such Project Costs;
- (e) certification that:
  - (i) the Company has no reason to believe that either the current Project Budget or the current Project Schedule (being, in the case of the Initial Advance under the Term Loan Facilities, the Project Schedule delivered by the Company pursuant to paragraph 25 of Part A of this Schedule 2) is not accurate; and
  - (ii) neither the current Project Budget nor the current Project Schedule indicate:
    - (A) a Forecast Funding Shortfall (determined, in the case of the Initial Advance under the Term Loan Facilities, without taking account of any amount of Contingent Equity or any amount of the Contingent Debt Facilities) has occurred and is continuing or could reasonably be expected to result from such Advance; or
    - (B) that Substantial Completion will not be achieved and the Opening Conditions specified in paragraph (a) of the definition thereof satisfied by (in the case of the Initial Advance under the Term

and attaching any update thereof; and

- (f) certification that, since the CP Satisfaction Date, no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur.

5. **Adviser's Certificates**

- (a) Receipt by the Intercreditor Agent together with the Advance Request of a certificate from the Technical Adviser in substantially the form set out in Part F (*Form of Technical Advisor's Advance Certificate*) of this Schedule 2 (the "**Technical Adviser's Advance Certificate**") certifying that the Technical Adviser has no reason to believe that:
  - (i) the current Project Budget is not accurate in all material respects or that it does not fairly represent the Remaining Project Costs; or
  - (ii) the current Project Schedule (being, in the case of the Initial Advance under the Term Loan Facilities, the Project Schedule delivered by the Company pursuant to paragraph 25 of Part A of this Schedule 2) is not accurate in all material respects or that Substantial Completion will not be achieved and the Opening Conditions specified in paragraph (a) of the definition thereof satisfied by (in the case of the Initial Advance under the Term Loan Facilities) 31 December 2006 or (in the case of each subsequent Advance) 28 February 2007.
- (b) Receipt by the Intercreditor Agent of a certificate from the Technical Adviser in substantially the form of the Technical Adviser's Advance Certificate certifying that, to the best of its knowledge:
  - (i) the Advances requested by the Company under the Term Loan Facilities are, save to the extent they are to be applied in accordance with Clause 7.1 (*Final Completion Costs*) or Clause 7.2 (*Rebalancing between Debt and Equity*), required prior to the date falling 30 days after the proposed Advance Date to make payments in accordance with the Project Budget or to refinance such payments previously made; and
  - (ii) certifications and statements made by the Company in the Advance Request (as referred to in Part F (*Form of Technical Advisor's Advance Certificate*) of this Schedule 2) and all attachments thereto are correct in all material respects.

6. **Recent Reports, Financial Statements and Other Information**

- (a) Receipt by the Intercreditor Agent of each of the reports, financial statements and other information due pursuant to paragraphs 1 and 2 of Part A of Schedule 5 (*Covenants*) on or before the date of the Advance Request.

(b) Receipt by the Intercreditor Agent of the Technical Adviser's Monthly Report due on or before the date of the Advance Request.

7. **Hedging**

- (a) Receipt by the Intercreditor Agent of a copy (certified as being true and correct by a Responsible Officer) of each Hedging Agreement (and each confirmation thereunder) required to be entered into in accordance with the Hedging Arrangements.
- (b) The Company shall have delivered notice in respect of each Hedging Agreement to the counter-party thereto and the Security Agent shall have received an acknowledgement from each such counter-party, each such notice and acknowledgement being in the form required by clause 4 of the Debenture.

8. **Fees and Expenses**

The Company shall have paid or arranged for payment out of the requested Advance of all fees, expenses and other charges then due and payable by it under the Senior Finance Documents or under any agreements between the Company and any of the Advisers (to the extent that such amounts have been duly invoiced).

9. **Project Documents and Subcontracts**

The Company shall have delivered a copy of:

- (a) each Project Document;
- (b) each first tier Subcontract entered into by the Prime Contractor with a contract price (or expected aggregate amount to be paid in the case of "cost plus" contracts) in excess of USD500,000 or its equivalent; and
- (c) each first tier Subcontract with a contract price (or expected aggregate amount to be paid in the case of "cost plus" contracts) in excess of USD500,000 or its equivalent entered into by any other Contractor who is party to a Project Document entered into with the Company that is not subject to a fixed price,

to the Intercreditor Agent and the Technical Adviser promptly after mutual execution and delivery thereof. The Company shall have certified that such Project Documents and Subcontracts are consistent with the Project Budget, the Project Schedule and the Plans and Specifications and the Technical Adviser shall have certified (in substantially the form of the Technical Adviser's Advance Certificate) that the Project Documents referred to in subparagraph (a) are consistent in all material respects with the Project Budget, the Project Schedule and the Plans and Specifications.

10. **Terrorism Insurance**

Receipt by the Intercreditor Agent of evidence satisfactory to it that the maximum sum insured under terrorism insurance in accordance with paragraph 4.1 of Appendix 2 to Schedule 7 (*Insurance*) is not less than the amount required had the Advance requested already been made.



**11. Equity**

In the case only of the Initial Advance under the Term Loan Facilities, receipt by the Intercreditor Agent of evidence that:

- (a) the full amount of Base Equity has been paid up or advanced to the Company; and
- (b) the Subordinated Funding has been advanced in full to the Company.

**(II) Conditions Precedent to each Advance under the Contingent Debt Facilities**

In addition to the conditions set out in sub-section I of this Part B, prior to the date of making the Initial Advance under the Contingent Debt Facilities:

**1. Base Debt Facilities**

Receipt by the Intercreditor Agent of certification from the Company that the full amount of each Base Debt Facility has been utilised.

**2. Contingent Equity**

Receipt by the Intercreditor Agent of certification from the Company that the full amount of Contingent Equity specified in paragraphs (a) and (b) of the definition thereof has been paid up or advanced to the Company.

**(III) Conditions Precedent to Advances in respect of Final Completion Costs**

In addition to all the conditions set out in sub-section I and (if applicable) sub-section II of this Part B, prior to the making of an Advance under Clause 7.1 (*Final Completion Costs*):

**Technical Adviser Confirmation**

Receipt by the Intercreditor Agent of certification from the Technical Adviser in substantially the form of the Technical Adviser's Advance Certificate that:

- (a) Substantial Completion has been achieved; and
- (b) the Technical Adviser agrees with the estimate of Final Completion Costs provided to the Intercreditor Agent.

**(IV) Conditions Precedent to each Advance under the Revolving Credit Facility**

As set out in the Revolving Credit Facility Agreement.

**SCHEDULE 4**  
**REPRESENTATIONS AND WARRANTIES**

**1. Organization**

Each of the Wynn Obligor and the Company is duly organized, incorporated, validly existing and (if applicable) in good standing under the laws of the jurisdiction of its organization and has all requisite corporate or limited liability company power and authority to:

- (a) carry on its business as now conducted;
- (b) own or hold under lease and operate the Properties it purports to own or hold under lease;
- (c) carry on its business as now being conducted and as now proposed to be conducted in respect of the Projects;
- (d) incur the Financial Indebtedness contemplated hereunder; and
- (e) execute, deliver and perform under each of the Transaction Documents to which it is a party and create any Lien on its Property contemplated thereunder;

save, in relation to Wynn Resorts in respect of sub-paragraphs (a), (b), (c) and (d) only, to the extent any lack thereof could not reasonably be expected to have a Material Adverse Effect.

**2. Authorization; No Conflict**

2.1 Each of the Wynn Obligor and the Company has taken all necessary corporate or limited liability company action, as the case may be, to authorize the execution, delivery and performance of the Transaction Documents to which it is a party. Neither the execution, delivery or performance of each Transaction Document to which it is a party nor the consummation of the transactions contemplated thereby:

- (a) by each Wynn Obligor and the Company does or will contravene the formation or constitutional documents or any other material Legal Requirement then applicable to or binding on each such Obligor; or
- (b) does or will contravene or result in any breach or constitute any default under, or result in or require the creation or imposition of any Lien upon any of the Properties of any Wynn Obligor or the Company or under any security or agreement or instrument to which any Wynn Obligor or the Company is a party or by which it or any of its respective properties may be bound, except for Permitted Liens or as could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

2.2 Save in respect of the authorisation by the Macau SAR required to be given in accordance with the Land Concession Consent Agreement in relation to the Land Security Assignment and the notice required to be given to the Macau SAR in relation to

the Assignment of Rights, no consent or authorization or filing with, notice to or other act by or in respect of, any Governmental Authority or any Person is required in connection with the borrowings under the Senior Finance Documents or with the execution, delivery, performance, validity or enforceability of any of the Transaction Documents, except consents, authorisations, filings, registrations and notices described in Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*) (which consents, authorisations, registrations, filings and notices have, unless otherwise indicated on such schedule, been obtained or made and are in full force and effect) or, in the case of any Transaction Documents entered into after the date of the Initial Advance under the Term Loan Facilities, as have been obtained or made and are in full force and effect at the time this representation is deemed to be made.

**3. Legality, Validity and Enforceability**

- 3.1 Each of the Transaction Documents to which any of the Wynn Obligor or the Company is a party is a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, subject only to bankruptcy and similar laws and principles of equity.
- 3.2 None of the Transaction Documents to which any of the Wynn Obligor or the Company is a party has been amended or modified except in accordance with this Agreement.
- 3.3 The Company has not entered into any additional contracts in contravention of the terms of any Senior Finance Document.

**4. Compliance with Law and Permits**

Each Wynn Obligor and the Company is in compliance in all material respects with all material Legal Requirements (including all material Environmental Laws) and Permits (save, in the case of Wynn Resorts, any non-compliance that could not reasonably be expected to have a Material Adverse Effect) and no notices of any material violation of any Permit made or issued by or with a Governmental Authority relating to any of the Projects have been issued, entered or received by any such Obligor (and which violation is continuing).

**5. Permits**

- 5.5 As of the Signing Date, there are no Permits made or issued by or with a Governmental Authority that are required or will become required under existing Legal Requirements for the ownership, development, construction or financing of either Project, other than the Permits described in Schedule 12 (*Permits*).
- 5.2 All Permits have been obtained or effected to the extent they are required at the time this representation is deemed to be made and, as far as the Company is aware, no reasonable basis exists for it to believe that the Permits which are not required at such time shall not be obtained when they are required.

6. **Litigation**

There are no pending or, to the Company's knowledge, threatened actions, suits, proceedings or investigations of any kind, including actions or proceedings of or before any Governmental Authority, to which any Wynn Obligor or the Company is a party or is subject, or by which any of them or any of their Properties (including, without limitation, revenue) or either of the Projects is bound that, individually or collectively, could reasonably be expected to have a Material Adverse Effect nor is the Company aware of any reasonable basis for any such action, suit, proceeding or investigation.

7. **Financial Statements**

The financial statements of the Company and the Wynn Obligors, delivered to the Intercreditor Agent pursuant to Clause 2.1 (*Conditions Precedent to the CP Satisfaction Date*) on or prior to the CP Satisfaction Date, were, and, in the case of financial statements to be delivered after the CP Satisfaction Date pursuant to paragraph 1 of Part A of Schedule 5 (*Covenants*) hereto, will be prepared in conformity with applicable GAAP and fairly present in all material respects the financial position (on a consolidated basis in the case of Wynn Resorts) of the entities described in such financial statements as of the respective dates thereof and the results of operations and cash flows (on a consolidated basis in the case of Wynn Resorts) of the entities described therein for each of the periods then ended subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. No such financial statement fails to disclose any material Guarantee Obligations, contingent liabilities or liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including, without limitation, any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, required to be reflected therein.

8. **Security Interests**

8.1 As of the CP Satisfaction Date, save in respect of the authorisation by the Macau SAR required to be given in accordance with the Land Concession Consent Agreement in relation to the Land Security Assignment and the notice required to be given to the Macau SAR in relation to the Assignment of Rights:

- (a) the security interests granted or purported to be granted to the Senior Secured Creditors pursuant to the Security Documents in the Project Security (i) constitute as to Properties included in the Project Security existing on the date on which this representation is made or deemed to be made or repeated and, with respect to subsequently acquired Properties included in the Project Security, will constitute, a perfected security interest under all applicable law and/or the UCC and (ii) have, and, with respect to such subsequently acquired Properties, will have been perfected under all applicable law and/or the UCC, and grant the Senior Secured Creditors superior priority and rights over the rights of any third Persons now existing or hereafter arising whether by way of mortgage, lien, security interests, encumbrance, assignment or otherwise, subject to the rights and priorities of Permitted Liens;

- (b) all such action as is necessary has been taken to establish, perfect and maintain the Senior Secured Creditors' rights in and to the Project Security, including any obtaining of consents or approvals, recording, filing, registration, giving of notice or other similar action; and
- (c) each of the Security Documents is effective to create a legal, valid, binding and enforceable security interest in the Project Security described therein and proceeds and products thereof.

Each of the Obligors has properly delivered or caused to be delivered to the Security Agent all Project Security that requires perfection of the Lien and security interest described above by possession.

- 8.2 As of the CP Satisfaction Date, save in respect of the authorisation by the Macau SAR required to be given in accordance with the Land Concession Consent Agreement in relation to the Land Security Assignment and the notice required to be given to the Macau SAR in relation to the Assignment of Rights, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for either (a) the pledge or grant by the Obligors of the Liens purported to be created in favour of the Secured Creditors pursuant to any of the Security Documents, or (b) the exercise by the Security Agent, or any of the other Secured Creditors of any rights or remedies in respect of any Project Security (whether specifically granted or created pursuant to any of the Security Documents or created or provided for by applicable law), except for registrations, filings, giving of notices or recordings contemplated by paragraph 8.1 of this Schedule 4 or as set forth in Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*).
- 8.3 As of the CP Satisfaction Date, except such as may have been filed in favour of the Security Agent as contemplated by paragraph 8.1 of this Schedule 4 or as set forth in Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*), no effective UCC financing statement, fixture filing or other instrument similar in effect covering all or any part of the Project Security is on file in any filing or recording office in the United States of America or elsewhere.

#### 9. **No Existing Defaults**

- 9.1 No Event of Default has occurred which is continuing.
- 9.2 None of the Company, the Wynn Obligors, or, to the Company's knowledge, the Performance Bond Provider or any other Major Project Participant is in default under or with respect to any of its material Contractual Obligations under any of the Transaction Documents to which it is a party, which default (in the case only of a Major Project Participant other than the Company or a Wynn Obligor) could reasonably be expected to have a Material Adverse Effect.

#### 10. **Taxes**

- 10.1 Each of the Wynn Obligors (other than Wynn Resorts) and the Company has filed, or caused to be filed, all tax and informational returns that are required to have been filed by it in any jurisdiction and all such tax and informational returns are correct and

complete in all material respects. Each of the Wynn Obligors (other than Wynn Resorts) and the Company has paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by it, to the extent the same have become due and payable (other than (a) those taxes that it is contesting in good faith and by appropriate proceedings and (b) those taxes not yet due, provided that with respect to each of sub-paragraph (a) and (b) of this paragraph 10.1, it has established reserves therefor in amounts that are adequate for the payment thereof and are required by applicable GAAP).

- 10.2 None of the Wynn Obligors (other than Wynn Resorts) or the Company has incurred any material tax liability in connection with any of the Projects or the other transactions contemplated by the Transaction Documents which has not been disclosed in writing to the Intercreditor Agent, including as disclosed in the financial statements delivered to the Intercreditor Agent under this Agreement.
- 10.3 There are no Liens for Taxes on any of the Properties of any of the Obligors (other than Wynn Resorts) or the Company other than Liens permitted pursuant to paragraph 3(a) of Part B of Schedule 5 (*Covenants*) hereto.

11. **Business, Debt, Etc.**

The Company has not conducted any business other than a Permitted Business. The Company has no place of business outside the Macau SAR or as otherwise permitted pursuant to paragraph 14.2 of Part B of Schedule 5 (*Covenants*). The Company has no outstanding Financial Indebtedness other than Permitted Financial Indebtedness.

12. **Environmental Laws**

- 12.1 The Company is in compliance with all applicable material Environmental Laws in all material respects and, so far as it is aware, there are no circumstances that could at any time be reasonably expected to prevent or interfere with such compliance.
- 12.2 No material Environmental Claim has been made which has not been fully discharged, released, satisfied or withdrawn.
- 12.3 So far as the Company is aware:
- (a) the Site does not contain any Hazardous Substances whose presence on the Site could reasonably be expected to affect the Company or the Projects in a material and adverse manner; and
  - (b) there are no antiquities or obstructions on the Site which could reasonably be considered likely to prevent or impede the carrying out of either Project in any material respect.

13. **Utilities**

All material utility services (including, without limitation, gas, water and electrical interconnection) necessary for the Projects are or will be available at the Site as and when required.

**14. No Forecast Funding Shortfall**

As of each Advance Date, no Forecast Funding Shortfall (determined in the case of the Initial Advance under the Term Loan Facilities without taking account of any amount of Contingent Equity or any amount of the Contingent Debt Facilities) has occurred and is continuing or could reasonably be expected to result from any Advance proposed to be made thereon.

**15. Sufficiency of Interests and Project Documents**

- 15.1 The Company is the sole legal and beneficial owner of, and has good title to, or has a valid leasehold interest in, the land comprised in the Site, and good title to, or a valid license or leasehold interest in, all its other Property, and, other than as provided by the Transaction Documents, none of its Property is subject to any claims, liabilities, obligations, charges or restrictions of any kind, nature or description (other than claims, liabilities, obligations, charges or restrictions that individually or in the aggregate could not reasonably be expected to materially interfere with the business or Property of the Company), or to any Lien except for Permitted Liens. None of the Pledged Stock is subject to any Lien except for Permitted Liens.
- 15.2 The Intercreditor Agent has received a true, complete and correct copy of each of the Major Project Documents in effect or required to be in effect as of the date this representation is made or deemed to be made (including all exhibits, schedules, disclosure letters, modifications and amendments referred to therein or delivered or made pursuant thereto, if any). Each Major Project Document is in full force and effect, enforceable against the Persons party thereto in accordance with its terms, subject only to bankruptcy and similar laws and principles of equity.
- 15.3 Save as at the Signing Date in relation to the Performance Bond Facility Agreement, all conditions precedent to the obligations of the respective parties (other than the Company) under the Major Project Documents have been satisfied or waived, except for such conditions precedent which by their terms cannot be met until a later stage in the construction or operation of the Projects, and the Company has no reason to believe that any such condition precedent which could reasonably be expected to have a Material Adverse Effect cannot be satisfied on or prior to the appropriate stage in the development, construction or operation of the Projects.

**16. Intellectual Property**

The Company owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. To the Company's knowledge, no claim has been asserted or is pending by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does the Company know of any valid basis for any such claim, except with respect to Intellectual Property (other than any Intellectual Property related to or otherwise associated with the Company's use of the "Wynn" name), as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect. The use by the Company of the Intellectual Property related to or otherwise associated with the Company's use of the "Wynn" name does not infringe on the rights of any

Person. The use by the Company of Intellectual Property other than Intellectual Property related to or otherwise associated with the Company's use of the "Wynn" name, does not infringe on the rights of any Person, which infringement, individually or collectively, could reasonably be expected to have a Material Adverse Effect.

**17. Project Budget; Projections**

**17.1 The Project Budget:**

- (a) is, to the Company's knowledge, based on assumptions the Company believes to be reasonable as to all legal and factual matters material to the estimates set forth therein;
- (b) is consistent with the provisions of the Transaction Documents in all material respects;
- (c) has been and will (in the case of any update) be prepared in good faith and with due care;
- (d) sets forth, for each Line Item, the total costs anticipated to be incurred to achieve Construction Completion;
- (e) fairly represents the Company's expectation as to the matters covered thereby as of its date or the date of its most recent update; and
- (f) demonstrates no Forecast Funding Shortfall (determined, as of any date prior to the date of the Initial Advance under the Term Loan Facilities, without taking account of any amount of Contingent Equity or any amount of the Contingent Debt Facilities).

**17.2 As of the CP Satisfaction Date, the Projections:**

- (a) are based on assumptions the Company believes to be reasonable as to all legal and factual matters material to the estimates set forth therein;
- (b) are consistent with the provisions of the Transaction Documents in all material respects (including paragraph 1 of Part B and paragraph 2(c) of Part A of Schedule 5 (*Covenants*));
- (c) set forth all material costs and expenses anticipated to be incurred; and
- (d) represent the Company's views as to costs and expenses anticipated to be incurred in the manner contemplated by the Transaction Documents.

**18. Fees and Enforcement**

Other than amounts that have been paid in full or will have been paid in full by the CP Satisfaction Date, no fees or taxes, including stamp, transaction, registration or similar taxes, are required to be paid for the legality, validity or enforceability of any of the Transaction Documents then in effect.



## 19. ERISA

Either (a) there are no Plans or Multiemployer Plans for the Company or any member of the Controlled Group or (b) (i) the Company and each Commonly Controlled Entity have fulfilled their obligations (if any) under the minimum funding standards of ERISA and the Code for each Plan and for contributions to any Multiemployer Plan; (ii) each Plan is in compliance in all material respects with the currently applicable provisions of ERISA and the Code; (iii) neither the Company nor any Commonly Controlled Entity has incurred any liability to the PBGC or a Plan under Title IV of ERISA (other than liability or contributions for premiums due in the ordinary course). Assuming that the credit extended hereunder does not involve the assets of any employee benefit plan subject to Title I of ERISA sponsored, monitored or contributed by for the Company or any Commonly Controlled Entity, neither the execution of the Transaction Documents nor the consummation of the transactions contemplated thereby will involve a “prohibited transaction” with respect to any Plans within the meaning of section 406 of ERISA or section 4975 of the Code which is not exempt under section 408 of ERISA or under section 4975(d) of the Code.

## 20. Subsidiaries and Beneficial Interest

### 20.1 *The Company*

- (a) As of the date of the Wong Share Pledge and the CP Satisfaction Date, Mr Wong Chi Seng legally and beneficially owns 20,010 Class A Shares (as defined in the Governing Documents of the Company), representing 10% of the total issued share capital and 10% of the Voting Stock of the Company;
- (b) As of the date of the Company Share Pledge and the CP Satisfaction Date, Wynn HK, a company incorporated in the Hong Kong SAR, legally and beneficially owns 102,000 Class B Shares (as defined in the Governing Documents of the Company), representing 51% of the total issued share capital and 51% of the Voting Stock of the Company; and
- (c) As of the date of the Company Share Pledge and the CP Satisfaction Date, Wynn International, a company incorporated in the Isle of Man, legally and beneficially owns 78,000 Class C Shares (as defined in the Governing Documents of the Company), representing 39% of the total issued share capital and 39% of the Voting Stock of the Company.

### 20.2 *Wynn HK*

As of the date of the Wynn HK Share Charge and the CP Satisfaction Date, Wynn Holdings, a company incorporated in the Isle of Man, legally and beneficially owns 99% and beneficially owns 1%, and Wynn International, as nominee of Wynn Holdings, legally owns 1%, of the total issued share capital of Wynn HK.

### 20.3 *Wynn Holdings*

As of the CP Satisfaction Date, Wynn International legally and beneficially owns not less than 65.7% by capital and 79.3% by voting power of the total issued share capital of Wynn Holdings and the remainder thereof (if any) is the subject of Substantial Shareholder’s Undertakings or Relevant Party’s Undertakings delivered to the

Intercreditor Agent pursuant to paragraph 30 of Part A of Schedule 2 (*Conditions Precedent*).

20.4 *Wynn International*

As of the date of the Wynn International Share Charge and the CP Satisfaction Date, Wynn Asia, a company incorporated in the State of Nevada, legally and beneficially owns 100% of the total issued share capital of Wynn International.

20.5 *Wynn Asia*

As of the CP Satisfaction Date, Wynn Resorts, a company incorporated in the State of Nevada, legally and beneficially owns 100% of the total issued share capital of Wynn Asia.

20.6 Save as provided by the Security Documents or the Wong Option Agreement, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Capital Stock issued by any Wynn Obligor (other than Wynn Resorts) or the Company. None of the Wynn Obligors (other than Wynn Resorts) or the Company have issued, or authorized the issuance of, any Disqualified Stock.

21. **Labour Disputes and Acts of God**

21.1 Neither the business nor the Properties of the Company, nor, to the knowledge of the Company, any other Major Project Participant, is affected by any fire, explosion, accident, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty or other event of force majeure, that could reasonably be expected to have a Material Adverse Effect.

21.2 There are no strikes, lockouts, stoppages, slowdowns or other labour disputes against the Company pending or, to the knowledge of the Company, threatened that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of the Company have not been in violation of any applicable Legal Requirement dealing with such matters that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. All payments due from the Company on account of employee health and welfare insurance that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect if not paid have been paid or accrued as a liability on the books of the Company.

22. **Liens**

Except for Permitted Liens, none of the Wynn Obligors (other than Wynn Resorts) or the Company have secured or agreed to secure any Financial Indebtedness by any Lien upon any of their present or future revenues or other Properties or Capital Stock. None of the Wynn Obligors (other than Wynn Resorts) or the Company have outstanding any Lien or obligation to create Liens on or with respect to any of their Properties (including, without

limitation, revenues), other than Permitted Liens and as provided in the Security Documents.

23. **Title**

Save, in the case of any such Property which, pursuant to the Security Documents, is expressed to be subject only to the floating charge granted pursuant to the Floating Charge, to the extent such floating charge has not been consolidated and the absence of such title could not reasonably be expected to have a Material Adverse Effect, each of the Wynn Obligors (other than Wynn Resorts) and the Company owns and has good, legal and beneficial title to the Property upon which it purports to grant Liens pursuant to the Security Documents, free and clear of all Liens, except Permitted Liens.

24. **Project Schedule**

The Project Schedule:

- (a) accurately specifies in summary form the work that the Company proposes to complete in each calendar quarter from the CP Satisfaction Date through Final Completion of the Projects, all of which the Company expects to be achieved;
- (b) is, to the Company's knowledge, based on assumptions the Company believes to be reasonable as to all legal and factual matters material to the estimates set forth therein;
- (c) is consistent with the provisions of the Transaction Documents in all material respects;
- (d) has been and will (in the case of any update) be prepared in good faith and with due care;
- (e) fairly represents the Company's expectation as to the matters covered thereby as of its date or the date of its most recent update; and
- (f) as of the Signing Date, the CP Satisfaction Date and the Advance Date for the Initial Advance under the Term Loan Facilities, demonstrates that Substantial Completion will be achieved and the Opening Conditions specified in paragraph (a) of the definition thereof satisfied by 31 December 2006 and, thereafter, by 28 February 2007.

25. **Location of Accounts and Records**

The Company's books of accounts and records are located at the Company's principal place of business in the Macau SAR.

26. **Solvency**

Each Wynn Obligor (other than, after the Sponsor Support Release Date, Wynn Resorts) and the Company is, and after giving effect to:

- (a) the incurrence of all Financial Indebtedness;

- (b) the use of the proceeds of such Financial Indebtedness (including, in the case of the Company, the use of proceeds of Advances made under the Senior Finance Documents); and
  - (c) obligations being incurred in connection with the Transaction Documents,
- will be and will continue to be Solvent.

27. **Plans and Specifications**

The Plans and Specifications:

- (a) are, to the Company's knowledge as of the CP Satisfaction Date, based on assumptions that the Company believes to be reasonable as to all legal and factual matters material thereto;
- (b) are, and except to the extent permitted under paragraph 15 of Part B of Schedule 5 (*Covenants*) will be from time to time, consistent with the provisions of the Transaction Documents;
- (c) have been prepared in good faith with due care; and
- (d) are accurate in all material respects and fairly represent the Company's expectations as to the matters covered thereby.

28. **No subsidiaries**

Save as approved by the Intercreditor Agent (such approval not to be unreasonably withheld), the Company has no subsidiaries and does not legally or beneficially own any Capital Stock in any Person.

29. **Pari Passu**

The payment obligations under the Senior Finance Documents of each of the Wynn Obligors (other than, after the Sponsor Support Release Date, Wynn Resorts) and the Company rank at least *pari passu* with all its other present and future unsecured and unsubordinated obligations, except for obligations mandatorily preferred by law applying to companies generally.

30. **Insurance**

The Company is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which it is engaged and in any event in accordance with Schedule 7 (*Insurance*); and the Company has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers at a cost that could not reasonably be expected to have a Material Adverse Effect (other than as a result of general market conditions).

31. **Fiscal Year**

The fiscal year of each of the Obligors ends on 31 December of each calendar year.

**32. Accuracy of Information, etc.**

As of the Signing Date, or, in the case of the Information Memorandum, the date thereof, no statement or information contained in the Information Memorandum or any other document, certificate or written statement furnished to any Secured Creditor, by or on behalf of any Wynn Obligor, the Company or the PASA Agent for use in connection with the transactions contemplated by any of the Senior Finance Documents, contained (when, in the case of any such document, certificate or written statement (other than the Information Memorandum), read as a whole with all such documents, certificates and written statements furnished on or prior to the Signing Date to such Senior Secured Creditor) any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements contained herein or therein not misleading. As of the Signing Date, or, in the case of the Information Memorandum, the date thereof, the projections and pro forma financial information contained in the materials referenced above (including the Projections) are based upon good faith estimates and assumptions believed by management of the Company to be reasonable at the time made, it being recognized by the Senior Secured Creditors that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. As of the Signing Date, there are no facts known to any Wynn Obligor, the Company or the PASA Agent that could, individually or collectively, reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed in the Senior Finance Documents, in the Information Memorandum or in any other documents, certificates and written statements furnished to the Senior Secured Creditors for use in connection with the transactions contemplated by the Senior Finance Documents.

**33. Site and Site Easements**

- 33.1 The Site, the material Site Easements and the current use thereof comply in all material respects with all applicable Legal Requirements and with all Insurance Requirements.
- 33.2 No Taking has been commenced or, to the Company's knowledge, is contemplated with respect to all or any portion of the Site or the Site Easements or for the relocation of roadways providing access thereto except, in each case, as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect.
- 33.3 There are no current, pending or, to the knowledge of the Company, proposed special or other assessments for public improvements or otherwise affecting the Site or the Site Easements, nor are there any contemplated improvements thereto that may result in such special or other assessments, in any case that could reasonably be expected to result in a material liability to the Company.
- 33.4 There are no outstanding options to purchase or rights of first refusal or restrictions on transferability affecting the Site or the material Site Easements (other than those set forth in the Senior Finance Documents and the Land Concession Contract or arising by mandatory operation of law).

33.5 Except as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect, no Project building or structure or any appurtenance thereto or equipment thereon, or the use, operation or maintenance thereof, violates any restrictive covenant or encroaches on any easement or on any property owned by others.

34. **Affiliate Agreements**

The Intercreditor Agent has received a true, complete and correct copy of each of the Affiliate Agreements in effect as of the date this representation is made or deemed to be made.

**SCHEDULE 5  
COVENANTS**

**Part A - Affirmative Covenants**

The Company shall:

1. **Financial Statements** - Furnish to the Intercreditor Agent and, in the case of the Wynn Resorts' annual report referred to in sub-paragraph (a) below, each Facility Agent and each Lender:
  - (a) as soon as available, but in any event not later than the earlier of (i) 10 days after the filing with the SEC of Wynn Resorts' annual report on Form 10-K (or successor form thereto) with respect to each Fiscal Year and (ii) 90 days after the end of each Fiscal Year, a copy of:
    - (i) the audited balance sheets (on a consolidated basis in the case of Wynn Resorts) of:
      - (A) Wynn Resorts; and
      - (B) the Company,as at the end of such Fiscal Year and the related audited statements of income and of cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, by the Auditors; and
    - (ii) the unaudited balance sheet, of:
      - (A) Wynn Asia;
      - (B) Wynn International; and
      - (C) Wynn HK,as at the end of such Fiscal Year and the related unaudited statements of income and of cash flows for such Fiscal Year, setting forth in each case in comparable form the figures for the previous Fiscal Year; and
  - (b) as soon as available, but in any event not later than the earlier of (i) 10 days after the filing with the SEC of Wynn Resorts' quarterly report on Form 10-Q (or successor form thereto) with respect to each of the first three Fiscal Quarters of each Fiscal Year and (ii) 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, the unaudited (on a consolidated basis in the case of Wynn Resorts) balance sheets of:
    - (A) Wynn Resorts;
    - (B) Wynn Asia;

- (C) Wynn International;
- (D) Wynn HK; and
- (E) the Company,

as at the end of such quarter and the related unaudited statements of income and of cash flows for such quarter and the portion of the Fiscal Year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year.

All such financial statements shall be fair in all material respects (in the case of financial statements delivered pursuant to sub-paragraph (b) of this paragraph 1, subject to normal year-end audit adjustments) and shall be prepared in accordance with applicable GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by such Auditors or Responsible Officer, as the case may be, and disclosed therein).

2. **Certificates; Other Information** - Furnish to the Intercreditor Agent:

- (a) concurrently with the delivery of any financial statements pursuant to paragraph 1 of this Part A:
  - (i) a certificate of a Responsible Officer of the relevant Obligor certifying that the statement is fair in all material respects (subject, where relevant, to normal year-end audit adjustments);
  - (ii) a certificate of a Responsible Officer of the relevant Obligor stating that, to the best of each such Responsible Officer's knowledge, the Obligor during such period has observed or performed all of its material covenants and other agreements, and satisfied every material condition contained in the Senior Finance Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no actual knowledge of any Default except as specified in such certificate or in the equivalent certificate for such period issued pursuant to this sub-paragraph (a)(ii) by a Responsible Officer of another Obligor;
  - (iii) in the case of quarterly or annual financial statements, a Compliance Certificate containing all information and calculations necessary for determining compliance by the Company with the provisions of this Agreement as of the last day of the applicable Fiscal Quarter or Fiscal Year, as the case may be;
  - (iv) in the case of Wynn Asia, until the Fiscal Quarter following the date upon which the full amount of Base Equity has been paid up or advanced to the Company, a copy of its bank statements for the preceding Fiscal Quarter, certified as being true and complete by a Responsible Officer of Wynn Asia; and



- (v) in the case of the Company:
- (1) a list of each of its accounts;
  - (2) a copy of the bank statements for each such account for the preceding Fiscal Quarter; and
  - (3) a certificate of a Responsible Officer of the Company setting out the amount(s) and details of any further Subordinated Debt or Shareholder Loans (including, in each case, all terms and conditions thereof) made available to the Company during the preceding Fiscal Quarter;
- (b) for each calendar month during the period up to and including the first calendar month by which Substantial Completion has been achieved and the Opening Conditions specified in paragraph (a) of the definition thereof have been satisfied and for the month in which the Final Completion Date occurs, deliver to the Facility Agents, the Technical Adviser and the Intercreditor Agent, within 25 days following the end of the relevant calendar month, a status report (the “**Monthly Construction Period Report**”) in form and substance reasonably acceptable to the Intercreditor Agent and including information on each of the items set out in Schedule 18 (*Monthly Construction Period Report*) and such other information which any Facility Agent or the Intercreditor Agent may reasonably request, including information and reports reasonably requested by the Technical Adviser and attaching:
- (i) an updated Project Budget;
  - (ii) an updated Project Schedule; and
  - (iii) all progress reports provided by the Prime Contractor pursuant to the Construction Contract (including each Monthly Construction Progress Report) since (in the case of the second and subsequent Monthly Construction Period Reports) the last Monthly Construction Period Report;
- (c) as soon as available, and in any event no later than the Opening Date and 30 days prior to the beginning of each Fiscal Year thereafter, detailed projections (each, together with the projections provided pursuant to paragraph 22 of Part A of Schedule 2 (*Conditions Precedent*), the “**Projections**”) of the Company for such Fiscal Year (or portion thereof from the Opening Date through the end of such Fiscal Year), including a projected balance sheet of the Company as of the end of such Fiscal Year and the related statements of projected cash flow and profit and loss and the detailed assumptions supporting such Projections and, no less frequently than quarterly, significant revisions, if any, of such Projections with respect to such Fiscal Year, which Projections shall in each case be accompanied by a certificate of a Responsible Officer of the Company stating that such Projections are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect

and which such Projections shall demonstrate compliance with paragraph 1 of Part B of this Schedule;

- (d) within 45 days after the end of each Fiscal Quarter after the Opening Date, a narrative discussion and analysis (the “**Quarterly Operating Period Report**”) in form and substance reasonably acceptable to the Intercreditor Agent of the financial condition and results of operations of the Company for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year (or if the then current Fiscal Year is the Fiscal Year in which the Opening Date has occurred, from the Opening Date) to the end of such Fiscal Quarter, as compared to the portion of the Projections covering such periods and to the comparable periods of the previous Fiscal Year;
- (e) promptly, and in any event within ten Business Days after any Major Project Document or Affiliate Agreement is terminated (save upon expiration in accordance with its terms) or amended or any new Major Project Document or Affiliate Agreement is entered into, or upon becoming aware of any material default by any Person or the occurrence of any event under a Major Project Document or Affiliate Agreement which, with the expiry of any grace period, the giving of notice or the making of any determination provided thereunder, or any combination of the foregoing, would give rise to a right to terminate (a “**Termination Event**”), a written statement describing such event with copies of such amendments or new Major Project Document or Affiliate Agreement (including, in the case of the latter, a certificate from a Responsible Officer confirming the transactions contemplated therein comply with the requirements of paragraph 10 of Part B of Schedule 5 (*Covenants*)) and, with respect to any such terminations or material defaults, an explanation of any actions being taken by the Company with respect thereto;
- (f) promptly, and in any event within 30 days of the end of each Fiscal Year, deliver to the Intercreditor Agent a certificate certifying that the insurance requirements of Schedule 7 (*Insurance*) have been implemented and are being complied with;
- (g) within twenty days after the end of each Fiscal Quarter of the Company, a schedule of all Proceedings instigated or threatened in writing involving an alleged liability of, or claims against or affecting, the Company, Wynn HK, Wynn International or Wynn Asia equal to or greater than USD5,000,000 or its equivalent, and promptly after request by the Intercreditor Agent, such other information as may be reasonably requested by the Intercreditor Agent to enable the Intercreditor Agent and its counsel to evaluate any of such Proceedings;
- (h) a copy of each written notice which is given under or pursuant to the Concession Contract or the Land Concession Contract by the Macau SAR to the Company promptly upon receipt of such notice;
- (i) at the same time as the giving of any written notice under or pursuant to the Concession Contract or the Land Concession Contract by the Company to the Macau SAR, a copy of such notice; and

- (j) promptly, such additional financial and other information as the Intercreditor Agent may from time to time reasonably request.
3. **Permits** - Deliver to the Intercreditor Agent and (in the case of Permits made or issued by or with a Governmental Authority) the Technical Adviser promptly, but in no event later than 20 days after the receipt thereof by the Company, copies of:
- (a) all material Permits (including those specified in Part B of Schedule 12 (*Permits*)) that are obtained or entered into by the Company after the Signing Date; and
  - (b) any material amendment, supplement or other modification to any such Permit received by the Company after the Signing Date.
4. **Plans and Specifications** - Provide to the Technical Adviser copies of, and maintain at the Site, a complete set of the Plans and Specifications.
5. **Technical Adviser**
- 5.1 Cooperate and cause the Prime Contractor and the PASA Agent to cooperate with the Technical Adviser in the performance of the Technical Adviser's duties. Without limiting the generality of the foregoing, the Company shall and shall cause the Prime Contractor to:
- (a) communicate with and promptly provide all invoices, documents, plans and other information reasonably requested by the Technical Adviser relating to the work;
  - (b) provide the Technical Adviser with access to the Site and, subject to required safety precautions and reasonable site management restrictions, the construction areas; and
  - (c) solely in the case of the PASA Agent, provide the Technical Adviser with reasonable working space and access to telephone, copying and telecopying equipment at the Site,
- and the Company shall take reasonable measures to otherwise facilitate the Technical Adviser's review of the construction of the Projects and preparation of the certificates and reports required hereunder.
- 5.2 In addition to any other consultation required under this Agreement, following the end of each quarter, upon the request of the Intercreditor Agent, consult with any such Person regarding any adverse event or condition identified in any report prepared by the Technical Adviser.
6. **Management Letters** - Deliver to the Intercreditor Agent a copy of any "management letter" or other similar communication received by the Company from the Auditors in relation to the Company's financial, accounting and other systems, management or accounts.

7. **Governmental and Environmental Reports** - Deliver to the Intercreditor Agent and the Technical Adviser copies of all material reports required to be filed by the Company with any Governmental Authority in connection with the construction of the Projects.
8. **Payment of Obligations** - To the extent not otherwise subject to valid subordination, standstill, intercreditor or similar arrangements, pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate (under the circumstances) proceedings and reserves in conformity with applicable GAAP with respect thereto have been provided on the books of the Company.
9. **Conduct of Business and Maintenance of Existence, etc.**
  - (a) Preserve, renew and keep in full force and effect its corporate or limited liability company existence and remain a Subsidiary of Wynn Resorts;
  - (b) take all reasonable action to maintain all rights, privileges, franchises, Permits and licenses necessary in the normal conduct of its business, except to the extent that failure to do so could not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect; and
  - (c) engage only in the businesses which are Permitted Businesses.
10. **Maintenance of Property; Leases; Insurance**
  - 10.1 Keep all material Property and systems useful and necessary in its business in good working order and condition, ordinary wear and tear excepted.
  - 10.2 Maintain all material rights of way, easements, grants, privileges, licenses, certificates, and Permits necessary for the intended use of the Site and the Site Easements, except any such item the loss of which, individually or in the aggregate, could not reasonably be expected to materially and adversely affect or interfere with the Permitted Businesses or Property of the Company.
  - 10.3 Comply with the terms of each lease or other grant of rights in respect of land, including easement grants, so as to not permit any material uncured default on its part to exist thereunder, except, in each case, where non-compliance therewith could not reasonably be expected to materially and adversely affect or interfere with the Permitted Businesses or Property of the Company.
  - 10.4 At all times maintain in full force and effect the insurance policies listed in and otherwise comply with Schedule 7 (*Insurance*).
  - 10.5 Preserve and protect the Liens created pursuant to the Security Documents and, if any Lien (other than Permitted Liens) is asserted against any of the Project Security, promptly give the Intercreditor Agent a detailed written notice of such Lien and pay the underlying claim in full or take such other action so as to cause it to be released or bonded over in a manner reasonably satisfactory to the Intercreditor Agent.

11. **Inspection of Property; Books and Records; Discussions**

- (a) Keep proper books of records and account in which full, true and correct entries in conformity with applicable GAAP and all Legal Requirements.
- (b) Subject to any Macau Gaming Laws restricting such actions and, where no Event of Default has occurred which is continuing, prior reasonable request and notice, procure that each of the Agents or their respective nominees and the Technical Adviser (each a “**Relevant Person**”) be allowed reasonable rights of inspection and access during normal business hours to the Site Facilities, the Projects, the Auditors and other Company officers, the Company’s accounting books and records and any other documents relating to the Projects as they may reasonably require, and so as not unreasonably to interfere with the operations of the Company or any Major Project Participant and to take copies of any documents inspected. Any information and documents made available for inspection by a Relevant Person pursuant to this paragraph shall be made available subject to customary confidentiality undertakings being executed by such Relevant Person.
- (c) For all expenditures with respect to which Advances under the Term Loan Facilities are made, the Company shall retain, until at least three years after delivery of the last report specified in paragraph 2(b) of this Part A for the Fiscal Year in which the last Advance was made under the Term Loan Facilities, all records and other documents evidencing such expenditures as are required hereunder to be attached to an Advance Request made in respect of any Term Loan Facility.

12. **Notices** - Promptly give notice to the Intercreditor Agent of:

- (a) the occurrence of any Default;
- (b) unless already notified pursuant to paragraph 2(e) of this Part B, any notice of termination (other than expiration in accordance with the terms thereof), default or any Termination Event under any Major Project Document;
- (c) (i) any fact, circumstance, condition or occurrence at, on, or arising from, any of the Site or the Site Easements that results in non-compliance with any Environmental Law that has resulted or could reasonably be expected to result in a Material Adverse Effect, and (ii) any Environmental Claim pending or, to the Company’s knowledge, threatened against the Company or, to the Company’s knowledge, pending or threatened against any Contractor or any Subcontractor arising in connection with its occupying or conducting operations on or in respect of the Projects, the Site or the Site Easements which could reasonably be expected to have a Material Adverse Effect;
- (d) any change in the Responsible Officers of the Company, and such notice shall include a certified specimen signature of any new officer so appointed and, if requested by any Facility Agent or the Intercreditor Agent, evidence of the authority of such new Responsible Officer;

- (e) any proposed material change in (i) the nature or scope of either Project or (ii) the business or operations of the Company;
- (f) any notice of any material schedule delay delivered under the Construction Contract and all remedial plans by the Prime Contractor and updates thereof;
- (g) any “Substantial Completion” or “Final Completion” certificates or notices thereof delivered under any Major Project Documents;
- (h) any (i) default or event of default (or alleged default) under any Contractual Obligation of the Company or (ii) litigation, investigation or proceeding which may exist at any time between the Company and any Governmental Authority, that in either case, could reasonably be expected to have a Material Adverse Effect;
- (i) upon any officer of the Company obtaining knowledge thereof, the instigation or written threat of any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration against or affecting the Company, or any Property of the Company (collectively, “**Proceedings**”) not previously disclosed in writing by the Company to the Lenders that, in any case (i) is reasonably likely to give rise to a Material Adverse Effect or (ii) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions under the Transaction Documents, or any material development in any such Proceeding, in each case together with such other information as the Intercreditor Agent may reasonably require;
- (j) the following events, as soon as possible and in any event within 30 days after the Company knows or has reason to know thereof: (i) the occurrence of any Reportable Event with respect to any Plan, a material failure to make any required contribution to a Plan, the creation of any Lien in favour of the PBGC or a Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC, the Company, any Wynn Obligor or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the termination, Reorganization or Insolvency of, any Plan;
- (k) any event, occurrence or circumstance which reasonably could be expected to give rise to a Forecast Funding Shortfall or render the Company incapable of, or prevent the Company from (i) achieving Substantial Completion and satisfying the Opening Conditions specified in paragraph (a) of the definition thereof on or before 31 December 2006 (in the case of any such event, occurrence or circumstance arising on or prior to the date of the Initial Advance under the Term Loan Facilities) or 28 February 2007 (in the case of any such event, occurrence or circumstance arising after the date of the Initial Advance under the Term Loan Facilities) or (ii) meeting any material obligation of the Company under the Construction Contract or the other Major Project Documents as and when required thereunder; and

(l) any development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this paragraph shall be accompanied by a statement of a Responsible Officer of the Company setting forth details of the occurrence referred to therein and stating what action the Company and/or the relevant Obligor proposes to take with respect thereto.

**13. Environmental Laws; Permits**

- 13.1 Inform the Intercreditor Agent promptly on becoming aware of any, or any anticipated, release, emission, discharge or disposal of any matter that might reasonably be expected to form the basis for any Environmental Claim.
- 13.2 Comply with all applicable Environmental Laws and Environmental Licences (save for any failure to comply that could not reasonably be expected to have a Material Adverse Effect).
- 13.3 Provide copies of any notices from any Governmental Agency of non-compliance with any material Environmental Law or Environmental Licence and any notices of any Environmental Claims to the Intercreditor Agent.
- 13.4 Deliver to the Intercreditor Agent:
- (a) any notice that any Governmental Authority may condition approval of, or any application for, any Permit held by the Company on terms and conditions that are materially burdensome to the Company, or to the operation of any of its businesses or any Property owned, leased or otherwise operated by the Company in each case in a manner not previously contemplated; and
  - (b) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Intercreditor Agent in relation to any matters disclosed pursuant to this paragraph 13.

**14. Hedging**

Comply with the Hedging Arrangements and not enter into any other Swap Agreement or derivative transaction unless:

- (a) the Company is in compliance with the Hedging Arrangements;
- (b) to the extent any such arrangement is entered into prior to the Construction Completion Date, it is contemplated by, and the costs thereof properly reflected in, the Project Budget; and
- (c) unless such arrangement is with a Lender which has executed a duly completed Hedging Counterparty's Deed of Accession and Finance Party Accession Undertaking (also executed, in the case of the latter, by the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent) and promptly delivered by the Intercreditor Agent to the Security Agent) and is

on the same terms as those comprised in the Hedging Arrangements, the counter-party thereto has no Lien or any right to share in any Lien over any Property of the Company.

**15. Additional Collateral, Discharge of Liens, etc.**

15.1 With respect to any Property (other than any Property which the Intercreditor Agent is reasonably satisfied is neither comprised in either Project nor necessary or desirable to ensure the full benefit of each Project to the Company) acquired by the Company after the Signing Date as to which the Senior Secured Creditors do not have a perfected security interest, subject to compliance with applicable Macau Gaming Laws and restrictions on the grant of Liens permitted pursuant to paragraph 3 of Part B of this Schedule, promptly:

- (a) execute and deliver to the Intercreditor Agent such amendments to the Security Documents or such other documents as the Intercreditor Agent, acting reasonably, deems necessary or advisable to grant to the Senior Secured Creditors a security interest in such Property; and
- (b) take all actions necessary or advisable to grant to the Senior Secured Creditors a perfected first priority security interest in such Property (subject to Permitted Liens).

In addition to the foregoing, in the event any such Property (other than any Property which the Intercreditor Agent is reasonably satisfied is neither comprised in either Project nor necessary or desirable to ensure the full benefit of each Project to the Company) acquired after the Signing Date consists of land or other Property with respect to which a recording or registration in the real property records of an appropriate jurisdiction is required or advisable in order to perfect a security interest therein, promptly (and, in any event, within 30 days following the date of such acquisition):

- (i) execute and deliver a mortgage, substantially in the form of the Mortgage (with such modifications, if any, as are necessary to comply with Legal Requirements that the Security Agent may reasonably request), such mortgage to be recorded in the real property records of the appropriate jurisdiction, or execute and deliver to the Security Agent for recording a supplement to the Mortgage, in either case pursuant to which the Company grants to the Senior Secured Creditors a Lien on such Property subject only to Permitted Liens; and
- (ii) execute and/or deliver such other documents or provide such other information in furtherance thereof as the Security Agent may reasonably request, including delivering documents and taking such other actions which would have been required pursuant to Clause 2 (*Conditions Precedent*) if such Property were part of the Project Security at the CP Satisfaction Date.

15.2 Notwithstanding anything to the contrary in this paragraph 15, sub-paragraph 15.1 shall not apply to any Property created or acquired after the Signing Date, as applicable, as to which the Intercreditor Agent has reasonably determined that the collateral value thereof



is insufficient to justify the difficulty, time and/or expense of obtaining or maintaining a perfected security interest therein.

16. **Use of Proceeds and Revenues**

- 16.1 Use the proceeds of each of the Facilities only for the purposes specified or allowed in this Agreement and the Facility Agreement relating to such Facility.
- 16.2 Ensure that all of its funds and all other amounts received by it are utilised, and all of its accounts are established and funded, in accordance with the provisions of Schedule 6 (*Accounts*) and as otherwise provided by this Agreement and that it otherwise complies with Schedule 6 (*Accounts*).

17. **Compliance with Laws, Project Documents, etc.; Permits**

- 17.1 Comply in all material respects with all material Legal Requirements and its Governing Documents.
- 17.2 Comply, duly and promptly, in all material respects with its material obligations and enforce all of its material rights under all Project Documents, except in the case of Project Documents (other than the Major Project Documents) where the failure to comply could not reasonably be expected to have a Material Adverse Effect.
- 17.3 From time to time obtain, maintain, retain, observe, keep in full force and effect and comply in all material respects with the terms, conditions and provisions of all Permits made or issued by or with a Governmental Authority as shall now or hereafter be necessary under applicable laws.
18. **Pari Passu Ranking** - Procure that the obligations of the Company and each Wynn Obligor (other than, after the Sponsor Support Release Date, Wynn Resorts) under the Senior Finance Documents do and shall rank at least *pari passu* with all its other present and future unsecured and unsubordinated obligations, except for obligations mandatorily preferred by law applying to companies generally.
19. **Further Assurances** - From time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take all such actions, as any of the Intercreditor Agent or the Security Agent may reasonably request, for the purposes of implementing or effectuating the provisions of the Senior Finance Documents, or of more fully perfecting or renewing the rights of the Senior Secured Creditors with respect to the Project Security (or with respect to any additions thereto or replacements or proceeds or products thereof or with respect to any other Property acquired after the date of the Senior Finance Documents by the Company which may be deemed to be part of the Project Security) pursuant to the Senior Finance Documents. Upon the exercise by the Intercreditor Agent, the Security Agent or any other Senior Secured Creditor of any power, right, privilege or remedy pursuant to any of the Senior Finance Documents which requires any consent, approval, notification, registration or authorisation of any Governmental Authority, the Company shall execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the Intercreditor Agent, the Security Agent or such

Senior Secured Creditor may reasonably be required to obtain from the Company for such governmental consent, approval, notification, registration or authorisation.

20. **Diligent Construction of the Project** - The Company shall take or cause to be taken all action, make or cause to be made all contracts and do or cause to be done all things necessary to construct the Project diligently in accordance with the Construction Contract, the Plans and Specifications, the Project Schedule, the Project Budget and the other Transaction Documents.
21. **Retainage Amounts** - Withhold from each Contractor party to a Major Project Document such retainage from any payment to be made to such Contractor as is permitted by such Major Project Document.
22. **Preserving Project Security** - Undertake and cause the Wynn Obligor to undertake, all actions which are necessary or appropriate in the reasonable judgment of the Intercreditor Agent to:
  - (a) maintain the Senior Secured Creditors' respective security interests under the Security Documents in the Project Security in full force and effect at all times (including the priority thereof); and
  - (b) preserve and protect the Project Security and protect and enforce the Company's rights and title and the respective rights of the Senior Secured Creditor to the Project Security,including the making or delivery of all filings and registrations, the payments of fees and other charges, the issuance of supplemental documentation, the discharge of all claims or other liens other than Permitted Liens adversely affecting the respective rights of the Senior Secured Creditors to and under the Project Security and the publication or other delivery of notice to third parties.
23. **Registration of First Phase Land** - Carry out definitive registration with the Macau Real Estate Registry in respect of the first phase land (referred to in the Land Concession Contract) upon Substantial Completion including the multi-storey car park contemplated by Change Order No.1 and the second phase land (referred to in the Land Concession Contract) comprised therein.
24. **Termination of Concession Contract** - Notify the Intercreditor Agent promptly upon receiving:
  - (a) notice of any consultations with the Macau SAR as contemplated by paragraph B1(c) of the Gaming Concession Consent Agreement in relation to any termination of the Concession Contract;
  - (b) notice of any consultations with the Macau SAR as contemplated by paragraph C1 of the Land Concession Consent Agreement in relation to any termination or rescission of the Land Concession Contract;
  - (c) notice of any negotiations with the Macau SAR pursuant to article 83 of the Concession Contract;

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- (d) any notice from the Macau SAR pursuant to clause 3 of article 80 of the Concession Contract; or
  - (e) any notice from the Macau SAR pursuant to clause 4 of article 80 of the Concession Contract,
- and keep the Intercreditor Agent fully apprised thereof.

**Part B - Negative Covenants**

The Company shall not directly or indirectly:

**1. Financial Condition Covenants**

- (a) *Leverage Ratio* - Permit the Leverage Ratio of the Company as at the last day of any period of four full consecutive Fiscal Quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first Fiscal Quarter which begins after the Construction Completion Date) ending on any Quarterly Date set forth below to exceed the ratio set forth below opposite such Quarterly Date:

<u>Quarterly Date</u>	<u>Leverage Ratio</u>
First, Second and Third Quarterly Dates	5.00
Fourth and Fifth Quarterly Dates	4.00
Sixth and Seventh Quarterly Dates	3.00
Eighth Quarterly Date and each Quarterly Date thereafter	2.50

*provided that, for purposes of calculating EBITDA pursuant to this paragraph 1(a) for any period which is less than four full Fiscal Quarters, EBITDA shall be calculated on an annualised basis.*

- (b) *Debt Service Cover Ratio* - Permit the Debt Service Cover Ratio of the Company for any period of four full consecutive Fiscal Quarters ending on any Quarterly Date set forth below (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first Fiscal Quarter which begins after the Construction Completion Date) to be less than the ratio set forth below opposite such Quarterly Date:

<u>Quarterly Date</u>	<u>Debt Service Cover Ratio</u>
First, Second and Third Quarterly Dates	1.05
Fourth Quarterly Date and each Quarterly Date thereafter	1.15

- (c) *Maintenance of Net Worth* - Permit the Net Worth of the Company at any Quarterly Date to be less than the Minimum Net Worth for that Quarterly Date.

- (d) *Interest Coverage Ratio* - Permit the Interest Coverage Ratio of the Company for any period of four full consecutive Fiscal Quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first Fiscal Quarter which begins after the Construction Completion Date) ending on any Quarterly Date set forth below to be less than the ratio set forth below opposite such Quarterly Date:

<u>Quarterly Date</u>	<u>Interest Coverage Ratio</u>
First, Second and Third Quarterly Dates	2.50
Fourth, Fifth, Sixth and Seventh Quarterly Dates	3.00
Eighth Quarterly Date and each Quarterly Date thereafter	4.00

2. **Limitation on Financial Indebtedness**

Create, incur, assume or suffer to exist any Financial Indebtedness, except:

- (a) Financial Indebtedness of the Company created under any Senior Finance Document, the Performance Bond Facility or the Subordinated Funding Agreement or in respect of Base Equity or Contingent Equity or any Shareholder Loan or Guarantee Obligations represented by the guarantee required to be issued pursuant to clause 7 of the Land Concession Contract;
- (b) Financial Indebtedness of the Company (including Capital Lease Obligations) secured by Liens permitted by paragraph 3 (k) of this Part B in an aggregate principal amount not to exceed USD5,000,000 or its equivalent at any one time outstanding;
- (c) Financial Indebtedness of the Company to employees of the Company (or their estates) incurred in connection with any repurchase of employee stock options or stock upon death, disability or termination of such employee in accordance with employment agreements or option plans or agreements, *provided* that (i) such Financial Indebtedness will not exceed USD2,000,000 or its equivalent in any Fiscal Year and USD6,000,000 or its equivalent during the term of the Senior Finance Documents and (ii) such Financial Indebtedness shall be unsecured and subordinated on terms and conditions reasonably satisfactory to the Intercreditor Agent, subject to such covenants and events of default as may be reasonably acceptable to the Intercreditor Agent and expressly provide that payments thereon shall be required only to the extent not restricted by any Senior Finance Document;
- (d) on or prior to the Construction Completion Date, Guarantee Obligations represented by performance bonds, guaranties, commercial or standby letters of credit (other than the Concession Contract Performance Bond), bankers' acceptances or similar instruments issued by a Person for the benefit of a trade creditor of the Company, in an aggregate amount not to exceed USD25,000,000 or its equivalent at any time outstanding so long as:
- (i) such Financial Indebtedness is incurred in the ordinary course of business; and
- (ii) the obligations of the Company supported by such performance bonds, guaranties, trade letters of credit, bankers' acceptances or similar instruments (A) consist solely of payment obligations with respect to costs

incurred in accordance with the Project Budget which would otherwise be permitted to be paid by the Company pursuant to this Agreement and (B) if secured, are secured solely by Liens permitted by paragraph 3 (l) of this Part B;

- (e) after the Construction Completion Date, Guarantee Obligations represented by performance bonds, guaranties, commercial or standby letters of credit (other than the Concession Contract Performance Bond), bankers' acceptances or similar instruments issued by a Person for the benefit of a trade creditor of the Company, in an aggregate amount not to exceed USD10,000,000 or its equivalent at any time outstanding so long as:
- (i) such Financial Indebtedness is incurred in the ordinary course of business; and
  - (ii) the obligations of the Company supported by such performance bonds, guaranties, trade letters of credit, bankers' acceptances or similar instruments (A) do not consist of payment obligations with respect to Project Costs and (B) if secured, are secured solely by Liens permitted by paragraph 3 (m) of this Part B;
- (f) Financial Indebtedness of the Company:
- (i) in an aggregate principal amount not to exceed USD35,000,000 or its equivalent;
  - (ii) on terms no more favourable to the creditor than those to which the Term Loan Facilities are subject;
  - (iii) neither arranged nor sought to be arranged at any time prior to 1 January 2005; and
  - (iv) *provided* (x) the creditor has executed and delivered to the Intercreditor Agent a duly completed Additional Lender's Accession Deed and Finance Party Accession Undertaking (also executed, in the case of the latter, by the Intercreditor Agent and all parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent) and promptly delivered by the Intercreditor Agent to the Security Agent), whereupon, provided the other conditions of this sub-paragraph 2(f) have also been satisfied, such creditor shall become a party hereto as an Additional Lender and the creditor and each of the other parties hereto shall assume obligations towards, and acquire rights against, one another accordingly or (y) the Financial Indebtedness is otherwise on terms satisfactory to the Intercreditor Agent concerning the relationship between the creditor and the Senior Secured Creditors, including the exercise of rights against the Company and any other Obligor and the sharing and enforcement of the Security and any other liens over Property of the Company or any other Obligor,

and *provided* that an aggregate amount of:

- (v) Equity (in addition to Base Equity, Contingent Equity, the Subordinated Funding and any other Equity required to be paid up or advanced in accordance with the terms of the Senior Finance Documents); or
- (vi) in substitution therefor, other moneys retained by the Company which would otherwise be available to make Restricted Payments (and which shall not thereafter be applied by the Company in the making of any Restricted Payment or other payment permitted pursuant to paragraph 6.1 of this Part B),

not less than the aggregate principal amount of such Financial Indebtedness is advanced, paid up or so retained as a condition to the incurring of such Financial Indebtedness;

- (g) Financial Indebtedness of the Company incurred for the purpose of repaying the balance of the principal amount owing to all Lenders *provided* the Intercreditor Agent is satisfied that upon the incurrence of such Financial Indebtedness or immediately thereafter the Release Date (without reference to paragraph (b) of the definition of Release Date) will occur; and
- (h) other Financial Indebtedness approved in writing by the Intercreditor Agent, (together, "**Permitted Financial Indebtedness**").

### 3. **Limitation on Liens**

Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

- (a) Liens for taxes not yet due or which are being contested in good faith by appropriate proceedings, *provided* that adequate reserves with respect thereto are maintained on the books of the Company in conformity with applicable GAAP;
- (b) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business for amounts which are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceeding (such contest proceedings conclusively operating to stay the sale of any portion of the Project Security on account of such Lien);
- (c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation provided that if such pledges are being contested, appropriate reserves (determined in accordance with the applicable GAAP) are maintained on the books of the Company (and through an allocation in the Project Budget in the case where any such reserves are maintained prior to the Construction Completion Date);

- (d) deposits by or on behalf of the Company to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, appeal bonds and other obligations of a like nature incurred in the ordinary course of business;
- (e) easements, rights-of-way, restrictions, encroachments and other similar encumbrances and other minor defects and irregularities in title, in each case incurred in the ordinary course of business that, in the aggregate, do not materially detract from the value of the Property subject thereto or materially interfere with the ordinary conduct of the business of the Company;
- (f) Liens created pursuant to the Security Documents;
- (g) licenses of patents, trademarks and other intellectual property rights granted by the Company in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of the Company;
- (h) any attachment or judgment Lien not constituting an Event of Default;
- (i) Liens in favour of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (j) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any Site and Site Easements;
- (k) Liens securing Financial Indebtedness of the Company incurred pursuant to paragraph 2(b) of this Part B to finance the acquisition of fixed or capital assets *provided that*:
  - (i) such Liens shall be created substantially simultaneously with the acquisition of such fixed or capital assets (or the refinancing of such Financial Indebtedness as otherwise permitted hereunder);
  - (ii) such Liens do not at any time encumber any Property other than the Property (and proceeds of the sale or other disposition thereof) financed by such Financial Indebtedness;
  - (iii) the principal amount of Financial Indebtedness secured thereby is not increased; and
  - (iv) the Property financed by such Financial Indebtedness is not of a type that will become affixed to the Site or the other Site Facilities such that the removal thereof could reasonably be expected to materially interfere with the ongoing ordinary course of operations of either Project;
- (l) Liens on cash disbursed pursuant to the Term Loan Facilities Agreements and deposited with, or held for the account of, the Company securing reimbursement obligations under performance bonds, guaranties, commercial or standby letters of credit, bankers' acceptances or similar instruments permitted under paragraph 2(d) of this Part B, granted in favour of the issuers of such



performance bonds, guaranties, commercial letters of credit or bankers' acceptances, so long as:

- (i) any cash disbursed to secure such reimbursement obligations is invested (if at all) in Permitted Investments only (to the extent the Company has the right to direct the investment thereof) and is segregated from the Company's general cash accounts so that such Liens attach only to such cash and Permitted Investments; and
  - (ii) the amount of cash and/or Permitted Investments secured by such Liens is not less than the amount of Financial Indebtedness secured thereby and in any event does not exceed 110% of the amount of the Financial Indebtedness secured thereby (ignoring any interest earned or paid on such cash and any dividends or distributions declared or paid in respect of such Permitted Investments);
- (m) Liens on cash deposited with, or held for the account of, the Company securing reimbursement obligations under performance bonds, guaranties, commercial or standby letters of credit, bankers' acceptances or similar instruments permitted under paragraph 2(e) of this Part B or the guarantee required to be issued pursuant to clause 7 of the Land Concession Contract, granted in favour of the issuers of such performance bonds, guaranties, commercial letters of credit or bankers' acceptances, so long as (i) any cash used as security for such reimbursement obligations is invested (if at all) in Permitted Investments only (to the extent the Company has the right to direct the investment thereof) and is segregated from the Company's general cash accounts so that such Liens attach only to such cash and Permitted Investments and (ii) the amount of cash and/or Permitted Investments secured by such Liens does not exceed 110% of the amount of the Financial Indebtedness secured thereby (ignoring any interest earned or paid on such cash and any dividends or distributions declared or paid in respect of such Permitted Investments);
- (n) until the date of the Initial Advance under the Term Loan Facilities, the cash deposit pledged by the Company in favour of the Performance Bond Provider pursuant to the Performance Bond Facility Agreement;
- (o) without prejudice to Schedule 6 (*Accounts*), Liens arising by reason of any netting or set-off arrangements entered into by the Company in the normal course of its banking arrangements and the standard account operating procedures of the bank for the purpose of netting debit and credit balances;
- (p) Liens arising under title transfer or retention of title arrangements entered into by the Company in the normal course of its trading activities on the counterparty's standard or usual terms provided that such arrangements shall be limited to Property of an aggregate value not exceeding USD1,000,000 or its equivalent; and
- (q) other Liens approved in writing by the Intercreditor Agent.

4. **Limitation on Fundamental Changes**

Enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its Property or business, except that the Company may dispose of any of its Property in accordance with paragraph 5 of this Part B.

5. **Limitation on Disposition of Property**

Dispose of any of its Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or issue or sell any Capital Stock to any Person, except:

- (a) the Disposition for fair market value in the ordinary course of business of obsolete or worn out Property or Property no longer used or useful in the business of the Company *provided* that either:
  - (i) such Disposition could not reasonably be expected to materially adversely affect either Project or any of the Project Security; or
  - (ii) with respect to Property Disposed of by reason of its obsolescence or worn out condition, prior to or promptly following such Disposition any such Property shall be replaced (if replacement is in fact necessary or desirable) with other Property of substantially equal or greater utility and similar use and either (A) a value at least substantially equal to that of the replaced Property when first acquired or (B) substantially equal or greater quality and, if applicable, prestige and calibre as the replaced Property when first acquired and free from any Lien of any other Person (subject to Permitted Liens) and the Company shall promptly subject such replacement property to the Lien of the Security Documents in favour of the Secured Creditors of at least the same priority as Property so replaced, *provided* further that, in the case of any Asset Sale permitted pursuant to this sub-paragraph 5(a)(ii):
    - (A) the Company may deliver a Reinvestment Notice in respect thereof;
    - (B) any remaining Net Cash Proceeds of such Asset Sale (and any Reinvestment Prepayment Amount) are applied towards prepayment of the Advances under the Term Loan Facilities in accordance with paragraph 3 of Schedule 9 (*Mandatory Prepayment*); and
    - (C) the aggregate amount of Net Cash Proceeds of Asset Sales that may be excluded from the foregoing prepayment requirement pursuant to a Reinvestment Notice delivered under sub-paragraph (A) shall not exceed USD10,000,000 or its equivalent in any Fiscal Year;

- (b) the Disposition of cash (in each case in transactions otherwise permitted under this Agreement), Investments permitted pursuant to paragraph 8 of this Part B, inventory (in the ordinary course of business), receivables (in connection with the collection thereof and otherwise as customary in business activities of the type conducted by the Company) and cash or non-cash prizes and other complimentary items for customers customary in business activities of the type conducted by the Company;
- (c) the sale or issuance of the Company's Capital Stock (other than Disqualified Stock) to its direct Shareholders *provided* that such Capital Stock is fully paid upon such issuance (or, as the case may be, sale) and is subject to the Liens created under the Company Share Pledge;
- (d) in addition to other Dispositions allowed under this paragraph 5, Dispositions of Property having a fair market value not in excess of USD5,000,000 or its equivalent in the aggregate in any Fiscal Year following the Construction Completion Date; *provided* that (i) the consideration received for such Property shall be in an amount at least equal to the fair market value thereof; and (ii) the sole consideration received shall be cash;
- (e) subject to compliance with paragraph 23 of this Part B, the Company may enter into any leases or licences with respect to any space on or within the Site Facilities;
- (f) the incurrence of Liens permitted under paragraph 3 of this Part B;
- (g) any Event of Eminent Domain *provided* that the requirements of Schedule 9 (*Mandatory Prepayment*) are complied with in connection therewith;
- (h) subject to compliance with paragraph 17 of this Part B, the Company may enter into Subconcessions; or
- (i) any Disposition not falling within any of the preceding sub-paragraph of this paragraph 5 made with the prior written consent of the Intercreditor Agent (such consent not to be unreasonably withheld).

6. **Limitation on Restricted Payments**

- 6.1 (a) Declare or pay any dividend on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of the Company (including any Equity), whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of the Company;
- (b) enter into any derivatives or other transaction with any financial institution, commodities or stock exchange or clearinghouse (a "**Derivatives Counterparty**") obligating the Company to make payments to such Derivatives Counterparty as a result of any change in market value of any such Capital Stock;

- (c) make any repayment of, or pay any interest on or other amount in respect of, the Subordinated Funding, the Performance Bond Facility or any other Subordinated Debt (including any Equity); or
  - (d) make any payment of IP Fees other than Approved IP Fees,
- (collectively, “**Restricted Payments**”) except, to the extent constituting Restricted Payments, the Company may:
- (i) pay dividends, distributions or other payments if permitted under paragraphs 6.2, 17(d) or 17(e) of this Part B or, subject to any applicable Legal Requirements, from the proceeds of any Advance made pursuant to Clause 7.2 (*Rebalancing between Debt and Equity*);
  - (ii) make payments permitted in accordance with the Deed of Appointment and Priority;
  - (iii) pay Approved IP Fees and amounts other than IP Fees payable, in each case, under the IP Agreement to the Licensor and permitted pursuant to paragraph 20 of this Part B; and
  - (iv) take actions permitted pursuant to paragraph 10 of this Part B.
- 6.2 At any time after the Sponsor Support Release Date, the Company may declare and/or pay at the times set out in paragraph 6.3 of this Part B by way of dividend or other distribution or other payment (including IP Fees in excess of Approved IP Fees), subject to compliance with applicable Legal Requirements:
- (a) 50% of the Excess Cash Flow remaining after (1) prepayment of Advances under the Term Loan Facilities in respect of Excess Cash Flow pursuant to paragraph 6 of Schedule 9 (*Mandatory Prepayment*) and (2) each of the Reserve Accounts is fully funded in accordance with Schedule 6 (*Accounts*) provided that all of the following conditions have been satisfied:
    - (i) no Event of Default has occurred and is continuing;
    - (ii) the ratio of Senior Debt as at the end of the most recently ended Fiscal Year to EBITDA of the Company for such Fiscal Year (provided that such Fiscal Year is or begins after the Fiscal Year in which the Construction Completion Date occurs) is less than 3:1;
    - (iii) the ratio of Senior Debt as at the end of each of the four consecutive Fiscal Quarters of the Company immediately preceding the payment or making of such dividend or other distribution to Cumulative EBITDA for such Fiscal Quarter is less than 4:1 (provided that each of such Fiscal Quarters begins on or after the Opening Date), where “**Cumulative EBITDA**” for a Fiscal Quarter of the Company (the “**Tested Quarter**”) shall be the sum of EBITDA of the Company for each of the four most recent Fiscal Quarters commencing after the Opening Date provided that if the period between the Opening Date and the last day of a Tested

Quarter consists of less than four consecutive Fiscal Quarters of the Company commencing after the Opening Date, Cumulative EBITDA for such Tested Quarter shall be the EBITDA of the Company for the aggregate Fiscal Quarter periods which have elapsed since the Opening Date, calculated on an annualised basis;

- (iv) Debt Service Cover Ratio for the most recently ended Fiscal Year is at least 1.5:1 *provided* that such Fiscal Year is or begins after the financial year in which the Construction Completion Date occurs; and
  - (v) each of the Reserve Accounts is fully funded in accordance with Schedule 6 (*Accounts*); and
- (b) 100% of the Excess Cash Flow remaining after (1) prepayment of Advances under the Term Loan Facilities in respect of Excess Cash Flow pursuant to paragraph 6 of Schedule 9 (*Mandatory Prepayment*) and (2) each of the Reserve Accounts is fully funded in accordance with Schedule 6 (*Accounts*) *provided* that all of the following conditions have been satisfied:
- (i) no Event of Default has occurred and is continuing;
  - (ii) the ratio of Senior Debt as at the end of the most recently ended Fiscal Year to EBITDA of the Company for such Fiscal Year (provided that such Fiscal Year is or begins after the Fiscal Year in which the Construction Completion Date occurs) is less than less than 2:1;
  - (iii) the ratio of Senior Debt as at the end of each of the four consecutive Fiscal Quarters of the Company immediately preceding the payment or making of such dividend or other distribution to Cumulative EBITDA for such Fiscal Quarter is less than 4:1 (provided that each of such Fiscal Quarter begins on or after the Opening Date), where “**Cumulative EBITDA**” for a Fiscal Quarter of the Company (the “**Tested Quarter**”) shall be the sum of EBITDA of the Company for each of the four most recent Fiscal Quarters commencing after the Opening Date *provided* that if the period between the Opening Date and the last day of a Tested Quarter consists of less than four consecutive Fiscal Quarters of the Company commencing after the Opening Date, Cumulative EBITDA for such Tested Quarter shall be the EBITDA of the Company for the aggregate Fiscal Quarter periods which have elapsed since the Construction Completion Date, calculated on an annualised basis;
  - (iv) Debt Service Cover Ratio of the Company for the most recently ended Fiscal Year is at least 1.5:1 provided that such Fiscal Year is or begins after the financial year in which the Construction Completion Date occurs; and
  - (v) each of the Reserve Accounts is fully funded in accordance with Schedule 6 (*Accounts*).

- 6.3 Any payment or making of dividends or other distribution under paragraph 6.2 of this Part B shall be made in April of each calendar year (or such earlier date after the Intercreditor Agent is satisfied that all of the above conditions have been satisfied after receipt of the annual audited financial statements of the Company for such calendar year and the Compliance Certificate delivered together with such financial statements) and on or after the date of any prepayment of Advances under the Term Loan Facilities in respect of Excess Cash Flow pursuant to paragraph 6 of Schedule 9 (*Mandatory Prepayment*) provided that if the condition referred to in paragraph 6.2(a)(i), (a)(iv), (b)(ii) or, as the case may be, (b)(iv) of this Part B is not satisfied at such time, such payment may be made at any time in such calendar year after the satisfaction of the condition referred to in paragraph 6.3(a)(ii), (a)(iv), (b)(ii) or, as the case may be, (b)(iv) of this Part B provided that all other conditions remain satisfied at the time of such payment.
- 6.4 The financial ratios set out in paragraph 6.2 of this Part B shall be tested by reference to the financial statements of the Company delivered pursuant to paragraph 1(a) of Part A of this Schedule 5 and/or each Compliance Certificate delivered pursuant to paragraph 2(a) of Part A of this Schedule 5.

7. **Limitation on Capital Expenditures**

Make, commit to make or incur Capital Expenditures except:

- (a) for the purposes of the Projects and:
- (i) prior to the Construction Completion Date except as contemplated by the Project Budget; and
  - (ii) thereafter, in Fiscal Year 2006, in an aggregate amount in excess of USD12,500,000 or its equivalent and in each subsequent Fiscal Year, in an aggregate amount in excess of USD30,000,000 or its equivalent; or
- (b) to the extent such Capital Expenditures are made from the proceeds of any Financial Indebtedness incurred pursuant to paragraph 2(f) of this Part B or any Equity (in addition to Base Equity, Contingent Equity, the Subordinated Funding and any other Equity required to be paid up or advanced in accordance with the terms of the Senior Finance Documents) or any other moneys which would otherwise be available to make Restricted Payments (including such moneys referred to in sub-paragraph (v) of paragraph 2(f) of this Part B).

Notwithstanding any other provision hereof, the Company shall not make, commit to make or incur any Capital Expenditures where a Forecast Funding Shortfall has occurred and is continuing or would result therefrom.

8. **Limitation on Investments**

Make any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting an ongoing business from, or make any other investment in, any other Person (all of the foregoing, "**Investments**"), except:

- (a) extensions of trade credit in the ordinary course of business (including, without limitation, advances to patrons of the Project casino and gaming operations consistent with ordinary course gaming operations) *provided* that such extensions are in compliance with all Legal Requirements (including any applicable Legal Requirements concerning money lending in any jurisdiction in which any of the accounts referred to in paragraph 4.2 of Schedule 6 (*Accounts*) is situate);

- (b) Permitted Investments;
- (c) loans and advances to employees of the Company in the ordinary course of business (including, without limitation, for travel, entertainment and relocation expenses) in an aggregate amount not to exceed USD5,000,000 or its equivalent at any one time outstanding;
- (d) Investments consisting of securities received in settlement of debt created in the ordinary course of business and owing to the Company or in satisfaction of judgments; and
- (e) in addition to Investments otherwise expressly permitted by this paragraph 8, so long as no Default shall have occurred and be continuing or would result therefrom and no Material Adverse Effect shall have occurred and be continuing or would result therefrom, Investments by the Company in an aggregate amount (valued at cost) not to exceed USD10,000,000 or its equivalent at any one time outstanding.

**9. Limitation on Optional Payments and Modifications of Governing Documents**

- (a) Make or offer to make any optional or voluntary payment, prepayment, repurchase or redemption of, or otherwise voluntarily or optionally defease, any Financial Indebtedness, or segregate funds for any such payment, prepayment, repurchase, redemption or defeasance, or enter into any derivative or other transaction with any Derivatives Counterparty obligating the Company to make payments to such Derivatives Counterparty as a result of any change in market value of such Financial Indebtedness, other than the prepayment of (i) Financial Indebtedness incurred under the Senior Finance Documents in accordance with the terms of the Senior Finance Documents or (ii) Permitted Financial Indebtedness; or
- (b) amend or modify, or permit the amendment or modification of its Governing Documents in any manner adverse to any of the Secured Creditors.

**10. Limitation on Transactions with Affiliates**

Enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate of the Company unless such transaction is:

- (a) (i) a genuine commercial transaction on terms that are not less favourable to the Company than those that might be obtained at the time in a comparable

arm's length transaction with Persons who are not Affiliates of the Company;

- (ii) the aggregate of the expenditures by the Company involved in all such transactions does not exceed USD15,000,000 or its equivalent in any Fiscal Year, excluding the reimbursement of bona fide, actual out-of-pocket expenses incurred by a third party for the purposes of the Projects (details of which reimbursements shall be certified to the Intercreditor Agent by a Responsible Officer no less frequently than quarterly); and
- (iii) in the case of any transaction, or series of related transactions involving expenditures by the Company in excess of USD5,000,000 or its equivalent, the Company has delivered to the Intercreditor Agent an opinion as to the fairness to the Company at the time the transaction was entered into from a financial point of view and the other matters referred to in this sub-paragraph (a) issued by an independent financial advisor reasonably satisfactory to the Intercreditor Agent,

*provided* that, in no such case shall such a transaction or series of related transactions consist of, contain, or provide for the payment of any profit or similar component benefiting an Affiliate of the Company, all payments under such transactions to represent only the payment or reimbursement of actual costs and expenses, except transactions where the Company is the recipient of such payments;

- (b) a Disposition permitted pursuant to paragraph 5 of this Part B (*provided* that the requirements of sub-paragraph (a) above shall apply to leases, licences and Subconcessions permitted pursuant to paragraphs 5(e) and 5(h) of this Part B and Dispositions permitted pursuant to paragraph 5(b) of this Part B), an Investment permitted pursuant to paragraph 8 of this Part B, a Restricted Payment permitted pursuant to paragraph 6 of this Part B or a receipt of Equity required or permitted to be subscribed or advanced pursuant to the terms hereof;
- (c) subject to paragraph 20 of this Part B, expressly contemplated by the Project Administration Services Agreement or the IP Agreement and *provided* that any amendments, modifications or supplements thereto shall comply with sub-paragraph (a) above; or
- (d) expressly contemplated by the Project Budget delivered to the Intercreditor Agent pursuant to paragraph 24 of Part A of Schedule 2 (*Conditions Precedent*).

#### 11. **Limitation on Sales and Leasebacks**

Save as permitted pursuant to paragraph 5 of this Part B, enter into any arrangement with any Person providing for the leasing by the Company as lessee of Property which has been or is to be sold or transferred by the Company to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such Property or rental obligations of the Company.



**12. Limitation on Changes in Fiscal Periods**

Permit the Fiscal Year of the Company to end on a day other than December 31 or change the Company's method of determining Fiscal Quarters.

**13. Limitation on Negative Pledge Clauses**

Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of the Company to create, incur, assume or suffer to exist any Lien upon any of its Property or revenues, whether now owned or hereafter acquired, to secure the Obligations other than:

- (a) the Senior Finance Documents;
- (b) the Concession Contract;
- (c) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby and proceeds thereof); and
- (d) as required by applicable Legal Requirements.

**14. Limitation on Lines of Business**

14.1 Enter into any business activities, whether directly or indirectly, other than Permitted Businesses.

14.2 Establish any representative office or other place of business in a jurisdiction outside the Macau SAR unless such office or place of business has been notified to the Intercreditor Agent, the requirements of paragraph 15 of Part A of this Schedule 5 have been satisfied in respect of any Property of the Company which may at any time be located in such jurisdiction within 30 days of such establishment and the Company has taken all such steps as may be required in such jurisdiction to perfect, maintain and protect the Security.

**15. Restrictions on Changes**

**15.1 *Concession Contract and Land Concession Contract***

Notwithstanding any other provision of this paragraph 15, agree to any amendment to or termination of, or assign, transfer, cancel or waive any of its rights under the Concession Contract or the Land Concession Contract without obtaining the prior written consent of the Intercreditor Agent.

**15.2 *Permits and Other Contracts***

15.2.1 Directly or indirectly enter into, amend, modify, terminate, supplement or waive a right or permit or consent to the amendment, modification, termination (except expiration in accordance with its terms), supplement or waiver of any of the provisions of, or give any consent or exercise any other discretion under:

- (a) any Permit, the effect of which could reasonably be expected to have a Material Adverse Effect;

- (b) (i) the Prime Contractor's Completion Guarantee or the Prime Contractor's Performance Bond; or
  - (ii) any other Payment and Performance Bond (*provided* that the Company may amend, modify, terminate, supplement or waive any provision under (or provide a consent under) any such document if such amendment, modification, termination, supplement, waiver or consent could not reasonably be expected to have a Material Adverse Effect); or
  - (c) (i) any other Major Project Document *provided* that the Company may:
    - (1) agree to increase the Subordinated Funding by such amount as, together with all Financing Costs estimated to accrue or be payable in respect thereto up until the Opening Date, does not exceed USD23,000,000; and
    - (2) save in respect of any such action which the Intercreditor Agent notifies to the Company as requiring its prior written consent, agree to immaterial amendments or modifications thereto or grant immaterial consents, waive timely performance or observance of an immaterial obligation, exercise an immaterial discretion or remedy, make an immaterial election or compromise or settle an immaterial claim thereunder, so long as, in each case, such action is in the ordinary course of business and consistent with customary commercial practices and could not reasonably be expected to:
      - (x) impair or otherwise adversely affect any of the rights, benefits or interests of the Company or any Senior Secured Creditor under or in respect of any Transaction Document or, in the case of any Senior Secured Creditor, any of the Project Security; or
      - (y) give rise to a Material Adverse Effect; or
  - (ii) any other Project Document or other contract unless it could not reasonably be expected to have a Material Adverse Effect, without in each case obtaining the Intercreditor Agent's prior written consent (which consent shall not be unreasonably withheld). Notwithstanding any of the foregoing, the Company may only take or, as the case may be, permit or consent to the taking of, any such action under or in respect of, or otherwise agree to any variation to the Project Works or the Plans and Specifications or any other variation to the Construction Contract without the prior written consent of the Intercreditor Agent where:
- (A) the aggregate value of the costs (if any) arising from all such actions and variations does not exceed USD60,000,000 or its equivalent and:
- (1) the actions or variations do not involve any extension of the Guaranteed Date of Substantial Completion (beyond that effective prior to the variations);

- (2) (x) no Forecast Funding Shortfall (without taking into account any amount of Contingent Equity or any amount of the Contingent Debt Facilities) has occurred and is continuing or would result therefrom; and
- (y) no Material Adverse Effect could reasonably be expected to result therefrom,
- and, except where such actions or variations satisfy the requirements specified in sub-paragraph (c)(i)(2) above, the Intercreditor Agent has received a certificate from the Company signed by a Responsible Officer certifying that the conditions set out in this sub-paragraph (2) have been satisfied; and
- (3) in respect of each such action or variation involving costs in excess of USD2,000,000 or its equivalent:
- (x) the Technical Adviser has certified to the Intercreditor Agent that the actions or variations could not reasonably be expected to:
- (aa) delay the achievement of Substantial Completion and the satisfaction of the Opening Conditions specified in paragraph (a) of the definition thereof beyond 31 December 2006 (in the case of any action or variation proposed on or prior to the date of the Initial Advance under the Term Loan Facilities) or 28 February 2007 (in the case of any action or variation proposed after the date of the Initial Advance under the Term Loan Facilities); or
- (bb) have any material adverse impact on the construction of either Project or the performance of the obligations of the Prime Contractor under the Construction Contract; and
- (y) the Insurance Adviser has certified to the Intercreditor Agent that the actions or variations could not reasonably be expected to result in a material adverse modification, cancellation or termination of any Insurance or otherwise have any material adverse impact on the rights or benefits of any Senior Secured Creditor in respect thereto; and

- (B) to the extent any such action or variation may cause Project Costs to increase to an amount in excess of Base Project Costs, the Company shall procure the funding of the costs arising from the action or variation from the proceeds of:
- (i) additional Equity (other than any Base Equity, the Subordinated Funding or any Contingent Equity) and deposit the proceeds of such additional Equity in the Capital Contributions Account to be held, subject to the other terms of this Agreement, pending application towards such costs; or
  - (ii) Financial Indebtedness incurred pursuant to paragraph 2(f) of this Part B *provided that*:
    - (1) the Company may also apply the proceeds of such Financial Indebtedness towards the refinancing of Equity utilized pursuant to sub-paragraph (i) above;
    - (2) the aggregate amount of all such Financial Indebtedness incurred for the purpose of funding the costs arising from this or any other such action or variation or refinancing Equity pursuant to sub-paragraph (1) above, together with, in each case, all Financing Costs estimated to accrue or be payable in respect thereto up until the Opening Date, shall not exceed USD25,000,000 or its equivalent; and
    - (3) any outstanding Equity utilized pursuant to sub-paragraph (i) (other than any such Equity refinanced pursuant to sub-paragraph (1)) shall, notwithstanding the terms thereof, count towards the satisfaction of the condition specified in paragraph 2(f)(v) of this Part B in respect of such Financial Indebtedness.

The Company shall not issue any certificate or other evidence contemplated by clause 7.4 of the Construction Contract Direct Agreement concerning the satisfaction of any of the provisions of this paragraph 15.2 unless such provisions have been satisfied.

- 15.2.2 Issue, accept, or be deemed to have confirmed any notice of “Substantial Completion” or “Final Completion” of all or any portion of either Project under article 12 of the Construction Contract without the written approval of the Intercreditor Agent (such approval not to be unreasonably withheld or, without prejudice to any other provision of this Agreement, delayed).
- 15.2.3 Reduce the level of Retainage Amounts withheld pursuant to section 5.6 of the Construction Contract or paragraph 21 of Part A of this Schedule 5 except in accordance with the Construction Contract.
- 15.2.4 Fail to withhold a sum equal to 100% of the costs reasonably estimated by the Company (and confirmed by the Technical Adviser) as necessary to complete “Punch List Items” (as defined in the Construction Contract) as Retainage Amounts pursuant to section 5.7 of the Construction Contract unless such retention is not permitted under applicable laws.
- 15.2.5 Accept any non-conforming “Work” (as defined in the Construction Contract) of a material nature unless the Company shall have complied with the requirements of paragraph 15.2.1 of this Part B.

- 15.2.6 (a) Approve the initial "Schedule of Values" (as defined in the Construction Contract) or any change, modification or supplement thereto pursuant to section 5.1 of the Construction Contract, without, in each case, the consent of the Technical Adviser, such consent not to be unreasonably withheld or (b) fail to direct the Prime Contractor to adjust the Schedule of Values as contemplated in section 5.1 of the Construction Contract as and when reasonably required by the Technical Adviser.
- 15.2.7 Accept or agree to any increase in the Contractor's Fee (as defined in the Construction Contract) for any reason, except to the extent required pursuant to section 18.5 of the Construction Contract following compliance with paragraph 15.2.1 of this Part B or such increase is paid from the proceeds of additional Equity (other than Base Equity, Contingent Equity, the Subordinated Funding or any other Equity required to be paid or advanced in accordance with the terms hereof).

**16. Limitation on Formation and Acquisition of Subsidiaries**

Without the prior written consent of the Intercreditor Agent (such consent not to be unreasonably withheld), form, create or acquire any direct or indirect Subsidiary.

**17. Limitation on Subconcessions**

Grant or enter into any Subconcession unless:

- (a) no breach of the Concession Contract shall exist and be continuing at the time such Subconcession is granted or entered into or would occur after or as a result of granting or entering into such Subconcession;
- (b) no Event of Default shall exist and be continuing at the time such Subconcession is granted or entered into or would occur after or as a result of granting or entering into such Subconcession (or immediately after any renewal or extension thereof at the option of the Company);
- (c) such Subconcession and any business or other activities carried out pursuant thereto shall be self-contained and shall not adversely affect the operation of the Projects (excluding the ability of the Company to grant further Subconcessions), no breach or termination thereof shall result in a breach or an entitlement to terminate the Concession Contract, the Company shall have no responsibility nor any liability, actual or contingent, for the performance by the subconcessionaire of its obligations under or in respect of the Subconcession and, subject to receipt by the Intercreditor Agent of evidence reasonably satisfactory to it, neither the Subconcession nor any business or other activities carried out pursuant thereto could otherwise reasonably be expected to materially interfere with, impair or detract from the operation of the Projects or otherwise have a Material Adverse Effect;
- (d) if any upfront premium or similar payment is paid or received in respect of the grant or entry into such Subconcession at any time prior to the Sponsor Support Release Date, it shall first be deposited into the Upfront Premium Account and thereafter:
  - (i) the first USD20,000,000 or equivalent of any such payments shall be retained in the Upfront Premium Account;

- (ii) amounts of such payments in excess of this amount may only be withdrawn from the Upfront Premium Account by the Company prior to the Sponsor Support Release Date for application towards:
- (A) prepayment of the Subordinated Funding;
  - (B) after utilisation of the Contingent Equity and, if available, the Contingent Debt Facilities, in full, meeting any Remaining Project Costs which are not otherwise required under this Agreement to be met by subscription of additional Equity; or
  - (C) the costs of developing and constructing outside the scope of the Projects the additional works comprised in the “second phase” (as referred to in the Land Concession Contract) (the “**Phase 2 Project Works**”) or prepaying Equity used to meet such costs, *provided* that:
    - (1) the Intercreditor Agent has been provided with all such information in relation to the Phase 2 Project Works as it may reasonably require;
    - (2) the Phase 2 Project Works proceed on terms reasonably acceptable to the Intercreditor Agent, including terms requiring:
      - (aa) receipt and approval of all Major Project Documents relating to the Phase 2 Project Works;
      - (bb) the deposit of all amounts of upfront premia or similar payments proposed to be applied towards the costs of the Phase 2 Project Works or prepaying Equity used to meet such costs into a separate segregated account secured on terms no less onerous than the Upfront Premium Account in favour of the Security Agent (the “**Phase 2 Project Account**”);
      - (cc) delivery of regular budgets, schedule updates and progress reports; and
      - (dd) disbursement of funds from the Phase 2 Project Account for budgeted purposes only and subject to satisfaction of conditions precedent including:
        - (i) delivery of formal disbursement requests supported by progress claims and/or other evidence reasonably acceptable to the Intercreditor Agent; and

- (ii) no Forecast Funding Shortfall in respect of the Projects (without taking into account any amounts standing to the credit of the Phase 2 Project Account or otherwise committed for application towards the costs of the Phase 2 Project Works) or its equivalent without double counting in respect of the Phase 2 Project Works (taking into account the amounts standing to the credit of the Phase 2 Project Account (less any amount proposed to be withdrawn for the purposes of prepaying Equity pursuant to this sub-paragraph (C)) or otherwise committed and unconditionally available (or available subject only to the satisfaction of conditions reasonably acceptable to the Intercreditor Agent) for application towards the costs of the Phase 2 Project Works, including any such amount of any Financial Indebtedness incurred pursuant to paragraph 2(f) of this Part B but not, in any case, any other amount of Available Funding); and
- (3) 50% of all amounts of such payments remaining in the Phase 2 Project Account as at the completion of the Phase 2 Project Works shall be withdrawn and applied towards prepayment of the Advances under the Term Loan Facilities in accordance with paragraph 6 of Schedule 9 (*Mandatory Prepayment*) and the remaining balance may be used by the Company and applied in its discretion (including, subject to compliance with applicable Legal Requirements, to make Restricted Payments) *provided* that no Default has occurred and is continuing; and
- (iii) 50% of all amounts of such payments remaining in the Upfront Premium Account as at the Sponsor Support Release Date shall be withdrawn and applied towards prepayment of the Advances under the Term Loan Facilities in accordance with paragraph 6 of Schedule 9 (*Mandatory Prepayment*) and the remaining balance may be used by the Company and applied in its discretion (including, subject to compliance with applicable Legal Requirements, to make Restricted Payments) *provided* that no Default has occurred and is continuing and the Phase 2 Project Works (if any) have been completed; and
- (e) if any upfront premium or similar payment is paid or received in respect of the grant or entry into such Subconcession at any time on or after the Sponsor Support Release Date, it shall first be deposited into the Upfront Premium Account and thereafter 50% shall be withdrawn and applied towards prepayment of the Advances under the Term Loan Facilities in accordance with paragraph 6 of Schedule 9 (*Mandatory Prepayment*) and the remaining balance

in the Upfront Premium Account may be used by the Company and applied in its discretion (including, subject to compliance with applicable Legal Requirements, to make Restricted Payments) *provided* that no Event of Default has occurred and is continuing.

**18. Limitation on Sale or Discount of Receivables**

Except as permitted pursuant to paragraph 5(b) of this Part B, directly or indirectly, sell with recourse, or discount or otherwise sell for less than the face value thereof, any of its notes or accounts receivable other than an assignment for purposes of collection in the ordinary course of business.

**19. Compliance**

Use or permit the use of the Projects in any manner that could result in such use becoming a non-conforming use under any applicable land use law, rule or regulation.

**20. Restrictions on Payments of IP Fees**

Make any payment to the Licensor under the IP Agreement save that the Company may pay:

- (a) Approved IP Fees provided that (i) the Debt Service Accounts are fully funded in accordance with Schedule 6 (*Accounts*); (ii) amounts payable to the Performance Bond Provider permitted by Clause 5.2 of the Deed of Appointment and Priority have been paid; and (iii) amounts payable to the Subordinated Funding Provider pursuant to Clause 6.2 of the Deed of Appointment and Priority have been paid;
- (b) IP Fees other than Approved IP Fees in accordance with paragraph 6 (*Restricted Payments*) of this Part B;
- (c) any amount by way of reimbursement under the IP Agreement *provided* that such payment satisfies the requirements of paragraph 10(a) (*Limitation on Transactions with Affiliates*) of this Part B; and
- (d) any other sums under the IP Agreement out of monies remaining in the Company after each of the Reserve Accounts is fully funded in accordance with Schedule 6 (*Accounts*) and any prepayment of Advances under the Term Loan Facilities in respect of Excess Cash Flow pursuant to paragraph 6 of Schedule 9 (*Mandatory Prepayment*) has been made,

*provided* that, save in respect of any reimbursement made pursuant to sub-paragraph (c), the Company may not make any such payment until after the last day of the first full Fiscal Quarter of the Company beginning on or after the Construction Completion Date.

**21. Amendment to Transaction Documents**

Enter into any agreement (other than the Senior Finance Documents) restricting its ability to amend any of the Transaction Documents.



**22. No Other Powers of Attorney**

Execute or deliver any agreement creating any powers of attorney (other than powers of attorney for signatories of documents permitted or contemplated by the Transaction Documents), or similar documents, instruments or agreements, except to the extent such documents, instruments or agreements comprise part of the Security Documents.

**23. Limitation on Leases and Licences**

Enter into any lease or licence with respect to any space on or within the Site Facilities unless:

- (a) no Enforcement Notice has been issued;
- (b) such lease or licence is a genuine commercial transaction on arm's length terms;
- (c) no gaming operations may be conducted on any space that is subject to such lease or licence other than in accordance with the Concession Contract and all other applicable Legal Requirements and subject to compliance by the Company with paragraph 26 of this Part B,

and *provided* always that the security interests granted in favour of the Lenders under any of the Security Documents are not materially and adversely affected.

**24. Concession Contract Inventory of Properties**

Include in any inventory or any update thereof required pursuant to article 44 of the Concession Contract any item which is not specified in Schedule 16 (*Concession Contract Inventory of Properties*) or reasonably incidental to the categories of items referred to therein or otherwise reasonably approved by the Intercreditor Agent.

**25. Casino and Gaming Zone Areas**

Designate any area (other than the horizontal property identified as comprising the casino in the Plans and Specifications as at the Signing Date) as a casino or gaming zone unless such designation would not cause the aggregate area which is classified as casino or gaming zones by the Macau SAR to exceed 20,000m<sup>2</sup> and the Intercreditor Agent has received evidence that, in the event of the reversion of such area to the Macau SAR upon termination of the Concession Contract, such reversion would not materially affect the ongoing operation of the Hotel Project.

**26. Junkets**

Enter into or permit to subsist any arrangement with any gaming junket-tour promoters, directors or cooperators unless such Persons and any such arrangement are in compliance with the requirements of the Concession Contract and the IP Agreement and all other applicable Legal Requirements and the Company shall monitor the activities of such Persons in regard to such arrangements and shall take all necessary or appropriate reasonable measures to ensure such compliance.

## SCHEDULE 6

### ACCOUNTS

#### 1. Accounts

##### 1.1 Accounts

The Company shall, prior to submitting an Advance Request for the Initial Advance, establish with a bank acceptable to the Intercreditor Agent in the jurisdiction specified, on the terms and conditions set out in this Schedule 6, the Pledge over Onshore Accounts, the Capital Contributions Account Control Agreement and the Account Bank Notices and Acknowledgements and maintain in accordance with the requirements of this Schedule 6 and the Senior Finance Documents, the following bank accounts:

- (a) an account denominated in US dollars opened in Macau and designated "Hotel Facility USD Disbursement Account";
- (b) an account denominated in HK dollars opened in Macau and designated "Hotel Facility HKD Disbursement Account";
- (c) an account denominated in US dollars opened in Macau and designated "Project Facility USD Disbursement Account";
- (d) an account denominated in HK dollars opened in Macau and designated "Project Facility HKD Disbursement Account";
- (e) an account denominated in US dollars opened in Nevada and designated "Capital Contributions Account";
- (f) an account denominated in US dollars opened in Macau and designated "USD Operating Account";
- (g) an account denominated in HK dollars opened in Macau and designated "HKD Operating Account";
- (h) an account denominated in Patacas opened in Macau and designated "MOP Operating Account";
- (i) an account denominated in US dollars opened in Macau and designated "USD Debt Service Account";
- (j) an account denominated in HK dollars opened in Macau and designated "HKD Debt Service Account";
- (k) an account denominated in US dollars opened in Macau and designated "USD Debt Service Reserve Account";
- (l) an account denominated in HK dollars opened in Macau and designated "HKD Debt Service Reserve Account";
- (m) an account denominated in Patacas opened in Macau and designated "Special Gaming Tax Account";

- (n) an account denominated in Patacas opened in Macau (being the account referred to in paragraph B6 of the Gaming Concession Consent Agreement) and an account denominated in US dollars opened in Macau, together designated "Compensation Proceeds Account"; and
- (o) an account opened in Macau and designated "Upfront Premium Account".

The Company may open one or more additional operating accounts with one or more banks in the Hong Kong SAR *provided* that:

- (i) such bank is acceptable to the Intercreditor Agent;
- (ii) the Company has completed paragraph (a) of the definition of "HK Account" in the Charge over HK Accounts by inserting details of each such additional operating account and executed and delivered the Charge over HK Accounts to the Security Agent;
- (iii) the Security Agent has received the Account Bank Notices and Acknowledgements in respect of each such account executed by the relevant Account Bank; and
- (iv) the Intercreditor Agent has received a legal opinion, in form and substance reasonably satisfactory to it, concerning the efficacy of the Charge over HK Accounts and the Security created thereunder, the Account Bank Notices and Acknowledgements and such other matters as it may reasonably require,

and:

- (A) thereafter, the Company may nominate further operating accounts which it proposes to open with banks situated in the Hong Kong SAR for designation as "HK Accounts" pursuant to paragraph (c) of the definition thereof in the Charge over HK Accounts; and
- (B) at any time, the Company may nominate additional operating accounts which it proposes to open with banks situated in the Macau SAR for designation as "Onshore Accounts" pursuant to paragraph (c) of the definition thereof in the Pledge over Onshore Accounts,

and, subject to such banks being, in the case of each such nomination, acceptable to the Intercreditor Agent, the Security Agent shall so designate such nominated accounts and, subject to any other remaining requirements of the definition of "Operating Accounts" in Clause 1.1 being satisfied, each such account shall be an "Account" for the purposes of this Agreement.

## 1.2 **Maintenance of Accounts**

The Accounts shall, save as otherwise provided by the Charges over Accounts, the Account Bank Notices and Acknowledgements or herein, be maintained by the Company with the relevant Account Bank in accordance with the Account Bank's usual practice

and may from time to time be sub-divided into such sub-accounts as the Company may reasonably request.

**1.3 Restrictions**

The Company shall maintain each Account as a separate account with the relevant Account Bank and:

- (a) none of the restrictions contained in this Schedule on the withdrawal of funds from Accounts shall affect the obligations of the Company to make any payments of any nature required to be made to the Senior Secured Creditors on the due date for payment thereof in accordance with any of the Senior Finance Documents; and
- (b) no withdrawal shall be made from any Account if it would cause such account to become overdrawn.

**1.4 Credits to Accounts**

Save as otherwise provided in any of the Security Documents after enforcement thereof, the Company shall credit, and shall procure that there is credited, to the Accounts all such amounts as are provided for in this Agreement and ensure that such other credits are made thereto as are required to be made pursuant to any other provision of any other Senior Finance Document.

**1.5 Interest**

Each amount from time to time standing to the credit of each Account (for the avoidance of doubt excluding amounts for the time being applied in acquiring

Permitted Investments) shall bear interest at such rate as may from time to time be agreed between the Company and the relevant Account Bank, and the Company shall ensure that such interest is credited to such account at such time or times as may be agreed from time to time between the Company and the Account Bank or, failing agreement, in arrears on 31 December.

**1.6 Payments**

Save as otherwise provided in this Agreement or pursuant to the Charges over Accounts, the Account Bank Notices and Acknowledgements or any other relevant Security Document, no party shall be entitled to require any Account Bank to make any payment out of the amount standing to the credit of any Account maintained with it.

**1.7 Other Accounts**

The Company will not open or maintain any accounts other than the Accounts except with the prior approval of the Intercreditor Agent.

## 2. Disbursement Accounts

### 2.1 Deposits

The Company shall pay (and shall specify in the relevant Advance Request that) all proceeds of all:

- (a) Hotel Facility Advances which are denominated in US dollars to the Hotel Facility USD Disbursement Account;
- (b) Hotel Facility Advances which are denominated in HK dollars to the Hotel Facility HKD Disbursement Account;
- (c) Project Facility Advances which are denominated in US dollars to the Project Facility USD Disbursement Account; and
- (d) Project Facility Advances which are denominated in HK dollars to the Project Facility HKD Disbursement Account,

*provided that the proceeds of any Advance made pursuant to Clause 7.2 (Rebalancing between Debt and Equity) shall be paid to the Securities Account (and the relevant Advance Request shall specify accordingly).*

### 2.2 Withdrawals

2.2.1 The Company shall only be entitled to withdraw amounts from the Hotel Facility USD Disbursement Account and the Hotel Facility HKD Disbursement Account to pay Project Costs.

2.2.2 The Company shall only be entitled to withdraw amounts from the Project Facility USD Disbursement Account and the Project Facility HKD Disbursement Account to pay Project Costs.

### 2.2.3 Closure

Each of the Disbursement Accounts shall be closed by the Company within five Business Days of the last to occur of:

- (a) the last day of the Hotel Facility Availability Period or, as the case may be, the Project Facility Availability Period; and
- (b) the day upon which the Intercreditor Agent (following consultation with the Technical Adviser) is satisfied that all Remaining Project Costs in respect of which any Advance has been made under Clause 7.1 (*Final Completion Costs*) have been fully paid and discharged.

Any balance remaining on the Disbursement Accounts shall be applied by the Company to the Operating Accounts.

## 3. Capital Contributions Account

### 3.1 Deposits

The Company shall procure that all Equity proceeds are paid into the Capital Contributions Account.

### 3.2 **Withdrawals**

The Company shall only be entitled to withdraw amounts from the Capital Contributions Account:

- (a) prior to the Construction Completion Date, to pay Project Costs; and
- (b) after the Construction Completion Date:
  - (i) to the extent such amounts constitute proceeds of Base Equity, Contingent Equity, Subordinated Funding or, to the extent required under this Agreement to be subscribed or advanced to fund any Project Costs, any other Equity, to pay Project Costs; and
  - (ii) otherwise, once all Remaining Project Costs have been paid, in transfer to the Operating Accounts.

## 4. **Operating Accounts**

### 4.1 **Deposits**

Subject to paragraph 4.2 of this Schedule 6, the Company shall procure that:

- (a) the proceeds of all Revolving Credit Facility Advances; and
- (b) all Project Revenues and other amounts received by it which, in either case, are not required to be credited to any other Account, are paid directly into the Operating Accounts.

### 4.2 **Additional Operating Accounts**

Notwithstanding paragraph 4.1 of this Schedule 6:

- (a) amounts paid by or on behalf of patrons of the casino or gaming operations of the Company for the purposes of securing or application against any payments which may fall due from them to the Company; and
- (b) Project Revenues receivable from such amounts or otherwise derived from such operations, and received in any jurisdiction outside the Macau SAR, may be deposited into or held in an account maintained by an Affiliate of the Company in that jurisdiction which is not an Operating Account (each, an “**Affiliated Offshore Account**”) *provided*:
- (c) in the event that such amounts are deposited into or held in an account maintained by an Affiliate of the Company or commingled with moneys held for or payable to any Affiliate of the Company, such action is consistent with the usual business practices of Affiliates of the Company engaged in casino or gaming operations of the type undertaken by the Company and a copy of the agreement(s) relating to the receipt and payment of such amounts has been

delivered to the Intercreditor Agent pursuant to sub-paragraph 2(e) of Part A of Schedule 5 (*Covenants*);

- (d) the Company takes all reasonable steps to enforce its rights under such agreements and, subject to sub-paragraph (e) below, to ensure all such amounts held for or payable to the Company (rather than a patron of the casino or gaming operations thereof) or otherwise comprising Project Revenues (together, for the purposes of this paragraph 4.2, the “**Company Funds**”), are withdrawn and deposited into an Operating Account in the Macau SAR or the Hong Kong SAR as soon as is reasonably practicable;
- (e) notwithstanding sub-paragraph (d) above, the Company may, consistent with prudent international business practice and the usual business practices of companies engaged in casino or gaming operations, maintain the Company Funds referred to therein in an Affiliated Offshore Account in the jurisdiction in which they were received *provided that*:
- (i) upon the aggregate of all Company Funds standing to the credit of such accounts in such jurisdiction exceeding, in the case of:
- (A) Taiwan, USD5,000,000;
  - (B) Japan, USD2,000,000; or
  - (C) any other jurisdiction, USD1,000,000,
- or its equivalent, the Company shall, as soon as practicable thereafter, procure the withdrawal and deposit of an amount not less than such excess into, if such jurisdiction is the Hong Kong SAR, an existing Operating Account in that jurisdiction or the Macau SAR or, if such jurisdiction is not the Hong Kong SAR, an account opened by the Company in such jurisdiction in respect of which the following conditions have been satisfied (each such account, an “**Additional Operating Account**”):
- (1) the account is maintained with a bank reasonably acceptable to the Intercreditor Agent;
  - (2) the Security Agent has, on terms reasonably satisfactory to the Intercreditor Agent, been granted a first ranking Lien over the account, the credit balance and all rights, benefits and proceeds thereof for the payment and discharge of all of the Secured Obligations;
  - (3) the Security Agent has received such acknowledgements and undertakings concerning the account and the Lien from the bank with which the account is opened as the Intercreditor Agent may reasonably require, including acknowledgements and undertakings in substantially the same terms as those set out in the Account Bank Notices and Acknowledgements; and

- (4) the Intercreditor Agent has, if requested by it, received a legal opinion, in form and substance reasonably satisfactory to it, concerning the efficacy of the Lien, the acknowledgements and undertakings and such other matters as it may reasonably require; and
- (ii) upon the aggregate of all Company Funds standing to the credit of such Affiliated Offshore Accounts and any Additional Operating Account in such jurisdiction exceeding, in the case of:
  - (A) Taiwan, USD10,000,000;
  - (B) Japan, USD4,000,000; or
  - (C) any other jurisdiction, USD2,000,000,or its equivalent, the Company shall, as soon as practicable thereafter, procure that an amount not less than such excess is withdrawn from such jurisdiction and deposited into an Operating Account in the Macau SAR or the Hong Kong SAR.

#### 4.3 **Withdrawals**

Subject to this Agreement and the other Senior Finance Documents, the Company shall be entitled to withdraw amounts from the Operating Accounts to meet Project operating expenses, to fund other Accounts and to make other payments permitted or required in accordance with this Agreement.

#### 5. **Debt Service Accounts**

##### 5.1 **Deposits**

5.1.1 The Company shall procure that the amount standing to the credit of the USD Debt Service Account and the HKD Debt Service Account:

- (a) two months prior to the next Repayment Date is not less than one-third of the aggregate amounts of Debt Service due by way of principal repayment in US dollars and HK dollars respectively under the Term Loan Facilities on such Repayment Date;
- (b) one month prior to such Repayment Date is not less than two-thirds of such amounts; and
- (c) as at such Repayment Date is equal to such amounts.



- 5.1.2 In the case of any Interest Payment Date under the Term Loan Facilities which falls at the end of a three month interest period, the Company shall procure that, in addition to any other amount required to be credited to such Accounts pursuant to this paragraph 5.1, the amount standing to the credit of the USD Debt Service Account and the HKD Debt Service Account:
- (a) two months prior to such Interest Payment Date is not less than one-third of the aggregate amounts of Debt Service estimated to be due by way of Financing Costs in US dollars and HK dollars respectively under the Term Loan Facilities on such Interest Payment Date;
  - (b) one month prior to such Interest Payment Date is not less than two-thirds of such amounts; and
  - (c) as at such Interest Payment Date is equal to such amounts.
- 5.1.3 Where such an Interest Payment Date falls at the end of a two month Interest Period, the Company shall procure that, in addition to any other amount required to be credited to such Accounts pursuant to this paragraph 5.1, the amount standing to the credit of the USD Debt Service Account and the HKD Debt Service Account:
- (i) one month prior to such Interest Payment Date is not less than half the aggregate amounts of Debt Service estimated to be due by way of Financing Costs in US dollars and HK dollars respectively under the Term Loan Facilities on such Interest Payment Date; and
  - (i) as at such Interest Payment Date is equal to such amounts.
- 5.1.4 Where such an Interest Payment Date falls at the end of a one month Interest Period, the Company shall procure that, in addition to any other amount required to be credited to such Accounts pursuant to this paragraph 5.1, the amount standing to the credit of the USD Debt Service Account and the HKD Debt Service Account as at such Interest Payment Date is equal to the aggregate amounts of Debt Service due by way of Financing Costs in US dollars and HK dollars respectively under the Term Loan Facilities on such Interest Payment Date.
- 5.1.5 No amount required to be deposited into a Debt Service Account pursuant to Schedule 9 (*Mandatory Prepayment*) shall be taken into account when determining the amounts required to be deposited into the Debt Service Accounts pursuant to this paragraph 5.1.
- 5.2 **Withdrawals**
- On each Repayment Date and Interest Payment Date, the Company shall make payment of the amounts of Debt Service due on such date under the Term Loan Facilities from the Debt Service Accounts.
6. **Special Gaming Tax Account**
- 6.1 **Deposits**
- The Company shall, prior to the end of each calendar month beginning on or after the Opening Date, pay into the Special Gaming Tax Account the amount of special gambling tax payable for such calendar month in accordance with article 50 of the Concession Contract and applicable Legal Requirements.

**6.2 Withdrawals**

Save as otherwise agreed by the Intercreditor Agent, the Company shall only be entitled to withdraw moneys from the Special Gaming Tax Account to pay special gambling tax as and when it falls due.

**7. Debt Service Reserve Account**

**7.1 Deposit**

Subject to the right of the Company to pay items with a higher priority in the payment waterfall referred to in paragraph 12 hereof and after ensuring that the Debt Service Accounts and the Special Gaming Tax Account are fully funded in accordance with the requirements of this Schedule 6 but prior to any prepayment of Advances under the Term Loan Facilities in respect of Excess Cash Flow pursuant to paragraph 4 of Schedule 9 (*Mandatory Prepayment*), any payment to the Licensor under the IP Agreement (other than Approved IP Fees or any other payment permitted pursuant to paragraph 20(c) (*Restrictions on Payments of IP Fees*) of Part B of Schedule 5 (*Covenants*)) or any Restricted Payment, the Company shall, on each Repayment Date, procure that the amount standing to the credit of the USD Debt Service Reserve Account and the HKD Debt Service Reserve Account is not less than the sum of the aggregate amounts of Debt Service due in US dollars and HK dollars respectively under the Term Loan Facilities over the period beginning immediately after such Repayment Date and including and ending on the later of the next two Repayment Dates. Where an Interest Period comes to an end during such period, this amount shall be determined on the assumption that further interest continues to accrue in respect of the amount outstanding under the Term Loan Facilities to which such Interest Period related at the same rate as that applicable during such Interest Period and on the assumption that such accrued interest shall be due on the later of the next two such Repayment Dates.

**7.2 Withdrawals**

7.2.1 The Company may, to the extent that it has evidenced to the satisfaction of the Intercreditor Agent that amounts standing to the credit of the Debt Service Accounts or otherwise available to the Company are insufficient to make the relevant payment, pay to the Intercreditor Agent (or as it may direct) from the balance standing to the credit of either Debt Service Reserve Account, any amount of Debt Service due and payable by the Company under the Term Loan Facilities and which has not been paid.

7.2.2 The Company may, to the extent that it has evidenced to the satisfaction of the Intercreditor Agent that the amounts standing to the credit of the Debt Service Reserve Accounts exceed the balances required by this paragraph 7, transfer the amount of the excess to the Operating Accounts.

**8. Compensation Proceeds Account**

**8.1 Deposits**

The Company shall ensure that all Termination Proceeds, Eminent Domain Proceeds, Insurance Proceeds (other than Insurance Proceeds in respect of loss of revenue which are required to be paid directly to parties other than the Company under the terms of the relevant policy in Schedule 7 (*Insurance*) or which relate to any claim made thereunder

but paid by the Company) and all other sums referred to in paragraph B 6 of the Gaming Concession Consent Agreement are paid immediately to the Compensation Proceeds Account.

## 8.2 **Withdrawals**

8.2.1 The Company may only make a withdrawal from the Compensation Proceeds Account if:

- (a) such request relates to moneys which the Company is obliged to apply in mandatory prepayment of the Term Loan Facilities or as otherwise provided pursuant to Clause 8.3 (*Mandatory Prepayment*) and Schedule 9 (*Mandatory Prepayment*); or
- (b) such request is made in accordance with paragraphs 8.2.2 or 8.2.3 hereof.

8.2.2 If there shall occur any damage or destruction of or with respect to the Projects with respect to which Insurance Proceeds for any single loss or series of related losses not in excess of USD20,000,000 or its equivalent are payable, such Insurance Proceeds may be withdrawn from the Compensation Proceeds Account in amounts from time to time necessary to make payments for work undertaken towards repair, restoration or reconstruction necessitated by such event(s), upon confirmation by the Intercreditor Agent that it has received documentation reasonably satisfactory to it supporting such requested payments.

8.2.3 Provided that the conditions set forth in paragraph 5 of Schedule 9 (*Mandatory Prepayment*) have been satisfied or waived by the Intercreditor Agent, or have been acknowledged by the Intercreditor Agent as having been satisfied, which acknowledgement shall not be unreasonably withheld, delayed or conditioned, if there shall occur any damage or destruction of or with respect to the Projects with respect to which Insurance Proceeds for any single loss or series of related losses of more than USD20,000,000 or its equivalent are payable, such Insurance Proceeds may be withdrawn from the Compensation Proceeds Account in amounts from time to time necessary to make payments for work undertaken towards repair, restoration or reconstruction necessitated by such event(s) upon confirmation by the Intercreditor Agent that it has received:

- (a) a certificate from the Company:
  - (i) describing in reasonable detail the nature of the repairs or restoration to be effected with such withdrawal and certifying that such repairs or restoration are materially consistent with, and shall be undertaken in accordance with, the Repair Plan;
  - (ii) stating the cost of such repairs or restoration (which shall be no less than the amount of Insurance Proceeds requested in such release) and that such requested release amount will be applied to the cost thereof;
  - (iii) stating that the aggregate amount requested in respect of such repairs or restoration (when added to any other Insurance Proceeds received by the

Company or funds otherwise made available to the Projects in respect of such damage or destruction) does not exceed the cost of such repairs or restoration and that a sufficient amount of funds is or will be available to the Company to complete such repair or restoration; and

- (iv) stating that neither a Default nor an Event of Default has occurred and is continuing other than a Default or an Event of Default resulting solely from such damage or destruction (*provided* that, in any event, no other Default or Event of Default shall have occurred and be continuing);
- (b) such documents, certificates and information of the type described in paragraph 5(g) of Schedule 9 (*Mandatory Prepayment*) as the Required Lenders may reasonably request; and
- (c) in the event such repairs or restorations relate to damage or destruction with respect to which Insurance Proceeds for any single loss or series of related losses in excess of USD20,000,000 or its equivalent are payable, all other documents, certificates and information with respect to such Insurance Proceeds, repair and/or restoration as the Intercreditor Agent may reasonably request as necessary or appropriate in connection with such repairs or restoration of the Projects or to preserve or protect the Senior Secured Creditors' interests hereunder and in the applicable Project Security.

## 9. **Upfront Premium Account**

### 9.1 **Deposits**

The Company shall ensure that the amount of any upfront premium or similar payment paid or received in respect of the grant or entry into any Subconcession is paid immediately to the Upfront Premium Account in accordance with paragraph 17 of Part B of Schedule 5 (*Covenants*).

### 9.2 **Withdrawals**

The Company may only make withdrawals from the Upfront Premium Account in accordance with paragraph 17 of Part B of Schedule 5 (*Covenants*).

## 10. **Permitted Investments**

### 10.1 **Power of Investment**

The Company may require, subject as provided in this Agreement, that such part of the amounts outstanding to the credit of any Account as it considers prudent shall be invested from time to time in Permitted Investments in accordance with this paragraph 10.

### 10.2 **Procedure for Investment**

- 10.2.1 Unless held for the account of the Company and secured by first ranking fixed charge in favour of the Security Agent pursuant to a Charge over Accounts, the Company shall ensure that all Permitted Investments are made in the name of the Company and secured

by a first ranking fixed lien in favour of the Security Agent in such form and on such terms as the Intercreditor Agent may reasonably require.

10.2.2 The Company will at all times seek to match the maturities of the Permitted Investments made out of moneys standing to the credit of an Account having regard to the availability of Permitted Investments which are readily marketable, and shall liquidate (or procure that there are liquidated) Permitted Investments to the extent necessary for the purposes of payment of any amount due under the Senior Finance Documents.

10.2.3 The Company shall ensure that all documents of title or other documentary evidence of ownership with respect to Permitted Investments made out of any Account are held in the possession of the Security Agent and, if any such document or other evidence comes into the possession or control of the Company, it shall procure that the same is delivered immediately to the Security Agent.

### 10.3 **Realisation**

10.3.1 The Company shall ensure that, whenever any Investment Proceeds or Investment Income is received in respect of a Permitted Investment made from amounts standing to the credit of an Account:

- (a) the Investment Proceeds and, prior to the Opening Date, the Investment Income are either:
  - (i) reinvested in further Permitted Investments; or
  - (ii) paid into the relevant Account from which the Permitted Investment derives; and
- (b) after the Opening Date, the Investment Income is paid to an Operating Account.

10.3.2 The Company shall give directions to the relevant Account Bank under paragraph 10.3.1 of this Schedule 6 and otherwise exercise its rights hereunder in such manner as will ensure compliance with the applicable provisions of the Senior Finance Documents with respect to Accounts, Permitted Investments, Investment Proceeds and Investment Income.

### 10.4 **Non-qualifying criteria**

If any Permitted Investment ceases to be a Permitted Investment, the Company will upon becoming aware thereof procure that the relevant investment is replaced by a Permitted Investment or by cash.

### 10.5 **Accounts include Permitted Investments**

10.5.1 Subject to sub-paragraph 10.5.2 of this Schedule 6, any reference herein to the balance standing to the credit of one of the Accounts will be deemed to include a reference to the Permitted Investments in which all or part of such balance is for the time being invested. In the event of any dispute as to the value of the credit of an Account pursuant to this paragraph 10.5, that value shall be determined in good faith by the Intercreditor Agent.

If the Company so requests, the Intercreditor Agent will give the Company details of the basis and method of that determination.

10.5.2 If the amount standing to the credit of any Account (excluding for this purpose any amount deemed to be included pursuant to sub-paragraph 10.5.1 of this Schedule 6) is insufficient to make a payment under the Senior Finance Documents when due out of such Account, the Security Agent is authorised, in its discretion and without any liability for loss or damage thereby incurred by the Company, to require the relevant Account Bank or, as the case may be, the Company to sell or otherwise realise, or to enter into any exchange transaction with respect to, any Permitted Investment concerned with that Account to the extent that the same is, in the opinion of the Intercreditor Agent, necessary for the payment of any amount due under the Senior Finance Documents which could not otherwise be paid out of the cash balance standing to the credit of the relevant Account.

#### 10.6 **Information**

Commencing with the quarter in which a Permitted Investment is first made on behalf of the Company, the Company shall, together with any other statement to be provided under this Schedule, deliver to the Security Agent a schedule of the investments made, realised or liquidated during the quarter in respect of each Account, in such detail as the Intercreditor Agent may reasonably require.

#### 10.7 **No Responsibility**

No Senior Secured Party will be responsible for any loss, cost or expense suffered by the Company in respect of any of its actions or those of any Account Bank in relation to the acquisition, disposal, deposit or delivery of Permitted Investments pursuant to this Agreement save for any such loss, cost or expense directly caused by its gross negligence or wilful misconduct. The Account Banks shall be acting solely for and on behalf of the Company in acquiring, holding or disposing of any Permitted Investment.

### 11. **General Account Provisions**

#### 11.1 **Transfers/Withdrawals**

Save as otherwise agreed in writing with the Intercreditor Agent, where this Schedule expressly provides for the making of payments to, or withdrawals or transfers from any Account, no other payments to, or, as the case may be, other withdrawals or transfers from, such Account shall be made except as expressly permitted under this Schedule or under the Security Documents.

#### 11.2 **Application of Amounts**

All amounts withdrawn or transferred from any Account by the Company for application in or towards making a specific payment or meeting a specific liability shall be applied in or towards making that payment or meeting that liability, and for no other purpose.

### 11.3 **Default**

11.3.1 Notwithstanding any other provisions of this Schedule, at any time following an Enforcement Notice, the Intercreditor Agent may request the Security Agent to give notice to any Account Bank and the Company instructing the Account Bank not to act on the instructions or requests of the Company in relation to any sums at any such time standing to the credit of any of the Accounts and the Company shall procure that the Account Bank shall, in accordance with the Charges over Accounts and the Account Bank Notices and Acknowledgements, not so act and the Company shall not be entitled to give or make any further such instructions or requests.

11.3.2 Notwithstanding the other provisions of this Agreement, at any time following an Enforcement Notice, the Intercreditor Agent may request the Security Agent to:

- (i) give written notice to any Account Bank (with a copy to the Company) that the Security Agent shall be the sole signatory in relation to the Accounts;
- (ii) apply the credit balances in the Accounts in or towards repayment of the Facilities and such other liabilities of the Company as the Intercreditor Agent may elect; and
- (iii) generally use amounts standing to the credit of the Accounts at its discretion in order to discharge the Company's obligations under the Transaction Documents,

and, pursuant to the Charges over Accounts and the Account Bank Notices and Acknowledgements, the Company shall procure that the Account Bank so acts and makes such payments accordingly.

### 11.4 **Review of Project Accounts**

The Company irrevocably grants (solely for the purposes of its role as agent of the Senior Secured Creditors hereunder) the Security Agent or any of its appointed representatives access to review the books and records of the Accounts (and shall irrevocably authorise each Account Bank to disclose the same to the Security Agent and its appointed representatives) and irrevocably waives any right of confidentiality which may exist in respect of such books and records solely to the extent necessary to allow disclosure of such books and records to any Senior Secured Creditor and its advisers *provided* that, to the extent any such right of confidentiality does exist and the information comprised in such books and records is not otherwise in the public domain or required to be notified by the Company or the Account Bank to any of the Senior Secured Creditors and subject to any requirement to disclose any such information pursuant to any Legal Requirement or any other regulatory or stock exchange requirement, any Senior Secured Creditor or adviser to whom such disclosure is made shall undertake to the Company to keep the information comprised therein confidential.

### 11.5 **Statements**

The Company shall arrange for each Account Bank to provide to the Security Agent, at the latter's request:

- (a) a list of all Accounts maintained with it;
- (b) in respect of each calendar month, a statement of the balance of and each payment into and from each of the Accounts and the global amount of interest earned on each such Account during the preceding three month period or, if less, since the opening of the relevant Account; and
- (c) such other information concerning the Accounts as the Security Agent may require.

### 11.6 **Waiver of Rights**

#### 11.6.1 **Waiver of rights by the Company**

Save as provided in this Agreement, the Company agrees not to exercise any right which it may have under any applicable law to direct the transfer of any amount standing to the credit of an Account to the Company or its order or to direct the transfer of any Permitted Investment to the Company or to its order.

#### 11.6.2 **Waiver of rights by Account Banks**

The Company shall procure that each Account Bank acknowledges and agrees that each Account and Permitted Investment is the subject of a Lien in favour of the Senior Secured Creditors collectively and acknowledges and agrees that (save, in the case of the Performance Bond Provider, as permitted pursuant to (i) section 2.6 of the Performance Bond Facility Agreement prior to the issuance of an Enforcement Notice or (ii) paragraph 3(n) of Part B of Schedule 5 (*Covenants*)) it is not entitled to, and shall undertake not to, claim or exercise any lien, right of set-off, combination of accounts or other right, remedy or security with respect to:

- (a) moneys standing to the credit of such Account or in the course of being credited to it or any earnings; or
- (b) any Permitted Investment.

### 11.7 **Closing of Accounts**

The Company may close the Accounts on or after the Release Date and instruct each Account Bank to transfer any credit balances on the Accounts maintained with it (subject to the retention of amounts by such Account Bank in respect of uncleared cheques of the Company) to the order of the Company or to such account(s) as the Company may designate.

### 12. **Order of Priority**

The Company shall observe the payment waterfall outlined in Schedule 17 (*Payment Waterfall*) when making payments into and withdrawals from the Accounts. In the event of any conflict between Schedule 17 (*Payment Waterfall*) and any other provisions of this Agreement (including this Schedule 6), the other provisions of this Agreement (including this Schedule 6) shall prevail.



## SCHEDULE 7

### INSURANCE

References in this Schedule 7 to Clauses and Appendices refer to the Clauses and Appendices of this Schedule 7, unless the context otherwise requires.

#### 1. INSURANCES TO BE EFFECTED

##### 1.1 Direct Insurances

The Company shall effect:

1.1.1 the Construction Period Insurances as set out in Appendix 1 (*Construction Period Insurances*) on or before the issuance of the full Notice to Proceed (as defined in the Construction Contract) and shall maintain such Direct Insurances (including such additional Direct Insurances as may be required pursuant to paragraphs 1.2 and 4 of Appendix 1 (*Construction Period Insurances*)) from the issuance of such notice until the date of Substantial Completion (or such later date as may be specified in Appendix 1 (*Construction Period Insurances*));

1.1.1 the Operation Period Insurances as set out in Appendix 2 (*Operation Period Insurances*) on or before the expiry of the Construction Period Insurances and shall maintain such Direct Insurances from the date of Substantial Completion until the Release Date; and

1.1.2 all other Direct Insurances that may be required to be effected by the Company from time to time by any applicable law or under any contract to which it is a party and shall maintain such Direct Insurances until the Release Date,

in each case, in a form reasonably satisfactory to the Intercreditor Agent (after consultation with the Insurance Adviser).

##### 1.2 Reinsurance

The Company shall, if required under Clause 2.1.1 (*Policies*), procure that facultative reinsurance of each Direct Insurance is purchased and maintained in full force and effect throughout the period that such Direct Insurance is required by this Schedule 7 to be maintained.

##### 1.3 Additional Insurances

1.3.1 The Intercreditor Agent may at any time, having consulted with the Insurance Adviser and acting reasonably and taking into account the availability in the international market place of the following relevant item on reasonable commercial terms, require the Company to:

(a) procure the amendment of any or all Insurances to cover increased risks and/or liabilities; and/or

(b) effect additional Insurances to cover risks and/or liabilities other than those specified in the scope of the Construction Period Insurances, the

Operation Period Insurances and the other Direct Insurances as would from time to time be insured in accordance with standard industry practice by an owner and operator of a “five-star” first class Las Vegas—style luxury resort and casino carrying on the Permitted Businesses which does not self-insure (except in respect of deductibles required by insurers generally) and which is financed on a limited recourse basis, in such amounts and, in the case of additional Insurances, with such deductibles, in each case as the Intercreditor Agent may reasonably require, taking into account, among other things, the basis on which the Projects are financed and the interests of the Senior Secured Creditors under the Senior Finance Documents.

1.3.2 In the event that the Company fails to effect any Insurance required to be effected pursuant to Clause 1.3.1 above, the Intercreditor Agent may effect such Insurance and the Company shall indemnify the Intercreditor Agent for the direct costs and expenses incurred by it as a result of effecting such Insurance.

1.3.3 The Company may effect additional Insurances other than those required by Clause 1.1 (*Direct Insurances*), Clause 1.2 (*Reinsurance*) or the other sub-clauses of this Clause 1.3 provided that such Insurances do not prejudice the interests of the Company or the Senior Secured Creditors under or in respect of any Insurance effected pursuant to such clauses.

## 2. **INSURANCE UNDERTAKINGS**

### 2.1 **Policies**

The Company shall procure that:

2.1.1 each of the Direct Insurances is placed and maintained with one or more insurers authorised to operate in the Macau SAR (with not less than 95% of the coverage in respect of each such Direct Insurance provided by insurers rated at least A- by Standard & Poor’s Corporation or at least A by AM Best for their long term unsecured and unsubordinated debt or reinsured by insurers rated at least A- by Standard & Poor’s Corporation or at least A by AM Best for their long term unsecured and unsubordinated debt or, in each case, in respect of:

- (a) the Professional Indemnity Insurance referred to in paragraph 6 of Appendix 1 (*Construction Period Insurances*), rated at least BBB+ by Standard & Poor’s Corporation or B by AM Best; and
- (b) the Workers Compensation Insurance referred to in paragraph 6 of Appendix 1 (*Construction Period Insurances*), rated at least BBB by Standard & Poor’s Corporation or B- by AM Best),

and that none of the Direct Insurers (after Reinsurance) or Reinsurers shall (save in the case of the Excess Third Party Liability and the Difference in Conditions Third Party Liability Insurances comprised in the placement referred to in paragraph 3 of Appendix 1 (*Construction Period Insurances*)) take more than a

33.33% share on any one insurance placement (and, for such purpose, each of paragraphs 1 to 7 in Appendix 1 (*Construction Period Insurances*) and paragraphs 1 to 6 in Appendix 2 (*Operation Period Insurances*) shall be regarded as an insurance placement) unless otherwise agreed by the Intercreditor Agent;

- 2.1.2 each of the Insurances is in a form and on terms acceptable to the Intercreditor Agent (including, without limitation, the level or period of any deductibles) consistent with the obligations of the Company under this Schedule 7;
- 2.1.3 each Construction Period Insurance and each Operation Period Insurance has endorsements in substantially the form set out in Appendix 3 (*Form of Endorsements for Direct Insurances*) or in such other forms as the Intercreditor Agent (after consultation with the Insurance Adviser) reasonably approves in writing; and
- 2.1.4 each Reinsurance of each Construction Period Insurance and Operation Period Insurance has endorsements in substantially the form set out in Appendix 4 (*Form of Endorsements for Reinsurances*) or in such other forms as the Intercreditor Agent (after consultation with the Insurance Adviser) reasonably approves in writing.

## 2.2 **General Undertakings**

The Company shall:

- 2.2.1 pay or procure the payment of all premiums payable under each of the Insurances promptly as required under the Insurances and if requested by the Intercreditor Agent, promptly produce to the Intercreditor Agent copies of receipts or other evidence of payment satisfactory to the Intercreditor Agent;
- 2.2.2 indemnify the Intercreditor Agent and any Senior Secured Creditor against any premium or premiums paid by that Senior Secured Creditor for any of the Insurances;
- 2.2.3 promptly on receipt by the Company, deliver an original cover note and an original policy for each of the Insurances to the Intercreditor Agent;
- 2.2.4 at least fifteen days prior to the expiry of the Construction Period Insurances, provide evidence reasonably satisfactory to the Intercreditor Agent (after consultation with the Insurance Adviser) that the Operation Period Insurances shall be in effect on and from the expiry of the Construction Period Insurances;
- 2.2.5 at least ten days prior to the expiry of any Insurance (and provided such Insurance is being renewed), provide to the Intercreditor Agent a certificate from the Company's insurance brokers (or, if the Company has no broker, Insurers) confirming the renewal of the policy relating to such Insurance, the renewal period, the amounts insured and any changes in terms or conditions;

- 2.2.6 take all action within its power to procure that nothing is at any time done or suffered to be done whereby any Insurance may be rendered void or voidable or may be suspended, impaired or defeated or any claim becomes uncollectable in full or in part, including, without limitation:
- (a) complying with all of the requirements imposed on it under the Insurances;
  - (b) taking all action within its power to procure that at all times all parties to the Insurances (other than the Company and the Senior Secured Creditors) comply with all of the requirements under the Insurances; and
  - (c) taking all action necessary to maintain the Insurances as valid and up-to-date insurances;
- 2.2.7 not make any misrepresentation of any material facts or fail to disclose any material facts in respect of the Insurances which may have an adverse impact on the Insurances;
- 2.2.8 comply with each Direct Insurer's, and, where reinsurance is placed by the Company's insurance brokers, Reinsurer's risk management requirements set out in the policy documents for each Insurance;
- 2.2.9 promptly make and diligently pursue claims under the Insurances;
- 2.2.10 notify the Intercreditor Agent promptly upon becoming aware of any claim made under any of the Insurances where the actual or estimated totality of the amount of that claim exceeds USD500,000 (or its equivalent in other currencies) and of any occurrence which the Company considers could reasonably be expected to entitle it to submit a claim under any of the Insurances where the actual or estimated totality of the amount of that claim exceeds USD500,000 or its equivalent in other currencies;
- 2.2.11 in the event of any claim made under any of the Insurances where the actual or estimated totality of the amount of that claim exceeds USD500,000 (or its equivalent in other currencies) (not taking into account any relevant deductible for this purpose), provide a report to the Intercreditor Agent (and, if possible, procure a report from the Company's insurance broker to the Intercreditor Agent) which shall include a description of the loss;
- 2.2.12 notify the Intercreditor Agent immediately upon receipt of any proceeds in relation to any claims in excess of USD500,000 under the Direct Insurances;
- 2.2.13 ensure so far as reasonably possible that no Insurance can be terminated by the Direct Insurer, and, where reinsurance is placed by the Company's insurance brokers, Reinsurer for any reason (including failure to pay the premium or any other amount) unless the Intercreditor Agent and the Company receive at least thirty days' written notice (or such lesser period, if any, as may be specified from time to time by Direct Insurers, and, where reinsurance is placed by the

Company's insurance brokers, Reinsurers in the case of war risks and kindred perils);

- 2.2.14 without prejudice to sub-clause 2.2.13 above, notify the Intercreditor Agent if any Direct Insurer, and, where reinsurance is placed by the Company's insurance brokers, Reinsurer cancels or gives notice of cancellation of any of the Insurances promptly on receipt of such notice;
- 2.2.15 notify the Intercreditor Agent of any act or omission or of any event which would reasonably be foreseen as invalidating or rendering unenforceable in whole or in part any of the Insurances;
- 2.2.16 notify the Intercreditor Agent promptly on becoming aware of any written proposal to make any material variation to any terms of any of the Insurances by any party to it;
- 2.2.17 not rescind, terminate or cancel any of the Insurances (unless replaced by a policy with the same coverage and otherwise meeting the requirements of this Schedule 7) nor agree to any variation to any of the material terms of the Insurances unless it obtains the prior written agreement of the Intercreditor Agent, which permission shall not be unreasonably withheld;
- 2.2.18 give the Intercreditor Agent and the Insurance Adviser such information about the Insurances (or as to any matter relevant to the Insurances) as the Intercreditor Agent reasonably requests from time to time; and
- 2.2.19 procure the delivery to the Intercreditor Agent by each of the insurance brokers (acceptable to the Intercreditor Agent (after consultation with the Insurance Adviser)) through whom at any time any of the (i) Direct Insurances are effected of an Insurance Broker's Letter of Undertaking in the form set out in Appendix 5 (*Form of Insurance Broker's Letter of Undertaking*) and (ii) Reinsurances are effected of a Reinsurance Broker's Letter of Undertaking in the form set out in Appendix 6 (*Form of Reinsurance Broker's Letter of Undertaking*).

### 2.3 Assignment of Insurances

- 2.3.1 The Company shall, in accordance with the Assignment of Insurances, grant assignments in favour of the Security Agent on behalf of the Secured Parties over all of its rights, title and interest in the Direct Insurances (other than any public liability, third party liability, workers compensation or legal liability insurance or any other insurances the proceeds of which are payable to employees of the Company) held by it from time to time.
- 2.3.2 The Company shall give notice to each of the Direct Insurers (other than with respect to any public liability, third party liability, workers compensation, legal liability or any other insurances the proceeds of which are payable to employees of the Company) who are Macau Direct Insurers (as defined in the Assignment of Insurances) in the form of the Form of Notice of Assignment of Onshore Insurance Policy set out in the schedule to the Assignment of Insurances and

shall procure an acknowledgement from each such Direct Insurer in the form of the Form of Acknowledgement from Macau Direct Insurer set out in the schedule to the Assignment of Insurances.

## **2.4 Assignment of Reinsurances**

2.4.1 The Company shall procure that each of the Direct Insurers grants an assignment in favour of the Security Agent on behalf of the Secured Parties, over all of its rights, title and interest in any Reinsurance held from time to time under Clause 1.2 (*Reinsurance*) and/or the Reinsurance proceeds (other than relating to any public liability, third party liability or legal liability insurance or any other insurances the proceeds of which are payable to employees of the Company). Each assignment shall at all times be in the form of the Assignment of Reinsurances dated on or about the date of this Agreement unless otherwise agreed by the Security Agent (acting on the instructions of the Intercreditor Agent).

2.4.2 The Company shall procure that each such Direct Insurer gives notice to each Reinsurer with whom it has effected such Reinsurance in the form set out in Part 1 of Schedule 2 to the Assignment of Reinsurances and shall procure an acknowledgement from each such Reinsurer in the form set out in Part 2 of Schedule 2 to the Assignment of Reinsurances.

## **3. FAILURE TO COMPLY WITH PROVISIONS OF INSURANCES**

### **3.1 Notice of Non-Compliance**

The Company shall notify the Intercreditor Agent as promptly as practicable if the Company has at any time failed to comply with this Schedule 7, explaining in reasonable detail the failure, whether the Company reasonably believes it can be remedied and, if so, how and by when.

### **3.2 Annual Compliance Certificate**

The Company shall, at the same time as delivery of its annual audited accounts pursuant to paragraph 1 of Part A of Schedule 5 (*Covenants*) to the Common Terms Agreement but, in any event, not less frequently than once every 12 months after the Signing Date, deliver to the Intercreditor Agent a certificate confirming its compliance with this Schedule 7 or, if there is any non-compliance with this Schedule 7, explaining, in reasonable detail, the non-compliance, whether the Company reasonably believes it can be remedied and, if so, how and by when.

### **3.3 Action by Intercreditor Agent**

If at any time and for any reason any Insurance required hereunder is not in full force and effect or if the Company fails to comply with any other provision of this Schedule 7, then, without prejudice to the rights of any of the Senior Secured Creditors under any Senior Finance Document, the Intercreditor Agent may (after consultation with the Insurance Adviser) thereupon on behalf of itself and the other Senior Secured Creditors, or at any time while the same is continuing, procure on behalf of itself and the other

Senior Secured Creditors that Insurance at the Company's expense is maintained such that full compliance with this Schedule 7 is restored. If that Insurance cannot be procured by the Intercreditor Agent, the Company shall (without prejudice to any other obligations of the Company under this Schedule 7 or any of the Senior Finance Documents) take or procure the taking of all reasonable steps to eliminate or minimise uninsured hazards as required by the Intercreditor Agent in writing (after consultation with the Insurance Adviser).

#### **3.4 Continuing Obligations**

Any notification by the Company of its failure to comply with this Schedule 7 shall not prejudice the rights of the Senior Secured Creditors under the Senior Finance Documents.

#### **4. MARKET AVAILABILITY**

Notwithstanding the foregoing provisions of this Schedule 7, the Company shall not be in breach of its obligations under this Schedule 7 if any Operation Period Insurances (other than insurances which the Company is required to maintain under applicable Legal Requirements) required to be entered into or maintained by the Company in the terms required under this Schedule 7 are not available to the Company or, as the case may be, the Prime Contractor in the international insurance market place on reasonable commercial terms. Without prejudice to any other terms that may be commercially reasonable, for the purposes of this paragraph 4, such commercial terms shall be reasonable if the premium payable in respect of the sum required to be insured under such Operation Period Insurance pursuant to Appendix 2 to this Schedule 7 (or, where no such sum is referred to, the limit of indemnity or limit of liability specified therein) is not more than 125% of the amount derived by multiplying the rate set out opposite such Insurance in Appendix 7 (*Operation Period Insurance Costs*) by such sum or in respect of all Operation Period Insurances (including such Operation Period Insurance) is not more than 125% of the total of such amounts derived for each Operation Period Insurance.

#### **5. INSURANCE PROCEEDS**

##### **5.1 Conduct of Claims - Company**

Subject to Clause 5.3 (*Conduct of Claims - Default*) below, the Company has the sole conduct of all claims under the Insurances arising from any one loss (for which purpose, two or more claims made in respect of the same, or reasonably related, circumstances are taken to relate to one loss) where the actual or estimated totality of that loss is less than or equal to USD5,000,000 (or its equivalent in other currencies). For any loss where the actual or estimated totality of claims arising is more than USD5,000,000 (or its equivalent in other currencies), the Company shall not negotiate, compromise or settle any claim without the prior consent of the Intercreditor Agent (after consultation with the Insurance Adviser) (not to be unreasonably withheld).

## 5.2 Application of Proceeds

The Company shall ensure that:

- 5.2.1 subject to sub-clause 5.2.4 below and prior to the delivery of an Enforcement Notice, all proceeds of any claim under any Insurance relating to physical damage or loss:
- (a) to the extent not required for the purpose of mandatory prepayment pursuant to Schedule 9 (*Mandatory Prepayment*), shall be applied towards the repair or restoration of the damaged Project Facilities in accordance with Schedule 6 (*Accounts*); or
  - (b) to the extent required for the purpose of mandatory prepayment pursuant to Schedule 9 (*Mandatory Prepayment*), shall be applied towards mandatory prepayment in accordance with Clause 8.4 (*Mandatory Prepayment*);
- 5.2.2 subject to sub-clause 5.2.4 below and prior to the delivery of an Enforcement Notice, all proceeds of any claim under any Insurance relating to loss of revenue or business interruption shall be applied in accordance with Schedule 9 (*Mandatory Prepayment*);
- 5.2.3 subject to sub-clause 5.2.4 below and following the delivery of an Enforcement Notice, all proceeds of any claim under any Insurance shall be applied as directed by the Security Agent; and
- 5.2.4 all proceeds of any public liability, third party liability, workers compensation or legal liability insurance, or directors and officers insurance or any other insurances the proceeds of which are payable to employees of the Company, shall be applied to its intended purpose.

## 5.3 Conduct of Claims - Default

Notwithstanding any other provisions of this Clause 5, if an Enforcement Notice has been delivered, then the Security Agent in consultation with the Insurance Adviser shall have sole conduct of all claims under the Insurances.

## 5.4 Insolvency of Direct Insurers

For the purpose of conduct of claims and application of proceeds under any Reinsurance taken out by a Direct Insurer, references to delivery of an Enforcement Notice in this Clause 5 shall include delivery of the notice referred to in Clause 2.2.1 (*Enforcement of Assignment*) of the Assignment of Reinsurances to such Direct Insurer following an "Insolvency Event" (as defined in the Assignment of Reinsurances).



## SCHEDULE 8

### HEDGING ARRANGEMENTS

1. The Company shall, prior to the making of any Advance under a Term Loan Facility, enter into agreements to the extent necessary to ensure that at least 50% of the aggregate amount drawn under the Term Loan Facilities (including the amount of such Advance) and the principal amount owed to each Additional Lender is subject, through interest rate swaps, caps, collars or other products agreed with the Intercreditor Agent, to either a fixed interest rate or interest rate protection for such period as reflects the repayment schedule for such Facility and the repayment schedule under each Additional Lender Facility Agreement and with a final maturity date of not less than three years from the date upon which such Hedging Arrangement was first entered into in respect of such amount.
2. The purchase price of any such products may be paid for:
  - (a) by one or other of the other Obligor for the benefit of the Company (*provided* that such payment shall either constitute Equity (other than Base Equity, Contingent Equity or any other Equity required to be paid up or advanced in accordance with the terms of the Senior Finance Documents) or otherwise create no recourse to the Company); or
  - (b) out of the amount provided in the "Interest" Line Item (*provided* that the sum of the purchase prices, interest and any other amounts payable by the Company in respect of all such products does not exceed such amount).
3. Only a Lender or an Affiliate of a Lender may act as a Hedging Counterparty in respect of the Hedging Arrangements required by paragraph 1 above.
4. The Hedging Agreements are to be on the terms of the 1992 standard International Swap & Dealers Association, Inc. Master Agreement (the "**ISDA Master Agreement**") and the ISDA Schedule, together with such amendments as are acceptable to the Intercreditor Agent. All Hedging Agreements for swap transactions will provide for full two way payments (with the Company being a Fixed Rate Payer (as defined in the 2000 ISDA Definitions as published by the International Swaps and Derivatives Association, Inc. (the "**2000 Definitions**")) and the Hedging Counterparty being a Floating Rate Payer (as defined in the 2000 Definitions)) and the payment measure and payment method for such swap transactions in the event of early termination, whether upon a "Termination Event" or an "Event of Default", shall be "Second Method" and "Market Quotation" respectively. Terms in quotations in this paragraph 4 shall have the meaning ascribed in the ISDA Master Agreement.
5. The Hedging Counterparties shall have equal security over the assets of the Company with the Senior Secured Creditors in accordance with the terms of this Agreement and the Deed of Appointment and Priority.
6. Any payments due from the Company under the Hedging Agreements (except for the purchase price or other amounts in respect of any interest rate caps, collars or other products paid by another Obligor) prior to the Opening Date, including any Realised

Hedge Loss plus any accrued default interest in accordance with paragraph 10 below, shall be a permitted Project Cost.

In this paragraph and paragraphs 7 and 10 below, “**Realised Hedge Loss**” means, in relation to a Hedging Counterparty at any time, the amount (if any) payable (but unpaid) by the Company to such Hedging Counterparty under the Hedging Agreement to which such Hedging Counterparty is a party (but excluding any default interest) upon an early termination of any transaction or transactions thereunder which has been terminated in accordance with paragraph 9 below. The amount is to be calculated on a net basis across the transactions under such Hedging Agreement in accordance with the terms of the applicable Hedging Agreement.

7. Payments due from the Company under the Hedging Agreements following the Opening Date, including any Realised Hedge Loss plus any accrued default interest in accordance with paragraph 10 below, shall (save for any such amounts paid by another Obligor) be a Financing Cost.
8. Except with the prior consent of the Intercreditor Agent, no amendments may be made to a Hedging Agreement to an extent that might reasonably be expected to result in:
  - (a) any payment under the Hedging Agreement being required to be made by the Company on any date other than the dates originally provided for in the Hedging Agreement;
  - (b) the Company becoming liable to make an additional payment under any Hedging Agreement which liability does not arise from the original provisions of the Hedging Agreement; or
  - (c) the Company becoming liable to make any payment under the Hedging Agreement in any currency other than in the currency provided for under the original provisions of the Hedging Agreement.
9.
  - (a) The Company may terminate a transaction under a Hedging Agreement prior to its stated maturity only in circumstances provided for in such Hedging Agreement and with the approval of the Intercreditor Agent provided that the approval of the Intercreditor Agent shall not be required in the case of any termination by reason of illegality when the requirements of paragraph 1 above are met following such termination.
  - (b) A Hedging Counterparty may terminate a transaction under a Hedging Agreement prior to its stated maturity only in circumstances provided for in such Hedging Agreement.
  - (c) Unless a Hedging Counterparty has already exercised such rights in accordance with sub-paragraph (b) above, the Intercreditor Agent may require a Hedging Counterparty to terminate transactions under a Hedging Agreement where a declaration has been made by the Intercreditor Agent pursuant to Clause 19.2.2 (*Remedies following an Event of Default*).

- (d) If a voluntary or mandatory prepayment is to be made in accordance with Clause 8 (*Repayments, Prepayments and Cancellation*) and following such prepayment the aggregate amount of the “**Notional Amounts**” (as defined in the 2000 Definitions) of all Hedging Agreements at such time would be greater than 125% of the principal amounts outstanding under the Term Loan Facilities, the Company shall unwind, in order of maturity immediately following such prepayment (unless otherwise agreed by the Intercreditor Agent), sufficient transactions under the Hedging Agreements (and pay associated breakage costs) on the first Payment Date (as defined in the 2000 Definitions) (or, where such prepayment falls within 5 Business Days (as defined in the relevant Hedging Agreement) prior to such first Payment Date, the second Payment Date) in respect of such transaction immediately succeeding such prepayment such that the Intercreditor Agent is satisfied that, following such terminations, the aggregate Notional Amounts of all transactions under all Hedging Agreements is not less than 50% and not more than 125% of the principal amounts outstanding under the Facilities.
10. In the event that a Hedging Agreement is terminated and the Company fails to pay any Realised Hedge Loss, such Realised Hedge Loss shall comprise an Unpaid Sum and interest shall accrue in respect thereof accordingly.

**SCHEDULE 9**  
**MANDATORY PREPAYMENT**

1. To the extent that any Equity Issuance Proceeds are received by (or paid to the order of) the Company other than from the Wynn Obligors after the Signing Date, the Company shall ensure that an amount equal to the amount of such Equity Issuance Proceeds (excluding any such Equity Issuance Proceeds derived from Base Equity, Contingent Equity or, to the extent required or permitted under this Agreement to fund any Project Costs, any other Equity) shall be applied on the next Term Loan Facility Interest Payment Date after such receipt (or payment) towards prepayment of the Advances under the Term Loan Facilities and, pending such application, deposited in a Debt Service Account.
2. With respect to the Net Cash Proceeds from any Asset Sale made by the Company as to which the Company has:
  - (a) not delivered a Reinvestment Notice within the period required therefor, such Net Cash Proceeds (or portion thereof not subject to such a Reinvestment Notice) shall be applied, on the next Term Loan Facility Interest Payment Date following the expiration of the aforesaid required period for delivery of a Reinvestment Notice with respect to such Asset Sale, towards prepayment of the Advances under the Term Loan Facilities and, pending such application, deposited in a Debt Service Account; or
  - (b) delivered a Reinvestment Notice within the period required therefor, on the next Term Loan Facility Interest Payment Date following each Reinvestment Prepayment Date, an amount equal to the Reinvestment Prepayment Amount with respect to the portion of Net Cash Proceeds referred to therein shall be applied towards the prepayment of the Advances under the Term Loan Facilities and, pending such application, deposited in a Debt Service Account.
3. On the next Term Loan Facility Interest Payment Date following the date on which the Company receives any Termination Proceeds or Eminent Domain Proceeds, the Company shall apply such proceeds towards prepayment of the Advances under the Term Loan Facilities.
4. If, for any Fiscal Year commencing with the Fiscal Year in which the Construction Completion Date occurs, there shall be Excess Cash Flow, the Company shall, subject to ensuring each of the Debt Service Accounts and the Special Gaming Tax Account is funded in accordance with Schedule 6 (*Accounts*), the Reserve Accounts are fully funded, apply the ECF Percentage of such Excess Cash Flow towards prepayment of the Advances under the Term Loan Facilities. Each such prepayment shall be made on the next Term Loan Facility Interest Payment Date following the earlier of:
  - (a) the date on which the financial statements of the Company referred to in paragraph 1 of Part A of Schedule 5 (*Covenants*), for the Fiscal Year with respect to which such prepayment is made, are required to be delivered to the Lenders; and

- (b) the date such financial statements are actually delivered, and, pending such application, shall be deposited in a Debt Service Account.
5. Any Insurance Proceeds (other than those received by the Company for any single loss or series of related losses not in excess of USD20,000,000 or its equivalent) shall be applied to the prepayment of the Advances under the Term Loan Facilities on the next Term Loan Facility Interest Payment Date falling not less than 30 days after the Company's receipt of such Insurance Proceeds, unless each of the following conditions are satisfied or waived by the Intercreditor Agent within such 30 day period, in which event such amounts shall be applied to the repair or restoration of the Projects in accordance with the terms of Schedule 6 (*Accounts*):
- (a) the damage or destruction does not constitute the destruction of all or substantially all of the Projects;
  - (b) a Default has not occurred and is continuing (other than a Default resulting solely from such damage or destruction) and after giving effect to any proposed repair and restoration, no Default will result from such damage or destruction or proposed repair and restoration;
  - (c) the Company certifies, and the Intercreditor Agent determines in its reasonable judgment, that repair or restoration of the Projects to a condition substantially similar to their condition immediately prior to the event or events to which the relevant Insurance Proceeds relate, is technically and economically feasible within a 9 month period (where the damage or destruction occurs prior to the Construction Completion Date) or a 12 month period (where it occurs thereafter) and that a sufficient amount of funds is or will be available to the Company to make such repairs and restorations (subject at all times to paragraph 7 of Part B of Schedule 5 (*Covenants*));
  - (d) the Company delivers to the Intercreditor Agent a plan (the "**Repair Plan**") describing in reasonable detail the nature of the repairs or restoration to be effected and the anticipated costs and schedule associated therewith, in form and substance reasonably satisfactory to the Intercreditor Agent;
  - (e) the Company certifies, and the Intercreditor Agent determines in its reasonable judgment, that a sufficient amount of funds is or will be available to the Company to make all payments on Financial Indebtedness which will become due during and following the repair period and, in any event, to maintain compliance with the covenants set forth in paragraph 1 of Part B of Schedule 5 (*Covenants*) during such repair period and no Forecast Funding Shortfall has occurred and is continuing or could reasonably be expected to occur during or following the repair period;
  - (f) no Permit is necessary to proceed with the repair and restoration of the Projects and no material amendment to the Project Documents, or, except with the consent of the Senior Secured Creditors, any of the Senior Finance Documents, and no other instrument is necessary for the purpose of effecting the repairs or

restoration of the Projects or subjecting the repairs or restoration to the Liens of the applicable Security Documents and maintaining the priority of such Liens or, if any of the above is necessary, the Company will be able to obtain the same as and when required; and

- (g) the Intercreditor Agent shall receive such certificates, opinions or other matters as it may reasonably request as necessary or appropriate in connection with such repairs or restoration of the Projects or to preserve or protect the Senior Secured Creditors' interests hereunder and in the applicable Project Security.

After Insurance Proceeds have been applied to the repair or restoration of the Projects as provided in this Agreement, any excess Insurance Proceeds shall be applied on the next Term Loan Facility Interest Payment Date thereafter to the prepayment of the Advances under the Term Loan Facilities.

- 6. Any amount of premia or similar payment paid in respect of the grant or entry into any Subconcession:

- (a) prior to the Sponsor Support Release Date and to be applied towards prepayment of the Advances under the Term Loan Facilities pursuant to paragraph 17 of Part B of Schedule 5 (*Covenants*), shall be so applied on the Term Loan Facility Interest Payment Date falling immediately after the Sponsor Support Release Date or, subject to payment of the amounts specified in Clause 8.6.2 (*Restrictions*), on or after the Sponsor Support Release Date and prior to such Interest Payment Date; or
- (b) at any time on or after the Sponsor Support Release Date and to be applied towards prepayment of the Advances under the Term Loan Facilities pursuant to paragraph 17 of Part B of Schedule 5 (*Covenants*), shall be so applied on (or, subject to payment of the amounts specified in Clause 8.6.2 (*Restrictions*), prior to) the Term Loan Facility Interest Payment Date falling immediately after the date of upon which such amount of premia is paid.

Any such amount deposited into the Phase 2 Project Account and to be applied towards prepayment of the Advances under the Term Loan Facilities following the completion of the Phase 2 Project Works pursuant to paragraph 17 of Part B of Schedule 5 (*Covenants*) shall be so applied on the Term Loan Facility Interest Payment Date falling immediately after the date of such completion or, subject to payment of the amounts specified in Clause 8.6.2 (*Restrictions*), on or after such date and prior to such Interest Payment Date.

- 7. If all or substantially all of either Project is lost, damaged or destroyed or declared by any relevant Insurer to be a constructive total loss, the Company shall immediately prepay all amounts outstanding under the Senior Finance Documents.

**SCHEDULE 10**  
**EVENTS OF DEFAULT**

- (a)
  - (i) The Company shall have failed to pay any principal of any Advance when due in accordance with the terms of the relevant Facility Agreement; or
  - (ii) the Company shall have failed to pay any interest on any Advance within 5 days after any such interest becomes due in accordance with the terms of the relevant Senior Finance Document; or
  - (iii) any Obligor shall have failed to pay any other amount payable under any Senior Finance Document within 10 days after any such other amount becomes due in accordance with the terms of the relevant Senior Finance Document or in the event that any such other amount becomes due without a notice being given to the relevant Obligor, 10 days after notice to the relevant Obligor of the non-payment of such amount.
- (b) Any representation or warranty made or deemed made by any Obligor in any Senior Finance Document to which it is a party or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with any Senior Finance Document shall prove to have been incorrect in any material respect (or, in the case of the representations and warranties set out in paragraphs 20.1, 20.2 and 20.3 of Schedule 4 (*Representations and Warranties*), in any respect) on or as of the date made or deemed made and, in the case of an Obligor (other than the Company or a Wynn Obligor), such event, in the reasonable opinion of the Intercreditor Agent, could reasonably be expected to give rise to a Material Adverse Effect.
- (c) The Company shall default in the observance or performance of:
  - (i) paragraph 12(a) of Part A of Schedule 5 (*Covenants*) and, other than in respect of a Default arising by reason of paragraphs (w), (x), (y), (z), (aa) or (bb) of Schedule 10 (*Events of Default*), such default shall continue unremedied for a period of 30 days;
  - (ii) paragraph 12(b) of Part A of Schedule 5 (*Covenants*) in so far as it relates to the Concession Contract or the Land Concession Contract;
  - (iii) paragraph 24 of Part A of Schedule 5 (*Covenants*); or
  - (iv) paragraph 1 of Part B of Schedule 5 (*Covenants*).
- (d) Any Obligor or the Performance Bond Provider shall default in the observance or performance of any other covenant or agreement contained in any Senior Finance Document to which it is a party (other than as provided in paragraphs (a) through (c) of this Schedule), and such default shall continue unremedied for a period of 30 or, *provided* the relevant Obligor or the Performance Bond Provider is diligently pursuing action to remedy the default and it is of a nature that it is capable of being remedied, 60 days after the earlier of:
  - (i) the Company becoming aware of such default; and

- (ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such default.
- (e) The Company or any Wynn Obligor shall:
  - (i) default in making any payment of any principal of any Financial Indebtedness (including, without limitation, any Guarantee Obligation, but excluding the Advances) on the scheduled due date with respect thereto;
  - (ii) default in making any payment of any interest on any such Financial Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Financial Indebtedness was created; or
  - (iii) default in the observance or performance of any other agreement or condition relating to any such Financial Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition (or any declaration by the holder of such Financial Indebtedness by reason thereof) is to cause immediately such Financial Indebtedness to become due prior to its stated maturity or (in the case of any such Financial Indebtedness constituting a Guarantee Obligation) to become payable,

*provided that a default event or condition described in sub-paragraphs (i), (ii) or (iii) of this paragraph (e) shall not at any time constitute a Default or Event of Default unless, at such time, the aggregate amount of the default in the principal payment in the case of sub-paragraph (i), the default in the interest payment in the case of sub-paragraph (ii) and the amount accelerated in the case of sub-paragraph (iii) of this paragraph (e) exceeds USD5,000,000 or its equivalent in the case of the Company and the Wynn Obligors (other than Wynn Resorts) taken as a whole or USD10,000,000 or its equivalent in the case of Wynn Resorts and, in the case of Wynn Resorts after the Sponsor Support Release Date, such event, in the reasonable opinion of the Intercreditor Agent, could reasonably be expected to give rise to a Material Adverse Effect.*
- (f) (i) Any Obligor (other than the Subordinated Funding Provider) or the Performance Bond Provider shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, administration, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or any Obligor (other than the Subordinated Funding Provider) or the Performance Bond Provider shall make a general assignment for the benefit of its creditors;
- (ii) there shall be commenced against any Obligor (other than the Subordinated Funding Provider) or the Performance Bond Provider any case, proceeding or other action of a nature referred to in sub-paragraph (i) above that (A) results in



the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of 60 days;

- (iii) there shall be commenced against or any Obligor (other than the Subordinated Funding Provider) or the Performance Bond Provider any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof;
- (iv) any Obligor (other than the Subordinated Funding Provider) or the Performance Bond Provider shall consent to, approve, or acquiesce in, any of the acts set forth in sub-paragraphs (i), (ii) or (iii) above; or
- (v) any Obligor (other than the Subordinated Funding Provider) or the Performance Bond Provider shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due,

*provided* that no Event of Default shall be deemed to have occurred under this paragraph (f) as a result of any such action, event of condition by, against or concerning the Performance Bond Provider if:

- (vi) immediately upon (and, in any event, no more than [three] Business Days after) becoming aware or receiving notice thereof, the Company gives notice to the Intercreditor Agent of its intention to replace the Performance Bond Provider; and
- (vii) within 60 days (or such shorter period as the Intercreditor Agent may determine is required pursuant to the Concession Contract) after such action, event or condition has occurred:
  - (A) the Performance Bond Provider has been replaced by a Person (the “**Replacement Performance Bond Provider**”) acceptable to the Intercreditor Agent;
  - (B) the Replacement Performance Bond Provider has provided a replacement Concession Contract Performance Bond and acceded to the terms of the Deed of Appointment and Priority, in each case on terms acceptable to the Intercreditor Agent; and
  - (C) the Intercreditor Agent is satisfied that no breach of the Concession Contract or any applicable Legal Requirement has occurred or will result from such replacement, and that the replacement complies, and has been authorised by the Macau SAR in accordance with, the Concession Contract and all other applicable Legal Requirements.

- (g) At any time prior to the Construction Completion Date, a Forecast Funding Shortfall occurs and continues for 30 days without being cured.

- (h) (i) Any Person shall engage in any “prohibited transaction” (as defined in section 406 of ERISA or section 4975 of the Code) involving any Plan;
- (ii) any “accumulated funding deficiency” (as defined in section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favour of the PBGC or a Plan shall arise on the assets of any Obligor or any Commonly Controlled Entity;
- (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Intercreditor Agent, likely to result in the termination of such Plan for purposes of Title IV of ERISA;
- (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA other than in a standard termination under section 4041(b) of ERISA;
- (v) any Obligor or any Commonly Controlled Entity shall, or in the reasonable opinion of the Intercreditor Agent is likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan; or
- (vi) any Obligor, or any of their Subsidiaries or any Commonly Controlled Entity shall be required to make during any Fiscal Year payments pursuant to any employee welfare benefit plan (as defined in section 3(1) of ERISA) that provides benefits to retired employees (or their dependents), other than as required by sections 601 and following of ERISA, section 4980B of the Code, or the corresponding provisions of applicable state law, and in each case in sub-paragraphs (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect.
- (i) One or more judgments or decrees shall be entered against Wynn Resorts which could reasonably be expected to have a Material Adverse Effect or against the Company or any Wynn Obligor involving (in the latter case) for the Company and the Wynn Obligors taken as a whole a liability (not paid or covered by insurance as to which the relevant insurance company has acknowledged coverage) of USD5,000,000 or its equivalent or more, and all such judgments or decrees, in either case, shall not have been vacated, discharged, stayed or bonded pending appeal within 30 days from the entry thereof.
- (j) Any of the Senior Finance Documents shall cease, for any reason (other than pursuant to the terms thereof), to be in full force and effect, or any Obligor shall in writing to any Senior Secured Creditor in the event that any Senior Secured Creditor is seeking to exercise its rights or in any Proceedings so assert, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby.

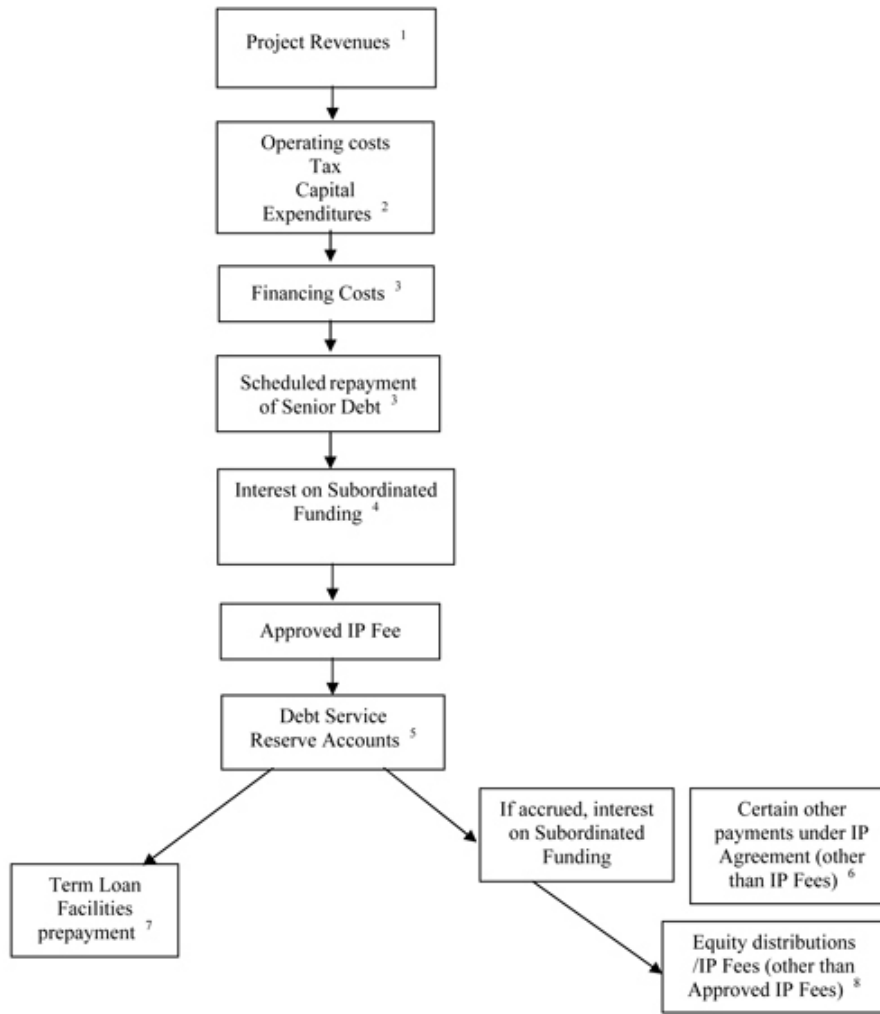
- (k) The Company shall breach or default under in any material respect any material term, condition, provision, covenant, representation or warranty contained in any Major Project Document and such breach or default shall continue unremedied for 30 or, save in the case of any payment default, provided the Company is diligently pursuing action to remedy the default and it is of a nature that is capable of being remedied, 60 days after the earlier of:
- (i) the Company becoming aware of such breach or default; and
  - (ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such breach or default.
- (l) Any party (other than the Company) shall breach or default under any term, condition, provision, covenant, representation or warranty contained in any Major Project Document and such breach or default shall continue unremedied for 30 days after the earlier of:
- (i) the Company becoming aware of such breach or default; and
  - (ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such breach or default,
- and, in the reasonable opinion of the Intercreditor Agent, such breach or default could reasonably be expected to have a Material Adverse Effect.
- (m) Any of the Transaction Documents shall terminate or be terminated or cancelled, become invalid or illegal or otherwise cease to be in full force and effect prior to its stated expiration date *provided* that the occurrence of any of the foregoing events with respect to any Major Project Document (other than the Concession Contract, the Land Concession Contract, the Construction Contract or the IP Agreement) shall constitute an Event of Default under this paragraph (m) only if the same could reasonably, in the reasonable opinion of the Intercreditor Agent, be expected to result in a Material Adverse Effect and the same shall continue unremedied for 30 days after the earlier of:
- (i) the Company becoming aware of such occurrence; and
  - (ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such occurrence,
- provided* that in the case of any such Major Project Document (other than the Concession Contract, the Land Concession Contract, the Construction Contract or the IP Agreement), if the occurrence is not the result of the breach or default by an Obligor in any material respect of any material term, condition, provision, covenant, representation or warranty, then no Event of Default shall be deemed to have occurred as a result thereof under this paragraph (m) if the Company provides written notice to the Intercreditor Agent immediately upon (but in no event more than 3 Business Days after) the Company becoming aware of such occurrence that it intends to replace such Project Document and:
- (A) the Company obtains a replacement obligor or obligors for the affected party;

- (B) the Company enters into a replacement Major Project Document on terms no less beneficial to the Company and the Senior Secured Creditors in any material respect than the Major Project Document being replaced within 60 days of such occurrence, *provided* that the replacement Major Project Document may require the Company to pay amounts under the replacement Major Project Document in excess of those that would have been payable under the replaced Major Project Document; and
  - (C) in the reasonable opinion of the Intercreditor Agent, such occurrence, after considering any replacement obligor and replacement Major Project Document and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect.
- (n) A Change of Control shall occur.
  - (o) Any Subordinated Debt, the Subordinated Funding Agreement or the Performance Bond Facility Agreement shall cease, for any reason, to be validly subordinated to the Obligations of the Obligors as provided in the Senior Finance Documents and the documentation, instruments or other agreements related to the Subordinated Debt, as the case may be.
  - (p) The Company or any Wynn Obligor shall fail to observe, satisfy or perform, or there shall be a violation or breach of, any of the terms, provisions, agreements, covenants or conditions attaching to or under the issuance to such Person of any Permit or any such Permit or any provision thereof shall be suspended, revoked, cancelled, terminated or materially and adversely modified or fail to be in full force and effect or any Governmental Authority shall challenge or seek to revoke any such Permit if such failure to perform, violation, breach, suspension, revocation, cancellation, termination or modification could reasonably be expected to have a Material Adverse Effect.
  - (q) Substantial Completion and the satisfaction of the Opening Conditions specified in paragraph (a) of the definition thereof shall not have occurred by 28 February 2007 or Construction Completion shall not have occurred by 31 May 2007.
  - (r) The Technical Adviser shall reasonably determine (based on its experience, familiarity and review of the Projects and the information and schedule provided by the Company and the Prime Contractor and having regard to any measures for expediting or accelerating the progress of the works) that Substantial Completion and the satisfaction of the Opening Conditions specified in paragraph (a) of the definition thereof is likely to occur no earlier than 28 February 2007.
  - (s) The Company shall abandon either of the Projects or otherwise cease to pursue them.
  - (t) Any call or drawing made by the Macau SAR under the Concession Contract Performance Bond unless the Concession Contract Performance Bond is fully reinstated within 30 days thereof in accordance with the Concession Contract, no other Event of Default has occurred or will result from such reinstatement.
  - (u) The Company shall fail to at all times maintain in full force and effect the insurance policies required by Schedule 7 (*Insurance*).

- (v) Any Governmental Authority takes any action or there is a change in (or in the interpretation, administration or application of) or the introduction of any Legal Requirement:
  - (i) which deprives the Company of the use of all or any material part of its Property (including nationalisation, expropriation, modification, suspension or extinguishment of any material rights benefiting or the imposition of any restrictions materially and adversely affecting any of the Projects by such Governmental Authority);
  - (ii) which prevents the Company from conducting its business or operations, or a material part thereof, in a similar manner as contemplated at the Signing Date; or
  - (iii) which, in the reasonable opinion of the Intercreditor Agent, otherwise could reasonably be expected to have a Material Adverse Effect, and, in each case, such action, change or introduction or the effects thereof, are not removed or stayed within 30 days of the occurrence of such action, change or introduction.
- (w) Any temporary administrative intervention is made by the Macau SAR pursuant to article 79 of the Concession Contract.
- (x) The Macau SAR takes any formal measure seeking the unilateral dissolution of the Concession Contract pursuant to article 80 thereof or the Macau SAR gives notice pursuant to article 80(3) of the Concession Contract and the Company fails to comply with the terms thereof within the grace period specified therein.
- (y) The Intercreditor Agent considers the subject matter of any negotiations required to be notified to it pursuant to paragraph 24(c) of Part A of Schedule 5 (*Covenants*) is such as could reasonably give rise to an entitlement of the Macau SAR to unilaterally dissolve the Concession Contract pursuant to article 80 thereof.
- (z) Any consultations are commenced as contemplated by paragraph B1(c) of the Gaming Concession Consent Agreement and (save for the purpose of giving notice to the Macau SAR that the Security Agent intends to take action to enforce all or any of the pledges constituted by the Company Share Pledge, the Wynn International Share Charge and/or the Wynn HK Share Charge which may be given by the Security Agent immediately upon such consultations being commenced) the Intercreditor Agent considers the subject matter of such consultations is reasonably likely to give rise to (a) the taking of any action to terminate the Concession Contract or (b) an agreement to terminate the Concession Contract.
- (aa) The Land Concession Contract is terminated or rescinded or the Macau SAR takes any formal measure seeking any termination of the Land Concession Contract pursuant to Clause 15 thereof or any rescission pursuant to Clause 16 thereof.
- (bb) The Macau SAR gives any notice pursuant to paragraph C7 of the Land Concession Consent Agreement.
- (cc) A Material Adverse Effect has occurred which is continuing.

SCHEDULE 17

PAYMENT WATERFALL



Note 1: Separate treatment for upfront premium or similar payment paid for grant of Subconcessions and other receipts which are subject to Schedule 9 (*Mandatory Prepayment*)

Note 2: As permitted by paragraph 7 of Part B, Schedule 5 (*Covenants*)

Note 3: Debt Service on Term Loan Facilities built up in Debt Service Accounts pursuant to paragraph 5 of Schedule 6 (*Accounts*)

Note 4: 7.5% fixed rate. Interest accrues in the event of a cash shortfall (Clause 6.3 Deed of Appointment and Priority)

Note 5: Six months Debt Service on Term Loan Facilities pursuant to paragraph 7 of Schedule 6 (*Accounts*)

Note 6: As permitted by paragraph 20(d), Part B, Schedule 5 (*Covenants*)

Note 7: As required by paragraph 4 of Schedule 9 (*Mandatory Prepayment*)

Note 8: Subject to distribution tests in paragraph 6, Part B, Schedule 5 (*Covenants*)

SIGNATURES

**The Company**

**WYNN RESORTS (MACAU) S.A.**

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**The Hotel Facility Lenders**

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**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

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Project Finance Team

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Project Finance Team

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**BANCO ESPÍRITO SANTO DO ORIENTE, S.A.**

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Fax: (853) 785-228  
Attention: Sylvana Chan/Frances T.M. Lo

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**The Revolving Credit Facility Lenders**

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**The Global Coordinating Lead Arrangers**

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Attention: Sunny Lui/Raymond Fung/Sara Wong  
Risk & Agency

DATED 14 SEPTEMBER 2004

**WYNN RESORTS (MACAU) S.A.**  
as Company

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**  
as Hotel Facility Agent

and

**THE HOTEL FACILITY LENDERS**  
referred to herein

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**HOTEL FACILITY AGREEMENT**

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**THIS AGREEMENT** is made on the 14<sup>th</sup> day of September 2004

**BETWEEN:**

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (2) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** (the “**Hotel Facility Agent**”); and
- (3) **THE HOTEL FACILITY LENDERS** (as defined below).

**WHEREAS:**

The Hotel Facility Lenders have agreed to make certain loan facilities available to the Company in connection with the Hotel Project upon the terms and subject to the conditions set out in this Agreement and the Common Terms Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless otherwise defined herein, all terms defined or referred to in the Common Terms Agreement shall have the same meaning herein and in addition:

“**Available Commitment**” means, in relation to a Hotel Facility Lender at any time and save as otherwise provided herein, the aggregate US dollar equivalent amount of Available Tranche A Commitment, Available Tranche B Commitment, Available Tranche C Commitment and Available Tranche D Commitment of such Hotel Facility Lender.

“**Available Facility**” means, at any time, the aggregate US dollar equivalent amount of the Available Tranche A Facility, the Available Tranche B Facility, the Available Tranche C Facility and the Available Tranche D Facility.

“**Available Tranche A Commitment**” means, in relation to a Hotel Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche A Commitment” in Schedule 1 (*The Hotel Facility Lenders*) less:

- (a) any amounts of the Available Tranche A Commitment of such Hotel Facility Lender cancelled pursuant to Clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement;
- (b) the aggregate amount of Tranche A Advances which have been made by such Hotel Facility Lender at such time; and
- (c) in relation to any Advance Request, the amount of any Tranche A Advance due to be made on or before the proposed Advance Date.

**“Available Tranche B Commitment”** means, in relation to a Hotel Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche B Commitment” in Schedule 1 (*The Hotel Facility Lenders*) less:

- (a) any amounts of the Available Tranche B Commitment of such Hotel Facility Lender cancelled pursuant to Clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement;
- (b) the aggregate amount of Tranche B Advances which have been made by such Hotel Facility Lender at such time; and
- (c) in relation to any Advance Request, the amount of any Tranche B Advance due to be made on or before the proposed Advance Date.

**“Available Tranche C Commitment”** means, in relation to a Hotel Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche C Commitment” in Schedule 1 (*The Hotel Facility Lenders*) less:

- (a) any amounts of the Available Tranche C Commitment of such Hotel Facility Lender cancelled pursuant to Clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement;
- (b) the aggregate amount of Tranche C Advances which have been made by such Hotel Facility Lender at such time; and
- (c) in relation to any Advance Request, the amount of any Tranche C Advance due to be made on or before the proposed Advance Date.

**“Available Tranche D Commitment”** means, in relation to a Hotel Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche D Commitment” in Schedule 1 (*The Hotel Facility Lenders*) less:

- (a) any amounts of the Available Tranche D Commitment of such Hotel Facility Lender cancelled pursuant to Clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement;
- (b) the aggregate amount of Tranche D Advances which have been made by such Hotel Facility Lender at such time; and
- (c) in relation to any Advance Request, the amount of any Tranche D Advance due to be made on or before the proposed Advance Date.

**“Available Tranche A Facility”** means, at any time, the aggregate amount of the Available Tranche A Commitments of all the Hotel Facility Lenders at such time.

**“Available Tranche B Facility”** means, at any time, the aggregate amount of the Available Tranche B Commitments of all the Hotel Facility Lenders at such time.

“**Available Tranche C Facility**” means, at any time, the aggregate amount of the Available Tranche C Commitments of all the Hotel Facility Lenders at such time.

“**Available Tranche D Facility**” means, at any time, the aggregate amount of the Available Tranche D Commitments of all the Hotel Facility Lenders at such time.

“**Common Terms Agreement**” means the common terms agreement dated 14 September 2004 and made between, among others, the Company, the financial institutions defined therein as Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, the Hotel Facility Agent, the Project Facility Agent, the Intercreditor Agent and the Security Agent.

“**HIBOR**” means, in relation to any Tranche B Advance or Tranche D Advance:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for HK dollars or for the Interest Period for that Hotel Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Hotel Facility Agent at its request quoted by the Reference Banks to leading banks in the Hong Kong interbank market,

at or about 11.00 a.m. (Hong Kong time) on the Quotation Day for the offering of deposits in HK dollars for a period comparable to the Interest Period for that Hotel Facility Advance.

“**Hotel Base Debt Facility**” means the Tranche A Facility and the Tranche B Facility.

“**Hotel Contingent Debt Facility**” means the Tranche C Facility and the Tranche D Facility.

“**Hotel Facility**” means the Hotel Base Debt Facility and the Hotel Contingent Debt Facility.

“**Hotel Facility Advance**” means, as the context may require, a Tranche A Advance, a Tranche B Advance, a Tranche C Advance or a Tranche D Advance and “**Hotel Facility Advances**” shall mean each Tranche A Advance, Tranche B Advance, Tranche C Advance and Tranche D Advance or any of them.

“**Hotel Facility Lender**” means any commercial bank or financial institution which:

- (a) is named in Schedule 1 (*The Hotel Facility Lenders*); or
- (b) has become a party hereto in accordance with Clause 13 (*Changes to the Parties*),

and which has not ceased to be a party hereto in accordance with the terms hereof.

“**Hotel Finance Documents**” means:

- (a) this Agreement;
- (b) the Common Terms Agreement;

- (c) any other Senior Finance Document to which a Hotel Facility Lender is a party in its capacity as a Hotel Facility Lender; and
- (d) any other document designated as such by the Hotel Facility Agent and the Company.

“**Hotel Finance Parties**” means the Hotel Facility Agent and the Hotel Facility Lenders.

“**Hotel Loan**” means the aggregate principal amount for the time being outstanding hereunder.

“**LIBOR**” means, in relation to any Tranche A Advance or Tranche C Advance:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for US dollars or for the Interest Period for that Hotel Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Hotel Facility Agent at its request quoted by the Reference Banks to leading banks in the London interbank market,

at or about 11:00 a.m. (London time) on the Quotation Day for the offering of deposits in US dollars and for a period comparable to the Interest Period for that Hotel Facility Advance.

“**Majority Hotel Facility Lenders**” means:

- (a) before any Hotel Facility Advances have been made, a Hotel Facility Lender or Hotel Facility Lenders whose Available Commitments amount in aggregate to more than 50% of the Available Facility (or, if all Available Commitments have been reduced to zero, amounted in aggregate to more than 50% of the Available Facility immediately prior to the reduction); and
- (b) thereafter, a Hotel Facility Lender or Hotel Facility Lenders whose US dollar equivalent participations in the Hotel Facility Advances then outstanding (or, where all such Hotel Facility Advances have been repaid, immediately prior to such repayment) amount in aggregate to more than 50% of the US dollar equivalent of all Hotel Facility Advances then outstanding.

“**Margin**” means 3.50% per annum.

“**Party**” means a party to this Agreement.

“**Reference Banks**” means, in relation to:

- (a) LIBOR, the principal London offices of Deutsche Bank AG, Société Générale and Citibank, N.A.; and
- (b) HIBOR, the principal Hong Kong offices of Deutsche Bank AG, Société Générale and Citibank, N.A.,

or such other bank or banks designated from time to time by the Hotel Facility Agent provided that the consent of the Company shall be required if such designation is made prior to an occurrence of an Event of Default which is continuing.

“**Screen Rate**” means, in relation to:

- (a) LIBOR, the British Bankers’ Association Interest Settlement Rate for US dollars for the relevant period, displayed on the appropriate page (being currently “LIBOR01”) of the Reuters Monitor Money Rates Service screen; and
- (b) HIBOR, the rate designated as “FIXING@11:00” (or any other designation which may from time to time replace that designation or, if no such designation appears, the arithmetic average (rounded upwards, to four decimal places) of the displayed rates for the relevant period) appearing under the heading “HONG KONG INTERBANK OFFERED RATES (HK DOLLAR)” on the Reuters Screen HIBOR1=R Page.

If the agreed page is replaced or service ceases to be available, the Hotel Facility Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Hotel Facility Lenders.

“**Tranche A Advance**” means an advance (as from time to time reduced by repayment in accordance with the terms hereof or the Common Terms Agreement) made or to be made by the Hotel Facility Lenders under the Tranche A Facility.

“**Tranche A Facility**” means the US dollar term loan facility granted to the Company under Clause 3.1.1 (*Grant of Hotel Base Debt Facilities*).

“**Tranche B Advance**” means an advance (as from time to time reduced by repayment in accordance with the terms hereof or the Common Terms Agreement) made or to be made by the Hotel Facility Lenders under the Tranche B Facility.

“**Tranche B Facility**” means the HK dollar term loan facility granted to the Company under Clause 3.1.2 (*Grant of Hotel Base Debt Facilities*).

“**Tranche C Advance**” means an advance (as from time to time reduced by repayment in accordance with the terms hereof or the Common Terms Agreement) made or to be made by the Hotel Facility Lenders under the Tranche C Facility.

“**Tranche C Facility**” means the US dollar term loan facility granted to the Company under Clause 3.2.1 (*Grant of Hotel Contingent Debt Facilities*).

“**Tranche D Advance**” means an advance (as from time to time reduced by repayment in accordance with the terms hereof or the Common Terms Agreement) made or to be made by the Hotel Facility Lenders under the Tranche D Facility.

“**Tranche D Facility**” means the HK dollar term loan facility granted to the Company under Clause 3.2.2 (*Grant of Hotel Contingent Debt Facilities*).



## 1.2 Interpretation

In this Agreement:

- 1.2.1 the principles of construction contained in Clause 1.2 (*Principles of Construction*) of the Common Terms Agreement and the rules of interpretation contained in Clause 1.3 (*Rules of Interpretation*) of the Common Terms Agreement shall apply to the construction and interpretation of this Agreement;
- 1.2.2 any reference to the “**Hotel Facility Agent**” or “**Hotel Facility Lender**” shall be construed so as to include its or their (and any subsequent) successors and any permitted transferees in accordance with their respective interests; and
- 1.2.3 references in this Agreement to any Clause or Schedule shall be to a clause or schedule contained in this Agreement.

## 1.3 Third Party Rights

- 1.3.1 The Contracts (Rights of Third Parties) Act 1999 applies to Clause 1.4 (*Non-Recourse Liability*) but only for the benefit of the Operatives and subject always to the terms of Clause 17 (*Governing Law*) and Clause 18 (*Jurisdiction*).
- 1.3.2 Except as provided in sub-clause 1.3.1 above, a Person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
- 1.3.3 Save as provided by the Common Terms Agreement, the consent of any Person who is not a party to this Agreement is not required to rescind or vary this Agreement.

## 1.4 Non-recourse Liability

Notwithstanding any provision in the Senior Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Senior Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Senior Finance Document to which such Operative is party. The sole recourse of the Hotel Finance Parties for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Senior Finance Documents shall be against the Obligors, and not against any assets or property of any Operative save to the extent such Operative is party to a Senior Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

## 2. COMMON TERMS AGREEMENT

This Agreement and the rights and obligations of the parties hereto shall be subject to the terms and conditions of the Common Terms Agreement which shall be deemed to be incorporated into this Agreement. In the case of any conflict between the terms of this Agreement and the terms of the Common Terms Agreement, the terms of this Agreement shall prevail.

## 3. THE HOTEL FACILITY

### 3.1 Grant of the Hotel Base Debt Facilities

#### 3.1.1 *Tranche A Facility*

The Hotel Facility Lenders grant to the Company, upon the terms and subject to the conditions hereof, a US dollar term loan facility in an aggregate amount of USD107,008,191.

3.1.2 **Tranche B Facility**

The Hotel Facility Lenders grant to the Company, upon the terms and subject to the conditions hereof, a HK dollar term loan facility in an aggregate amount of HKD487,086,911.

3.2 **Grant of the Hotel Contingent Debt Facilities**

3.2.1 **Tranche C Facility**

The Hotel Facility Lenders grant to the Company, upon the terms and subject to the conditions hereof, a US dollar term loan facility in an aggregate amount of USD9,120,014.

3.2.2 **Tranche D Facility**

The Hotel Facility Lenders grant to the Company, upon the terms and subject to the conditions hereof, a HK dollar term loan facility in an aggregate amount of HKD41,513,089.

4. **PURPOSE**

4.1 **Purpose**

The Company shall apply all amounts borrowed by it under the Hotel Facility to finance Project Costs incurred or to be incurred in connection with the Hotel Project.

5. **CONDITIONS PRECEDENT**

The provisions of Clause 2 (*Conditions Precedent*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

6. **AVAILABILITY OF THE HOTEL FACILITY**

6.1 **Drawdown of Advances**

The provisions of Clause 3 (*Drawdown of Advances*) and Clause 4.1 (*Hotel Facility Availability Period*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

6.2 **Each Hotel Facility Lender's Participation**

6.2.1 Each Hotel Facility Lender will participate through its Facility Office in each Tranche A Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche A Commitment to the Available Tranche A Facility immediately prior to the making of that Tranche A Advance.

6.2.2 Each Hotel Facility Lender will participate through its Facility Office in each Tranche B Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche B Commitment to the Available Tranche B Facility immediately prior to the making of that Tranche B Advance.

6.2.3 Each Hotel Facility Lender will participate through its Facility Office in each Tranche C Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in

the proportion borne by its Available Tranche C Commitment to the Available Tranche C Facility immediately prior to the making of that Tranche C Advance.

6.2.4 Each Hotel Facility Lender will participate through its Facility Office in each Tranche D Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche D Commitment to the Available Tranche D Facility immediately prior to the making of that Tranche D Advance.

### 6.3 **Reduction of Available Commitment**

If a Hotel Lender's Available Tranche A Commitment or, as the case may be, Available Tranche B Commitment, Available Tranche C Commitment or Available Tranche D Commitment is reduced in accordance with the terms hereof or the Common Terms Agreement after the Intercreditor Agent or the Hotel Facility Agent has received an Advance Request for a Tranche A Advance or, as the case may be, a Tranche B Advance, a Tranche C Advance or a Tranche D Advance and such reduction was not taken into account in the Available Tranche A Facility or, as the case may be, the Available Tranche B Facility, the Available Tranche C Facility or the Available Tranche D Facility, then the amount of that Tranche A Advance or, as the case may be, Tranche B Advance, Tranche C Advance or Tranche D Advance shall be reduced accordingly.

## 7. **REPAYMENT**

### 7.1 **Repayment**

Subject to Clause 7.2 (*Final Maturity*), the Company shall repay the Hotel Loans in quarterly instalments by repaying on each Repayment Date amounts equal to the percentage set out next to the relevant Repayment Date in Schedule 2 (*Repayment Schedule*) of the aggregate US dollar denominated Hotel Facility Advances and the aggregate HK dollar denominated Hotel Facility Advances outstanding as at the end of the last day of the Hotel Facility Availability Period.

### 7.2 **Final maturity**

The Company shall repay on the Final Repayment Date all amounts outstanding or due and payable under the Hotel Facility on that day.

### 7.3 **No re-borrowing**

The Company may not re-borrow any part of the Hotel Facility which is repaid.

## 8. **PREPAYMENT AND CANCELLATION**

All prepayments of Hotel Facility Advances and cancellation of Available Commitments shall be made in accordance with Clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement.

## 9. **INTEREST**

### 9.1 **Calculation of Interest**

The rate of interest on each Hotel Facility Advance for each Interest Period is the percentage rate per annum which is the aggregate of:

9.1.1 the Margin; and

9.1.2 LIBOR (in the case of a Tranche A Advance or a Tranche C Advance) or HIBOR (in the case of a Tranche B Advance or a Tranche D Advance).

**9.2 Payment of interest**

Accrued interest on each Hotel Facility Advance is payable by the Company on the last day of each Interest Period relating to that Hotel Facility Advance.

**9.3 Default Interest**

Default interest shall be calculated and paid in accordance with Clause 9.4 (*Default Interest*) of the Common Terms Agreement.

**10. INTEREST PERIODS**

The duration of each Interest Period shall be determined in accordance with Clause 9.3 (*Interest Periods*) of the Common Terms Agreement.

**11. NOTIFICATION**

**11.1 Advances**

Promptly, and in any event, not less than 7 Business Days (in the case of the Initial Advance) or 4 Business Days (in the case of each subsequent Hotel Facility Advance), before the proposed Advance Date for each Hotel Facility Advance, the Hotel Facility Agent shall notify each Hotel Facility Lender of the proposed amount of the relevant Hotel Facility Advance and the aggregate principal amount of the relevant Hotel Facility Advance allocated to such Hotel Facility Lender pursuant to Clause 6.2 (*Each Hotel Facility Lender's Participation*) and each Hotel Facility Lender shall, on such Advance Date, subject to the terms and conditions of this Agreement, make available to the Hotel Facility Agent for the account of the Company its said portion of such Hotel Facility Advance.

**11.2 Interest rate determination**

The Hotel Facility Agent shall promptly notify the Company and the Hotel Facility Lenders of each determination of LIBOR and HIBOR under this Agreement.

**11.3 Changes to interest rates**

The Hotel Facility Agent shall promptly notify the Company and the Hotel Facility Lenders of any change to any interest rate occasioned by the operation of Clause 10 (*Changes to the calculation of interest*) of the Common Terms Agreement.

**11.4 Interest payment and repayment instalments**

Without prejudice to the Company's obligation to make any interest payment or to pay any repayment instalment on the due date, the Hotel Facility Agent shall provide to the Company and each Hotel Facility Lender (with a copy to the Intercreditor Agent) a notice setting out the relevant scheduled payment of interest and scheduled repayment of principal under this Agreement at least 15 Business Days before such amounts fall due for payment by the Company.

## 12. FEES

### 12.1 Tranche A and Tranche C Commitment fees

The Company shall pay to the Hotel Facility Agent (for the account of each Hotel Facility Lender) in arrears a commitment fee in US dollars computed at the rate of 1.25% per annum on that Hotel Facility Lender's Available Tranche A Commitment and Available Tranche C Commitment for the Hotel Facility Availability Period.

### 12.2 Tranche B and Tranche D Commitment fees

The Company shall pay to the Hotel Facility Agent (for the account of each Hotel Facility Lender) in arrears a commitment fee in HK dollars computed at the rate of 1.25% per annum on that Hotel Facility Lender's Available Tranche B Commitment and Available Tranche D Commitment for the Hotel Facility Availability Period.

### 12.3 Payment

The accrued commitment fees are payable on the last day of each successive period of three months which ends during the Hotel Facility Availability Period, on the last day of the Hotel Facility Availability Period and, in relation to any of the Tranche A Facility, the Tranche B Facility, the Tranche C Facility or the Tranche D Facility which is fully drawn or cancelled (in full or part), on the date it is fully drawn or the cancellation is effective (and, where the cancellation is as to only part of the Tranche A Available Commitment, the Tranche B Available Commitment, the Tranche C Available Commitment or the Tranche D Available Commitment, payment shall be made as of that date in respect of the commitment fee accrued in relation to that part).

## 13. CHANGES TO THE PARTIES

### 13.1 Transfers by the Hotel Facility Agent

The Hotel Facility Agent may resign in accordance with the Common Terms Agreement and may assign and transfer all of its rights and obligations under the Hotel Finance Documents to a replacement Hotel Facility Agent appointed in accordance with the terms of the Common Terms Agreement.

### 13.2 Transfers by the Company

The Company may not assign, transfer, novate or dispose of any of its rights or obligations under the Hotel Finance Documents.

### 13.3 Transfers by the Hotel Facility Lenders

A Hotel Facility Lender may assign, transfer or novate any of its rights and/or obligations under the Hotel Finance Documents in accordance with Clause 21.4 (*Assignment and Transfer by Lenders*), Clause 21.5 (*Assignments by Lenders*) and Clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement.

### 13.4 Assignment and Transfer Fees

On the date upon which an assignment takes effect pursuant to Clause 21.5 (*Assignments by Lenders*) of the Common Terms Agreement or a transfer takes effect pursuant to Clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreements, the relevant assignee or Transferee shall pay to the Intercreditor Agent for its own account a fee in accordance with Clause 21.7 of the Common Terms Agreement.

## 14. PAYMENTS

### 14.1 Payments

14.1.1 All payments under this Agreement shall be made in accordance with Clause 26 (*Payment Mechanics*) of the Common Terms Agreement.

14.1.2 Subject to Clause 26 (*Payment Mechanics*) of the Common Terms Agreement, on each date on which this Agreement requires an amount to be paid by the Company or a Hotel Facility Lender, the Company or, as the case may be, such Hotel Facility Lender shall make the same available to the Hotel Facility Agent for value on such due date and at such time and in such funds and to such account with such bank as the Hotel Facility Agent shall specify from time to time.

### 14.2 Partial Payments

14.2.1 If the Hotel Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Company to the Hotel Facility Lenders under the Hotel Finance Documents, the Hotel Facility Agent shall apply that payment towards the obligations of the Company under the Hotel Finance Documents in the following order:

- (a) **first**, in or towards payment *pro rata* of all amounts paid by the Hotel Facility Lenders under Clause 23.5 (*Indemnity to Intercreditor Agent*) of the Common Terms Agreement but which have not been reimbursed by the Company;
- (b) **secondly**, in or towards payment *pro rata* of all amounts paid by the Hotel Facility Lenders under Clause 15.3 (*Indemnity to Hotel Facility Agent*) but which have not been reimbursed by the Company;
- (c) **thirdly**, in or towards payment *pro rata* of all costs and expenses incurred by the Hotel Facility Lenders which the Company is obliged to reimburse;
- (d) **fourthly**, in or towards payment *pro rata* of all accrued but unpaid fees and commissions due to the Hotel Facility Lenders under the Hotel Finance Documents;
- (e) **fifthly**, in or towards payment *pro rata* of all accrued but unpaid interest (including default interest) due to the Hotel Facility Lenders under the Hotel Finance Documents;
- (f) **sixthly**, in or towards payment *pro rata* of any principal due to the Hotel Facility Lenders under the Hotel Finance Documents but unpaid; and
- (g) **seventhly**, in or towards payment *pro rata* of any other sum due to the Hotel Facility Lenders under the Hotel Finance Documents but unpaid.

14.2.2 The Hotel Facility Agent shall, if so directed by the Majority Hotel Facility Lenders, vary the order set out in sub-clause 14.2.1 above.

14.2.3 Sub-clause 14.2.1 above will override any appropriation made by the Company.

**15. DECISION MAKING AMONGST HOTEL FACILITY LENDERS**

**15.1 Decisions**

Save as otherwise set out herein and subject to the Common Terms Agreement, the required Senior Secured Creditors for the purpose of any decision within the scope of Clause 34.2 (*Amendment and waiver of Facility Agreements*) of the Common Terms Agreement) relating to this Agreement shall be the Hotel Facility Agent acting on the instructions of the Majority Hotel Facility Lenders.

**15.2 Failure to Give Instructions**

If the Hotel Facility Agent gives notice to the Hotel Facility Lenders requesting their specific instructions on any matter referred to in Clause 15.1 (*Decisions*) and it specifies in such notice that the Hotel Facility Lenders are to give such instructions by a certain date and time specified in such notice, any Hotel Facility Lender which fails to respond by the date and time so specified shall have its portion of the Hotel Facility Advances and its Available Commitment disregarded for all purposes of determining whether instructions have been given to the Hotel Facility Agent by the Majority Hotel Facility Lenders (and, for the purposes of determining the Available Facility or the amount of all Hotel Facility Advances outstanding, the Available Commitments and portion of Hotel Facility Advances of such Hotel Facility Lender shall be deducted).

**15.3 Indemnity to Hotel Facility Agent**

15.3.1 Each Hotel Facility Lender shall, rateably in accordance with its share of the US dollar equivalent of all outstanding Hotel Facility Advances (or, if no Hotel Facility Advance has been made, in accordance with its share of the US dollar equivalent of the total undrawn Available Commitment of all the Hotel Facility Lenders) for the time being (or, if all such Advances have been repaid or all Available Commitments reduced to zero, immediately prior to the repayment thereof or, as the case may be, such reduction), indemnify the Hotel Facility Agent, within fifteen days of demand, against any cost, loss or liability incurred by the Hotel Facility Agent (other than by reason of the negligence or wilful misconduct of the Hotel Facility Agent) in acting as Hotel Facility Agent under any of the Finance Documents (unless the Hotel Facility Agent has been reimbursed by the Company pursuant to a Senior Finance Document).

15.3.2 Provided that the Company is required to reimburse or indemnify the Hotel Facility Agent for such cost, loss or liability in accordance with the terms of the Senior Finance Documents, the Company shall, within fifteen days of demand in writing by any Hotel Facility Lender, indemnify such Hotel Facility Lender in relation to any payment actually made by such Hotel Facility Lender pursuant to Clause 15.3.1 above.

**16. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

**17. GOVERNING LAW**

This Agreement shall be governed by English law.

18. **JURISDICTION**

18.1 **Jurisdiction of English courts**

18.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) (a “**Dispute**”).

18.1.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they will not argue to the contrary.

18.1.3 This Clause 18.1 (*Jurisdiction of English Courts*) is for the benefit of the Hotel Finance Parties only. As a result, no Hotel Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Senior Finance Documents, the Hotel Finance Parties may take concurrent proceedings in any number of jurisdictions.

18.2 **Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Company:

18.2.1 irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and

18.2.2 agrees that failure by a process agent to notify the Company of the process will not invalidate the proceedings concerned.



SIGNATURES

**The Company**

**WYNN RESORTS (MACAU) S.A.**

By: ***Matt Maddox***  
Address: 429 Avenida da Praia Grande, 18<sup>th</sup> Floor  
Praia Grande Commercial Centre  
Macau  
Tel: (853) 371-476  
Fax: (853) 329-966  
Attention: Chief Financial Officer

Copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA  
Tel: (1) 702-770-2111  
Fax: (1) 702-770-1520  
Attention: General Counsel

**The Hotel Facility Agent**

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**

By: ***David Gore***                      ***Sun Peng Lui***  
Address: 42<sup>nd</sup> Floor, Edinburgh Tower  
15 Queen's Road Central  
Hong Kong  
Tel: (852) 2166-5414/(852) 2166-5415  
Fax: (852) 2868-1874/(852) 2868-4925  
Attention: Kenny Chan/Annie Yuen  
Commercial Back Office - Loans

Copy to:

Société Générale Asia Limited

Address: 42<sup>nd</sup> Floor, Edinburgh Tower  
15 Queen's Road Central  
Hong Kong

Tel: (852) 2166-5671/(852) 2166-5430/(852) 2166-5665

Fax: (852) 2804-6215

Attention: Sunny Lui/Raymond Fung/Sara Wong  
Risk & Agency

**The Hotel Facility Lenders**

**DEUTSCHE BANK AG, HONG KONG BRANCH**

By: ***Philip Crotty*** ***Peter Lo***

Address: 55<sup>th</sup> Floor, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Tel: (852) 2203-7436

Fax: (852) 2203-7212

Attention: Jonathan Robinson  
Debt Products Group

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

By: ***David Gore*** ***Sun Peng Lui***

Address: 42<sup>nd</sup> Floor, Edinburgh Tower  
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Tel: (852) 2166-5414/(852) 2166-5415

Fax: (852) 2868-1874/(852) 2868-4925

Attention: Kenny Chan/Annie Yuen  
Commercial Back Office - Loans

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**BANK OF CHINA, MACAU BRANCH**

By: ***Cheong Chi Sang***  
Address: Avenida Doutor Mario Soares  
Bank of China Building  
Macau  
Tel: (853) 792-1698/(853) 792-1646  
Fax: (853) 792-1659  
Attention: Wong Weng Tim/ Kuan Sio Keng

**CANADIAN EASTERN FINANCE LIMITED**

By: ***P.K. Tang*** ***Teresa C.Y. Lee***  
Address: Suite 2002  
20<sup>th</sup> Floor, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong  
Tel: (852) 2846-3736  
Fax: (852) 2524-1162  
Attention: Teresa Lee

**SHINSEI BANK, LIMITED**

By: ***Paul R. Smith*** ***Jonathan Robinson***  
Address: 1-8, Uchisaiwaicho 2-Chome  
Chiyoda-ku  
Tokyo 100-8501  
Japan  
Tel: (81) 3-5510-6623/(81) 3-5293-6918  
Fax: (81) 3-5511-5133  
Attention: Kazuki Yoneda/Kanako Matsuoka

**INDUSTRIAL AND COMMERCIAL BANK OF CHINA, MACAU BRANCH**

By: ***Shen Xiao Qi He Jin Qiu Stephen Leong***

Address: Alm. Dr. Carlos D' Assumpção, No. 411-417  
18 andar E, F, G e H  
Edf. Dynasty Plaza  
Macau

Tel: (853) 791-3075/(853) 791-3072

Fax: (853) 786-328

Attention: Clarence Wong/Elaine Lam

DATED 14 SEPTEMBER 2004

**WYNN RESORTS (MACAU) S.A.**  
as Company

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**  
as Project Facility Agent

and

**THE PROJECT FACILITY LENDERS**  
referred to herein

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**PROJECT FACILITY AGREEMENT**

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THIS AGREEMENT is made on the 14<sup>th</sup> day of September 2004

**BETWEEN:**

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (2) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** (the “**Project Facility Agent**”); and
- (3) **THE PROJECT FACILITY LENDERS** (as defined below).

**WHEREAS:**

The Project Facility Lenders have agreed to make certain loan facilities available to the Company in connection with the Projects upon the terms and subject to the conditions set out in this Agreement and the Common Terms Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless otherwise defined herein, all terms defined or referred to in the Common Terms Agreement shall have the same meaning herein and in addition:

“**Available Commitment**” means, in relation to a Project Facility Lender at any time and save as otherwise provided herein, the aggregate US dollar equivalent amount of Available Tranche A Commitment, Available Tranche B Commitment, Available Tranche C Commitment and Available Tranche D Commitment of such Project Facility Lender.

“**Available Facility**” means, at any time, the aggregate US dollar equivalent amount of the Available Tranche A Facility, the Available Tranche B Facility, the Available Tranche C Facility and the Available Tranche D Facility.

“**Available Tranche A Commitment**” means, in relation to a Project Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche A Commitment” in Schedule 1 (*The Project Facility Lenders*) less:

- (a) any amounts of the Available Tranche A Commitment of such Project Facility Lender cancelled pursuant to Clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement;
- (b) the aggregate amount of Tranche A Advances which have been made by such Project Facility Lender at such time; and
- (c) in relation to any Advance Request, the amount of any Tranche A Advance due to be made on or before the proposed Advance Date.

**“Available Tranche B Commitment”** means, in relation to a Project Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche B Commitment” in Schedule 1 (*The Project Facility Lenders*) less:

- (a) any amounts of the Available Tranche B Commitment of such Project Facility Lender cancelled pursuant to Clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement;
- (b) the aggregate amount of Tranche B Advances which have been made by such Project Facility Lender at such time; and
- (c) in relation to any Advance Request, the amount of any Tranche B Advance due to be made on or before the proposed Advance Date.

**“Available Tranche C Commitment”** means, in relation to a Project Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche C Commitment” in Schedule 1 (*The Project Facility Lenders*) less:

- (a) any amounts of the Available Tranche C Commitment of such Project Facility Lender cancelled pursuant to Clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement;
- (b) the aggregate amount of Tranche C Advances which have been made by such Project Facility Lender at such time; and
- (c) in relation to any Advance Request, the amount of any Tranche C Advance due to be made on or before the proposed Advance Date.

**“Available Tranche D Commitment”** means, in relation to a Project Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche D Commitment” in Schedule 1 (*The Project Facility Lenders*) less:

- (a) any amounts of the Available Tranche D Commitment of such Project Facility Lender cancelled pursuant to Clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement;
- (b) the aggregate amount of Tranche D Advances which have been made by such Project Facility Lender at such time; and
- (c) in relation to any Advance Request, the amount of any Tranche D Advance due to be made on or before the proposed Advance Date.

**“Available Tranche A Facility”** means, at any time, the aggregate amount of the Available Tranche A Commitments of all the Project Facility Lenders at such time.

**“Available Tranche B Facility”** means, at any time, the aggregate amount of the Available Tranche B Commitments of all the Project Facility Lenders at such time.



“**Available Tranche C Facility**” means, at any time, the aggregate amount of the Available Tranche C Commitments of all the Project Facility Lenders at such time.

“**Available Tranche D Facility**” means, at any time, the aggregate amount of the Available Tranche D Commitments of all the Project Facility Lenders at such time.

“**Common Terms Agreement**” means the common terms agreement dated 14 September 2004 and made between, among others, the Company, the financial institutions defined therein as Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, the Hotel Facility Agent, the Project Facility Agent, the Intercreditor Agent and the Security Agent.

“**HIBOR**” means, in relation to any Tranche B Advance or Tranche D Advance:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for HK dollars or for the Interest Period for that Project Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Project Facility Agent at its request quoted by the Reference Banks to leading banks in the Hong Kong interbank market,

at or about 11.00 a.m. (Hong Kong time) on the Quotation Day for the offering of deposits in HK dollars for a period comparable to the Interest Period for that Project Facility Advance.

“**LIBOR**” means, in relation to any Tranche A Advance or Tranche C Advance:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for US dollars or for the Interest Period for that Project Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Project Facility Agent at its request quoted by the Reference Banks to leading banks in the London interbank market,

at or about 11:00 a.m. (London time) on the Quotation Day for the offering of deposits in US dollars and for a period comparable to the Interest Period for that Project Facility Advance.

“**Majority Project Facility Lenders**” means:

- (a) before any Project Facility Advances have been made, a Project Facility Lender or Project Facility Lenders whose Available Commitments amount in aggregate to more than 50% of the Available Facility (or, if all Available Commitments have been reduced to zero, amounted in aggregate to more than 50% of the Available Facility immediately prior to the reduction); and
- (b) thereafter, a Project Facility Lender or Project Facility Lenders whose US dollar equivalent participations in the Project Facility Advances then outstanding (or, where all such Project Facility Advances have been repaid, immediately prior to

such repayment) amount in aggregate to more than 50% of the US dollar equivalent of all Project Facility Advances then outstanding.

**“Margin”** means 3.50% per annum.

**“Party”** means a party to this Agreement.

**“Project Base Debt Facility”** means the Tranche A Facility and the Tranche B Facility.

**“Project Contingent Debt Facility”** means the Tranche C Facility and the Tranche D Facility.

**“Project Facility”** means the Project Base Debt Facility and the Project Contingent Debt Facility.

**“Project Facility Advance”** means, as the context may require, a Tranche A Advance, a Tranche B Advance, a Tranche C Advance or a Tranche D Advance and **“Project Facility Advances”** shall mean each Tranche A Advance, Tranche B Advance, Tranche C Advance and Tranche D Advance or any of them.

**“Project Facility Lender”** means any commercial bank or financial institution which:

- (a) is named in Schedule 1 (*The Project Facility Lenders*); or
  - (b) has become a party hereto in accordance with Clause 13 (*Changes to the Parties*),
- and which has not ceased to be a party hereto in accordance with the terms hereof.

**“Project Finance Documents”** means:

- (a) this Agreement;
- (b) the Common Terms Agreement;
- (c) any other Senior Finance Document to which a Project Facility Lender is a party in its capacity as a Project Facility Lender; and
- (d) any other document designated as such by the Project Facility Agent and the Company.

**“Project Finance Parties”** means the Project Facility Agent and the Project Facility Lenders.

**“Project Loan”** means the aggregate principal amount for the time being outstanding hereunder.

**“Reference Banks”** means, in relation to:

- (a) LIBOR, the principal London offices of Deutsche Bank AG, Société Générale and Citibank, N.A.; and

(b) HIBOR, the principal Hong Kong offices of Deutsche Bank AG, Société Générale and Citibank, N.A., or such other bank or banks designated from time to time by the Project Facility Agent provided that the consent of the Company shall be required if such designation is made prior to an occurrence of an Event of Default which is continuing.

“**Screen Rate**” means, in relation to:

- (a) LIBOR, the British Bankers’ Association Interest Settlement Rate for US dollars for the relevant period, displayed on the appropriate page (being currently “LIBOR01”) of the Reuters Monitor Money Rates Service screen; and
- (b) HIBOR, the rate designated as “FIXING@11:00” (or any other designation which may from time to time replace that designation or, if no such designation appears, the arithmetic average (rounded upwards, to four decimal places) of the displayed rates for the relevant period) appearing under the heading “HONG KONG INTERBANK OFFERED RATES (HK DOLLAR)” on the Reuters Screen HIBOR1=R Page.

If the agreed page is replaced or service ceases to be available, the Project Facility Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Project Facility Lenders.

“**Tranche A Advance**” means an advance (as from time to time reduced by repayment in accordance with the terms hereof or the Common Terms Agreement) made or to be made by the Project Facility Lenders under the Tranche A Facility.

“**Tranche A Facility**” means the US dollar term loan facility granted to the Company under Clause 3.1.1 (*Grant of Project Base Debt Facilities*).

“**Tranche B Advance**” means an advance (as from time to time reduced by repayment in accordance with the terms hereof or the Common Terms Agreement) made or to be made by the Project Facility Lenders under the Tranche B Facility.

“**Tranche B Facility**” means the HK dollar term loan facility granted to the Company under Clause 3.1.2 (*Grant of Project Base Debt Facilities*).

“**Tranche C Advance**” means an advance (as from time to time reduced by repayment in accordance with the terms hereof or the Common Terms Agreement) made or to be made by the Project Facility Lenders under the Tranche C Facility.

“**Tranche C Facility**” means the US dollar term loan facility granted to the Company under Clause 3.2.1 (*Grant of Project Contingent Debt Facilities*).

“**Tranche D Advance**” means an advance (as from time to time reduced by repayment in accordance with the terms hereof or the Common Terms Agreement) made or to be made by the Project Facility Lenders under the Tranche D Facility.

“**Tranche D Facility**” means the HK dollar term loan facility granted to the Company under Clause 3.2.2 (*Grant of Project Contingent Debt Facilities*).

## 1.2 Interpretation

In this Agreement:

- 1.2.1 the principles of construction contained in Clause 1.2 (*Principles of Construction*) of the Common Terms Agreement and the rules of interpretation contained in Clause 1.3 (*Rules of Interpretation*) of the Common Terms Agreement shall apply to the construction and interpretation of this Agreement;
- 1.2.2 any reference to the “**Project Facility Agent**” or “**Project Facility Lender**” shall be construed so as to include its or their (and any subsequent) successors and any permitted transferees in accordance with their respective interests; and
- 1.2.3 references in this Agreement to any Clause or Schedule shall be to a clause or schedule contained in this Agreement.

## 1.3 Third Party Rights

- 1.3.1 The Contracts (Rights of Third Parties) Act 1999 applies to Clause 1.4 (*Non-Recourse Liability*) but only for the benefit of the Operatives and subject always to the terms of Clause 17 (*Governing Law*) and Clause 18 (*Jurisdiction*).
- 1.3.2 Except as provided in sub-clause 1.3.1 above, a Person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
- 1.3.3 Save as provided by the Common Terms Agreement, the consent of any Person who is not a party to this Agreement is not required to rescind or vary this Agreement.

## 1.4 Non-recourse Liability

Notwithstanding any provision in the Senior Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Senior Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Senior Finance Document to which such Operative is party. The sole recourse of the Project Finance Parties for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Senior Finance Documents shall be against the Obligors, and not against any assets or property of any Operative save to the extent such Operative is party to a Senior Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

## 2. COMMON TERMS AGREEMENT

This Agreement and the rights and obligations of the parties hereto shall be subject to the terms and conditions of the Common Terms Agreement which shall be deemed to be incorporated into this Agreement. In the case of any conflict between the terms of this Agreement and the terms of the Common Terms Agreement, the terms of this Agreement shall prevail.

**3. THE PROJECT FACILITY**

**3.1 Grant of the Project Base Debt Facilities**

**3.1.1 *Tranche A Facility***

The Project Facility Lenders grant to the Company, upon the terms and subject to the conditions hereof, a US dollar term loan facility in an aggregate amount of USD138,999,595.

**3.1.2 *Tranche B Facility***

The Project Facility Lenders grant to the Company, upon the terms and subject to the conditions hereof, a HK dollar term loan facility in an aggregate amount of HKD339,652,357.

**3.2 Grant of the Project Contingent Debt Facilities**

**3.2.1 *Tranche C Facility***

The Project Facility Lenders grant to the Company, upon the terms and subject to the conditions hereof, a US dollar term loan facility in an aggregate amount of USD11,846,559.

**3.2.2 *Tranche D Facility***

The Project Facility Lenders grant to the Company, upon the terms and subject to the conditions hereof, a HK dollar term loan facility in an aggregate amount of HKD28,947,643.

**4. PURPOSE**

**4.1 Purpose**

The Company shall apply all amounts borrowed by it under the Project Facility to finance Project Costs incurred or to be incurred in connection with the Projects.

**5. CONDITIONS PRECEDENT**

The provisions of Clause 2 (*Conditions Precedent*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

**6. AVAILABILITY OF THE PROJECT FACILITY**

**6.1 Drawdown of Advances**

The provisions of Clause 3 (*Drawdown of Advances*) and Clause 4.1 (*Project Facility Availability Period*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

**6.2 Each Project Facility Lender's Participation**

6.2.1 Each Project Facility Lender will participate through its Facility Office in each Tranche A Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche A Commitment to the Available Tranche A Facility immediately prior to the making of that Tranche A Advance.

6.2.2 Each Project Facility Lender will participate through its Facility Office in each Tranche B Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche B Commitment to the Available Tranche B Facility immediately prior to the making of that Tranche B Advance.

6.2.3 Each Project Facility Lender will participate through its Facility Office in each Tranche C Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche C Commitment to the Available Tranche C Facility immediately prior to the making of that Tranche C Advance.

6.2.4 Each Project Facility Lender will participate through its Facility Office in each Tranche D Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche D Commitment to the Available Tranche D Facility immediately prior to the making of that Tranche D Advance.

### 6.3 **Reduction of Available Commitment**

If a Project Lender's Available Tranche A Commitment or, as the case may be, Available Tranche B Commitment, Available Tranche C Commitment or Available Tranche D Commitment is reduced in accordance with the terms hereof or the Common Terms Agreement after the Intercreditor Agent or the Project Facility Agent has received an Advance Request for a Tranche A Advance or, as the case may be, a Tranche B Advance, a Tranche C Advance or a Tranche D Advance and such reduction was not taken into account in the Available Tranche A Facility or, as the case may be, the Available Tranche B Facility, the Available Tranche C Facility or the Available Tranche D Facility, then the amount of that Tranche A Advance or, as the case may be, Tranche B Advance, Tranche C Advance or Tranche D Advance shall be reduced accordingly.

## 7. **REPAYMENT**

### 7.1 **Repayment**

Subject to Clause 7.2 (*Final Maturity*), the Company shall repay the Project Loans in quarterly instalments by repaying on each Repayment Date amounts equal to the percentage set out next to the relevant Repayment Date in Schedule 2 (*Repayment Schedule*) of the aggregate US dollar denominated Project Facility Advances and the aggregate HK dollar denominated Project Facility Advances outstanding as at the end of the last day of the Project Facility Availability Period.

### 7.2 **Final maturity**

The Company shall repay on the Final Repayment Date all amounts outstanding or due and payable under the Project Facility on that day.

### 7.3 **No re-borrowing**

The Company may not re-borrow any part of the Project Facility which is repaid.

## 8. **PREPAYMENT AND CANCELLATION**

All prepayments of Project Facility Advances and cancellation of Available Commitments shall be made in accordance with Clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement.

## 9. **INTEREST**

### 9.1 **Calculation of Interest**

The rate of interest on each Project Facility Advance for each Interest Period is the percentage rate per annum which is the aggregate of:

9.1.1 the Margin; and

9.1.2 LIBOR (in the case of a Tranche A Advance or a Tranche C Advance) or HIBOR (in the case of a Tranche B Advance or a Tranche D Advance).

**9.2 Payment of interest**

Accrued interest on each Project Facility Advance is payable by the Company on the last day of each Interest Period relating to that Project Facility Advance.

**9.3 Default Interest**

Default interest shall be calculated and paid in accordance with Clause 9.4 (*Default Interest*) of the Common Terms Agreement.

**10. INTEREST PERIODS**

The duration of each Interest Period shall be determined in accordance with Clause 9.3 (*Interest Periods*) of the Common Terms Agreement.

**11. NOTIFICATION**

**11.1 Advances**

Promptly, and in any event, not less than 7 Business Days (in the case of the Initial Advance) or 4 Business Days (in the case of each subsequent Project Facility Advance), before the proposed Advance Date for each Project Facility Advance, the Project Facility Agent shall notify each Project Facility Lender of the proposed amount of the relevant Project Facility Advance and the aggregate principal amount of the relevant Project Facility Advance allocated to such Project Facility Lender pursuant to Clause 6.2 (*Each Project Facility Lender's Participation*) and each Project Facility Lender shall, on such Advance Date, subject to the terms and conditions of this Agreement, make available to the Project Facility Agent for the account of the Company its said portion of such Project Facility Advance.

**11.2 Interest rate determination**

The Project Facility Agent shall promptly notify the Company and the Project Facility Lenders of each determination of LIBOR and HIBOR under this Agreement.

**11.3 Changes to interest rates**

The Project Facility Agent shall promptly notify the Company and the Project Facility Lenders of any change to any interest rate occasioned by the operation of Clause 10 (*Changes to the calculation of interest*) of the Common Terms Agreement.

**11.4 Interest payment and repayment instalments**

Without prejudice to the Company's obligation to make any interest payment or to pay any repayment instalment on the due date, the Project Facility Agent shall provide to the Company and each Project Facility Lender (with a copy to the Intercreditor Agent) a notice setting out the relevant scheduled payment of interest and scheduled repayment of principal under this Agreement at least 15 Business Days before such amounts fall due for payment by the Company.

**12. FEES**

**12.1 Tranche A and Tranche C Commitment fees**

The Company shall pay to the Project Facility Agent (for the account of each Project Facility Lender) in arrears a commitment fee in US dollars computed at the rate of 1.25% per annum on that Project Facility Lender's Available Tranche A Commitment and Available Tranche C Commitment for the Project Facility Availability Period.

**12.2 Tranche B and Tranche D Commitment fees**

The Company shall pay to the Project Facility Agent (for the account of each Project Facility Lender) in arrears a commitment fee in HK dollars computed at the rate of 1.25% per annum on that Project Facility Lender's Available Tranche B Commitment and Available Tranche D Commitment for the Project Facility Availability Period.

**12.3 Payment**

The accrued commitment fees are payable on the last day of each successive period of three months which ends during the Project Facility Availability Period, on the last day of the Project Facility Availability Period and, in relation to any of the Tranche A Facility, the Tranche B Facility, the Tranche C Facility or the Tranche D Facility which is fully drawn or cancelled (in full or part), on the date it is fully drawn or the cancellation is effective (and, where the cancellation is as to only part of the Tranche A Available Commitment, the Tranche B Available Commitment, the Tranche C Available Commitment or the Tranche D Available Commitment, payment shall be made as of that date in respect of the commitment fee accrued in relation to that part).

**13. CHANGES TO THE PARTIES**

**13.1 Transfers by the Project Facility Agent**

The Project Facility Agent may resign in accordance with the Common Terms Agreement and may assign and transfer all of its rights and obligations under the Project Finance Documents to a replacement Project Facility Agent appointed in accordance with the terms of the Common Terms Agreement.

**13.2 Transfers by the Company**

The Company may not assign, transfer, novate or dispose of any of its rights or obligations under the Project Finance Documents.

**13.3 Transfers by the Project Facility Lenders**

A Project Facility Lender may assign, transfer or novate any of its rights and/or obligations under the Project Finance Documents in accordance with Clause 21.4 (*Assignment and Transfer by Lenders*), Clause 21.5 (*Assignments by Lenders*) and Clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement.

**13.4 Assignment and Transfer Fees**

On the date upon which an assignment takes effect pursuant to Clause 21.5 (*Assignments by Lenders*) of the Common Terms Agreement or a transfer takes effect pursuant to Clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreements, the relevant assignee or Transferee shall pay to the Intercreditor Agent for its own account a fee in accordance with Clause 21.7 of the Common Terms Agreement.



## 14. PAYMENTS

### 14.1 Payments

14.1.1 All payments under this Agreement shall be made in accordance with Clause 26 (*Payment Mechanics*) of the Common Terms Agreement.

14.1.2 Subject to Clause 26 (*Payment Mechanics*) of the Common Terms Agreement, on each date on which this Agreement requires an amount to be paid by the Company or a Project Facility Lender, the Company or, as the case may be, such Project Facility Lender shall make the same available to the Project Facility Agent for value on such due date and at such time and in such funds and to such account with such bank as the Project Facility Agent shall specify from time to time.

### 14.2 Partial Payments

14.2.1 If the Project Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Company to the Project Facility Lenders under the Project Finance Documents, the Project Facility Agent shall apply that payment towards the obligations of the Company under the Project Finance Documents in the following order:

- (a) **first**, in or towards payment *pro rata* of all amounts paid by the Project Facility Lenders under Clause 23.5 (*Indemnity to Intercreditor Agent*) of the Common Terms Agreement but which have not been reimbursed by the Company;
- (b) **secondly**, in or towards payment *pro rata* of all amounts paid by the Project Facility Lenders under Clause 15.3 (*Indemnity to Project Facility Agent*) but which have not been reimbursed by the Company;
- (c) **thirdly**, in or towards payment *pro rata* of all costs and expenses incurred by the Project Facility Lenders which the Company is obliged to reimburse;
- (d) **fourthly**, in or towards payment *pro rata* of all accrued but unpaid fees and commissions due to the Project Facility Lenders under the Project Finance Documents;
- (e) **fifthly**, in or towards payment *pro rata* of all accrued but unpaid interest (including default interest) due to the Project Facility Lenders under the Project Finance Documents;
- (f) **sixthly**, in or towards payment *pro rata* of any principal due to the Project Facility Lenders under the Project Finance Documents but unpaid; and
- (g) **seventhly**, in or towards payment *pro rata* of any other sum due to the Project Facility Lenders under the Project Finance Documents but unpaid.

14.2.2 The Project Facility Agent shall, if so directed by the Majority Project Facility Lenders, vary the order set out in sub-clause 14.2.1 above.

14.2.3 Sub-clause 14.2.1 above will override any appropriation made by the Company.

**15. DECISION MAKING AMONGST PROJECT FACILITY LENDERS**

**15.1 Decisions**

Save as otherwise set out herein and subject to the Common Terms Agreement, the required Senior Secured Creditors for the purpose of any decision within the scope of Clause 34.2 (*Amendment and waiver of Facility Agreements*) of the Common Terms Agreement) relating to this Agreement shall be the Project Facility Agent acting on the instructions of the Majority Project Facility Lenders.

**15.2 Failure to Give Instructions**

If the Project Facility Agent gives notice to the Project Facility Lenders requesting their specific instructions on any matter referred to in Clause 15.1 (*Decisions*) and it specifies in such notice that the Project Facility Lenders are to give such instructions by a certain date and time specified in such notice, any Project Facility Lender which fails to respond by the date and time so specified shall have its portion of the Project Facility Advances and its Available Commitment disregarded for all purposes of determining whether instructions have been given to the Project Facility Agent by the Majority Project Facility Lenders (and, for the purposes of determining the Available Facility or the amount of all Project Facility Advances outstanding, the Available Commitments and portion of Project Facility Advances of such Project Facility Lender shall be deducted).

**15.3 Indemnity to Project Facility Agent**

15.3.1 Each Project Facility Lender shall, rateably in accordance with its share of the US dollar equivalent of all outstanding Project Facility Advances (or, if no Project Facility Advance has been made, in accordance with its share of the US dollar equivalent of the total undrawn Available Commitment of all the Project Facility Lenders) for the time being (or, if all such Advances have been repaid or all Available Commitments reduced to zero, immediately prior to the repayment thereof or, as the case may be, such reduction), indemnify the Project Facility Agent, within fifteen days of demand, against any cost, loss or liability incurred by the Project Facility Agent (other than by reason of the negligence or wilful misconduct of the Project Facility Agent) in acting as Project Facility Agent under any of the Finance Documents (unless the Project Facility Agent has been reimbursed by the Company pursuant to a Senior Finance Document).

15.3.2 Provided that the Company is required to reimburse or indemnify the Project Facility Agent for such cost, loss or liability in accordance with the terms of the Senior Finance Documents, the Company shall, within fifteen days of demand in writing by any Project Facility Lender, indemnify such Project Facility Lender in relation to any payment actually made by such Project Facility Lender pursuant to Clause 15.3.1 above.

16. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

17. **GOVERNING LAW**

This Agreement shall be governed by English law.

18. **JURISDICTION**

18.1 **Jurisdiction of English courts**

18.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) (a “**Dispute**”).

18.1.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they will not argue to the contrary.

18.1.3 This Clause 18.1 (*Jurisdiction of English Courts*) is for the benefit of the Project Finance Parties only. As a result, no Project Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Senior Finance Documents, the Project Parties may take concurrent proceedings in any number of jurisdictions.

18.2 **Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Company:

18.2.1 irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and

18.2.2 agrees that failure by a process agent to notify the Company of the process will not invalidate the proceedings concerned.

SIGNATURES

**The Company**

**WYNN RESORTS (MACAU) S.A.**

By: ***Matt Maddox***  
Address: 429 Avenida da Praia Grande, 18<sup>th</sup> Floor  
Praia Grande Commercial Centre  
Macau  
Tel: (853) 371-476  
Fax: (853) 329-966  
Attention: Chief Financial Officer

Copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA  
Tel: (1) 702-770-2111  
Fax: (1) 702-770-1520  
Attention: General Counsel

**The Project Facility Agent**

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**

By: ***David Gore***                      ***Sun Peng Lui***  
Address: 42<sup>nd</sup> Floor, Edinburgh Tower  
15 Queen's Road Central  
Hong Kong  
Tel: (852) 2166-5414/(852) 2166-5415  
Fax: (852) 2868-1874/(852) 2868-4925  
Attention: Kenny Chan/Annie Yuen  
Commercial Back Office - Loans

Copy to:

Société Générale Asia Limited

Address: 42<sup>nd</sup> Floor, Edinburgh Tower  
15 Queen's Road Central  
Hong Kong

Tel: (852) 2166-5671/(852) 2166-5430/(852) 2166-5665

Fax: (852) 2804-6215

Attention: Sunny Lui/Raymond Fung/Sara Wong  
Risk & Agency

**The Project Facility Lenders**

**AOZORA BANK, LTD**

By: **David Gore** **Sun Peng Lui**

Address: 3-1  
Kudan-Minami 1-chome  
Chiyoda-ku  
Tokyo 102-8660  
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**BANCO ESPÍRITO SANTO DO ORIENTE, S.A.**

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Attention: Sylvana Chan/Frances T.M. Lo

DATED 14 SEPTEMBER 2004

**WYNN RESORTS (MACAU) S.A.**

as Company

and

**THE REVOLVING CREDIT FACILITY LENDERS**

referred to herein

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**REVOLVING CREDIT FACILITY AGREEMENT**

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THIS AGREEMENT is made on the 14<sup>th</sup> day of September 2004

**BETWEEN:**

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”); and
- (2) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*Original Revolving Credit Facility Lenders*) as lenders (the “**Original Revolving Credit Facility Lenders**”).

**WHEREAS:**

The Revolving Credit Facility Lenders have agreed to make certain loan facilities available to the Company in connection with the Projects upon the terms and subject to the conditions set out in this Agreement and the Common Terms Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless otherwise defined herein, all terms defined in the Common Terms Agreement shall have the same meaning herein and in addition:

“**Advance Request**” means a request for an Advance in substantially the form set out in Schedule 2 (*Form of Advance Request for a Revolving Credit Facility Advance*).

“**Available Commitment**” means a Revolving Credit Facility Lender’s Commitment *minus*:

- (a) the aggregate amount of its participation in any outstanding Revolving Credit Facility Advances (other than, in relation to any proposed Revolving Credit Facility Advance, such Revolving Credit Facility Lender’s participation in any Revolving Credit Facility Advances that are due to be repaid or prepaid on or before the proposed Advance Date); and
- (b) in relation to any proposed Revolving Credit Facility Advance, the aggregate amount of its participation in any Revolving Credit Facility Advances that are due to be made on or before the proposed Advance Date.

“**Available Facility**” means, at any time, the aggregate for the time being of each Revolving Credit Facility Lender’s Available Commitment.

“**Commitment**” means at any time:

- (a) in relation to an Original Revolving Credit Facility Lender, the amount set out opposite its name under the heading “Commitment” in Schedule 1 (*Original Revolving Credit Facility Lenders*) and the amount of any other Commitment transferred to it pursuant to Clause 12.2 (*Transfers by the Revolving Credit Facility Lenders*); and

(b) in relation to any other Revolving Credit Facility Lender, the amount of any Commitment transferred to it pursuant to Clause 12.2 (*Transfers by the Revolving Credit Facility Lenders*),

to the extent not cancelled, reduced or transferred by it pursuant to this Agreement or the Common Terms Agreement (including Clause 8 (*Repayments, Prepayments and Cancellation*) and Clause 14 (*Illegality*) of the Common Terms Agreement).

“**Common Terms Agreement**” means the common terms agreement dated 14 September 2004 and made between, among others, the Company, the financial institutions defined therein as Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, the Hotel Facility Agent, the Project Facility Agent, the Intercreditor Agent and the Security Agent.

“**HIBOR**” means, in relation to any Revolving Credit Facility Advance:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for HK dollars or the Interest Period of that Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Revolving Credit Facility Lenders (at the request of any Revolving Credit Facility Lender) quoted by the Reference Banks to leading banks in the Hong Kong interbank market,

at or about 11.00 am (Hong Kong time) on the Quotation Day for the offering of deposits in HK dollars for a period comparable to the Interest Period for that Advance.

“**Interest Period**” means, in relation to an Advance, each period determined in accordance with Clause 10 (*Interest Periods*).

“**Majority Revolving Credit Facility Lenders**” means:

- (a) if there are no Revolving Credit Facility Advances then outstanding, a Revolving Credit Facility Lender or Revolving Credit Facility Lenders whose Available Commitments aggregate more than 50% of the Available Facility (or, if all Available Commitments have been reduced to zero, aggregated more than 50% of the Available Facility immediately prior to the reduction); or
- (b) at any other time, a Revolving Credit Facility Lender or Revolving Credit Facility Lenders whose participations in the Revolving Credit Facility Advances then outstanding aggregate more than 50% of all the Revolving Credit Facility Advances then outstanding.

“**Margin**” means 2.50% per annum.

“**Quotation Day**” means, in relation to any period for which an interest rate is to be determined, the first day of that period.

“**Reference Banks**” means the principal office in Hong Kong of Deutsche Bank AG, Société Générale and Citibank, N.A., or such other banks as may be appointed by the

Majority Revolving Credit Facility Lenders with, if such designation is made prior to an occurrence of an Event of Default which is continuing, the consent of the Company.

**“Revolving Credit Facility”** means the revolving loan facility made available under this Agreement as described in Clause 3 (*The Facility*).

**“Revolving Credit Facility Advance”** means an Advance made or to be made under the Revolving Credit Facility or the principal amount outstanding for the time being of that Advance including a Rollover Advance.

**“Revolving Credit Facility Lender”** means any commercial bank, financial institution or other entity which:

- (a) is named in Schedule 1 (*Original Revolving Credit Facility Lenders*); or
- (b) has become a party hereto in accordance with Clause 12 (*Changes to the Parties*),

and which has not ceased to be a party hereto in accordance with the terms hereof.

**“Revolving Credit Facility Finance Documents”** means:

- (a) this Agreement;
- (b) the Common Terms Agreement;
- (c) any other Senior Finance Document to which a Revolving Credit Facility Lender is a party in its capacity as a Revolving Credit Facility Lender; and
- (d) any other document designated as such by the Revolving Credit Facility Lenders and the Company.

**“Rollover Advance”** means one or more Revolving Credit Facility Advances:

- (a) made or to be made on the same day that a maturing Revolving Credit Facility Advance is due to be repaid;
- (b) the aggregate amount of which is equal to or less than the maturing Revolving Credit Facility Advance; and
- (c) made or to be made to the Company for the purpose of refinancing a maturing Revolving Credit Facility Advance.

**“Screen Rate”** means, in relation to HIBOR, the rate designated as “FIXING@11:00” (or any other designation which may from time to time replace that designation or, if no such designation appears, the arithmetic average (rounded upwards, to four decimal places) of the displayed rates for the relevant period) appearing under the heading “HONG KONG INTERBANK OFFERED RATES (HK DOLLAR)” on the Reuters Screen HIBOR1=R Page.

If the agreed page is replaced or service ceases to be available, the Majority Revolving Credit Facility Lenders may specify another page or service displaying the appropriate rate after consultation with the Company.

“**Termination Date**” means the third anniversary of the Signing Date (as may be extended, by no more than a year at any time, with the consent of all of the Revolving Credit Facility Lenders) and which extension shall be notified to the Intercreditor Agent.

## 1.2 Interpretation

In this Agreement:

- 1.2.1 the principles of construction contained in Clause 1.2 (*Principles of Construction*) of the Common Terms Agreement and the rules of interpretation contained in Clause 1.3 (*Rules of Interpretation*) of the Common Terms Agreement shall apply to the construction and interpretation of this Agreement;
- 1.2.2 any reference to the “**Intercreditor Agent**” or any “**Revolving Credit Facility Lender**” shall be construed so as to include its or their (and any subsequent) successors and any permitted transferees in accordance with their respective interests; and
- 1.2.3 references in this Agreement to any Clause or Schedule shall be to a clause or schedule contained in this Agreement.

## 1.3 Third Party Rights

- 1.3.1 The Contracts (Rights of Third Parties) Act 1999 applies to Clause 1.4 (*Non-recourse liability*) but only for the benefit of the Operatives and subject always to the terms of Clause 16 (*Governing Law*) and Clause 17 (*Jurisdiction*).
- 1.3.2 Except as provided in sub-clause 1.3.1 above, a Person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement.
- 1.3.3 Save as provided by the Common Terms Agreement, the consent of any Person who is not a party to this Agreement is not required to rescind or vary this Agreement.

## 1.4 Non-recourse Liability

Notwithstanding any provision in the Senior Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Senior Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Senior Finance Document to which such Operative is party. The sole recourse of the Revolving Credit Facility Lenders for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Senior Finance Documents shall be against the Obligors and not against any assets or property of any Operative, save to the extent such Operative is party to a Senior Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr. Wong Chi Seng, his liability shall be limited to his shares in the Company.

2. **COMMON TERMS AGREEMENT**

This Agreement and the rights and obligations of the parties hereto shall be subject to the terms and conditions of the Common Terms Agreement which shall be deemed to be incorporated into this Agreement. In the case of any conflict between the terms of this Agreement and the terms of the Common Terms Agreement, the terms of this Agreement shall prevail.

3. **THE FACILITY**

Subject to the terms of this Agreement, the Revolving Credit Facility Lenders make available to the Company a revolving loan facility in an aggregate amount of HKD117,000,000.

4. **PURPOSE**

The Company shall apply all amounts borrowed by it under the Revolving Credit Facility towards general corporate purposes and working capital requirements of the Company other than payment of Senior Secured Indebtedness, Restricted Payments or payment under the IP Agreement.

5. **CONDITIONS OF UTILISATION**

5.1 **Conditions precedent**

The provisions of Clause 2.1 (*Conditions Precedent to the CP Satisfaction Date*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

5.2 **Further conditions precedent**

The obligation of each Revolving Credit Facility Lender to participate in each Advance under this Agreement is subject to the Company having satisfied the following conditions:

- (a) in the case of a Rollover Advance, no Event of Default shall have occurred and is continuing and, in the case of any other Revolving Credit Facility Advance, no Default shall have occurred and is continuing;
- (b) the representations and warranties contained in Schedule 4 (*Representations and Warranties*) of the Common Terms Agreement which are repeated by the Company pursuant to Clause 17.2 (*Timing*) of the Common Terms Agreement are true and correct in all material respects with reference to the facts and circumstances existing on the Advance Date;
- (c) receipt by the Intercreditor Agent of each of the reports, financial statements and other information due pursuant to paragraphs 1 and 2 of Part A of Schedule 5 (*Covenants*) of the Common Terms Agreement on or before the proposed Advance Date;
- (d) the Company shall have paid or arranged for payment out of the requested Advance of all fees, expenses and other charges then due and payable by it under Revolving Credit Facility Finance Documents; and



(e) a Project Certificate of Occupancy shall have been issued.

### 5.3 **Maximum number of Loans**

The Company may not deliver an Advance Request for a Revolving Credit Facility Advance if, as a result of the proposed Advance, more than four Revolving Credit Facility Advances would be outstanding.

## 6. **AVAILABILITY OF THE REVOLVING CREDIT FACILITY**

### 6.1 **Drawdown of Advances**

Subject to the terms of this Agreement and the Common Terms Agreement, the Company may request, and the Revolving Credit Facility Lenders shall make, Revolving Credit Facility Advances under the Revolving Credit Facility if, not later than 11:00 a.m. on the fifth Business Day before the proposed Advance Date, the Intercreditor Agent and the Revolving Credit Facility Lenders shall have received a completed Advance Request in respect of each such Advance.

### 6.2 **Completion of an Advance Request**

- (a) Each Advance Request in respect of a Revolving Credit Facility Advance is irrevocable and shall not be regarded as having been duly completed unless:
- (i) it is signed by a Responsible Officer of the Company whose specimen signature has been delivered to the Intercreditor Agent and who is identified as being authorised to so sign on behalf of the Company by a resolution of its Board of Directors, a copy of which, together with a certification in relation thereto by a Responsible Officer in substantially the form set out in paragraph 3(ii) of Part C of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement, has also been delivered to the Intercreditor Agent;
  - (ii) the proposed Advance Date is a Business Day within the Revolving Credit Facility Availability Period;
  - (iii) the currency and amount of the Advance comply with Clause 6.3 (*Currency and amount*);
  - (iv) the amount of each Revolving Credit Facility Lender's participation in the Advance complies with Clause 6.4 (*Lenders' Participation*); and
  - (v) the proposed Interest Period complies with Clause 10 (*Interest Periods*).
- (b) Only one Advance may be requested in each Advance Request.

### 6.3 **Currency and amount**

- (a) The currency specified in an Advance Request for a Revolving Credit Facility Advance must be HK dollars.
- (b) The amount of the proposed Revolving Credit Facility Advance must be:
- (i) a minimum of HKD5,000,000 or, if less, the Available Facility; and
  - (ii) less than or equal to the Available Facility.

#### 6.4 **Lenders' participation**

- (a) If the conditions set out in this Agreement and the Common Terms Agreement have been met, each Revolving Credit Facility Lender shall make its participation in each Revolving Credit Facility Advance available by the Advance Date through its Facility Office.
- (b) The amount of each Revolving Credit Facility Lender's participation in each Revolving Credit Facility Advance will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Advance.

#### 7. **REPAYMENT**

The Company shall repay each Revolving Credit Facility Advance on the last day of its Interest Period.

#### 8. **CANCELLATION**

##### 8.1 **Voluntary cancellation**

- (a) The Company may, if it gives the Intercreditor Agent and the Revolving Credit Facility Lenders not less than 15 days' prior written notice, cancel the whole or any part (being a minimum amount of HKD10,000,000) of the Available Facility, provided that any such cancellation prior to the third anniversary of the Signing Date shall require the prior consent of the Intercreditor Agent.
- (b) Any cancellation under Clause 8.1(a) above shall reduce the Available Commitments of the Revolving Credit Facility Lenders rateably.

##### 8.2 **Restrictions**

- (a) Any notice of cancellation given under this Clause 8 shall be irrevocable and shall specify the date or dates upon which the relevant cancellation is to be made and the amount of the cancellation.
- (b) Any cancellation pursuant to this Clause 8 shall be made together with accrued interest and fees on the amount cancelled and without premium or penalty.
- (c) The Company shall not cancel all or any part of the Available Facility except in accordance with this Agreement or the Common Terms Agreement (including Clause 8 (*Repayment, Prepayment and Cancellation*) and Clause 14 (*Illegality*) of the Common Terms Agreement).
- (d) No amount of the Available Facility cancelled under this Clause 8 may be subsequently reinstated.

#### 9. **INTEREST**

##### 9.1 **Calculation of interest**

The rate of interest on each Revolving Credit Facility Advance for each Interest Period is the percentage rate per annum which is the aggregate of:

- (a) the Margin; and
- (b) HIBOR.

**9.2 Payment of interest**

The Company shall pay accrued interest on each Revolving Credit Facility Advance on the last day of each Interest Period.

**9.3 Default Interest**

Default interest shall be calculated and paid in accordance with Clause 9.4 (*Default Interest*) of the Common Terms Agreement.

**9.4 Notification of rates of interest**

Each Revolving Credit Facility Lender shall promptly notify the Intercreditor Agent and the Company of the determination of a rate of interest under this Agreement.

**9.5 Changes to interest rates**

Each Revolving Credit Facility Lender shall promptly notify the Company and the Intercreditor Agent of any change to any interest rate occasioned by the operation of Clause 10 (*Changes to the calculation of interest*) of the Common Terms Agreement.

**10. INTEREST PERIODS**

- (a) The Company may select an Interest Period for a Revolving Credit Facility Advance in the Advance Request for that Advance.
- (b) Subject to this Clause 10, the Company may select an Interest Period for such Advance of 1, 2 or 3 months.
- (c) An Interest Period for a Revolving Credit Facility Advance shall not extend beyond the Termination Date.
- (d) Each Interest Period for a Revolving Credit Facility Advance shall start on the Advance Date applicable to such Advance.
- (e) A Revolving Credit Facility Advance shall have one Interest Period only.
- (f) Any Interest Period which would end on a day which is not a Business Day shall be extended to the next Business Day in that calendar month (if there is one on or prior to the Termination Date) or the preceding Business Day (if there is not).
- (g) Interest on a Revolving Credit Facility Advance shall accrue from and including the first day of an Interest Period relating to such Advance up to but excluding the last day of such Interest Period.

**11. COMMITMENT FEE**

- (a) The Company shall pay to each Revolving Credit Facility Lender a fee in HK dollars computed at the rate of 1.25% per annum on that Revolving Credit Facility Lender's daily Available Commitment for the Revolving Credit Facility Availability Period.
- (b) The accrued commitment fee is payable on the last day of each successive period of three months which ends during the Revolving Credit Facility Availability Period, on the last day of the Revolving Credit Facility Availability Period and, if cancelled in full or part, on the cancelled amount of the relevant Revolving Credit Facility Lender's Available Commitment, immediately prior to the time the cancellation is effective.

## 12. CHANGES TO THE PARTIES

### 12.1 Transfers by the Company

The Company may not assign, transfer, novate or dispose of any of its rights or obligations under the Revolving Credit Facility Finance Documents.

### 12.2 Transfers by the Revolving Credit Facility Lenders

A Revolving Credit Facility Lender may assign, transfer or novate all (but not some only) of its rights and/or obligations under the Revolving Credit Facility Finance Documents in accordance with Clause 21.4 (*Assignment and Transfer by Lenders*), Clause 21.5 (*Assignments by Lenders*) and Clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement.

## 13. PAYMENTS

### 13.1 Payments

- (a) All payments under this Agreement shall be made in accordance with Clause 26 (*Payment Mechanics*) of the Common Terms Agreement.
- (b) Subject to Clause 26 (*Payment Mechanics*) of the Common Terms Agreement, on each date on which this Agreement requires an amount to be paid by the Company to a Revolving Facility Lender or by a Revolving Credit Facility Lender to the Company, the Company or, as the case may be, such Revolving Credit Facility Lender, shall make the same available to such Revolving Credit Facility Lender or, as the case may be, the Company, for value on such due date and at such time and in such funds and to such account with such bank as the Revolving Credit Facility Lender or, as the case may be, the Company shall specify from time to time.

### 13.2 Partial Payments

- (a) If a Revolving Credit Facility Lender receives a payment that is insufficient to discharge all the amounts then due and payable by the Company to such Revolving Credit Facility Lender under the Revolving Credit Facility Finance Documents, such Revolving Credit Facility Lender shall apply that payment towards the obligations of the Company under the Revolving Credit Facility Finance Documents in the following order:
  - (i) **first**, in or towards payment *pro rata* of all amounts paid by the Revolving Credit Facility Lender under Clause 23.15 (*Indemnity to Intercreditor Agent*) of the Common Terms Agreement but which have not been reimbursed by the Company;
  - (ii) **secondly**, in or towards payment *pro rata* of all costs and expenses incurred by the Revolving Credit Facility Lender which the Company is obliged to reimburse;
  - (iii) **thirdly**, in or towards payment *pro rata* of all accrued and unpaid fees and commissions due to the Revolving Credit Facility Lender under the Revolving Credit Facility Finance Documents;
  - (iv) **fourthly**, in or towards payment *pro rata* of any principal due to the Revolving Credit Facility Lender under the Revolving Credit Facility Finance Documents but unpaid; and

(v) **fifthly**, in or towards payment *pro rata* of any other sum due to the Revolving Credit Facility Lender under the Revolving Credit Facility Finance Documents but unpaid.

(b) Sub-paragraph (a) above will override any appropriation made by the Company.

### 13.3 **Currency of account**

Subject to sub-clauses 26.7.1 to 26.7.3 of Clause 26.7 (*Currency of account*) of the Common Terms Agreement, HK dollars is the currency of account and payment for any sum due from the Company under any Revolving Credit Facility Finance Document.

### 14. **DECISION MAKING AMONGST REVOLVING CREDIT FACILITY LENDERS**

Save as otherwise set out herein and subject to the Common Terms Agreement, the required Senior Secured Creditors for the purposes of any decision within the scope of Clause 34.2 (*Amendment and waiver of Facility Agreements*) of the Common Terms Agreement relating to this Agreement shall be each of the Revolving Credit Facility Lenders.

### 15. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

### 16. **GOVERNING LAW**

This Agreement shall be governed by English law.

### 17. **JURISDICTION**

#### 17.1 **Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they will not argue to the contrary.
- (c) This Clause 17.1 (*Jurisdiction of English Courts*) is for the benefit of the Revolving Credit Facility Lenders only. As a result, no Revolving Credit Facility Lender shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Revolving Credit Facility Finance Documents, the Revolving Credit Facility Lenders may take concurrent proceedings in any number of jurisdictions.

#### 17.2 **Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Company:

- (a) irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
- (b) agrees that failure by a process agent to notify the Company of the process will not invalidate the proceedings concerned.

SIGNATURES

**The Company**

**WYNN RESORTS (MACAU) S.A.**

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Attention: Chief Financial Officer  
Copy to:

Wynn Resorts, Limited

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Las Vegas, Nevada 89109  
USA  
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Attention: General Counsel

**The Revolving Credit Facility Lenders**

**BANCO NACIONAL ULTRAMARINO, S.A.**

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**BANCO COMMERCIAL DE MACAU, S.A.**

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Attention: Sam Tou/Vilma Loi

**BANCO DELTA ASIA, S.A.R.L.**

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Attention: Howard Lau/Alex Chou

**DATED 14 SEPTEMBER 2004**

**CERTAIN FINANCIAL INSTITUTIONS**

as Original First Ranking Lenders

**BANCO NACIONAL ULTRAMARINO, S.A.**

as Second Ranking Finance Party

**WYNN GROUP ASIA, INC.**

as Third Ranking Finance Party

**WYNN RESORTS (MACAU) S.A.**

as Company

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

as Security Agent

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**

as Intercreditor Agent

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**

as Hotel Facility Agent and Project Facility Agent

and

**OTHERS**

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**DEED OF APPOINTMENT AND PRIORITY**

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**THIS DEED** is dated 14 September 2004 and made between:

- (1) **THE FINANCIAL INSTITUTIONS** named on the signing pages as First Ranking Lenders (the “**Original First Ranking Lenders**”);
- (2) **BANCO NACIONAL ULTRAMARINO, S.A.** (the “**Second Ranking Finance Party**”);
- (3) **WYNN GROUP ASIA, INC.**, a company organised under the laws of Nevada, as creditor of the Third Ranking Liabilities (the “**Third Ranking Finance Party**”) and as assignor under Schedule 2 (*Assignment of Third Ranking Liabilities*) (the “**Assignor**”);
- (4) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (5) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** as agent and security trustee for (unless otherwise provided herein) the Secured Parties (the “**Security Agent**”);
- (6) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Intercreditor Agent (the “**Intercreditor Agent**”);
- (7) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Hotel Facility Agent (the “**Hotel Facility Agent**”);
- (8) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Project Facility Agent (the “**Project Facility Agent**”);
- (9) **DEUTSCHE BANK AG, HONG KONG BRANCH** and **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in their capacities as global coordinating lead arrangers of the Facilities (the “**Global Coordinating Lead Arrangers**” or “**GCLAs**”); and
- (10) **BANCO NACIONAL ULTRAMARINO, S.A.** in its capacity as agent for the Security Agent under the Power of Attorney (the “**POA Agent**”).

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed, terms defined in the Common Terms Agreement shall, unless otherwise defined in this Deed, bear the same meaning when used in this Deed and, in addition:

“**Affiliate**” means, in relation to any Person, a Subsidiary of that Person or a Holding Company of that Person or any other Subsidiary of that Holding Company.

“**Assignor Accession Deed**” means a deed in substantially the form set out in Schedule 3 (*Form of Assignor Accession Deed*).

“**Charged Property**” means all of the assets which from time to time are, or are expressed to be, the subject of the Transaction Security.

“**Collateral Rights**” means all rights, powers and remedies of the Security Agent provided by Schedule 2 (*Assignment of Third Ranking Liabilities*) or by law.

**“Common Terms Agreement”** means the common terms agreement dated 14 September 2004 and made between, among others, the Company, the financial institutions defined therein as Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, the Hotel Facility Agent, the Project Facility Agent, the Intercreditor Agent and the Security Agent.

**“DAP Finance Documents”** means this Deed, the Second Ranking Facility Agreement and the Third Ranking Funding Agreement.

**“Delegate”** means any delegate, agent (including the POA Agent), attorney or co-trustee appointed by the Security Agent in accordance with the terms of the relevant Finance Documents.

**“Enforcement Action”** means:

- (a) the acceleration of any Liabilities or any declaration that any Liabilities are prematurely due and payable or payable on demand;
- (b) the taking of any steps to perfect, enforce or require the perfection or enforcement of any of the Transaction Security (including the crystallisation or consolidation of any floating charge forming part of the Transaction Security) or any other Security in respect of any Liabilities;
- (c) the making of any demand against any Grantor or any other Person in relation to any guarantee, indemnity or other assurance against loss in respect of any Liabilities or exercising any right to require any Grantor or any other Person to acquire any Liability (including exercising any put or call option against any Grantor or any other Person) for the redemption or purchase of any Liability;
- (d) the exercise of any right of set-off against any Grantor or any other Person in respect of any Liabilities;
- (e) the suing for, commencing or joining of any legal or arbitration proceedings against any Grantor or any other Person to recover or in respect of any Liabilities;
- (f) the entering into of any composition, assignment or arrangement in the context of insolvency with any Grantor; or
- (g) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, bankruptcy, dissolution, administration or reorganisation of any Grantor or any suspension of payments or moratorium of any indebtedness of any Grantor, or any analogous procedure or step in any jurisdiction.

**“Enforcement Notice”** means a notice of enforcement delivered by the Security Agent to any Sponsor after receipt by the Security Agent:

- (a) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the

payment and discharge in full of the First Ranking Liabilities, of an instruction from the Intercreditor Agent stating that an Event of Default under the First Ranking Finance Documents has occurred (which instruction may only be given by the Intercreditor Agent pursuant to Clause 19.2 of the Common Terms Agreement) and, as at the date of such notice from the Intercreditor Agent, is continuing;

- (b) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities but prior to the payment and discharge in full of the Second Ranking Liabilities, of an instruction from the Second Ranking Finance Party stating that an Event of Default under the Second Ranking Finance Documents has occurred and, as at the date of such notice from the Second Ranking Finance Party, is continuing; or
- (c) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and the payment and discharge in full of the First Ranking Liabilities and the Second Ranking Liabilities, of an instruction from the Third Ranking Finance Party stating that an Event of Default under the Third Ranking Finance Documents has occurred and, as at the date of such notice from the Third Ranking Finance Party, is continuing.

**“Event of Default”** means:

- (a) in relation to or under the Common Terms Agreement, any event or circumstance specified as such in the Common Terms Agreement;
- (b) in relation to or under the Second Ranking Facility Agreement, any event or circumstance specified as such in the Second Ranking Facility Agreement or if no such event or circumstance is specified in the Second Ranking Facility Agreement, the failure by the Company to pay any amount within 5 days after such amount becomes due in accordance with the terms thereof; or
- (c) in relation to or under the Third Ranking Funding Agreement, any event or circumstance specified as such in the Third Ranking Funding Agreement, and an “Event of Default” means any of them.

**“Finance Document”** means each of the First Ranking Finance Documents, the Second Ranking Finance Documents, the Third Ranking Finance Documents and any other document designated as such by the Security Agent and the Company.

**“Finance Parties”** means the Secured Parties other than the Security Agent.

**“Finance Party Accession Undertaking”** means an undertaking in substantially the form set out in Schedule 1 (*Form of Finance Party Accession Undertaking*).

**“First and Second Ranking Secured Obligations”** means the Secured Obligations other than the Third Ranking Liabilities.

**“First Ranking Finance Documents”** means the Senior Finance Documents as defined in the Common Terms Agreement.

**“First Ranking Finance Parties”** means the First Ranking Funding Parties, the Intercreditor Agent, the GCLAs, the Hotel Facility Agent and the Project Facility Agent.

**“First Ranking Funding Parties”** means the First Ranking Lenders and the Hedging Counterparties.

**“First Ranking Lenders”** means each Original First Ranking Lender and any Person which becomes a Party to this Deed as a First Ranking Lender in accordance with Clause 18 (*Change of Party and Accession by Hedging counterparties*).

**“First Ranking Liabilities”** means the Liabilities owed by the Grantors to the First Ranking Finance Parties under the First Ranking Finance Documents.

**“Funding Parties”** means the First Ranking Lenders, the Hedging Counterparties, the Second Ranking Finance Party and the Third Ranking Finance Party.

**“Grantors”** means the Company, the Obligors, Mr. Wong Chi Seng and the Assignor.

**“Hedging Counterparties”** means any Hedging Counterparty (as defined in the Common Terms Agreement) which becomes a Party in accordance with the terms of Clause 18.2 or Clause 18.4 (*Hedging Counterparties*).

**“Hedging Liabilities”** means the Liabilities owed by the Company to the Hedging Counterparties under the Hedging Agreements.

**“Insolvency Event”** means, in relation to any Grantor (other than Mr Wong Chi Seng):

- (a) such Grantor shall have commenced any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, administration, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or such Grantor shall make a general assignment for the benefit of its creditors;
- (b) there shall be commenced against such Grantor any case, proceeding or other action of a nature referred to in sub-paragraph (a) above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undischarged, undischarged or unbonded for a period of 60 days;
- (c) there shall be commenced against such Grantor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated,

discharged, or stayed or bonded pending appeal within 60 days from the entry thereof;

- (d) such Grantor consents to, approves of, or acquiesces in, any of the acts set forth in sub-paragraphs (a), (b) or (c) above; or
- (e) such Grantor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

“**Liabilities**” means all present and future liabilities and obligations at any time of:

- (a) any Sponsor to any First Ranking Finance Party (including the Obligations as defined in the Common Terms Agreement), the Second Ranking Finance Party and/or the Third Ranking Finance Party, in each case under the Finance Documents; and/or
- (b) the Assignor to any First Ranking Finance Party and/or the Second Ranking Finance Party under this Deed,

both actual and contingent and whether incurred solely or jointly or in any other capacity under the Finance Documents together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (i) any refinancing, novation, deferral or extension;
- (ii) any claim for damages or restitution; and
- (iii) any claim as a result of any recovery by any Grantor (other than Mr Wong Chi Seng) of a payment or discharge on the grounds of preference, and any amounts which would be included in any of the above but for any discharge, non-provability or unenforceability of those amounts in any insolvency or other proceedings.

“**Mandatory Permitted Lien**” means:

- (a) any attachment or judgment Lien not constituting an Event of Default; or
- (b) any other Lien arising by mandatory operation of law,

provided that in each case such Lien is either discharged within 21 days of arising or one or more bonds are provided for such Lien on such terms and for such amount satisfactory to the Security Agent (acting reasonably).

“**Party**” means a party to this Deed.

“**Performance Bond**” means the bank guarantee issued or to be issued by the Second Ranking Finance Party under or pursuant to the Second Ranking Facility Agreement.

“**Permitted Payment**” means:

- (a) payment to the Second Ranking Finance Party permitted under Clause 5.2 (*No Payment*) and Clause 5.3 (*Restricted Payments*); and

(b) payment to the Third Ranking Finance Party permitted under Clause 6.2 (*No Payment*), Clause 6.3 (*Accrual of Interest*) and Clause 6.4 (*Restricted Payments*).

“**Receiver**” means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

“**Second Ranking Facility Agreement**” means the Bank Guarantee Reimbursement Agreement dated 14 September 2004 between the Company and the Second Ranking Finance Party.

“**Second Ranking Finance Documents**” means the Second Ranking Facility Agreement.

“**Second Ranking Liabilities**” means the Liabilities owed by the Grantors to the Second Ranking Finance Party under the Second Ranking Finance Documents.

“**Secured Obligations**” means all the Liabilities (other than any of the Liabilities owed by Mr Wong Chi Seng) and all other present and future obligations at any time due, owing or incurred by any Grantor (other than Mr Wong Chi Seng) to any Secured Party under the Finance Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

“**Secured Parties**” means the Security Agent, any Receiver or Delegate, and each of the First Ranking Finance Parties, the Second Ranking Finance Party and the Third Ranking Finance Party from time to time but, in the case of each First Ranking Finance Party, the Second Ranking Finance Party and the Third Ranking Finance Party, only if it is a party to this Deed or has delivered to the Security Agent a duly executed Finance Party Accession Undertaking accepted by the Security Agent in accordance with Clause 18.6 (*Finance Party Accession Undertaking*) and, in the case of a First Ranking Finance Party (other than the Intercreditor Agent), the Intercreditor Agent.

“**Security**” means:

- (a) a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any Person;
- (b) any arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set off or made subject to a combination of accounts so as to effect discharge of any sum owed or payable to any Person or;
- (c) any other type of preferential arrangement (including any title transfer and retention arrangement) having a similar effect.

“**Security Providers**” means each Direct Insurer which is a party to an Assignment of Reinsurances and the Grantors.

“**Sponsors**” means the Grantors (other than the Assignor in its capacity as such).

“**Third Ranking Funding Agreement**” means the Subordinated Funding Agreement and the notes issued thereunder.

“**Third Ranking Finance Documents**” means the Third Ranking Funding Agreement.

“**Third Ranking Liabilities**” means any Liabilities owed by the Company to the Third Ranking Finance Party under the Third Ranking Finance Documents.

“**Transaction Security**” means the Security created or expressed to be created under or pursuant to any of the Security Documents (including, without limitation, the assignment created or expressed to be created under or pursuant to Schedule 2 (*Assignment of Third Ranking Liabilities*)).

“**TRL Enforcement Notice**” means a notice of enforcement delivered by the Security Agent to the Assignor after receipt by the Security Agent:

- (a) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities, of an instruction from the Intercreditor Agent stating that an Event of Default has occurred under the First Ranking Finance Documents and (as at the date of such notice from the Intercreditor Agent) is continuing; or
- (b) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities but prior to the payment and discharge in full of the Second Ranking Liabilities, of an instruction from the Second Ranking Finance Party stating that an Event of Default has occurred under the Second Ranking Facility Agreement and (as at the date of such notice from the Second Ranking Finance Party) is continuing.

“**TRL Secured Parties**” means the Secured Parties (other than the Third Ranking Finance Party).

“**Wong Event**” has the meaning given in the Wong Share Pledge.

## 1.2 Construction

- (a) In this Deed, the rules of construction and interpretation contained in Clause 1.2 (*Principles of Construction*) and Clause 1.3 (*Rules of Interpretation*) of the Common Terms Agreement shall be incorporated into this Deed and shall apply to the construction of this Deed and, unless a contrary indication appears a reference in this Deed to:
  - (i) any Grantor, the Assignor, any Secured Party or any Party shall be construed so as to include its successors in title, permitted assignees and permitted transferees and, in the case of the Security Agent, any Person for the time being appointed as agent and security trustee or security trustees in accordance with this Deed and, in the case of the POA Agent, any Person for the time being appointed as agent for the Security Agent under the Power of Attorney in accordance with this Deed;
  - (ii) “**assets**” includes present and future properties, revenues and rights of every description; and



- (iii) a Second Ranking Finance Document or a Third Ranking Finance Document shall be construed as that Second Ranking Finance Document or, as the case may be, that Third Ranking Finance Document amended or novated (however fundamentally) as permitted by this Deed.

**1.3 Third party rights**

- (a) The Contracts (Rights of Third Parties) Act 1999 applies to Clause 1.4 (*Non-Recourse Liability*) but only for the benefit of the Operatives subject always to the terms of Clause 26 (*Governing Law*) and Clause 27 (*Enforcement*).
- (b) Except as provided in sub-paragraph (a) above, a Person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.
- (c) The consent of any Person who is not a party to this Deed is not required to rescind or vary this Deed.

**1.4 Non-Recourse Liability**

Notwithstanding any provision in the Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Finance Document to which such Operative is party. The sole recourse of the Secured Parties for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Finance Documents shall be against the Obligors, and not against any assets or property of any Operative save to the extent such Operative is party to a Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

**2. PARALLEL DEBT (COVENANT TO PAY THE SECURITY AGENT)**

- 2.1 Notwithstanding any other provision of this Deed, the Company hereby irrevocably and unconditionally undertakes to pay to the Security Agent, as creditor in its own right and not as representative of the other Secured Parties, sums equal to and in the currency of each amount payable by the Company to each of the Secured Parties under each of the Finance Documents as and when that amount falls due for payment under the relevant Finance Document or would have fallen due but for any discharge resulting from failure of another Secured Party to take appropriate steps, in insolvency proceedings affecting the Company, to preserve its entitlement to be paid that amount.
- 2.2 The Security Agent shall have its own independent right to demand payment of the amounts payable by the Company under Clause 2.1, irrespective of any discharge of the Company's obligation to pay those amounts to the other Secured Parties resulting from failure by them to take appropriate steps, in insolvency proceedings affecting the Company, to preserve their entitlement to be paid those amounts.
- 2.3 Any amount due and payable by the Company to the Security Agent under this Clause 2 (*Parallel Debt (Covenant to pay the Security Agent)*) shall be decreased to the extent that

the other Secured Parties have received (and are able to retain) payment in full of the corresponding amount under the other provisions of the Finance Documents.

### **3. RANKING AND PRIORITY**

Each of the Parties agrees that the Liabilities owed by, and the Transaction Security granted by, the Grantors to the Secured Parties rank in the following order and are postponed and subordinated to any prior ranking Liabilities as follows:

- (a) first, the First Ranking Liabilities;
- (b) second, the Second Ranking Liabilities; and
- (c) third, the Third Ranking Liabilities.

### **4. FIRST RANKING FINANCE PARTIES: RIGHTS AND OBLIGATIONS**

#### **4.1 Payment**

The Grantors may pay, repay, redeem or acquire the First Ranking Liabilities at any time in accordance with the terms of the First Ranking Finance Documents.

#### **4.2 Security**

The First Ranking Finance Parties may take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the First Ranking Liabilities in addition to the Transaction Security.

#### **4.3 Increase of principal**

The First Ranking Finance Parties may from time to time (if permitted under the terms of the First Ranking Finance Documents), without the consent of the Second Ranking Finance Party or the Third Ranking Finance Party, increase the principal amount available under the First Ranking Finance Documents up to USD800,000,000 (or, if the Company incurs Financial Indebtedness permitted under paragraph 2(f) of Schedule 5 Part B of the Common Terms Agreement, USD800,000,000 plus an amount being 150% of the aggregate amount of such Financial Indebtedness incurred by the Company) shall be treated as being part of the First Ranking Liabilities.

#### **4.4 Amendments**

The First Ranking Finance Parties may (in addition to any increase in principal permitted by this Deed) amend the First Ranking Finance Documents (other than this Deed) at any time, provided such amendments are made in accordance with the terms thereof.

### **5. SECOND RANKING FINANCE PARTY: RIGHTS AND OBLIGATIONS**

#### **5.1 Subordination**

Each of the Company, the Assignor and the Second Ranking Finance Party agrees that, prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities, the Second Ranking Liabilities and the claims of the Second Ranking Finance Party (whether in respect of principal, interest or otherwise) in respect of the Second Ranking Liabilities shall be subordinated to the First Ranking Liabilities and postponed to the claims of the First Ranking Finance Parties in respect of the First

Ranking Liabilities in accordance with the terms hereof. For the avoidance of doubt, this Clause is without prejudice to Clause 15 (*Application of Proceeds*).

## 5.2 **No Payment**

Except as permitted under Clause 11 (*Effect of Insolvency Event*) and Clause 5.3 (*Restricted Payments*), each of the Company, the Assignor and the Second Ranking Finance Party hereby undertakes and agrees that, unless and until the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities:

- (a) no Second Ranking Liabilities (nor any part thereof) shall be payable or repayable, paid or repaid; and
- (b) none of the Second Ranking Finance Party and the Grantors shall at any time have or claim any right of set-off, deduction or counterclaim in respect of the Second Ranking Liabilities or any part thereof, and each of the Second Ranking Finance Party, the Company and the Assignor agrees that none of them shall exercise any such right which it may otherwise have and hereby waives all such rights,

except that:

- (i) at all times the Company may pay annual fees in accordance with section 2.4 and section 2.5 of the Second Ranking Facility Agreement and, if the Performance Bond is drawn, interest in accordance with section 3.4 of the Second Ranking Facility Agreement; and
- (ii) if:
  - (A) the Company fails to pay any sum due under the Concession Contract which failure is of a technical or administrative nature;
  - (B) the Performance Bond is drawn by the Macau SAR in respect of such failure in an amount not more than the sum referred to in paragraph (A) above; and
  - (C) the Company has delivered evidence satisfactory to the Intercreditor Agent that it had sufficient funds available to make the payment referred to in paragraph (A) above,

the Company may indemnify the Second Ranking Finance Party against the amount so drawn by the Macau SAR under the Performance Bond provided that the Second Ranking Finance Party reinstates the Performance Bond to the amount of bank guarantee required under article 61(3) of the Concession Contract and there is no continuing default under the Concession Contract in respect of such failure to pay.

## 5.3 **Restricted Payments**

The Company may pay Second Ranking Liabilities out of moneys which could be used to make Restricted Payments in accordance with paragraph 6 of Part B (*Negative*

*Covenants*) of Schedule 5 (*Covenants*) of the Common Terms Agreement at the time such Restricted Payments can be made.

**5.4 Security**

The Second Ranking Finance Party may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Second Ranking Liabilities in addition to the Transaction Security and the Lien referred to in paragraph 3(n) of Schedule 5 Part B of the Common Terms Agreement.

**5.5 Amendments**

The Second Ranking Finance Party may amend the Second Ranking Finance Documents in accordance with their terms at any time unless that amendment is, in relation to the provisions of the Second Ranking Finance Documents as at the date of this Deed, a change:

- (a) in the principal amount of the facility available under the Second Ranking Facility Agreement or the face value of the bank guarantee issued or to be issued pursuant to the Second Ranking Facility Agreement;
- (b) in the currency of repayment, reimbursement or prepayment of that facility;
- (c) the effect of which is to accelerate all or any of the dates of repayment, reimbursement or prepayment of that facility;
- (d) in the basis on which interest, fees or commission accrue, are calculated or are payable;
- (e) the effect of which is to make any Grantor liable to make additional or increased payments; or
- (f) to the representations, undertakings, financial covenants or events of default unless such representations, undertakings, financial covenants or, as the case may be, events of default after such change are no more restrictive or onerous to any Grantor than the terms under the First Ranking Finance Documents

in which case the prior written consent of the Intercreditor Agent is required.

**5.6 Provision of Documents**

The Second Ranking Finance Party shall, promptly upon any amendment of any of the Second Ranking Finance Documents, deliver a copy of such amendment to the Security Agent.

**6. THIRD RANKING FINANCE PARTY: RIGHTS AND OBLIGATIONS**

**6.1 Subordination**

Each of the Company and the Third Ranking Finance Party agrees that, prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Liabilities and the claims of the Third Ranking Finance Party (whether in respect of principal, interest or otherwise) in respect of the Third Ranking Liabilities shall be subordinated to the First

Ranking Liabilities and the Second Ranking Liabilities and postponed to the claims of the First Ranking Finance Parties in respect of the First Ranking Liabilities and the Second Ranking Finance Party in respect of the Second Ranking Liabilities in accordance with the terms hereof.

## 6.2 No Payment

Except as permitted under Clause 11 (*Effect of Insolvency Event*), Clause 6.3 (*Accrual of Interest*) and Clause 6.4 (*Restricted Payments*), each of the Company and the Third Ranking Finance Party hereby undertakes and agrees that, unless and until the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities and the Second Ranking Liabilities:

- (a) no Third Ranking Liabilities (nor any part thereof) shall be payable or repayable, paid or repaid; and
- (b) none of the Third Ranking Finance Party and the Sponsors shall at any time have or claim any right of set-off, deduction or counterclaim in respect of the Third Ranking Liabilities or any part thereof, and each of the Third Ranking Finance Party and the Sponsors agrees that none of them shall exercise any such right which it may otherwise have and hereby waives all such rights,

except that, the Company may pay:

- (i) at any time prior to the Opening Date, interest (but not any other payment) then due in accordance with the terms of the Third Ranking Funding Agreement (in this Clause “**Interest**”) on an Interest Payment Date for an Advance under any Term Loan Facility provided that:
  - (1) the aggregate amount of such Interest paid prior to the Opening Date may not exceed US\$10,140,000 (or, if the principal amount of the Subordinated Funding is increased to the extent permitted under paragraph 15.2.1(c)(i)(1) of Schedule 5 Part B of the Common Terms Agreement, US\$10,140,000 plus any Interest paid on any increase in the principal amount of the Subordinated Funding as permitted under paragraph 15.2.1(c)(i)(1) of Schedule 5 Part B of the Common Terms Agreement, provided that the amount of such Interest shall not exceed the amount estimated to accrue or be payable in accordance with paragraph 15.2.1(c)(i)(1) at the time of such increase);
  - (2) the proceeds of the Contingent Equity, the Contingent Debt Facility and the Revolving Credit Facility and the proceeds, damages and funds referred to in paragraphs (d), (e) and (f) of the definition of “Available Funding” may not be applied towards payment of any such Interest;
  - (3) the Company has delivered evidence reasonably satisfactory to the Intercreditor Agent that the Available Funding (excluding, in

the case where such payment is made prior to the Initial Advance, the Contingent Equity and any Available Commitments under the Contingent Debt Facilities) immediately after such payment will be sufficient to meet all Remaining Project Costs;

- (4) there is no Event of Default under paragraphs (a), (e) and/or (f) of Schedule 10 (*Events of Default*) to the Common Terms Agreement which is continuing; and
  - (5) there is no acceleration of any or all of the First Ranking Liabilities or any other Enforcement Action (other than the enforcement of security under the Wong Share Pledge as a result of the occurrence or continuance of an event that amounts only to a Wong Event) being taken under any or all of the First Ranking Finance Documents; or
- (ii) at any time on or after the Opening Date, Interest in accordance with the terms of the Third Ranking Funding Agreement on an Interest Payment Date for an Advance under any Term Loan Facility provided that:
- (1) such payment is made after payment in full of:
    - (x) all scheduled interest and principal which are due and payable under the First Ranking Finance Documents; and
    - (y) all amounts permitted to be paid under Clause 5.2 (*No Payment*) and which are due and payable under the Second Ranking Facility Agreementon or prior to such Interest Payment Date;
  - (2) there is no Event of Default under paragraphs (a), (e) and/or (f) of Schedule 10 (*Events of Default*) to the Common Terms Agreement which is continuing; and
  - (3) there is no acceleration of any or all of the First Ranking Liabilities or any other Enforcement Action (other than the enforcement of security under the Wong Share Pledge as a result of the occurrence or continuance of an event that amounts only to a Wong Event) being taken under any or all of the First Ranking Finance Documents.

### 6.3 **Accrual of Interest**

To the extent that interest (but not any other payment) accrued under the terms of the Third Ranking Funding Agreement is not permitted to be paid under Clause 6.2 (*No Payment*), such interest may be paid on any succeeding Interest Payment Date for an Advance under any Term Loan Facility (together with interest accrued thereon at the same rate as the rate of interest applicable to the principal amount of the Third Ranking

Funding Agreement) to the extent that such interest is permitted to be paid under Clause 6.2 (*No Payment*) subject to the Reserve Accounts being fully funded and any prepayment of Advances under the Term Loan Facilities in respect of Excess Cash Flow pursuant to paragraph 4 of Schedule 9 (*Mandatory Prepayment*) being made.

#### 6.4 **Restricted Payments**

The Company may pay Third Ranking Liabilities out of moneys which could be used to make Restricted Payments in accordance with paragraph 6 of Part B (*Negative Covenants*) of Schedule 5 (*Covenants*) of the Common Terms Agreement at the same time as such Restricted Payments can be made.

#### 6.5 **Security**

The Third Ranking Finance Party may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Third Ranking Liabilities in addition to the Transaction Security.

#### 6.6 **Amendments**

The Third Ranking Finance Party may amend the Third Ranking Finance Documents in accordance with their terms at any time unless that amendment is, in relation to the provisions of the Third Ranking Finance Documents as at the date of this Deed, a change:

- (a) in the principal amount of the facility available under the Third Ranking Funding Agreement provided that this restriction shall not apply to any increase in the principal amount of such facility to the extent permitted by paragraph 15.2.1(c)(i)(1) of Part B of Schedule 5 (*Covenants*) of the Common Terms Agreement;
- (b) in the currency of repayment, reimbursement or prepayment of that facility;
- (c) the effect of which is to accelerate all or any of the dates of repayment, reimbursement or prepayment of that facility;
- (d) in the basis on which interest, fees or commission accrue, are calculated or are payable;
- (e) the effect of which is to make any Sponsor liable to make additional or increased payments; or
- (f) to the representations, undertakings, financial covenants or events of default unless such representations, undertakings, financial covenants or, as the case may be, events of default after such change are no more restrictive or onerous to any Sponsor than the terms under the First Ranking Finance Documents

in which case the prior written consent of the Intercreditor Agent is required.

#### 6.7 **Provision of Documents**

The Third Ranking Finance Party shall, promptly upon any amendment of any of the Third Ranking Finance Documents, deliver a copy of such amendment to the Security Agent.

7. **ASSIGNMENT OF THIRD RANKING LIABILITIES**

The Assignor agrees to the provisions set out in Schedule 2 (*Assignment of Third Ranking Liabilities*).

8. **REPRESENTATIONS**

8.1 **Representations of Second Ranking Finance Party and Third Ranking Finance Party**

Each of the Second Ranking Finance Party, the Third Ranking Finance Party and the Assignor hereby makes the following representations and warranties (in relation to itself) and acknowledges that the Secured Parties (other than the Second Ranking Finance Party and the Third Ranking Finance Party) have entered into the Finance Documents to which they are a party in reliance upon those representations and warranties.

- (a) It is duly organised, incorporated and validly existing under the laws of its jurisdiction of incorporation.
- (b) The obligations expressed to be assumed by it in the DAP Finance Documents to which it is a party are legal and valid obligations binding on it and enforceable against it in accordance with the terms hereof, subject only to bankruptcy, insolvency, liquidation or other similar laws of general application and principles of equity.
- (c) Its execution and delivery of the DAP Finance Documents to which it is a party and the performance of its obligations hereunder do not and will not:
  - (i) result in a breach of its constitutive documents or any material Legal Requirement then applicable to or binding on it; or
  - (ii) result in any material breach or constitute any default under any security or agreement or instrument to which it is a party or by which it or any of its Properties may be bound.
- (d) It has the power to execute, deliver and perform under the DAP Finance Documents to which it is a party and all corporate and other action required to authorise its execution and delivery of the DAP Finance Documents to which it is a party and the performance of its obligations thereunder has been duly taken.
- (e) It has not taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge or belief) threatened against it for its winding-up, dissolution or re-organisation (whether by voluntary arrangement, scheme of arrangement or otherwise) or for the appointment of a receiver, administrative receiver, custodian, trustee or similar officer of it or of any or all of its assets or revenues.
- (f) Save as pursuant to or permitted under this Deed, it is the sole and absolute legal and beneficial owner of all of, in the case of the Second Ranking Finance Party, the Second Ranking Liabilities or, in the case of the Third Ranking Finance Party and the Assignor, the Third Ranking Liabilities, in each case free from any Security (except for any Lien referred to in paragraph 3(a), 3(f) or 3(q))



of Schedule 5 Part B of the Common Terms Agreement and any Mandatory Permitted Lien).

- (g) Save, in the case of the Assignor, for the filing referred to in paragraph 2(a) of Schedule 2 (*Assignment of Third Ranking Liabilities*), which filing will be carried out by the CP Satisfaction Date, all acts, conditions and things required to be done, fulfilled and performed in order (i) to enable it lawfully to enter into, and perform and comply with the obligations expressed to be assumed by it in the DAP Finance Documents to which it is a party, (ii) to ensure that the obligations expressed to be assumed by it in the DAP Finance Documents to which it is a party are legal, valid, binding and enforceable and (iii) to make the DAP Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation and England, have been done, fulfilled and performed.
- (h) Save, in the case of the Assignor, for the filing referred to in paragraph 2(a) of Schedule 2 (*Assignment of Third Ranking Liabilities*), which filing will be carried out by the CP Satisfaction Date, under the laws of its jurisdiction of incorporation and England in force at the date hereof, it is not necessary that any of the DAP Finance Documents to which it is a party be filed, recorded or enrolled with any court or other authority in such jurisdictions or that any stamp, registration or similar tax be paid on or in relation to any of the DAP Finance Documents to which it is a party.
- (i) Save as pursuant to or permitted under this Deed, it has not sold, transferred or otherwise disposed of, or agreed to sell, transfer or otherwise dispose of, the benefit of all or any of its rights, title and interest in any or all of, in the case of the Second Ranking Finance Party, the Second Ranking Liabilities or, in the case of the Third Ranking Finance Party, the Third Ranking Liabilities.
- (j) It has disclosed all agreements and all the terms and conditions of, in the case of the Second Ranking Finance Party, the Second Ranking Liabilities or, in the case of the Third Ranking Finance Party, the Third Ranking Liabilities as at the date hereof and has delivered to the Security Agent copies of all such agreements.

The representations and warranties contained in Clause 8.1(a) to Clause 8.1 (j) (other than Clauses 8.1(g)(iii), 8.1(h) and 8.1(j)) shall be deemed to be repeated by each of the Second Ranking Finance Party, the Third Ranking Finance Party and the Assignor on the CP Satisfaction Date and each Advance Date by reference to the facts and circumstances then existing on the CP Satisfaction Date or, as the case may be, such Advance Date.

## 8.2 Further Representation of Assignor

- (a) The Assignor hereby represents and warrants that this Deed:
  - (i) constitutes an effective security over the Assignor's right, title and benefit in and to the Third Ranking Liabilities; and
  - (ii) enjoys the priority which it is expressed to have.

- (b) The Assignor acknowledges that the Secured Parties have entered into the Finance Documents to which they are a party in reliance upon the representation and warranty in Clause 8.2(a) above.

**9. DISPOSAL, INSURANCE PROCEEDS, SECURITIES ACCOUNT AND ACCOUNTS**

**9.1 Proceeds of disposals and claims before enforcement**

The proceeds of any sale, lease, transfer or other disposal of any assets or of any claim which are (a) the subject of the Transaction Security and (b) received before the delivery of an Enforcement Notice in respect of the security of which such assets or claim is/are the subject shall (to the extent required by the relevant Finance Documents) be applied:

- (a) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities, in accordance with the terms of the Common Terms Agreement;
- (b) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities but prior to the payment and discharge in full of the Second Ranking Liabilities, in accordance with the terms of the Second Ranking Finance Documents; and
- (c) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities and the Second Ranking Liabilities, in accordance with the terms of the Third Ranking Finance Documents.

**9.2 Proceeds of insurances before enforcement**

The proceeds of any claim under any insurance policy which are (a) the subject of the Transaction Security and (b) received before the delivery of an Enforcement Notice by the Security Agent in respect of the security of which such insurance policy is the subject shall (to the extent required by the relevant Finance Documents) be applied:

- (a) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities, in accordance with the terms of the Common Terms Agreement;
- (b) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities but prior to the payment and discharge in full of the Second Ranking Liabilities, in accordance with the terms of the Second Ranking Finance Documents; and
- (c) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities and the Second Ranking

Liabilities, in accordance with the terms of the Third Ranking Finance Documents, and the Company and each Secured Party waives any rights it may have of requiring that any insurance proceeds be applied otherwise.

**9.3 Proceeds in Securities Account**

All moneys received or recovered by the Security Agent pursuant to the Securities Account Control Agreement or representing the Contingent Equity shall be applied towards the purposes set out in Clause 3.1 (*Contingent Equity Commitment*) of the Wynn Resorts Support Agreement or the requirements set out in Clause 5.1 of the Wynn Resorts Support Agreement and in accordance with the instructions of the Intercreditor Agent.

**9.4 Accounts**

At any time following the issuance of an Enforcement Notice, any moneys standing to the credit of the Accounts may be applied in accordance with paragraph 11.3.2 of Schedule 6 to the Common Terms Agreement.

**10. ENTITLEMENT TO ENFORCE**

**10.1 First Ranking Finance Parties**

The First Ranking Finance Parties may take any action (including, without limitation, Enforcement Action) at any time if entitled to do so under the terms of the First Ranking Finance Documents to which they are a party.

**10.2 General Restriction**

Except as permitted by Clauses 10.3 (*Second Ranking Finance Party: Permitted Enforcement*) to 10.5 (*No restriction on Permitted Payments*) and Clause 11 (*Effect of Insolvency Event*), none of the Second Ranking Finance Party and the Third Ranking Finance Party may take any Enforcement Action at any time.

**10.3 Second Ranking Finance Party: Permitted Enforcement**

Subject to Clause 11 (*Effect of Insolvency Event*), the Second Ranking Finance Party shall not be entitled to take any Enforcement Action until the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities but shall be entitled at any time thereafter to take any action (including, without limitation, Enforcement Action) if entitled to do so under the terms of the Second Ranking Finance Documents or if an Event of Default under the Second Ranking Facility Agreement has occurred.

**10.4 Third Ranking Finance Party: Permitted Enforcement**

Subject to Clause 11 (*Effect of Insolvency Event*) the Third Ranking Finance Party shall not be entitled to take any Enforcement Action (other than any action referred to in paragraph (g) of the definition of "Enforcement Action" with respect to itself) until the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities and the Second Ranking Liabilities but shall be entitled at any time thereafter to take any action (including, without limitation, Enforcement Action) if entitled to do so under the terms of the Third Ranking Finance Documents.

#### 10.5 **No restriction on Permitted Payments**

No restriction on the taking of Enforcement Action included in this Clause 10 (*Entitlement to Enforce*) shall restrict the taking or making of any Permitted Payment.

### 11. **EFFECT OF INSOLVENCY EVENT**

#### 11.1 **Acceleration and claim**

After (1) the occurrence of an Insolvency Event in relation to any Grantor (other than Mr Wong Chi Seng) and (2) the delivery of an Enforcement Notice upon or after the occurrence of such Insolvency Event, each of the Second Ranking Finance Party and the Third Ranking Finance Party shall be entitled to exercise any right it may have in respect of that Grantor (other than Mr Wong Chi Seng) to:

- (a) accelerate any of such Grantor's Liabilities or declare them prematurely due and payable or payable on demand;
- (b) make a demand under any guarantee, indemnity or other assurance against loss in respect of any Liabilities of that Grantor;
- (c) exercise any right of set off or take or receive any payment in respect of any Liabilities of that Grantor; or
- (d) claim and prove in the liquidation of that Grantor for the Liabilities owing to it.

#### 11.2 **Payment of distributions**

After the occurrence of an Insolvency Event in relation to any Grantor (other than Mr Wong Chi Seng), the Person responsible for the distribution of the assets of that Grantor shall be directed to pay any distributions in respect of any of the Liabilities to the Security Agent until the Secured Obligations have been paid in full.

#### 11.3 **Set-Off**

To the extent that any of the Liabilities is discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event, any Second Ranking Finance Party or Third Ranking Finance Party which benefited from that set-off shall pay an amount equal to the amount of its Liabilities discharged by that set-off to the Security Agent for application in accordance with Clause 15 (*Application of Proceeds*).

#### 11.4 **Filing of claims**

After (1) the occurrence of an Insolvency Event in relation to any Grantor (other than Mr Wong Chi Seng) and (2) the delivery of an Enforcement Notice upon or after the occurrence of such Insolvency Event, the Third Ranking Finance Party irrevocably authorises the Security Agent to:

- (a) take any Enforcement Action (in accordance with the terms of this Deed);
- (b) demand, sue, prove and give receipt for any or all of the Third Ranking Liabilities;
- (c) collect and receive all distributions on, or on account of, any or all of the Liabilities; and

(d) file claims, take proceedings and do all other things the Security Agent considers reasonably necessary to recover the Liabilities.

#### 11.5 Funding Parties' Actions

The Funding Parties will do all things that the Security Agent reasonably requests in order to give effect to this Clause 11 and, if the Security Agent is not entitled to take any of the actions contemplated by this Clause 11 or if the Security Agent requests any Funding Party to take that action, that Funding Party will undertake those actions itself in accordance with the reasonable instructions of the Security Agent.

### 12. TURNOVER OF RECEIPTS

#### 12.1 Turnover by the Second Ranking Finance Party and Third Ranking Finance Party

If at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the discharge in full of the First Ranking Liabilities, any Second Ranking Finance Party or Third Ranking Finance Party receives or recovers:

- (a) any payment or distribution of, or on account of or in relation to, any of the Liabilities which is not permitted by Clause 5 (*Second Ranking Finance Party: Rights and Obligations*), Clause 6 (*Third Ranking Finance Party: Rights and Obligations*), Clause 9 (*Disposal, Insurance Proceeds*) or Clause 15 (*Application of Proceeds*);
- (b) any amount by way of set-off in respect of any of the Liabilities owed to them other than a payment permitted by (i) prior to the issuance of an Enforcement Notice, Clause 5 (*Second Ranking Finance Party: Rights and Obligations*), (ii) Clause 6 (*Third Ranking Finance Party: Rights and Obligations*) or (iii) Clause 9 (*Disposal, Insurance Proceeds*);
- (c) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 15 (*Application of Proceeds*); or
- (d) any payment or distribution in cash or in kind made as a result of the occurrence of an Insolvency Event in respect of any Grantor,

the Second Ranking Finance Party or, as the case may be, the Third Ranking Finance Party will hold that amount on trust for the Security Agent and promptly pay that amount to the Security Agent or, if this trust cannot be given effect to, the Second Ranking Finance Party or, as the case may be, the Third Ranking Finance Party will pay an amount equal to that receipt or recovery to the Security Agent, to be held on trust by the Security Agent for application in accordance with the terms of this Deed.

#### 12.2 Permitted assurance and receipts

Nothing in this Deed shall restrict the ability of any First Ranking Finance Party to:

- (a) arrange with any Person any assurance against loss in respect of, or reduction of its credit exposure to, any Security Provider (including assurance by way of credit based derivative or sub-participation); or

- (b) to receive or recover any sum in respect of its Liabilities as a result of any assignment or transfer permitted by Clause 18 (*Change of Party and Accession by Hedging counterparties*),

and that First Ranking Finance Party not be obliged to account to any other Party for any sum received by it as a result of that action.

### 12.3 Sums received by Company

If the Company receives or recovers any sum which, under the terms of any of the Finance Documents, should have been paid to the Security Agent, the Company shall hold that amount on trust for the Security Agent and promptly pay that amount to the Security Agent or, if this trust cannot be given effect to, the Company will promptly pay an amount equal to that receipt or recovery to the Security Agent for application in accordance with the terms of this Deed.

## 13. SHARING

### 13.1 Recovering Party's rights

- (a) Any amount paid by the Second Ranking Finance Party or the Third Ranking Finance Party (a "**Recovering Party**") to the Security Agent under Clause 11 (*Effect of Insolvency Event*) or Clause 12 (*Turnover of Receipts*) shall be treated as having been paid by the relevant Grantor and distributed in accordance with the terms of this Deed.
- (b) On a distribution of that amount by the Security Agent, the Recovering Party will be subrogated to the rights of the Secured Parties which have shared in the redistribution.
- (c) If and to the extent that the Recovering Party is unable to rely on its rights under paragraph (b) of this Clause 13.1 the Company shall be liable to the Recovering Party for a debt equal to the amount received or recovered by the Recovering Party and paid to the Security Agent (the "**Shared Amount**") which is immediately due and payable.

### 13.2 Reversal of redistribution

If any part of the Shared Amount received or recovered by a Recovering Party becomes repayable to a Grantor and is repaid by that Recovering Party to that Grantor then:

- (a) each Secured Party which has received a share of the relevant Shared Amount shall, upon request of the Security Agent, pay to the Security Agent for account of that Recovering Party an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Party for its proportion of any interest on the Shared Amount which that Recovering Party is required to pay); and
- (b) that Recovering Party's rights of subrogation in respect of any reimbursement shall be cancelled and the Company will be liable to each reimbursing Secured Party for the amount so reimbursed.

### 13.3 Deferral of subrogation

None of the Second Ranking Finance Party, the Third Ranking Finance Party, the Company and the Assignor will exercise any rights which it may have by reason of the performance by it of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Finance Documents of any Secured Party which ranks ahead of it in accordance with the priorities set out in Clause 3 (*Ranking and Priority*) until such time as all of the Liabilities of each Secured Party which ranks ahead of it in accordance with the priorities set out in Clause 3 (*Ranking and Priority*) (or, in the case of any Sponsor, of each Secured Party) have been irrevocably paid in full.

## 14. ENFORCEMENT OF SECURITY

### 14.1 Directions

Subject to Clause 14.2 (*Wong Event*) and Clause 14.3 (*Assignment of Reinsurances*), the Security Agent may enforce the Transaction Security (other than the security created under the Assignment of Reinsurances) but only at the instruction of the Intercreditor Agent (acting on the instruction of the Required Lenders given in accordance with the terms of the Common Terms Agreement), the Second Ranking Finance Party or (other than the assignment created under or pursuant to Schedule 2 (*Assignment of Third Ranking Liabilities*)) the Third Ranking Finance Party which is entitled to instruct enforcement as a result of Clause 10 (*Entitlement to Enforce*) provided that the notice setting out such instruction states that an Event of Default under the Common Terms Agreement (in the case of the Intercreditor Agent), the Second Ranking Facility Agreement (in the case of the Second Ranking Finance Party) or the Third Ranking Funding Agreement (in the case of the Third Ranking Finance Party) has occurred and (as at the date of such notice) is continuing. The Security Agent shall, promptly after receipt of such instruction to enforce any Transaction Security, deliver an Enforcement Notice and/or, as the case may be, the TRL Enforcement Notice to the relevant Sponsor(s) and/or, as the case may be, the Assignor. At all times after an instruction to commence enforcement has been issued and subject to the terms of this Deed, the Security Agent will act on the directions of:

- (a) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent (acting in accordance with the First Ranking Finance Documents);
- (b) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party; or
- (c) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Party

who shall be entitled to give directions and do any other things in relation to the enforcement of the Transaction Security (including in connection with but not limited to, the disposal, collection or realisation of assets subject to the Transaction Security) that it considers appropriate including (without limitation) determining the timing and manner of enforcement against any particular Person or asset.

#### 14.2 **Wong Event**

The Security Agent may enforce the security created under the Wong Share Pledge on the ground of a Wong Event if permitted under Clause 5.1 of the Wong Share Pledge. Notwithstanding anything contained herein to the contrary:

- (a) the occurrence or continuance of an event that amounts only to a Wong Event; or
- (b) any non-payment of any Liabilities by Mr Wong Chi Seng

does not trigger any right by the Security Agent to enforce any security under any of the Security Documents (other than the Wong Share Pledge).

#### 14.3 **Assignment of Reinsurances**

The Security Agent may enforce the security created under an Assignment of Reinsurances if entitled to do so under Clause 2.2 of such Assignment of Reinsurances after receiving an instruction to so enforce from:

- (a) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent;
- (b) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party; or
- (c) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Party

which instruction shall state that an Insolvency Event (as defined in such Assignment of Reinsurances) has occurred.

#### 14.4 **Company's and Assignor's waiver**

To the extent permitted under applicable law and subject to Clause 15 (*Application of Proceeds*), each of the Company and the Assignor waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any sum received or recovered from any Person, or by virtue of the enforcement of any of the Transaction Security or of any other



security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

#### 14.5 Duties owed

Each of the Secured Parties, the Company and the Assignor acknowledges, in the event that the Security Agent is instructed to enforce the security conferred by the Security Documents, that prior to:

- (a) the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the discharge in full of the First Ranking Liabilities, the duties of the Security Agent and of any Receiver or Delegate owed to the Secured Parties ranking below the First Ranking Finance Parties in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall be no different to the duty to the Grantors that would be owed by the Security Agent, Receiver or Delegate under general law; and
- (b) the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the discharge in full of the First Ranking Liabilities and the Second Ranking Liabilities, the duties of the Security Agent and of any Receiver or Delegate owed to the Third Ranking Finance Party in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall be no different to the duty to the Grantors that would be owed by the Security Agent, Receiver or Delegate under general law.

#### 14.6 Disposals by Security Agent

If any assets are sold or otherwise disposed of by (or on behalf of) the Security Agent, or by a Security Provider at the request of the Security Agent either as a result of the enforcement of any of the Transaction Security or if that disposal is permitted under the Security Documents:

- (a) the Security Agent shall be authorised (at the cost of the Company) to release and/or reassign those assets from the Transaction Security and is authorised to execute, on behalf of and without the need for any further authority from, any of the Secured Parties, any release and reassignment of the Transaction Security or any other claim over those assets and to issue any certificates of non-crystallisation or non-consolidation of any floating charge that may, in the absolute discretion of the Security Agent, be considered necessary or desirable; and
- (b) the Secured Parties, the Company and the Assignor shall execute any releases or other documents that the Security Agent may consider to be necessary to give effect to those releases and reassignments **provided that** the proceeds of that disposal are applied in accordance with this Deed.

#### 14.7 Power of Attorney

The POA Agent may not exercise any right under the Power of Attorney until after the delivery of an Enforcement Notice to the Company (and only if instructed by the Security Agent to do so).

#### 14.8 Livranças

The Security Agent may not present any of the Livranças for payment until after the delivery of an Enforcement Notice to the Company. Notwithstanding the terms of the Livrança Covering Letter, the aggregate amount to be inserted by the Security Agent into the Livranças may not exceed the aggregate amount of the Secured Obligations as at the date of such insertion by the Security Agent.

### 15. APPLICATION OF PROCEEDS

#### 15.1 Order of application

All amounts from time to time received or recovered by the Security Agent under Clause 2 (*Parallel Debt (Covenant to pay the Security Agent)*) and Clause 12 (*Turnover of Receipts*) and/or pursuant to any of the Livranças, the Power of Attorney and/or the Wynn Pledgors' Guarantee and/or in connection with the realisation or enforcement of all or any part of the Transaction Security (including, without limitation, the security created under the Mortgage) shall, subject to Clause 9 (*Disposal, Insurance Proceeds, Securities Account and Accounts*), be held by the Security Agent on trust to apply them at any time the Security Agent sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 15 (*Application of Proceeds*)), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (in its capacity as agent and security trustee), any Receiver or any Delegate;
- (b) in payment to the Intercreditor Agent on behalf of the First Ranking Finance Parties for application (in accordance with the terms of the First Ranking Finance Documents) (other than this Deed) towards the discharge of the First Ranking Liabilities or, in the case of insurance proceeds, for application in accordance with the terms of the First Ranking Finance Documents (other than this Deed);
- (c) after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities, in payment to the Second Ranking Finance Party for application (in accordance with the terms of the Second Ranking Finance Documents) towards the discharge of the Second Ranking Liabilities;
- (d) after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and the payment and (ii) discharge in full of the First Ranking Liabilities and the Second Ranking Liabilities, in payment to the Third Ranking Finance Party for application (in accordance with the terms of the Third Ranking Finance Documents) towards the discharge of the Third Ranking Liabilities;

- (e) after the payment and discharge in full of the Liabilities (other than any Liabilities owed by Mr Wong Chi Seng), if none of the Sponsors is under any further actual or contingent liability under any Finance Document, in payment to any Person to whom the Security Agent is obliged to pay in priority to any Sponsor; and
- (f) the balance (after full payment and discharge of the liabilities referred to in paragraphs (a) to (e) above), if any, in payment to any Person as directed by the Company.

To the extent that there are any funds available after application under any order listed in (a) to (f) above of amounts received or recovered by the Security Agent referred to above, the Security Agent shall apply such funds in accordance with the immediately succeeding order and if any of the Liabilities referred to in such immediately succeeding order are not yet payable, the Security Agent shall hold such funds until such Liabilities become payable, provided that in the case of the Second Ranking Liabilities, the Security Agent shall only hold such funds until the earlier of (1) the termination or cancellation of the Performance Bond and (2) 181 days after the date on which the Enforcement Notice is issued whereupon such funds shall be paid to the Third Ranking Finance Party for application towards the discharge of the Third Ranking Liabilities or, if already discharged, to (e) or (f). For example, if there are amounts (received or recovered by the Security Agent referred to above) available after the payment and discharge in full of the First Ranking Liabilities, the Security Agent shall pay such amounts to the Second Ranking Finance Party for application towards the discharge of the Second Ranking Liabilities and if the Second Ranking Liabilities are not yet payable, the Security Agent shall hold such funds until the Second Ranking Liabilities become payable provided that the Security Agent shall only hold such funds until the earlier of (1) the termination or cancellation of the Performance Bond and (2) 181 days after the date on which the Enforcement Notice is issued whereupon such funds shall be paid to the Third Ranking Finance Party for application towards the discharge of the Third Ranking Liabilities or, if already discharged, to (e) or (f).

## 15.2 Information

In giving effect to the provisions of Clause 15.1 (*Order of application*), the Security Agent may rely on the latest information notified to it by the Intercreditor Agent, the Second Ranking Finance Party or the Third Ranking Finance Party in respect of amounts due and payable by the relevant Security Provider(s) under the First Ranking Finance Documents (in the case of the Intercreditor Agent), the Second Ranking Finance Documents (in the case of the Second Ranking Finance Party) or the Third Ranking Finance Documents (in the case of the Third Ranking Finance Party), provided that to the extent that the Security Agent has not received any notification from the Intercreditor Agent, the Second Ranking Finance Party or the Third Ranking Finance Party of any amount due and payable under the First Ranking Finance Documents (in the case of the Intercreditor Agent), the Second Ranking Finance Documents (in the case of the Second Ranking Finance Party) or the Third Ranking Finance Documents (in the case of the Third Ranking Finance Party), the Security Agent shall be entitled to assume that no amount is due and payable under such Finance Document.

### 15.3 Provision of Information

- (a) Each of the Intercreditor Agent, the Second Ranking Finance Party and the Third Ranking Finance Party shall from time to time provide the Security Agent or the Intercreditor Agent with such information as may be reasonably required by the Security Agent or the Intercreditor Agent for the purposes of Clauses 15.1 (*Order of application*) and/or Clause 15.2 (*Information*) or the implementation thereof.
- (b) Prior to any application in accordance with Clause 15.1 (*Order of application*), the Security Agent shall give no less than ten Business Days' prior notice to the Intercreditor Agent, the Second Ranking Finance Party, the Third Ranking Finance Party and the Company of such application and request each of the Intercreditor Agent, the Second Ranking Finance Party and the Third Ranking Finance Party to provide details of the amounts due and payable by the relevant Security Provider(s) under the First Ranking Finance Documents (in the case of the Intercreditor Agent), the Second Ranking Finance Documents (in the case of the Second Ranking Finance Party) or the Third Ranking Finance Documents (in the case of the Third Ranking Finance Party).
- (c) Prior to the filing of any claim by the Security Agent in respect of the enforcement of the Transaction Security, the Security Agent shall give prior notice to the Intercreditor Agent, the Second Ranking Finance Party, the Third Ranking Finance Party of such filing and request each of the Intercreditor Agent, the Second Ranking Finance Party and the Third Ranking Finance Party to provide details of the amounts due and payable by the relevant Grantor(s) under the First Ranking Finance Documents (in the case of the Intercreditor Agent), the Second Ranking Finance Documents (in the case of the Second Ranking Finance Party) or the Third Ranking Finance Documents (in the case of the Third Ranking Finance Party). Any such claim which requires the specification of the Secured Obligations shall include the First Ranking Liabilities, the Second Ranking Liabilities and the Third Ranking Liabilities.

### 15.4 Investment of proceeds

Prior to the application of the proceeds of the Transaction Security in accordance with Clause 15.1 (*Order of application*) the Security Agent may, at any time after the delivery of an Enforcement Notice, at its discretion, hold all or part of those proceeds in a suspense or impersonal account(s) (which is interest-bearing provided that there is no tax liability on the Security Agent with respect to any interest in such account) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies at the Security Agent's discretion in accordance with the provisions of this Clause 15.4. If the Secured Obligations have been fully discharged or would be fully discharged if the monies in such suspense or impersonal account were applied towards satisfaction of the Secured Obligations, the Security Agent shall apply the monies in such suspense or impersonal account towards satisfaction of the Secured Obligations and if there are any monies remaining in such suspense or impersonal account after the Secured Obligations have been fully discharged, the Security Agent shall pay such remaining monies to any Person

as directed by the Company. Any interest accrued on any monies in such suspense or impersonal account shall be credited to such suspense or, as the case may be, impersonal account and shall, subject to the terms of this Clause 15.4, be applied towards satisfaction of the Secured Obligations.

#### 15.5 Currency conversion

- (a) For the purpose of or pending the discharge of any or all of the Secured Obligations, the Security Agent may convert any moneys received, recovered or realised or subject to application by the Security Agent or any Receiver pursuant to this Deed from the currency of such moneys to another for such purpose and any such conversion shall be made at the Security Agent's spot rate of exchange for the time being (or such other rate as may be available to the Security Agent from time to time in the ordinary course of business) for obtaining such other currency with the first currency and the Secured Obligations shall be discharged only to the extent of the net proceeds of such conversion received by the Security Agent
- (b) The obligations of any Grantor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.
- (c) If any sum (a "**Sum**") due from the Company or the Assignor, the Second Ranking Finance Party or the Third Ranking Finance Party under this Deed or any order or judgment given or made in relation thereto has to be converted from the currency (the "**First Currency**") in which such Sum is payable into another currency (the "**Second Currency**") for the purpose of:
- (i) making or filing a claim or proof against such Grantor, the Second Ranking Finance Party or, as the case may be, the Third Ranking Finance Party;
  - (ii) obtaining or enforcing an order or judgment in any court or other tribunal; or
  - (iii) applying the Sum in satisfaction of any of the Secured Obligations,
- the Company, the Assignor, the Second Ranking Finance Party or, as the case may be, the Third Ranking Finance Party shall (through the Security Agent) indemnify each Person to whom such Sum is due from and against any loss suffered or incurred as a result of any discrepancy between (a) the rate of exchange used for such purpose to convert such Sum from the First Currency into the Second Currency and (b) the rate or rates of exchange at which such Person may in the ordinary course of business purchase the First Currency with the Second Currency at the time of receipt of such Sum.

#### 15.6 Permitted deductions

The Security Agent shall be entitled, at any time after the delivery of an Enforcement Notice, (a) to set aside by way of reserve amounts required to meet and (b) to make and pay, any deductions and withholdings (on account of taxes or otherwise) which it is or

may be required by any applicable law to make from any distribution or payment made by it under this Deed, and to pay all taxes which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Deed).

**15.7 Good discharge**

The Security Agent is under no obligation to make the payments to the other Secured Parties in respect of the Secured Obligations in the same currency as that in which the Secured Obligations of the relevant Secured Party are denominated.

**15.8 Calculation of amounts**

For the purpose of calculating any Person's share of any sum payable to or by it, the Security Agent shall be entitled to:

- (a) notionally convert the Liabilities owed to any Person into a common base currency (decided in its discretion by the Security Agent), that notional conversion to be made at the spot rate (or such other rate as may be available to the Security Agent) at which the Security Agent is able to purchase the notional base currency with the actual currency of that Person's Liabilities at the time at which that calculation is to be made; and
- (b) assume that all moneys received or recovered as a result of the enforcement of the Transaction Security are applied in discharge of the Liabilities in accordance with the terms of the Finance Documents under which those Liabilities have arisen.

**15.9 Evidence of Secured Obligations**

A certificate of the Security Agent as to the amount of the Secured Obligations or any part thereof shall, in the absence of manifest error, be conclusive evidence (in the absence of manifest error) in any legal action or proceedings arising out of or in connection with this Deed.

**15.10 Consideration**

In consideration of the covenants given to the Security Agent by the Company in Clause 2 (*Parallel Debt (Covenant to pay the Security Agent)*), the Security Agent agrees with the Company to apply all moneys from time to time paid by the Company to the Security Agent in accordance with the provisions of Clause 9 (*Disposal, Insurance Proceeds, Securities Account and Accounts*) or, as the case may be, Clause 15.1 (*Order of application*).

**16. THE SECURITY AGENT**

**16.1 Appointment of Security Agent**

- (a) Each of the Secured Parties appoints the Security Agent to act as agent and, if specified in the relevant Security Documents, security trustee under and in connection with the Security Documents and all other documents (including notices and acknowledgement of the granting of any Transaction Security) in connection with the Security Documents.

- (b) The Security Agent declares that it shall hold, to the extent permitted by applicable law, the Transaction Security (other than the assignment created or expressed to be created under or pursuant to Schedule 2 (*Assignment of Third Ranking Liabilities*)) on trust for the Secured Parties and the assignment created or expressed to be created under or pursuant to Schedule 2 (*Assignment of Third Ranking Liabilities*) on trust for the TRL Secured Parties on the terms contained in this Deed.
- (c) Each of the parties to this Deed agrees that the Security Agent shall have only those duties, obligations and responsibilities expressly specified in this Deed or in the Security Documents (and no others shall be implied).
- (d) Each of the Secured Parties (other than the Security Agent) authorises the Security Agent to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with this Deed and the Security Documents together with any other incidental rights, power, authorities and discretions.

#### 16.2 **No independent power**

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any rights or powers arising under the Security Documents except through the Security Agent.

#### 16.3 **Security Agent's instructions**

The Security Agent shall:

- (a) except as otherwise provided in this Deed, act in accordance with any instructions given to it by:
  - (i) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent (acting in accordance with the First Ranking Finance Documents);
  - (ii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party; or
  - (iii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Partyand shall be entitled to assume that (A) any instructions received by it from the Intercreditor Agent, Second Ranking Finance Party or, as the case may be, Third Ranking Finance Party are duly given in accordance with the terms of the

relevant Finance Documents and (B) unless it has received actual written notice of revocation, that those instructions or directions have not been revoked;

- (b) be entitled to request instructions, or clarification of any direction, from:
  - (i) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent;
  - (ii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party; or
  - (iii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Partyas to whether, and in what manner, it should exercise or refrain from exercising any rights, powers and discretions and the Security Agent may refrain from acting unless and until those instructions or clarification are received by it; and
- (c) be entitled to carry out all dealings with the First Ranking Finance Parties through the Intercreditor Agent and may give to the Intercreditor Agent any notice or other communication required to be given by the Security Agent to the First Ranking Finance Parties.

#### 16.4 Security Agent's actions

Subject to the provisions of Clause 16.3 (*Security Agent's instructions*):

- (a) the Security Agent may, in the absence of any instructions to the contrary, take any action in the exercise of any of its powers and duties under the Finance Documents which in its absolute discretion it considers to be for the protection and benefit of all the Secured Parties; and
- (b) at any time after receipt by the Security Agent of written notice from:
  - (i) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent (acting in accordance with the First Ranking Finance Documents);
  - (ii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities



but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party; or

- (iii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Party directing the Security Agent to exercise all or any of its rights, powers or discretions under any of the Finance Documents, the Security Agent may, and shall if so directed by the Intercreditor Agent, the Second Ranking Finance Party or, as the case may be, the Third Ranking Finance Party, take any action as in its sole discretion it thinks fit to enforce the Transaction Security.

#### 16.5 Security Agent's discretions

The Security Agent may:

- (a) assume, unless it has in its capacity as security trustee for the Secured Parties, received actual written notice to the contrary from one of the Intercreditor Agent, the Second Ranking Finance Party or the Third Ranking Finance Party that (i) no Default or Event of Default has occurred and none of the Security Providers is in breach of or default under its obligations under any of the Finance Documents and (ii) any right, power, authority or discretion vested by any Finance Document in any Person has not been exercised;
- (b) if it receives any instructions or directions from:
- (i) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent;
- (ii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party; or
- (iii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Party to take any action in relation to the Transaction Security, assume that all applicable conditions under the Finance Documents for taking that action have been satisfied;
- (c) engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts (whether obtained by the Security Agent or by any

other Secured Party) whose advice or services may at any time seem necessary, expedient or desirable;

- (d) as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party or a Security Provider, upon a certificate signed by or on behalf of that Person;
- (e) refrain from acting in accordance with the instructions of the Intercreditor Agent, the Second Ranking Finance Party or the Third Ranking Finance Party (including bringing any legal action or proceeding arising out of or in connection with the Finance Documents) until it has received any indemnification and/or security that it may in its absolute discretion require (whether by way of payment in advance or otherwise) for all costs, losses and liabilities which it may incur in bringing any action or proceedings; and
- (f) rely upon any communication or document believed by it to be genuine.

#### 16.6 **Security Agent's obligations**

The Security Agent shall promptly inform each of the Intercreditor Agent, the Second Ranking Finance Party and the Third Ranking Finance Party of:

- (a) the contents of any notice or document received by it in its capacity as Security Agent from any Security Provider under any Finance Document; and
- (b) the occurrence of any Default or any default by a Security Provider in the due performance of or compliance with its obligations under any Finance Document of which the Security Agent has received notice from any other party to this Deed.

#### 16.7 **Excluded obligations**

Notwithstanding anything to the contrary expressed or implied in the Finance Documents, the Security Agent shall not:

- (a) be bound to enquire as to (i) whether or not any Default or Event of Default has occurred or (ii) the performance, default or any breach by a Grantor of its obligations under any of the Finance Documents;
- (b) be bound to account to any other Party for any sum or the profit element of any sum received by it for its own account;
- (c) be bound to disclose to any other Person (i) any confidential information or (ii) any other information if disclosure would or might in its reasonable opinion constitute a breach of any law or be a breach of fiduciary duty;
- (d) be under any obligations other than those which are specifically provided for in the Finance Documents; or
- (e) have or be deemed to have any duty, obligation or responsibility to, or relationship of trust or agency with, any Security Provider.

#### **16.8 Exclusion of Security Agent's liability**

Unless caused directly by its gross negligence or wilful misconduct the Security Agent shall not accept responsibility or be liable for:

- (a) the adequacy, accuracy and/or completeness of any information supplied by the Security Agent or any other Person in connection with the Finance Documents or the transactions contemplated in the Finance Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (c) any losses to any Person or any liability arising as a result of taking or refraining from taking any action in relation to any of the Finance Documents or the Transaction Security or otherwise, whether in accordance with an instruction from the Intercreditor Agent, the Second Ranking Finance Party or Third Ranking Finance Party or otherwise;
- (d) the exercise of, or the failure to exercise, any judgment, discretion or power given to it by or in connection with any of the Finance Documents, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents or the Transaction Security; or
- (e) any shortfall which arises on the enforcement of the Transaction Security.

#### **16.9 No proceedings**

No Party (other than the Security Agent) may take any proceedings against any officer, employee or agent of the Security Agent in respect of any claim it might have against the Security Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Security Agent may rely on this Clause.

#### **16.10 Own responsibility**

It is understood and agreed by each Secured Party that at all times that Secured Party has itself been, and will continue to be, solely responsible for making its own independent appraisal of and investigation into all risks arising under or in connection with the Finance Documents including but not limited to:

- (a) the financial condition, creditworthiness, condition, affairs, status and nature of each of the Security Providers;
- (b) the legality, validity, effectiveness, adequacy and enforceability of each of the Finance Documents and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents or the Transaction Security;

- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Grantor, or any other Person or any of their respective assets under or in connection with the Finance Documents, the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under to or in connection with the Finance Documents;
- (d) the adequacy, accuracy and/or completeness of any information provided by any Person in connection with the Finance Documents, the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents; and
- (e) the right or title of any Person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any security interest affecting the Charged Property,

and each Secured Party warrants to the Security Agent that it has not relied on and will not at any time rely on the Security Agent in respect of any of these matters.

#### **16.11 No responsibility to perfect Transaction Security**

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Security Provider to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any of the Finance Documents or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any applicable laws in any jurisdiction or to give notice to any Person of the execution of any of the Finance Documents or of the Transaction Security;
- (d) take, or to require any of the Security Providers to take, any steps to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary security interest under the laws of any jurisdiction; or
- (e) require any further assurances in relation to any of the Security Documents.

#### **16.12 Insurance by Security Agent**

- (a) The Security Agent shall not be under any obligation to insure any of the Charged Property, to require any other Person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Finance Documents. The Security Agent shall not be responsible for any loss which may be suffered by any Person as a result of the lack of or inadequacy of any insurance.

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be responsible for any loss which may be suffered by reason of, directly or indirectly, its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Intercreditor Agent, the Second Ranking Finance Party or the Third Ranking Finance Party shall have requested it to do so in writing and the Security Agent shall have failed to do so within fourteen days after receipt of that request.

#### **16.13 Custodians and nominees**

The Security Agent may appoint and pay any Person to act as a custodian or nominee on any terms in relation to any assets of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Deed or any document relating to the trust created under this Deed and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any Person appointed by it under this Deed or be bound to supervise the proceedings or acts of any Person.

#### **16.14 Acceptance of title**

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any of the Security Providers may have to any of the Charged Property and shall not be liable for or bound to require any Security Provider to remedy any defect in its right or title.

#### **16.15 Refrain from illegality**

The Security Agent may refrain from doing anything which in its opinion will or may be contrary to any relevant law, directive or regulation of any jurisdiction which would or might otherwise render it liable to any Person, and the Security Agent may do anything which is, in its opinion, necessary to comply with any such law, directive or regulation.

#### **16.16 Business with the Grantors**

The Security Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with any of the Security Providers.

#### **16.17 Powers supplemental**

The rights, powers and discretions conferred upon the Security Agent by this Deed shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by general law or otherwise.

#### **16.18 Security Agent division separate**

In acting as security trustee for the Secured Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments and any information received by any other division or department of the Security Agent may be treated as confidential and shall not be regarded as having been given to the Security Agent's trustee division.

#### **16.19 Disapplication**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Deed. Where there are any inconsistencies

between the Trustee Act 1925 and the Trustee Act 2000 and the provisions of this Deed, the provisions of this Deed shall, to the extent allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Deed shall constitute a restriction or exclusion for the purposes of that Act.

#### 16.20 **Winding up of trust**

If the Security Agent receives:

- (a) a notice from the Intercreditor Agent confirming that the Release Date has occurred;
- (b) a notice from the Second Ranking Finance Party confirming that all of the Second Ranking Liabilities have been discharged in full; and
- (c) a notice from the Third Ranking Finance Party confirming that all of the Third Ranking Liabilities have been discharged in full,

the trusts set out in this Deed shall be wound up. At that time the Security Agent shall, at the reasonable cost of the Company, release, without recourse or warranty, all of the Transaction Security then held by it and the rights of the Security Agent under each of the Security Documents and execute all such further documents and instruments and do such further acts as the Company may reasonably request for the purpose of effecting such release.

#### 16.21 **Perpetuity period**

The perpetuity period under the rule against perpetuities, if applicable to this Deed, shall be the period of eighty years from the date of this Deed.

### 17. **CHANGE OF SECURITY AGENT AND DELEGATION**

#### 17.1 **Resignation of the Security Agent**

- (a) The Security Agent may resign and appoint one of its affiliates as successor by giving written notice to the Secured Parties (or, in the case of the First Ranking Finance Parties, to the Intercreditor Agent on their behalf), with a copy of such notice to the Company, provided that its affiliate is a bank as referred to in paragraph F.1. in each of the Gaming Concession Consent Agreement and the Land Concession Consent Agreement and is rated at least A- by Standard & Poor's or A3 by Moody's Investors Services, Inc.
- (b) Alternatively the Security Agent may resign by giving written notice to the Secured Parties (or, in the case of the First Ranking Finance Parties, to the Intercreditor Agent on their behalf), with a copy of such notice to the Company, in which case:
  - (i) if such notice is given at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent may, subject to Clause 17.1(f), appoint a successor Security Agent which is a bank as

- referred to in paragraph F.1. in each of the Gaming Concession Consent Agreement and the Land Concession Consent Agreement;
- (ii) if such notice is given at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party shall be obliged to, subject to Clause 17.1(g), appoint a successor Security Agent which is a bank as referred to in paragraph F.1. in each of the Gaming Concession Consent Agreement and the Land Concession Consent Agreement within 30 days after such notice is given; and
  - (iii) if such notice is given at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Party shall be obliged to, subject to Clause 17.1(g), appoint a successor Security Agent which is a bank as referred to in paragraph F.1. in each of the Gaming Concession Consent Agreement and the Land Concession Consent Agreement within 30 days after such notice is given.
- (c) In the case of Clause 17.1(b)(i), if the Intercreditor Agent has not appointed a successor Security Agent in accordance with Clause 17.1(b)(i) above within 30 days after the Security Agent's resignation notice is given, the Security Agent (after consultation with the Intercreditor Agent) or the Company (after consultation with the Intercreditor Agent) may, subject to Clause 17.1(f), appoint a successor Security Agent which is a bank as referred to in paragraph F.1. in each of the Gaming Concession Consent Agreement and the Land Concession Consent Agreement. In the event that any of the Intercreditor Agent, the Security Agent and the Company has identified a bank during the 90 day period after the giving of a notice of resignation to act as successor Security Agent, the bank identified by the Intercreditor Agent shall be appointed as successor Security Agent or, if no such bank has been identified, the bank identified by the Security Agent shall be appointed as successor Security Agent or, if no such bank has been identified, the bank identified by the Company shall be appointed as successor Security Agent. The Company agrees that it will pay the fees of any successor Security Agent which shall be on market terms applicable to banks acting as security agents and trustees in respect of a transaction of the type contemplated under the Finance Documents.
- (d) In the case of Clause 17.1(b)(i), if the Intercreditor Agent, the Security Agent or the Company has not appointed a successor Security Agent in accordance with Clause 17.1(b)(i) or, as the case may be, Clause 17.1(c) within 90 days after the giving of a notice of resignation by the Security Agent, the Security Agent's resignation notice shall take effect on the date falling 90 days after the giving of

such notice of resignation whereupon the Security Agent may, by giving 30 days written notice to the Secured Parties (or, in the case of the First Ranking Finance Parties, to the Intercreditor Agent on their behalf) cease to act as agent and/or trustee for or on behalf of the Secured Parties and be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clause 16 (*The Security Agent*) and the Security Agent shall be entitled to release and discharge all of the Transaction Security and shall not have any liability to all or any of the Secured Parties in respect of such release or discharge.

- (e) If:
- (i) in the case of Clause 17.1(b)(ii), the Second Ranking Finance Party has not appointed a successor Security Agent in accordance with Clause 17.1(b)(ii); or
  - (ii) in the case of Clause 17.1(b)(iii), the Third Ranking Finance Party has not appointed a successor Security Agent in accordance with Clause 17.1(b)(iii),

the Security Agent's resignation notice shall take effect on the date falling 60 days after the giving of such notice of resignation whereupon the Security Agent shall cease to act as agent and/or trustee for or on behalf of the Secured Parties and be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clause 16 (*The Security Agent*) and the Security Agent shall be entitled to release and discharge all of the Transaction Security and shall not have any liability to all or any of the Secured Parties in respect of such release or discharge.

- (f) In the case of Clause 17.1(b)(i), if the Intercreditor Agent or the Security Agent appoints a successor in accordance with Clause 17.1(b)(i) or, as the case may be, Clause 17.1(c), the Security Agent's resignation notice shall only take effect upon (i) the assignment and transfer referred to in Clause 17.1(h) and (ii) that successor becoming a party to the Gaming Concession Consent Agreement and the Land Concession Consent Agreement (in place of the Security Agent) provided that if the conditions set out in (i) and (ii) above are not satisfied within 90 days of the giving of the Security Agent's resignation notice, the Security Agent may, by giving 30 days written notice to the Secured Parties (or, in the case of the First Ranking Finance Parties, to the Intercreditor Agent on their behalf), cease to act as agent and/or trustee for or on behalf of the Secured Parties and be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clause 16 (*The Security Agent*) and the Security Agent shall be entitled to release and discharge all of the Transaction Security and shall not have any liability to all or any of the Secured Parties in respect of such release or discharge.
- (g) In the case of Clause 17.1(b)(ii) or Clause 17.1(b)(iii), if the Second Ranking Finance Party or, as the case may be, the Third Ranking Finance Party appoints a successor in accordance with Clause 17.1(b)(ii) or, as the case may be, Clause



17.1(b)(iii), the Security Agent's resignation notice shall only take effect upon (i) the assignment and transfer referred to in Clause 17.1(h) and (ii) that successor becoming a party to the Gaming Concession Consent Agreement and the Land Concession Consent Agreement (in place of the Security Agent) provided that if the conditions set out in (i) and (ii) above are not satisfied within 60 days of the giving of the Security Agent's resignation notice, the Security Agent may cease to act as agent and/or trustee for or on behalf of the Secured Parties and be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clause 16 (*The Security Agent*) and the Security Agent shall be entitled to release and discharge all of the Transaction Security and shall not have any liability to all or any of the Secured Parties in respect of such release.

- (h) If the Security Agent resigns and a successor Security Agent is appointed in accordance with Clause 17.1(a), Clause 17.1(b) or Clause 17.1(c), the Security Agent shall:
- (i) assign all of its rights and benefits under the Finance Documents; and
  - (ii) transfer all of its rights, benefits and obligations (if any) under the Finance Documents,
- to such successor Security Agent, provided that it is acknowledged that such assignment and transfer shall not in any way prejudice the priority of the security constituted by this Deed (which shall be assigned to such successor Security Agent). The Security Agent shall give prior notice of such assignment and transfer to the Government of the Macau SAR.
- (i) Upon (i) the assignment and transfer referred to in Clause 17.1(h) and (ii) the successor Security Agent becoming a party to the Gaming Concession Consent Agreement and the Land Concession Consent Agreement (in place of the Security Agent), the successor Security Agent shall be and be deemed to be acting as agent and security trustee for the Secured Parties for the purposes of this Deed (other than Schedule 2 (*Assignment of Third Ranking Liabilities*)) or as agent and security trustee for the TRL Secured Parties for the purposes of Schedule 2 (*Assignment of Third Ranking Liabilities*) and in place of the former Security Agent.
- (j) Upon the appointment of a successor (if any), the retiring Security Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clause 16 (*The Security Agent*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (k) At any time:
- (i) prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment

and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent (acting in accordance with the First Ranking Finance Documents);

- (ii) after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party; or
  - (iii) after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Party
- may, by written notice to the Security Agent, require it to resign in accordance with Clause 17.1(b). In this event, the Security Agent shall resign in accordance with Clause 17.1(b).

## 17.2 Delegation

- (a) The Security Agent may, at any time, delegate (including by power of attorney) to any Person for any period, all or any of the rights, powers and discretions vested in it by any of the Finance Documents.
- (b) The delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent may think fit in the interest of the Secured Parties or, in the case of any delegation relating to the rights, powers and discretions vested in the Security Agent by Schedule 2 (*Assignment of Third Ranking Liabilities*), the TRL Secured Parties and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any such delegate or sub-delegate unless caused by the gross negligence or wilful misconduct of the Security Agent.

## 17.3 Additional trustees

- (a) The Security Agent may at any time appoint (and subsequently remove) any Person to act as a separate trustee or as a co-trustee jointly with it (i) if it considers that appointment to be in the interests of the Secured Parties or, in the case of acting as trustee under Schedule 2 (*Assignment of Third Ranking Liabilities*), the TRL Secured Parties or (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Agent deems to be relevant or (iii) for obtaining or enforcing any judgment in any jurisdiction, and the Security Agent shall give prior notice to the Sponsors, the Intercreditor Agent, the Second Ranking Finance Party and the Third Ranking Finance Party of any appointment.
- (b) Any Person so appointed (subject to the terms of this Deed) shall have the rights, powers and discretions (not exceeding those conferred on the Security

Agent by this Deed) and the duties and obligations that are conferred or imposed by the instrument of appointment.

- (c) The remuneration that the Security Agent may pay to that Person, and any costs and expenses incurred by that Person in performing its functions as a result of that appointment shall, for the purposes of this Deed, be treated as costs and expenses incurred by the Security Agent.

#### 17.4 The POA Agent

- (a) The Security Agent appoints the POA Agent to act as agent under the Power of Attorney.
- (b) The POA Agent may not exercise any of its rights under the POA without the instructions of the Security Agent, and the POA Agent shall act and exercise rights under the Power of Attorney only in accordance with the instructions given to it by the Security Agent.
- (c) The Power of Attorney shall be held and kept by the Security Agent and the Security Agent shall deliver the Power of Attorney to the POA Agent if and when required for the exercising of rights by the POA Agent under the Power of Attorney.
- (d) The POA Agent shall promptly inform the Security Agent of the contents of any notice or document received by it in its capacity as the POA Agent under or in connection with the Power of Attorney.
- (e) All references to the Security Agent in Clauses 16.7 (*Excluded obligations*), Clause 16.8 (*Exclusion of Security Agent's liability*), Clause 16.9 (*No proceedings*), Clause 16.10 (*Own responsibility*), Clause 16.11 (*No responsibility to perfect Transaction Security*), Clause 16.14 (*Acceptance of title*), Clause 16.15 (*Refrain from illegality*) shall include references to the POA Agent acting as agent under the Power of Attorney.
- (f) The POA Agent may resign by giving notice to the Security Agent and the Company, in which case the Security Agent may (acting in accordance with the instructions given to it pursuant to Clause 16.3(a)) appoint a successor POA Agent which is a financial institution operating in the Macau SAR provided that the Company's consent (which consent shall not be unreasonably withheld or delayed) shall be required if such financial institution is not a Senior Secured Creditor.
- (g) If the Security Agent has not appointed a successor POA Agent in accordance with paragraph (f) above within 60 days after notice of resignation was given, the POA Agent may appoint a successor POA Agent which is (i) a financial institution operating in the Macau SAR and (ii) is acceptable to the Security Agent (acting in accordance with the instructions given to it pursuant to Clause 16.3(a)) provided that the Company's consent (which consent shall not be unreasonably withheld or delayed) shall be required if such financial institution is not a Senior Secured Creditor.

- (h) The POA Agent's resignation notice shall only take effect upon satisfaction of each of the following conditions:
  - (i) the appointment of a successor POA Agent; and
  - (ii) the Security Agent is satisfied that the POA Agent has executed a power of attorney in favour of the successor POA Agent in respect of its power under the Power of Attorney, in form and substance satisfactory to the Security Agent.
- (i) Upon the appointment of a successor POA Agent, the retiring POA Agent shall be discharged from any further obligation in respect of the Power of Attorney. Its successor and each of the other parties hereto shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original party hereto.
- (j) The Security Agent may, acting in accordance with the instructions given to it pursuant to Clause 16.3(a)), by notice to the POA Agent require it to resign in accordance with paragraph (f) above. In this event, the POA Agent shall resign in accordance with paragraph (f) above.
- (k) The Company agrees that it will pay the fees of any successor POA Agent which shall be on market terms applicable to a financial institution operating in the Macau SAR.

## **18. CHANGE OF PARTY AND ACCESSION BY HEDGING COUNTERPARTIES**

### **18.1 Change of Party**

No party may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of any Finance Documents or the Liabilities except as permitted by this Clause 18.

### **18.2 Change of Funding Party**

A Funding Party may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of any Finance Documents to which it is a party or its Liabilities if:

- (a) in the case of a First Ranking Lender, that assignment or transfer is in accordance with the terms of the Common Terms Agreement;
- (b) in the case of a Hedging Counterparty, that assignment or transfer is in accordance with the terms of the relevant Hedging Agreement;
- (c) in the case of the Second Ranking Finance Party, the prior consent of the Intercreditor Agent has been obtained and that assignment or transfer is in accordance with the terms of the Second Ranking Finance Documents; and
- (d) in the case of the Third Ranking Finance Party, the prior consent of the Intercreditor Agent and the Second Ranking Finance Party has been obtained (such consent not to be unreasonably withheld or delayed by the Intercreditor Agent and the Second Ranking Finance Party) (provided that such consent is

not required if the assignee or transferee is Aruze Corporation or an Affiliate of Aruze Corporation) and that assignment or transfer is in accordance with Clause 18.7 (*New Assignor*) and the terms of the Third Ranking Finance Documents

and, in each case, any assignee or transferee permitted by this Clause 18.2 has executed and delivered to the Security Agent a Finance Party Accession Undertaking.

### **18.3 Change of Agent**

Any Person which becomes the Intercreditor Agent, the Hotel Facility Agent or the Project Facility Agent, each as defined in, and in accordance with, the terms of the Common Terms Agreement, shall at the same time accede to this Deed by executing and delivering to the Security Agent a Finance Party Accession Undertaking.

### **18.4 Hedging Counterparties**

Any Person which becomes a Hedging Counterparty as defined in, and in accordance with, the terms of the Common Terms Agreement, shall at the same time accede to this Deed by executing and delivering to the Security Agent a Finance Party Accession Undertaking.

### **18.5 First Ranking Lenders**

Any Person which becomes an Additional Lender pursuant to paragraph 2(f) of Part B of Schedule 5 to the Common Terms Agreement shall at the same time accede to this Deed as a First Ranking Lender by executing and delivering to the Security Agent a Finance Party Accession Undertaking. With effect from the date of acceptance by the Security Agent of a Finance Party Accession Undertaking, the new First Ranking Lender shall assume the same obligations and become entitled to the same rights as if it had been an original party to this Deed.

### **18.6 Finance Party Accession Undertaking**

With effect from the date of acceptance by the Security Agent of a Finance Party Accession Undertaking (which shall be accepted as soon as reasonably practicable after receipt by it of a duly completed Finance Party Accession Undertaking) or, if later the date specified in that Finance Party Accession Undertaking:

- (a) any Party ceasing entirely to be a Finance Party shall be discharged from further obligations towards the Security Agent and other Parties under this Deed and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date); and
- (b) as from that date, the replacement or new Finance Party shall assume the same obligations, and become entitled to the same rights, as if it had been an original Party to this Deed.

### **18.7 New Assignor**

- (a) If the Assignor assigns, sells, transfers or otherwise disposes of all of its right, title and interest in and to the Third Ranking Liabilities with (if the assignee, purchaser or, as the case may be, transferee is not Aruze Corporation or an Affiliate of Aruze Corporation) the consent of the Intercreditor Agent and the Second Ranking Finance Party (such consent not to be unreasonably withheld or delayed) in accordance with Schedule 2 (*Assignment of Third Ranking*)

*Liabilities*)), the Assignor shall procure the assignee, purchaser or, as the case may be, transferee to, at the same time as such assignment, sale, transfer or, as the case may be, disposal to execute and deliver to the Security Agent an Assignor Accession Deed.

- (b) With effect from the date of acceptance by the Security Agent (which shall be accepted as soon as reasonably practicable after receipt by it of the Assignor Accession Deed and the legal opinion referred to in paragraph 12(a) or, as the case may be, paragraph 12(b) of Schedule 2 (*Assignment of Third Ranking Liabilities*) and the satisfaction of the conditions set out in Clause 18.8 for accepting an Assignor Accession Deed), the outgoing Assignor shall be discharged from further obligations towards the Security Agent and other Parties under this Deed and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date) and, as from that date, the replacement Assignor shall assume the same obligations, and become entitled to the same rights, as if it had been an original Party to this Deed.

#### **18.8 Additional Parties**

Each of the Parties appoints the Security Agent to receive on its behalf each Finance Party Accession Undertaking and Assignor Accession Deed delivered to the Security Agent and to accept and sign it if, in the Security Agent's opinion, it is complete and appears on its face to be authentic and duly executed and until accepted and signed by the Security Agent that document shall not be effective.

#### **18.9 Disclosure of Information by Security Agent**

The Security Agent may disclose to any Person:

- (a) to (or through) whom the Security Agent assigns or transfers (or may potentially assign or transfer) all or any of its rights, benefits and obligations in accordance with the Finance Documents in accordance with Clause 17.1; or
- (b) to whom information may be required to be disclosed by any applicable law or pursuant to any regulatory or stock exchange requirement, such information about any Security Provider, the Projects and the Finance Documents as the Security Agent may consider appropriate, *provided* that the Person to whom such information is provided under sub-paragraph (a) above first enters into a confidentiality undertaking in substantially the form set out in Schedule 4 (*Form of Confidentiality Undertaking: Change of Security Agent*) and that the Company has received an original copy of such signed undertaking.

#### **19. FEES AND EXPENSES**

##### **19.1 Security Agent's fees**

The Company shall pay to the Security Agent, for its own account, the fees specified in the agreement dated the date hereof between the Security Agent and the Company, at the times and in the amounts specified in that agreement.

## 19.2 **Transaction and enforcement expenses**

The Company shall, from time to time on demand of the Security Agent, reimburse the Security Agent for:

- (a) at any time prior to the delivery of an Enforcement Notice to the Company, all reasonable costs and expenses (including legal fees); or
- (b) at any time upon or after the delivery of an Enforcement Notice to the Company, all costs and expenses (including legal fees)

on a full indemnity basis incurred by the Security Agent and any Receiver and Delegate in connection with:

- (i) the negotiation, preparation and execution of this Deed and the Security Documents and the completion of the transactions and perfection of the security contemplated in the Security Documents in accordance with, in the case of any fees, costs and expenses of the Technical Adviser, Insurance Adviser and legal advisers appointed on or prior to the date of this Deed, the appointment or engagement letters (if any) executed by the Company on or prior to the date hereof; and
- (ii) the exercise, preservation and/or enforcement of any of the rights, powers and remedies of the Security Agent and of the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or of enforcing those rights, powers and remedies

save to the extent that such costs and expenses have been paid to the Security Agent under any other provision of the First Ranking Finance Documents.

## 19.3 **Amendment costs**

If the Company requests an amendment, waiver or consent under any Finance Document to which the Security Agent is a party, the Company shall, within thirty days of demand, reimburse the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Security Agent in responding to, evaluating, negotiating or complying with that request.

## 19.4 **Stamp taxes**

The Company shall pay all stamp, registration, notarial and other taxes or fees to which this Deed, the other Security Documents, the Transaction Security or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Security Agent on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax or fees other than any costs which arise as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent.

## 19.5 **Interest on demands**

If the Company or the Assignor fails to pay any amount payable by it under this Deed on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to

the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is two per cent. per annum over the rate at which the Security Agent was being offered, by leading banks in the London Interbank Market, deposits in an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security Agent may from time to time select provided that to the extent that default interest shall have accrued on such amount and been paid in accordance with the terms of the other First Ranking Finance Documents, interest shall not be payable on such amount under this Clause 19.5.

#### 19.6 **Payments Free Of Deduction**

All payments to be made by the Company, the Assignor, the Second Ranking Finance Party or the Third Ranking Finance Party under this Deed shall be made free and clear of and without deduction for or on account of tax unless the Company, the Assignor, the Second Ranking Finance Party or, as the case may be, the Third Ranking Finance Party is required to make such payment subject to the deduction or withholding of tax, in which case the sum payable by the Company, the Assignor, the Second Ranking Finance Party or, as the case may be, the Third Ranking Fund Party in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Person on account of whose liability to tax such deduction or withholding has been made receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

### 20. **INDEMNITIES**

#### 20.1 **Company's indemnity**

The Company shall promptly indemnify the Security Agent, the POA Agent, every Receiver and Delegate against any cost, loss or liability, whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of:

- (a) any Default (as defined in the Common Terms Agreement), any Event of Default or any failure by the Company to comply with obligations under Clause 19 (*Fees and Expenses*);
- (b) the taking, holding, protection or enforcement of the Transaction Security;
- (c) the exercise of any of the rights, powers, and discretions vested in any of them by the Finance Documents or by law; or
- (d) any default by any Sponsor in the performance of any of the obligations expressed to be assumed by such Sponsor in the Finance Documents

save to the extent that such cost, loss or, as the case may be, liability (i) has been paid to the Security Agent, Receiver or, as the case may be, Delegate under any other provision of the First Ranking Finance Documents or (ii) arises as a consequence of any gross negligence or wilful misconduct of the Security Agent, the POA Agent, the Receiver or, as the case may be, the Delegate.



## 20.2 **Second Ranking & Third Finance Parties' Indemnity**

Each of the Second Ranking Finance Party and the Third Ranking Finance Party shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability, whether or not reasonably foreseeable, incurred by it any of them in relation to or arising out of any default by the Second Ranking Finance Party or, as the case may be, the Third Ranking Finance Party in the performance of any of the obligations expressed to be assumed by it in this Deed.

## 20.3 **Priority of indemnity**

The Security Agent may, in priority to any payment to the other Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in Clause 20.1 (*Company's indemnity*) from the Company and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it under this Clause.

## 20.4 **Funding Parties' indemnity**

If the Company fails to perform any of their obligations under this Clause 20 (*Indemnities*) within 3 Business Days:

- (a) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities, each First Ranking Funding Party (in the proportion that the Liabilities owed to it bears to the aggregate of the Liabilities owed to all the First Ranking Funding Parties for the time being (or, if no Advances have been made, in the proportion borne by its share of the aggregate undrawn Available Commitments of all First Ranking Funding Parties to the aggregate undrawn Available Commitments of all First Ranking Funding Parties for the time being) (or, if the Liabilities of each of those First Ranking Funding Parties is zero, immediately prior to their being reduced to zero));
- (b) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities but prior to the payment and discharge in full of the Second Ranking Liabilities, the Second Ranking Finance Party; or
- (c) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and the payment and discharge in full of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Party

shall indemnify the Security Agent and the POA Agent within three Business Days of demand against any cost, loss or liability incurred by the Security Agent and/or, as the case may be, the POA Agent as a result of that failure to perform and the Company shall indemnify each of the Funding Parties against any payment made by it under this Clause 20 (*Indemnities*). For the purpose of this Clause 20.4, the Liabilities owed to a Hedging Counterparty shall be deemed to be an amount equal to the Realised Hedge

Loss (if any) under the Hedging Agreement to which such Hedging Counterparty is party.

## 21. INFORMATION

### 21.1 Information and dealing

The Funding Parties shall provide to the Security Agent from time to time (through the Intercreditor Agent in the case of the First Ranking Funding Parties if relevant) any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each First Ranking Funding Party shall deal with the Security Agent exclusively through the Intercreditor Agent and shall not deal directly with the Security Agent.

### 21.2 Disclosure

Each of the Company and the Assignor consents, until such time as all of the Secured Obligations have been discharged in full, to the disclosure by any of the Secured Parties to each other of such information concerning any of the Security Providers as any Secured Party shall see fit.

## 22. NOTICES

### 22.1 Communications in writing

Any communication to be made under or in connection with this Deed shall be made in writing but, unless otherwise stated, may be made by fax or letter.

### 22.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) identified with its name below;
- (b) specified on the Finance Party Accession Undertaking to which it is a party; or
- (c) specified on the Assignor Accession Deed to which it is a party;

or any substitute address, fax number or department or officer as the party may notify to the Security Agent (or the Security Agent may notify to the other parties, if a change is made by the Security Agent) by not less than 10 Business Days' notice.

### 22.3 Delivery

- (a) Any communication or document made or delivered by one Person to another under or in connection with the Finance Documents shall only be effective:
  - (i) if delivered personally or by overnight courier, when left at the relevant address;
  - (ii) if by way of fax, when received in legible form; or
  - (iii) if by way of letter, when it has been left at the relevant address or 10 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 22.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent shall be effective only when actually received by that Security Agent and then only if it is expressly marked for the attention of the department or officer identified with that Security Agent's signature below (or any substitute department or officer as that Security Agent shall specify for this purpose).
- (c) All notices to the Company shall be sent through the Security Agent (but always with a copy to the Intercreditor Agent in the case of any notice from any First Ranking Finance Party (other than the Intercreditor Agent)). All notices from the Company hereunder shall be sent to the Security Agent who shall distribute them to the Intercreditor Agent (who shall forward them to the First Ranking Finance Parties), the Second Ranking Finance Party and the Third Ranking Finance Party.

#### 22.4 **Electronic communication**

- (a) Any communication to be made between the Security Agent and the Intercreditor Agent or a First Ranking Finance Party under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Security Agent and the Intercreditor Agent or the relevant First Ranking Finance Party:
  - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Security Agent and the Intercreditor Agent or a First Ranking Finance Party shall be effective only when actually received in readable form and in the case of any electronic communication made by a First Ranking Finance Party or the Intercreditor Agent to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.

#### 22.5 **English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be in English or, if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case,

**23. PRESERVATION**

**23.1 Partial invalidity**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision under the law of any other jurisdiction will in any way be affected or impaired and, if any part of the security intended to be created by or pursuant to this Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

**23.2 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

**23.3 Waiver of defences**

The provisions of this Deed will not be affected by an act, omission, matter or thing which, but for this Clause 23.3, would reduce, release or prejudice the subordination and priorities in this Deed including:

- (a) any time, waiver or consent granted to, or composition with any Person;
- (b) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Grantor or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Transaction Security;
- (c) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Person;
- (d) any amendment (however fundamental) or replacement of a Finance Document or any other document or security except for any express amendment to this Deed to that effect;
- (e) any unenforceability, illegality or invalidity of any obligation of any Person under any Finance Document or any other document or security; or
- (f) any intermediate payment or discharge of any of the Liabilities of the Secured Parties in whole or in part.

#### 23.4 **Priorities not affected**

Except as otherwise provided in this Deed the priorities referred to in Clause 3 (*Ranking and Priority*) will:

- (a) not be affected by any reduction or increase in the principal amount secured by the Transaction Security in respect of the Liabilities of the Secured Parties or by any intermediate reduction or increase in, amendment or variation to any of the Finance Documents, or by any variation or satisfaction of, any of the Liabilities or any other circumstances;
- (b) apply regardless of the order in which or dates upon which the Finance Documents and this Deed are executed or registered or notice of them is given to any Person; and
- (c) secure the Liabilities of the Secured Parties in the order specified, regardless of the date upon which any of the Liabilities arise or of any fluctuations in the amount of any of the Liabilities outstanding.

#### 24. **CONSENTS, AMENDMENTS AND OVERRIDE**

##### 24.1 **Required consents**

- (a) No term of this Deed may be amended or waived except by the written agreement of the Intercreditor Agent, the Second Ranking Finance Party, the Third Ranking Finance Party and the Security Agent. If the Security Agent has the prior consent of the Intercreditor Agent, the Second Ranking Finance Party, the Third Ranking Finance Party and the Assignor, the Security Agent and the Company may from time to time agree in writing to amend this Deed or waive any of the requirements of this Deed and any amendments or waivers so agreed shall be binding on the Secured Parties and the Assignor.
- (b) If the amendment or waiver may impose new or additional obligations on or withdraw or reduce the rights of any Party, the consent of that Party is required.
- (c) An amendment or waiver which relates to the rights or obligations of the Intercreditor Agent, the Hotel Facility Agent, the Project Facility Agent or the Security Agent may not be effected without the consent of the Intercreditor Agent, the Hotel Facility Agent, the Project Facility Agent or, as the case may be, the Security Agent.
- (d) Any amendment or waiver given in accordance with this Clause will be binding on all Parties and the Security Agent may effect, on behalf of any Secured Party or the Assignor, any amendment or waiver permitted by this Clause 24.1.

##### 24.2 **Amendment of other Security Documents**

- (a) Subject to Clause 24.2(b), any term of any of the Security Documents (other than this Deed) may be amended or waived by the Security Agent, acting on the instructions of:
  - (i) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii)

the payment and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent (acting in accordance with the First Ranking Finance Documents);

- (ii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party (acting in accordance with the Second Ranking Finance Documents); or
  - (iii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Party (acting in accordance with the Third Ranking Finance Documents).
- (b) Subject to Clause 17.1 (*Resignation of the Security Agent*), no release or discharge of any Transaction Security may be made except with the prior consent of the Intercreditor Agent, the Second Ranking Finance Party and the Third Ranking Finance Party unless such release or discharge is permitted under the relevant Security Document.

#### 24.3 **Agreement to override**

Unless expressly stated otherwise in this Deed, this Deed overrides anything in the Finance Documents to the contrary.

#### 25. **COUNTERPARTS**

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

#### 26. **GOVERNING LAW**

This Deed is governed by English law.

#### 27. **ENFORCEMENT**

##### 27.1 **Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 27.1(c) is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the

Secured Parties may take concurrent proceedings in any number of jurisdictions.

## 27.2 Service of Process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each of the Company, the Assignor and the Third Ranking Finance Party:
  - (i) irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Deed; and
  - (ii) agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.
- (b) Without prejudice to any other mode of service allowed under any relevant law, the Second Ranking Finance Party:
  - (i) irrevocably appoints Caixa Geral de Depósitos, London Branch, Walbrook-House, 23 - 27<sup>th</sup> Floor, Walbrook, London EC4N 8BT as its agent for service of process in relation to any proceedings before the English courts in connection with this Deed; and
  - (ii) agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.

## 27.3 Exercise of Rights

Notwithstanding anything in Clause 27.1(c) to the contrary, the Secured Parties will only take actions over the Transaction Security through the Security Agent unless and until the appointment of the Security Agent ceases and no successor Security Agent is appointed under Clause 17 (*Change of Security Agent and Delegation*).

**This Deed has been entered into on the date stated at the beginning of this Deed and executed as a deed by the Second Ranking Finance Party, the Third Ranking Finance Party and the Assignor and is intended to be and is delivered by them as a deed on the date specified above.**

**SCHEDULE 2**  
**ASSIGNMENT OF THIRD RANKING LIABILITIES**

**1. Assignment**

- (a) The Assignor hereby assigns, with full title guarantee, to the Security Agent as agent and security trustee for the TRL Secured Parties, as security for the payment and discharge of the First and Second Ranking Secured Obligations, all of the Assignor's right, title and interest from time to time in and to the Third Ranking Liabilities.
- (b) The execution of this Deed by the Company shall constitute notice to the Company of the assignment of the Assignor's right, title and interest in and to the Third Ranking Liabilities by the Assignor. The Company hereby consents to such assignment (and any further assignment or disposal of the Third Ranking Liabilities or any party thereof by the Security Agent or any Receiver pursuant to this Deed) and confirms to the Assignor and the Security Agent (as agent and security trustee for and on behalf of the TRL Secured Parties) that it shall continue to be bound by the terms on which the Third Ranking Liabilities have been or shall have been made available to it.
- (c) Notwithstanding the assignment referred to in paragraph 1(a) of this Schedule, the Assignor remains liable to perform the obligations imposed on it under the Third Ranking Finance Documents and neither the Security Agent nor any of the other Secured Parties is liable to perform any of such obligations nor liable for the consequences of non-performance.
- (d) Subject to the terms of the Finance Documents, each Funding Party is under an obligation to make further advances (or, in the case of a Hedging Counterparty, payments) to the Company and that obligation will be deemed to be incorporated into this Deed as if set out in this Deed.

**2. Further Assurance**

- (a) The Assignor hereby irrevocably authorises the Security Agent at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Third Ranking Liabilities fall within the scope of Article 9 of the Uniform Commercial Code of the State of Nevada or any other Uniform Commercial Code jurisdiction and (b) provide any other information required by part 5 of Article 9 of the Uniform Commercial Code of the State of Nevada, or any other Uniform Commercial Code jurisdiction, for the sufficiency or filing office acceptance of any financing statement or amendment, including whether the Assignor is an organisation, the type of organisation and any organisational identification number issued to the Assignor. The Assignor agrees to furnish any such information to the Security Agent promptly upon the Security Agent's request.



- (b) The Assignor shall promptly execute all documents and do all things (including without limitation the delivery, transfer or assignment of all or part of the Third Ranking Liabilities to the Security Agent or its nominee(s)) which the Security Agent may require for the purpose of (i) exercising the Collateral Rights or (ii) securing and perfecting the Security Agent's security over or title to all or any part of the Third Ranking Liabilities provided that any such requirement shall be reasonable prior to the delivery of a TRL Enforcement Notice to the Assignor.
- (c) The Assignor shall, upon written demand from the Security Agent, at any time after the Security Agent shall have given a TRL Enforcement Notice, (i) procure the transfer of the Assignor's right, title and interest in and to the Third Ranking Liabilities into the name of the Security Agent or its nominee(s), agents or such purchasers as it shall direct and (ii) execute all documents and do all other things that the Security Agent may require to facilitate the realisation of the Third Ranking Liabilities.

3. **Enforcement of Security Assignment**

- (a) After the Security Agent shall have given a TRL Enforcement Notice to the Assignor, the security created by or pursuant to paragraph 1 of this Schedule is immediately enforceable and the Security Agent may, without notice to the Assignor and/or any Grantor or prior authorisation from the Assignor or any court, enforce all or any part of that security (at the times, in the manner and on the terms it thinks fit) and get in, collect, hold, sell, assign or otherwise dispose of all or any part of the Third Ranking Liabilities (at the times, in the manner and on such terms as it may think fit).
- (b) Any restrictions on the consolidation of Security shall be excluded to the fullest extent permitted by law and the Security Agent shall, so far as it shall be lawful, be entitled to consolidate all or any of the security interests constituted by this Deed and/or its powers hereunder with any other Security whether in existence at the date of this Deed or created thereafter.
- (c) Neither the Security Agent nor any Receiver shall be liable to account as a mortgagee in possession in respect of all or any part of the Third Ranking Liabilities or be liable for any loss upon realisation in connection with the Third Ranking Liabilities (or any part thereof) to which a mortgagee in possession might otherwise be liable other than any loss which arises as a consequence of any gross negligence or wilful default on the part of the Security Agent or Receiver.
- (d) The power of sale or other disposal conferred on the Security Agent and on any Receiver by this Deed shall operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Deed.

- (e) A certificate in writing by an officer or agent of the Security Agent that any power of sale or other disposal has arisen and is exercisable shall be conclusive evidence (in the absence of manifest error) of that fact, in favour of a purchaser of all or any part of the Third ranking Liabilities.

4. **Receiver**

- (a) After the Security Agent shall have given a TRL Enforcement Notice to the Assignor or if requested to do so by the Assignor, the Security Agent may by deed or otherwise (acting through an authorised officer of the Security Agent), without prior notice to the Assignor or any Grantor:
  - (i) appoint one or more Persons to be a Receiver of the whole or any part of the Third Ranking Liabilities; and
  - (ii) remove (so far as it is lawfully able) any Receiver so appointed.

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Security Agent under the Laws of Property Act 1925 (as extended by this Deed) or otherwise and such powers shall remain exercisable from time to time by the Security Agent in respect of any Third Ranking Liabilities.

- (b) Each Person appointed to be a Receiver pursuant to paragraph 4(a) of this Schedule shall be:
  - (i) entitled to act individually or together with any other Person appointed or substituted as Receiver;
  - (ii) for all purposes deemed to be the agent of the Assignor which shall be solely responsible for his acts, defaults and liabilities (other than such acts, defaults and liabilities that are attributed to the gross negligence or wilful misconduct of the Receiver) and for the payment of his remuneration and no Receiver shall at any time act as agent for the Security Agent; and
  - (iii) entitled to remuneration for his services at a reasonable rate to be fixed by the Security Agent from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).
- (c) In addition to the powers of the Security Agent conferred by paragraph 3 of this Schedule, each Receiver shall (subject to any limitations or restrictions in the instrument appointing him but notwithstanding any winding-up, insolvency or dissolution of the Assignor) have, in relation to the part of the Third Ranking Liabilities in respect of which he was appointed (in the name of or on behalf of the Assignor or in his own name and, in each case, at the cost of the Assignor):
  - (i) all the powers and rights of an absolute owner and power to do or omit to do anything which the Assignor could do or omit to do;

- (ii) the power to do all things (including without limitation bringing or defending proceedings in the name or on behalf of the Assignor) which are incidental or conducive to (i) any of the functions, powers, authorities or discretions conferred on or vested in him or (ii) the exercise of the Collateral Rights (including without limitation realisation of such part of such Third Ranking Liabilities) or (iii) bringing to his hands any assets forming, or which when got in would be, part of such Third Ranking Liabilities; and
  - (iii) all the powers conferred on him by general law; and
  - (iv) all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act and all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver).
- (d) Without prejudice to the generality of the foregoing, each Receiver shall (subject to any limitations or restrictions in the instrument appointing him but notwithstanding any winding-up, insolvency or dissolution of the Assignor) have the following powers in relation to the part of the Third Ranking Liabilities (and any assets which, when got in, would be part of such Third Ranking Liabilities) in respect of which he was appointed (and every reference in this paragraph 4(d) to the "Third Ranking Liabilities" shall be read as a reference to that part of the Third Ranking Liabilities in respect of which such Receiver was appointed):
- (i) **Collection**  
power to collect and get in the Third Ranking Liabilities including without limitation amounts and distributions (whether in cash or in kind) payable in respect thereof;
  - (ii) **Proceedings and Claims**  
power to bring, prosecute, enforce, defend and abandon applications, claims, disputes, actions, suits and proceedings in connection with all or any part of the Third Ranking Liabilities or this Schedule in the name of the Assignor or in his own name and to submit to arbitration, negotiate, compromise and settle any such applications, claims, disputes, actions, suits or proceedings;
  - (iii) **Deal with Subordinated Indebtedness**  
power to sell, assign, transfer, factor or otherwise dispose of the Third Ranking Liabilities or any part thereof or concur in any of the foregoing on behalf of the Assignor in such manner and generally on such terms as he thinks fit;

(iv) **Redemption of Security**

power to redeem, discharge or compromise any security whether or not having priority to the security constituted by this Deed or any part of it;

(v) **Covenants, Guarantees and Indemnities**

power to enter into bonds, covenants, guarantees, commitments, indemnities and other obligations or liabilities as he shall think fit, to make all payments needed to effect, maintain or satisfy such obligations or liabilities and to use the company seal(s) (if any) of the Assignor; and

(vi) **Exercise of Powers in Assignor's Name**

power to exercise any or all of the above powers on behalf of and in the name of the Assignor (notwithstanding any winding-up, insolvency, dissolution of the Assignor) or on his own behalf.

(e) In making any sale or other disposal of all or any part of the assets subject to the security created hereunder or any acquisition in the exercise of their respective powers, a Receiver or the Security Agent may do so for such consideration, in such manner, and generally on such terms and conditions as it thinks fit. Any contract for such sale, disposal or acquisition by the Receiver or the Security Agent may contain conditions excluding or restricting the personal liability of the Receiver or the Security Agent.

(f) So long as Wynn Resorts has not delivered a notice under Clause 5.2 of the Wynn Resorts Support Agreement terminating its obligations under Clause 6 thereof, the Security Agent shall, prior to the acceptance of any offer made by a Senior Secured Creditor for the purchase of all or any of the Third Ranking Liabilities, give reasonable details of all of the written offers received by the Security Agent for the purchase of such Third Ranking Liabilities.

5. **Protection of Purchasers**

(a) The receipt of the Security Agent or any Receiver in respect of consideration from a purchaser shall be conclusive discharge to such purchaser of any part of the Third Ranking Liabilities from the Security Agent or any Receiver.

(b) No purchaser or other Person dealing with the Security Agent or any Receiver shall be bound to inquire whether the right of the Security Agent or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Security Agent or such Receiver in such dealings.

6. **Power of Attorney**

(a) The Assignor by way of security irrevocably (within the meaning of Section 4 of the Powers of Attorney Act 1971) appoints the Security Agent and any Receiver to be its attorney and in its name, on its behalf and as its act and deed to, upon and at all times after the Security Agent shall have delivered a TRL

Enforcement Notice, execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for:

- (i) carrying out any obligation imposed on the Assignor by this Deed (including, without limitation, the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Third Ranking Liabilities) which the Assignor has failed to perform in accordance with the terms hereof; and
  - (ii) enabling the Security Agent and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on it by or pursuant to this Deed or by law (including, without limitation, after the delivery of a TRL Enforcement Notice by the Security Agent, the exercise of any right of a legal or beneficial owner of the Third Ranking Liabilities).
- (b) The Assignor shall ratify and confirm all things done and all documents executed by any attorney in accordance with the terms of this paragraph 6 of this Schedule in the exercise of all or any of its powers granted by or in relation to the Assignor.

**7. Effectiveness of Security**

- (a) The security created by or pursuant to this Schedule shall remain in full force and effect as a continuing security for the First and Second Ranking Secured Obligations unless and until discharged by the Security Agent and shall not cease by reason of any partial payment of any of the First and Second Ranking Secured Obligations. Notwithstanding the foregoing, if the obligations of the Assignor under this Deed cease to be continuing for any reason, the liability of the Assignor at the date of such cessation shall remain, regardless of any subsequent increase or reduction in the First and Second Ranking Secured Obligations.
- (b) The security created by or pursuant to this Schedule and the Collateral Rights shall be cumulative, in addition to and independent of every other security which the Security Agent or any TRL Secured Party may at any time hold for any or all of the First and Second Ranking Secured Obligations or any rights, powers and remedies provided by law. No prior security held by the Security Agent (whether in its capacity as agent or security trustee or otherwise) or any of the TRL Secured Party over the whole or any part of the Third Ranking Liabilities shall merge into the security constituted by this Deed.
- (c) None of the obligations of the Assignor hereunder and the Collateral Rights shall be discharged, impaired or otherwise affected by:
  - (i) any winding-up, dissolution, re-organisation, bankruptcy, death or insolvency of, or any change in, any Grantor or any other Person;
  - (ii) any of the Secured Obligations being at any time illegal, invalid, unenforceable or ineffective;

- (iii) any unenforceability or invalidity of any other agreement or document;
  - (iv) any time or other indulgence being granted to the Company or any other Person with respect to the Secured Obligations;
  - (v) any (actual or purported) amendment, variation, waiver or release of any of the Secured Obligations except for a release or discharge in accordance with Clause 16.20 (*Winding up of trust*) or specific amendment of this Deed to that effect;
  - (vi) any variation of the terms of the trust upon which the Security Agent holds the security constituted hereby and/or the Collateral Rights;
  - (vii) any failure to take or failure to realise the value of any other collateral in respect of any or all of the Secured Obligations or any release, discharge, exchange or substitution of any such collateral; or
  - (viii) any other act, event or omission which but for this provision would or might operate to impair, discharge or otherwise affect the obligations of any or all of the Grantors and the Assignor hereunder and/or the Collateral Rights.
- (d) No failure on the part of the Security Agent to exercise, or any delay on its part in exercising, any Collateral Right shall operate as a waiver thereof, nor shall any single or partial exercise of any Collateral Right preclude any further or other exercise of that or any other Collateral Right.
  - (e) None of the Security Agent, its nominee(s) or any Receiver shall be liable by reason of (i) taking any action permitted by this Deed or (ii) any neglect or default in connection with the Third Ranking Liabilities or (iii) taking possession of or realising all or any part of the Third Ranking Liabilities, except in the case of gross negligence or wilful default upon its part.
  - (f) The Security Agent shall not be obliged to make any demand of any Grantor or any other Person, to take any action or obtain judgment in any court against any Grantor or any other Person or to make or file any proof or claim in a liquidation, bankruptcy, death or insolvency of any Grantor or any other Person or to enforce or seek to enforce any other security in respect of any or all of the First and Second Ranking Secured Obligations before exercising any Collateral Right.
  - (g) Until the satisfaction of the requirements set out in Clause 16.20 in respect of the release of security, any settlement or discharge hereunder in relation to the Assignor shall be conditional upon no security or payment to the Security Agent by or on behalf of any Grantor being avoided or reduced by virtue of any Grantor's bankruptcy, insolvency, liquidation or similar laws of general application and shall in those circumstances be void.
  - (h) Until the security constituted by this Schedule 2 is released by the Security Agent as contemplated by Clause 16.20, the Assignor shall not exercise any right

which it may at any time have, by reason of the performance of its obligations under this Schedule 2, to be indemnified by any Sponsor or to receive any collateral from any Sponsor or to claim any contribution from any other Person of any Sponsor's obligations under all or any of the Finance Documents or to take the benefit (in whole or in part and whether by subrogation or otherwise) of any rights of all or any of the Secured Parties under all or any of the Finance Documents or of any other security taken pursuant to, or in connection with, all or any of the Finance Documents by all or any of the Secured Parties.

**8. Set-Off**

The Assignor authorises the Security Agent (but the Security Agent shall not be obliged to exercise such right) from time to time to, after the delivery of a TRL Enforcement Notice to the Assignor, set off against any or all sums and monies due and payable by the Assignor hereunder but unpaid, any amount or other obligation (contingent or otherwise) owing by the Security Agent to the Assignor.

**9. Subsequent Security Interests**

If the Security Agent (acting in its capacity as agent or security trustee or otherwise) or any of the other Secured Parties (other than the Third Ranking Finance Party) at any time receives or is deemed to have received notice (which it reasonably believes to be genuine, correct and appropriately authorised) of any subsequent Security affecting all or any part of the Third Ranking Liabilities or any assignment or transfer of the Third Ranking Liabilities which is prohibited by the terms of any Finance Document, all payments thereafter by or on behalf of the Assignor to the Security Agent (whether in its capacity as agent or trustee or otherwise) or any of the other Secured Parties (other than the Third Ranking Finance Party) shall be treated as having been credited to a new account of the Assignor and not as having been applied in reduction of any or all of the First and Second Ranking Secured Obligations as at the time when the Security Agent or such other Secured Party received such notice save for the purpose of calculation of interest.

**10. Indemnity**

At any time:

- (a) prior to the delivery of a TRL Enforcement Notice to the Assignor, all reasonable costs and expenses; or
- (b) upon or after the delivery of a TRL Enforcement Notice to the Assignor, all costs and expenses

of any and all of the Secured Parties (other than the Third Ranking Finance Party) (including without limitation legal fees, stamp duties and any value added tax) incurred (i) in connection with the perfection or enforcement of the collateral constituted under or pursuant to this Schedule, (ii) in connection with the exercise of any Collateral Right and (iii) otherwise in relation to this Schedule, shall (except to the extent already reimbursed by the Company pursuant to the Deed of Appointment and Priority) be reimbursed

(through the Security Agent) to such Secured Party/Parties by the Assignor within 15 days of demand on a full indemnity basis.

**11. Discretion And Delegation**

- (a) Any liberty or power which may be exercised or any determination which may be made under this Schedule by the Security Agent or any Receiver may, subject to the other terms and conditions of this Deed, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons save that the Security Agent shall act in a reasonable manner if expressly required under this Schedule.
- (b) Each of the Security Agent and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Schedule (including without limitation the power of attorney under paragraph 6 of this Schedule) on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise of such power, authority or discretion by the Security Agent or the Receiver itself or any subsequent delegation or revocation thereof.

**12. Undertakings of Assignor**

- (a) The Assignor shall not, subject to sub-paragraph (b) below, assign, sell, transfer or otherwise dispose of all or any part of its right, title and/or interest in and/or to the Third Ranking Liabilities without the prior consent of the Intercreditor Agent and the Second Ranking Finance Party (such consent not to be unreasonably withheld or delayed) provided that in the event that such consent is granted, the Assignor shall procure the assignee, purchaser or, as the case may be, transferee to, at the same time as such assignment, sale, transfer or, as the case may be, disposal, (1) execute and deliver to the Security Agent an Assignor Accession Deed and (2) deliver to the Security Agent a legal opinion, in form and substance reasonably satisfactory to the Security Agent, in respect of the replacement Assignor's obligations under this Deed.
- (b) The Assignor may assign, sell, transfer or otherwise dispose of all or any part of its right, title and/or interest in and/or to the Third Ranking Liabilities to Aruze Corporation or an Affiliate of Aruze Corporation without the consent of any of the Secured Parties provided that Aruze Corporation or, as the case may be, the Affiliate of Aruze Corporation (1) executes and delivers to the Security Agent an Assignor Accession Deed and (2) delivers to the Security Agent a legal opinion, in form and substance reasonably satisfactory to the Security Agent, in respect of its obligations under this Deed.
- (c) The Assignor shall not create, grant or permit to exist any Security (other than any Lien referred to in paragraph 3(a), 3(f) or 3(q) of Schedule 5 Part B of the Common Terms Agreement and any Mandatory Permitted Lien) over all or any of its right, title and/or interest in and to the Third Ranking Liabilities.



SIGNATURES

**The Original First Ranking Lenders**

*(As Hotel Facility Lender and Project Facility Lender)*

**DEUTSCHE BANK AG, HONG KONG BRANCH**

By: ***Philip Crotty*** ***Peter Lo***

Address: 55<sup>th</sup> Floor, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Tel: (852) 2203-7436

Fax: (852) 2203-7212

Attention: Jonathan Robinson  
Debt Products Group

*(As Hotel Facility Lender)*

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

By: ***David Gore*** ***Sun Peng Lui***

Address: 42<sup>nd</sup> Floor, Edinburgh Tower  
15 Queen's Road Central  
Hong Kong

Tel: (852) 2166-5414/(852) 2166-5415

Fax: (852) 2868-1874/(852) 2868-4925

Attention: Kenny Chan/Annie Yuen  
Commercial Back Office - Loans

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*(As Hotel Facility Lender)*

**BANK OF CHINA, MACAU BRANCH**

By: ***Cheong Chi Sang***

Address: Avenida Doutor Mario Soares  
Bank of China Building  
Macau

Tel: (853) 792-1698/(853) 792-1646

Fax: (853) 792-1659

Attention: Wong Weng Tim/ Kuan Sio Keng

*(As Hotel Facility Lender)*

**CANADIAN EASTERN FINANCE LIMITED**

By: ***P.K. Tang*** ***Teresa C.Y. Lee***

Address: Suite 2002  
20<sup>th</sup> Floor, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Tel: (852) 2846-3736

Fax: (852) 2524-1162

Attention: Teresa Lee

(As Hotel Facility Lender)

**SHINSEI BANK, LIMITED**

By: **Paul R. Smith** **Jonathan Robinson**

Address: 1-8, Uchisaiwaicho 2-Chome  
Chiyoda-ku  
Tokyo 100-8501  
Japan

Tel: (81) 3-5510-6623/(81) 3-5293-6918

Fax: (81) 3-5511-5133

Attention: Kazuki Yoneda/Kanako Matsuoka

(As Hotel Facility Lender)

**INDUSTRIAL AND COMMERCIAL BANK OF CHINA, MACAU BRANCH**

By: **Shen Xiao Qi** **He Jin Qiu** **Stephen Jeong**

Address: Alm. Dr. Carlos D" Assumpção, No. 411-417  
18 andar E, F, G e H  
Edf. Dynasty Plaza  
Macau

Tel: (853) 791-3075/(853) 791-3072

Fax: (853) 786-328

Attention: Clarence Wong/Elaine Lam

---

(As Project Facility Lender)  
**AOZORA BANK, LTD**

By: **David Gore** **Sun Peng Lui**

Address: 3-1  
Kudan-Minami 1-chome  
Chiyoda-ku  
Tokyo 102-8660  
Japan

Tel: (81) 3-5212-9412/(81) 3-3239-8038

Fax: (81) 3-3263-9872/(81) 3-3263-7284

Attention: Emiko Sano/Yasue Harada

(As Project Facility Lender, Revolving Credit Facility Lender and POA Agent)  
**BANCO NACIONAL ULTRAMARINO, S.A.**

By: **Kan Cheok Kuan, Ronald**

**João Brito Augusto**

Address: Avenida de Almeida Ribeiro  
No. 22  
Macau

Tel: (853) 355-188/(853) 355-828

Fax: (853) 355-800/(853) 356-867

Attention: Ronald Kan Cheok Kuan/Vitor Rosário/Violet Choi

---

(As Project Facility Lender)

**KOREA FIRST FINANCE LIMITED**

By: ***Chul-Wan, Park***

Address: Room 2007  
Jardine House  
1 Connaught Place, Central  
Hong Kong

Tel: (852) 2526-5025

Fax: (852) 2845-9001

Attention: Pan-Young Ahn

(As Project Facility Lender)

**KOREA FIRST BANK, TOKYO BRANCH**

By: ***Dai Chang Song***

Address: Yurakucho Denki Bldg.  
South 2Fl  
1-7-1 Yurakucho  
Chiyoda-ku  
Tokyo 100-0006  
Japan

Tel: (81) 3-3201-6261

Fax: (81) 3-3201-4558

Attention: Min-Young Kim

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Copy to:

Korea First Bank

Address: 100, Kongpyung-Dong  
Chongro-Gu  
Seoul  
Korea

Tel: (82) 2-3702-4649/(82) 2-3702-4415

Fax: (82) 2-3702-4865

Attention: Dai Chang Song/Chang-Ho Lee  
Project Finance Team

Korea First Bank

Address: 100, Kongpyung-Dong  
Chongro-Gu  
Seoul  
Korea

Tel: (82) 2-3702-4649/(82) 2-3702-4415

Fax: (82) 2-3702-4865

Attention: Dai Chang Song/Chang-Ho Lee  
Project Finance Team

---

(As Project Facility Lender)

**WESTLB AG, HONG KONG BRANCH**

By: **Peter Geldart** **K.M. Sun**

Address: 36<sup>th</sup> Floor, Bank of America Tower  
12 Harcourt Road  
Hong Kong

Tel: (852) 2842-0214/(852) 2842-0436

Fax: (852) 2842-0290

Attention: William Ip/Florence Yip

Copy to:

WestLB AG, Hong Kong Branch

Address: 36<sup>th</sup> Floor, Bank of America Tower  
12 Harcourt Road  
Hong Kong

Tel: (852) 2842-0458/(852) 2842-0427

Fax: (852) 2892-0298

Attention: Jasper Wong/Björn Blüml

(As Project Facility Lender and Revolving Credit Facility Lender)

**BANCO COMERCIAL DE MACAU, S.A.**

By: **Tou Kei San** **Chan Sou Chao**

Address: Avenida da Praia Grande  
No. 572  
Macau

Tel: (853) 7910-861/(853) 7910-270

Fax: (853) 580-967

Attention: Sam Tou/Vilma Loi

---

(As Project Facility Lender)  
**ALLIED IRISH BANKS, p.l.c.**

By: **David Gore** **Sun Peng Lui**  
Address: St Helen's  
1 Undershaft  
London EC3A 8AB  
United Kingdom  
Tel: (44) 20-7726-8734  
Fax: (44) 20-7726-8735  
Attention: Antionette Dunleavy/David McIntyre

(As Project Facility Lender)  
**BANCO ESPÍRITO SANTO DO ORIENTE, S.A.**

By: **José Morgado** **Carlos Freire**  
Address: Av. Dr. Mário Soares  
No. 323  
Bank of China Building  
28<sup>th</sup> Floor "E-F"  
Macau  
Tel: (853) 7965-215/(853) 7965-210  
Fax: (853) 785-228  
Attention: Sylvana Chan/Frances T.M. Lo



(As Revolving Credit Facility Lender)

**BANCO DELTA ASIA, S.A.R.L.**

By: **Lau Siu Lun** **Wong Kai Fun**

Address: Rua Do Campo  
No. 39-41  
Macau

Tel: (853) 3958-202/(853) 3958-505

Fax: (853) 570-068

Attention: Howard Lau/Alex Chou

**The Second Ranking Finance Party**

Executed as a deed by

**BANCO NACIONAL ULTRAMARINO, S.A.**

acting by Kan Cheok Kuan, Ronald and

João Brito Augusto

) **Kan Cheok Kuan, Ronald**

) **João Brito Augusto**

)

)

Address: Avenida de Almeida Ribeiro  
No. 22  
Macau

Tel: (853) 355-188/(853) 355-828

Fax: (853) 355-800/(853) 356-867

Attention: Ronald Kan Cheok Kuan/Vitor Rosário/Violet Choi

**The Third Ranking Finance Party and the Assignor**

Executed as a deed by )  
WYNN GROUP ASIA, INC. )  
acting by Matthew Maddox ) *Matt Maddox*  
under the board resolution )  
of 10 September 2004 )

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Tel: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

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**The Company**

**WYNN RESORTS (MACAU) S.A.**

By: ***Matt Maddox***

Address: 429 Avenida da Praia Grande,  
18th Floor, Praia Grande Commercial Centre,  
Macau

Tel: (853) 371-476

Fax: (853) 329-966

Attention: Chief Financial Officer

Copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Tel: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

**The Security Agent**

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

By: *David Gore* *Sun Peng Lui*

Address: 42/F Edinburgh Tower,  
15 Queen's Road Central,  
Hong Kong

Tel: (852) 2166-5671/(852) 2166-5430/(852) 2166-5665

Fax: (852) 2804-6215

Attention: Sunny Lui/ Raymond Fung/ Sara Wong  
Risk & Agency

**The Intercreditor Agent**

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**

By: *David Gore* *Sun Peng Lui*

Address: 42/F Edinburgh Tower  
15 Queen's Road Central  
Hong Kong

Tel: (852) 2166-5414/(852) 2166-5415

Fax: (852) 2868-1874/(852) 2868-4925

Attention: Kenny Chan/ Annie Yuen  
Commercial Back Office - Loans

Copy to:

Société Générale Asia Limited

Address: 42/F Edinburgh Tower  
15 Queen's Road Central  
Hong Kong

Tel: (852) 2166-5671/(852) 2166-5430/(852) 2166-5665

Fax: (852) 2804-6215

Attention: Sunny Lui/Raymond Fung/Sara Wong  
Risk & Agency

---

**The Hotel Facility Agent and Project Facility Agent**

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**

By: *David Gore* *Sun Peng Lui*

Address: 42/F Edinburgh Tower  
15 Queen's Road Central  
Hong Kong

Tel: (852) 2166-5414/(852) 2166-5415

Fax: (852) 2868-1874/(852) 2868-4925

Attention: Kenny Chan/ Annie Yuen  
Commercial Back Office - Loans

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Address: 42/F Edinburgh Tower  
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Hong Kong

Tel: (852) 2166-5671/(852) 2166-5430/(852) 2166-5665

Fax: (852) 2804-6215

Attention: Sunny Lui/Raymond Fung/Sara Wong  
Risk & Agency

---

**The Global Coordinating Lead Arrangers**

**DEUTSCHE BANK AG, HONG KONG BRANCH**

By: *Philip Crotty* *Peter Lo*

Address: 55<sup>th</sup> Floor, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Tel: (852) 2203-7436

Fax: (852) 2203-7212

Attention: Jonathan Robinson  
Debt Products Group

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**

By: **David Gore** **Sun Peng Lui**

Address: 42/F Edinburgh Tower,  
15 Queen's Road Central,  
Hong Kong

Tel: (852) 2166-5414/(852) 2166-5415

Fax: (852) 2868-1874/(852) 2868-4925

Attention: Kenny Chan/Annie Yuen  
Commercial Back Office - Loans

Copy to:

Société Générale Asia Limited

Address: 42/F Edinburgh Tower  
15 Queen's Road Central  
Hong Kong

Tel: (852) 2166-5671/(852) 2166-5430/(852) 2166-5665

Fax: (852) 2804-6215

Attention: Sunny Lui/Raymond Fung/Sara Wong  
Risk & Agency



(Translation)

**MORTGAGE**

On the 14th day of September of the year two thousand four, at Avenida do Dr. Mário Soares, Bank of China Building, 25<sup>th</sup> Floor “D”, Macau where I attended for the purpose of the execution of this act, before me, **María Amélia António**, a Private Notary, appeared:

**FIRST:**

**Maddox, Matthew O.**, married, a citizen of the United States of America, holder of passport n°160178905, issued in Washington DC, United States of America on 4 December 1998, residing at n° 125 Rotunda S. João Bosco, 15<sup>th</sup> Floor “A”, Phoenix Terrace, Macau, acting in his capacity as a representative of:

**Wynn Resorts (Macau) S.A.**, in Chinese, 永利渡假村(澳門)股份有限公司 and, in English, Wynn Resorts Macau Limited, a company incorporated in Macau with its registered office at 429, Avenida da Praia Grande, 18<sup>th</sup> Floor, Praia Grande Commercial Centre, Macau Special Administrative Region, registered at the Macau Registry of Companies and Movable Property under n° 14917 (SO).

**SECOND:**

**Lui, Sun Peng**, married, British National Overseas citizen, holder of Hong Kong Identity Card, card number A835584(6) issued in Hong Kong on 18 October 1989, residing at Flat A, 19<sup>th</sup> Floor Wah Hai Mansion, 10-16 Fort Street, Hong Kong, and **Gore, David Edward**, married, Australian citizen, holder of Hong Kong Identity Card, card number P595621(1) issued in Hong Kong on 1 December 2003, residing at Flat F, 33/F Palatial Crest, 3 Seymour Road, Hong

Kong, and acting in their capacities as representatives of:

**Société Générale, Hong Kong Branch**, with its principal office at 42/F Edinburgh Tower, 15 Queen's Road Central, Hong Kong.

I verified: a) the identity of the parties to this deed by production of their respective identification documents; b) the capacity and authority of the first grantor to intervene in this act by a certificate issued by the Registry of Companies and Movable Property of Macau and a resolution, transmitted by fax, dated 9 September 2004 passed by the Board of Directors of the company represented by the first grantor stating that, among other things, the company has its own interest in having the obligations of other entities, in addition to its own obligations, secured by the mortgage created hereby because the transactions which require such security are relevant for the activities of the company and of the group of companies which they are all part of, and c) the capacity and authority of the second grantors to intervene in this act by two powers of attorney, one of which transmitted by fax. The documents above referred to which have been transmitted by fax are filed in my Office under n°s 4 and 3 in bundle n° 1/04 of documents transmitted by fax, pursuant to articles 62.3 and 60.3 of the Notarial Code. The certificate and one of the powers of attorney above referred to are filed in my Office under n°s 80 and 81 in bundle n° 1/04 of documents filed at the request of the parties.

**AND THEY DECLARED:**

That a group of institutions (hereinafter referred to as "the Secured Parties") have agreed to make available to Wynn Resorts (Macau) S.A. (hereinafter referred to as "the Borrower") certain loan and other facilities for the purpose,

subject to the terms and conditions set out in the respective documents (hereinafter referred to as “the Finance Documents”, a term that will include any amendments as may be introduced to such documents from time to time pursuant to their own provisions). It is a condition of the Secured Parties making the facilities available under the Finance Documents that a first mortgage be created over the rights of the Borrower to the lease of the land hereinafter referred to, including the ownership of all present and future constructions thereon and fixtures and accessions thereto. The mortgage shall be taken by Société Générale, Hong Kong Branch as security agent acting for and on behalf of the Secured Parties (hereinafter referred to as “the Bank” and always in its capacity as security agent acting for and on behalf of the Secured Parties). The scope of the mortgage is to secure the payment to the Bank of all obligations owing to the Secured Parties or any of them by the Borrower or all or any of the other Grantors under or pursuant to the Finance Documents or any of them whether present or future, actual or contingent and whether incurred by the Borrower or any other Grantor alone or jointly, and whether as principal or surety or in some other capacity (“the Secured Obligations”).

That, to secure the payment of the Secured Obligations to the Bank, including, without limitation, the liabilities of the Borrower under each Facility, the liabilities of the Borrower arising from bank guarantee n° 099/2002 dated 16 May 2002 issued by Banco Nacional Ultramarino, S.A. and any replacement bank guarantee thereof issued by the said bank under the Second Ranking Facility Agreement and meeting the requirements of the Concession Contract, and the liabilities of the Borrower under the Subordinated Funding, which Secured Obligations for

registration purposes only and without prejudice to the provisions of the Finance Documents are as follows:

1. Amount:

the aggregate maximum principal amount is the equivalent of US\$1,000,000,000 (one billion United States dollars), corresponding to MOP8,031,000,000 (eight billion and thirty one million patacas);

2. Interest:

interest is chargeable at a floating rate which currently varies between 3.38066% and 7.5% per annum; in the event of any default in payment, interest is chargeable at a floating rate which currently varies between 5.38066% and 7.5% per annum;

3. Expenses:

the amount of other payments, expenses, costs, taxes and indemnities is the equivalent of US\$100,000,000 (one hundred million United States dollars) corresponding to MOP803,100,000 (eight hundred and three million and one hundred thousand patacas),

the Borrower by way of this deed creates a first mortgage in favour of the Bank, who accepts it, over the rights of the Borrower to the lease of the land, not registered in the property index, given its nature and purpose, with an area of 64,518m<sup>2</sup> (sixty four thousand five hundred and eighteen square metres) named Fecho BPG – Zona B - Lote B1, located in the Macau peninsula at Zone B in the New Reclamation of the Outer Harbour (NAPE), bordering Rua Cidade de Sintra, Avenida de Sagres and Avenida 24 de Junho, described under n° 23137 at the Land Registry of Macau, whereat the said rights, which are granted for a period

of twenty five years as of 11 August 2004 subject to extension pursuant to the law, are registered in the name of the Company under inscription n° 29958F

This mortgage over the rights of the Borrower to the lease of the said land comprehends the right of ownership of any existing and future constructions thereon and fixtures and accessions thereto. The Bank hereby accepts the terms and conditions of all such rights as set out in the land concession contract which provides the title to the said lease.

The payment of interest secured by this mortgage covers all interest outstanding at any given moment and is not limited to interest accrued over a period of three years or of any other duration.

The Borrower undertakes to the Bank at all times during the subsistence of this mortgage that: a) it shall promptly notify the Bank in writing of any event or notice received by it that may reasonably be likely to prejudice materially the value of the rights of the Borrower to the lease of the said land and/or the mortgage hereunder or the ability of the Bank to realise the mortgage (except to the extent notification of such event or notice received has been given to the Bank by any Grantor); b) it shall not create, grant or permit to exist any lien over any of the rights of the Borrower to the lease of the said land (other than the mortgage created hereunder, any security created or to be created under the other Finance Documents in favour of the Bank, any lien referred to in paragraph 3(e), 3(f), 3(h), 3(i), 3(j) or 3(q) of Schedule 5 Part B of the Common Terms Agreement and any Mandatory Permitted Lien); c) it shall not assign, sell or dispose of in any other manner and for any purpose, all or any of the rights and property mortgaged hereunder.

This mortgage is enforceable upon an Enforcement Notice being issued by the Bank to the Borrower. The Bank shall not be liable by reason of (a) taking any action permitted by this mortgage or (b) any neglect or default in connection with any rights or property hereby mortgaged or (c) realising all or any rights and property hereby mortgaged, in each case except in the case of gross negligence or wilful misconduct on the part of the Bank.

The proceeds of any sale or other disposal of the rights and property hereby mortgaged shall be applied by the Bank in accordance with Clause 15 (*Application of Proceeds*) of the Deed of Appointment and Priority.

The Bank may, at any time after the delivery of an Enforcement Notice to the Borrower, place and keep, for such time as it shall determine, any proceeds received, recovered or realised by the enforcement of the mortgage at a separate suspense or impersonal account (which is interest-bearing provided that there is no tax liability on the Bank with respect to any interest in such account) to the credit of either the Borrower or the Bank, as the Bank shall determine, without having any obligation to apply the same or any portion thereof to the payment of the Secured Obligations. If the Secured Obligations have been fully discharged or would be fully discharged if the monies in such suspense account were applied towards satisfaction of the Secured Obligations, the Bank shall apply the monies in such suspense account towards satisfaction of the Secured Obligations and if there are any monies remaining in such suspense account after the Secured Obligations have been fully discharged, the Bank shall pay such remaining monies to the Borrower. Any interest accrued on any monies in such suspense or impersonal account shall be credited to such

suspense or, as the case may be, impersonal account and shall, subject to the foregoing, be applied towards satisfaction of the Secured Obligations.

No failure or delay on the part of the Bank to exercise its rights hereunder shall operate as a waiver thereof and such rights are cumulative and not exclusive of any securities provided by the Borrower and or remedies available in law. The Bank shall not be obliged, before enforcing this mortgage, to enforce or seek to enforce any other security in respect of the Secured Obligations.

The terms “Entidades Garantidas”, “Documentos de Financiamento”, “Outorgantes”, “Facilidades”, “Contrato da Facilidade de Segundo Grau”, “Contrato de Concessão”, “Financiamento Subordinado”, “Ônus Obrigatório Permitido” and “Aviso de Execução” shall have the same meaning as “Secured Parties”, “Finance Documents”, “Grantors”, “Facilities”, “Second Ranking Facility Agreement”, “Concession Contract”, “Subordinated Funding”, “Mandatory Permitted Lien” and “Enforcement Notice” respectively as defined in the deed of appointment and priority dated 14 September 2004 and made between, among others, the Borrower, Société Générale Asia Limited as intercreditor agent and the Bank as security agent (as amended, varied, novated, supplemented from time to time) (the “Deed of Appointment and Priority”) or, if not defined in the Deed of Appointment and Priority, the common terms agreement dated 14 September 2004 and made between, among others, the Borrower and Société Générale Asia Limited as intercreditor agent (as amended, varied, novated, supplemented from time to time).

Any documents, of whatever nature, issued by the Bank to the Borrower including without limitation an enforcement notice stating the amount of Secured

Obligations as at the date of such enforcement shall be treated as documents referred to in this deed for the purpose of article six hundred and eighty one of the Code of Civil Procedure.

The full and final discharge of the Secured Obligations as defined in the Deed of Appointment and Priority shall have the effect of releasing this mortgage. The Bank shall release this mortgage as soon as reasonably practicable following the satisfaction of the requirements set out in Clause 16.20 of the Deed of Appointment and Priority. If the Concession Contract should terminate prior to the full and final discharge of the Secured Obligations, this mortgage shall be reduced to the extent required to ensure that the casino referred to in Clause 42 of the Concession Contract reverts to the Macau Special Administrative Region free of this mortgage pursuant to Clause 43 of the Concession Contract.

This mortgage is governed by the laws of the Special Administrative Region of Macau and for any disputes arising from this agreement the parties submit to the jurisdiction of the Courts of Macau.

**AND THEY SAID NO FURTHER.**

I advised the parties to this deed that this act will not be effective between the parties and as against any third parties until it is registered.

I file in my record a certificate issued by the Macau Land Registry whereby I verified the description of the land and the inscription of the rights to the lease of the land and a certificate issued by the Finance Department of Macau whereby I verified the property index references.

As the parties to this deed do not understand the Portuguese language, I translated this deed verbally into English to them and they both assured me that it corresponds to their will.

I read and explained this act out loud and in the simultaneous presence of all.



Land Security Assignment

AN AGREEMENT made on 14 September 2004 between:

1. Wynn Resorts (Macau) S.A., a company incorporated in the Special Administrative Region of Macau (registered number 14917), with its registered office at 429 Avenida da Praia Grande, 18th Floor, Praia Grande Commercial Centre, Macau (“**the Company**”), herein represented by Mr Matthew O. Maddox, and
2. Société Générale, Hong Kong Branch, with its principal office at 42/F Edinburgh Tower, 15 Queen’s Road Central, Hong Kong, as agent for and on behalf of the Secured Parties (“**the Security Agent**”), herein represented by Mr Lui Sun Peng and Mr David Edward Gore.

## WHEREAS:

- A. The Secured Parties have agreed, subject to the terms and conditions in the Finance Documents, to make available to the Company certain loan and other facilities for the purpose of the Projects.
- B. It is a condition of the Secured Parties making the facilities available under the Finance Documents that the rights of the Company under the Land Concession Contract as specified herein are assigned in favour of the Security Agent (for and on behalf of the Secured Parties).

NOW, IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions and Interpretation

- 1.1 Definitions

In this Agreement, unless otherwise defined herein, all terms defined or referred to in the Deed of Appointment and Priority or, if not defined or referred to in the Deed of Appointment and Priority, the Common Terms Agreement, shall bear the same meaning when used in this Agreement and, in addition:

“Assignment” means the assignment with the scope referred to in Clause 3.

“Deed of Appointment and Priority” means the deed of appointment and priority dated 14 September 2004 and made between, among others, the Company, Société Générale Asia Limited as intercreditor agent, the Security Agent as security agent, the institutions defined therein as Original First Ranking Lenders, Second Ranking Finance Party and Third Ranking Finance Party.

“Land” means the land described in the Land Concession Contract as a plot of land with the area of 64,518 m<sup>2</sup> (sixty four thousand five hundred and eighteen square metres), named Lot B1, located in the Macau peninsula at Zone B in the New Reclamation of the Outer Harbour

(NAPE), bordering Rua Cidade de Sintra, Avenida de Sagres and Avenida 24 de Junho, with an assessed value of MOP319,360,971.00 (three hundred nineteen million three hundred and sixty thousand nine hundred and seventy one patacas), marked with the letters “B”, “B/a”, “B/b”, “B/c”, “B/g”, “B/h”, “B/i” in plant n.º 4672/1994, issued by the Cartography and Cadastre Department (DSCC) on March 2 2004 which is an integral part to the Land Concession Contract.

“Land Concession” means the lease of the Land to the Company granted by Dispatch n.º 81/2004 of the Secretary for Transportation and Public Works of the Government of the Macau SAR dated 4 August 2004, the terms of which are as set out in the Land Concession Contract.

“Land Concession Contract” means the contract setting out the terms of the lease of the Land to the Company, agreed to by the Company with the Macau SAR on 4 June 2004, which forms an integral part of Dispatch n.º 81/2004 and is appended as a schedule hereto.

“Mortgage” means a mortgage created on the Land and all present and future constructions on and fixtures and accessions to the Land pursuant to a mortgage deed dated 14 September 2004 executed between the Company and the Security Agent.

“Rights under the Land Concession Contract” means all of the rights of the Company under the Land Concession Contract (including, without limitation, the right to develop a hotel-resort-casino complex on the Land, the right to own all present and future constructions on and fixtures to the Land and the right to extend the duration of the Land Concession Contract in accordance with the laws of the Macau SAR, as stipulated in the Land Concession Contract).

“Security Agent’s Rights” means all rights, powers and remedies of the Security Agent provided by this Agreement or by law.

## 1.2 Interpretation

In this Agreement:

- (a) the principles of construction and interpretation contained or referred to in Clause 1.2 (*Construction*) of the Deed of Appointment and Priority shall apply to the construction and interpretation of this Agreement; and
- (b) any reference to any or all of the Grantors or any or all of the Secured Parties shall be construed so as to include its or their (and any subsequent) successors and any permitted assignees and transferees in accordance with their respective interests.

## 1.3 Non-recourse Liability

Notwithstanding any provision in the Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Finance Document to which such Operative is party. The sole recourse of the Secured Parties for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Finance Documents shall be against the Obligors, and not against any assets or property of any Operative save to the extent such Operative is party to a

Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

## 2. Payment of Secured Obligations

The Company shall discharge and pay to the Security Agent (when due and payable) each of the Secured Obligations in accordance with the Finance Documents provided that:

- (a) neither the obligations of the Company under this Clause nor the security constituted by this Agreement shall extend to or include any liability or sum which would, but for this proviso, cause such obligations or security to be unlawful or prohibited by any applicable law; and
- (b) every payment by the Company of any sum in respect of the Secured Obligations to or for the account of any of the Secured Parties to whom the same is due and payable which is made in accordance with the terms of the Finance Documents under which such sum is payable to such Secured Parties shall operate in satisfaction *pro tanto* of such covenant.

## 3. Assignment

The Company hereby assigns by way of security the Rights under the Land Concession Contract to the Security Agent as security for the discharge and payment of the Secured Obligations to the Security Agent.

## 4. Enforcement and Effect of Assignment

4.1 The Security Agent may, after delivering an Enforcement Notice to the Company, enforce the Assignment or exercise the Security Agent's rights under the Assignment by:

- (a) curing or attempting to cure, for and on behalf of the Company, any breaches or defaults of the Company under the Land Concession Contract, with or without any prior notice of such breaches or defaults from the Government of the Macau SAR including carrying out acts of conservation within the spirit of Section 266 of the Macau Civil Code;
- (b) obtaining authorisation from the Government of the Macau SAR pursuant to Clause 13.1 of the Land Concession Contract (which authorisation the Government of the Macau SAR has undertaken to give in paragraph B.2 of the Land Concession Consent Agreement) for an assignment of the Rights under the Land Concession Contract in favour of the Security Agent following which the Company shall be removed as lessee of the Land and the Security Agent shall become the lessee thereof, assuming the Rights under the Land Concession Contract including the right to complete (or to designate a Person/entity to complete) the development of the first phase and the second phase referred to in the Land Concession Contract, and cure any defaults of the Company under the Land Concession Contract, namely for failure to pay amounts under the Land Concession Contract;
- (c) after obtaining the authorisation referred to in Clause 4.1(b), applying for authorisation from the Government of the Macau SAR to further enforce the Assignment, subject to the limitations and restrictions under the Land

Concession Contract as amended pursuant to Clause 13.1 of the Land Concession Contract, in favour of a third party provided the assignee assumes the obligations of the Company or the Security Agent under the Land Concession Contract, in which case the Security Agent shall be removed as lessee of the Land and such assignee shall become the lessee thereof, assuming the Rights under the Land Concession Contract including the right to complete the development of the first phase and the second phase referred to in the Land Concession Contract, and cure any defaults under the Land Concession Contract, namely for failure to pay amounts under the Land Concession Contract, and/or

- (d) obtaining authorisation from the Government of the Macau SAR (which authorisation the Government of the Macau SAR has undertaken to give in paragraph B.4 of the Land Concession Consent Agreement) for an assignment of the Rights under the Land Concession Contract in favour of the Person purchasing the rights of the Company to the Land Concession pursuant to an enforcement of the Mortgage by the Security Agent provided the assignee assumes the obligations of the Concessionaire or the Security Agent under the Land Concession Contract, in which case the assignee shall become the lessee thereof, assuming the Rights under the Land Concession Contract including the right to complete the development of the first phase and the second phase referred to in the Land Concession Contract.

4.2 So long as Wynn Resorts has not delivered a notice under Clause 5.2 of the Wynn Resorts Support Agreement terminating its obligations under Clause 6 thereof, the Security Agent shall, prior to the acceptance of any offer made by a Senior Secured Creditor for the purchase of all or any of the rights of the Company under the Land Concession Contract subject to the Assignment, give reasonable details of all of the written offers received by the Security Agent for the purchase of such rights of the Company under the Land Concession Contract.

4.3 In making any sale or other disposal of all or any part of the rights of the Company under the Land Concession Contract or any acquisition in the exercise of its powers, the Security Agent may do so for such consideration, in such manner, and generally on such terms and conditions as it thinks fit. Any contract for such sale, disposal or acquisition by the Security Agent may contain conditions excluding or restricting the personal liability of the Security Agent.

#### 5. Documenting Enforcement of Assignment

The enforcement of the Assignment in the manner described in Clause 4.1(b), 4.1(c) and/or 4.1(d) shall, if requested by the Security Agent, be effected through the entering into a revision to the Land Concession Contract which will substitute the name and references to the Company as lessee of the Land with the name of the Security Agent or, as the case may be, the relevant assignee.

#### 6. Representations and Warranties of Company

The Company hereby makes the following representations and warranties to the Security Agent (for and on behalf of the Secured Parties) and acknowledges that the Secured Parties have relied upon those representations and warranties:

- (a) the Company has not assigned or otherwise disposed or purported to assign or otherwise dispose of any of the Rights under the Land Concession Contract except for the assignment created hereunder and the security created under the Mortgage;

- (b) this Agreement constitutes an effective assignment over the Charged Property provided that the authorisation from the Government of the Macau SAR referred to in Clause 4 is obtained;
- (c) it is the sole and absolute owner of all of the rights granted to the Company under the Land Concession Contract free from any Lien (except for any Lien referred to in paragraph 3(f) or 3(q) of Schedule 5 Part B of the Common Terms Agreement and any Mandatory Permitted Lien);
- (d) all acts, conditions and things required to be done, fulfilled and performed in order (i) to enable it lawfully to enter into, and perform and comply with the obligations expressed to be assumed by it in, this Agreement (ii) to ensure that the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable and (iii) to make this Agreement admissible in evidence in its jurisdiction of incorporation and in Macau SAR, have been done, fulfilled and performed; and
- (e) under the laws of Macau in force at the date hereof, it is not necessary that this Agreement be filed, recorded or enrolled with any court or other authority in Macau or that any stamp, registration or similar tax be paid on or in relation to this Agreement other than a stamp duty of MOP20.00 on this Agreement and a stamp duty of MOP5.00 on any of its counterparts.

7. Reliance on Representations and Warranties

The representations and warranties contained in Clause 6 (other than Clauses 6.1(b), 6.1(d)(iii) and 6.1(e)) shall be deemed to be repeated (by reference to the facts and circumstances then existing) by the Company on:

- (a) the CP Satisfaction Date; and
- (b) each Advance Date.

8. Undertakings and Rights Prior to Enforcement

8.1 The Company undertakes to the Security Agent (for and on behalf of the Secured Parties) at all times during the subsistence of this Agreement as follows:

- (a) the Company will not assign or otherwise dispose or undertake to assign or otherwise dispose to any Person all or any of the Rights under the Land Concession Contract (other than the assignment created hereunder and the Mortgage);
- (b) the Company will not create, grant or permit to exist any Lien (including without limitation any assignment) over all or any of the Rights under the Land Concession Contract (other than any Lien referred to in paragraph 3(f) or (q) of

Schedule 5 Part B of the Common Terms Agreement and any Mandatory Permitted Lien);

- (c) the Company will promptly notify the Security Agent in writing of the occurrence of any event or the receipt by it of any notice that could reasonably be likely to prejudice significantly the value of the Assignment or all or any of the Rights under the Land Concession Contract or the ability of the Security Agent to enforce its rights hereunder and/or to enforce the Assignment;
- (d) the Company will:
  - (i) at any time after the Security Agent shall have delivered an Enforcement Notice, at the written request of the Security Agent, deliver a written notice to the Security Agent within 5 Business Days of such request setting out all its outstanding obligations or liabilities under the Land Concession Contract, the Company acknowledging that, if the Security Agent enforces the Assignment, it will do so in reliance of such notice setting out such outstanding obligations or liabilities provided by the Company under this sub-paragraph;
  - (ii) promptly, upon the Security Agent's written request after the issuance of the Enforcement Notice to the Company, furnish the Security Agent with all information and documentation in its possession required for the performance of the Land Concession Contract by the Security Agent (save where such disclosure is prohibited by law); and
  - (iii) do and execute all things and documents as the Security Agent shall require it to do or execute for the purpose of exercising the Security Agent's Rights, securing and/or perfecting the Assignment and/or enforcing the Assignment provided that any such requirement shall be reasonable prior to the delivery of an Enforcement Notice to the Company.

8.2 Notwithstanding Clause 3 of this Agreement, unless and until the issuance of an Enforcement Notice by the Security Agent to the Company, the Company shall be entitled to exercise all of its Rights under the Land Concession Contract.

#### 9. Indemnity to the Security Agent

9.1 The Company acknowledges that all actions which the Security Agent or its designees or assignees shall take in order to cure or attempt to cure, with or without any prior notice from the Government of the Macau SAR, any breaches or defaults of the Company under the Land Concession Contract, including carrying out acts of conservation within the spirit of Section 266 of the Macau Civil Code, for and on behalf of the Company shall be executed in the name of the Security Agent for and on behalf of the Company or in the name of the Company, and the Company accepts full responsibility for any such actions except for any liability which arises as a consequence of any gross negligence or wilful misconduct of the Security Agent or its designees or assignees.

9.2 If legal proceedings are instituted against the Security Agent as a result of the taking of any action referred to in Clause 9.1, save in the case where such legal proceedings arise as a consequence of the gross negligence or wilful misconduct of the Security Agent, the Company undertakes to join the Security Agent in the said legal proceedings as a defendant to the

extent permitted by law, accepting the premise that the Security Agent will have recourse against the Company for any sums payable under a judgment obtained in such legal proceedings that is entered against the Security Agent except for any liability which arises as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent or its designees or assignees.

9.3 Without prejudice to the provisions of Clauses 9.1, 9.2 and 14, the Company shall on demand indemnify and keep indemnified the Security Agent against any liability and all taxes, including without limitation stamp duty, sums and expenses (other than any cost or expense which arises as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent or its designees or assignees), including court and legal fees, registration and notary fees and fees of any other nature which the Security Agent has incurred in order to do, or as a result of any of the following:

- (a) curing or attempting to cure any breaches or defaults of the Company under the Land Concession Contract pursuant to Clause 4.1(a) and 4.1(b);
- (b) amending the Land Concession Contract pursuant to Clause 5 for the purpose of enforcing the Assignment;
- (c) completing the development of the Land for the completion of the Projects; and/or
- (d) obtaining the licence of utilisation for the constructions built on the Land and registering the Land Concession both provisionally and definitively.

#### 10. Application of Moneys

10.1 The proceeds of:

- (a) enforcement of the Assignment;
- (b) any sale or other disposal of all present and future constructions on and fixtures to the Land or any portion thereof and generally
- (c) all moneys received or recovered by the Security Agent pursuant to this Agreement or the powers conferred by it,

shall (subject to (a) the claims of any Person having prior rights thereto and (b) Clause 10.2) be applied by the Security Agent (notwithstanding any purported appropriation by the Company or any other Grantor) in accordance with Clause 15 (*Application of Proceeds*) of the Deed of Appointment and Priority.

10.2 Notwithstanding any other provision of the Finance Documents, the Security Agent may, at any time after the delivery of an Enforcement Notice to the Company, pay any or all of the moneys received, recovered or realised by the Security Agent under this Agreement (including without limitation the proceeds of any conversion of currency) into any suspense or impersonal account (which is interest-bearing provided that there is no tax liability on the Security Agent with respect to any interest in such account) for so long as the Security Agent shall think fit (whether or not any Secured Obligations shall have become due) pending any further application of such moneys (as the Security Agent shall be entitled, but not obliged, to do in its discretion) in accordance with the provisions of Clause 10.1. If the Secured Obligations have been fully discharged or would be fully discharged if the moneys in such

suspense or impersonal account were applied towards satisfaction of the Secured Obligations, the Security Agent shall apply the moneys in such suspense or impersonal account towards satisfaction of the Secured Obligations and if there are any moneys remaining in such suspense or impersonal account after the Secured Obligations have been fully discharged, the Security Agent shall pay such remaining moneys to any Person as directed by the Company. Any interest accrued on any moneys in such suspense or impersonal account shall be credited to such suspense or, as the case may be, impersonal account and shall, subject to the terms of this Clause 10.2, be applied towards satisfaction of the Secured Obligations.

11. Company's Obligations

The obligations of the Company hereunder and the Security Agent's Rights shall not be discharged, impaired or otherwise affected by:

- (a) any winding-up, dissolution, re-organisation, bankruptcy, death or insolvency of, or any change in, the Company or any other Person;
- (b) any of the Secured Obligations being at any time illegal, invalid, unenforceable or ineffective;
- (c) any unenforceability or invalidity of any other agreement or document;
- (d) any time or other indulgence being granted to the Company or any other Person in respect of any of the Secured Obligations;
- (e) any amendment, variation, waiver or release of any of the Secured Obligations except for a release or discharge in accordance with Clause 16.20 of the Deed of Appointment and Priority;
- (f) any variation of the terms upon which the Security Agent holds the security constituted hereby;
- (g) any failure to take or failure to realise the value of any other collateral in respect of the Secured Obligations or any release, discharge, exchange or substitution of any such collateral; or
- (h) any other act, event or omission which but for this provision would or might operate to impair, discharge or otherwise affect any or all of the obligations of the Company or the Security Agent's Rights hereunder.

12. Effectiveness of Collateral

12.1 No failure on the part of the Security Agent to exercise, or delay on its part in exercising, any Security Agent's Right shall operate as a waiver thereof, nor shall any single or partial exercise of a Security Agent's Right preclude any further or other exercise of that or any other Security Agent's Right.

12.2 The Security Agent shall not be obliged, before exercising any Security Agent's Right as against the Company (a) to make any demand of any other Grantor or any other Person, (b) to take any action or obtain judgment in any court against the Company, any other Grantor or any other Person, (c) to make or file any proof or claim in a liquidation, bankruptcy or insolvency of the Company, any other Grantor or any other Person or (d) to enforce or seek to enforce any other security in respect of the Secured Obligations.



12.3 Until the satisfaction of the requirements set out in Clause 16.20 of the Deed of Appointment and Priority in respect of the release of security, any settlement or discharge hereunder shall be conditional upon no security or payment to the Security Agent by or on behalf of the Company and/or any other Grantor being avoided or reduced by virtue of the Company's or any other Grantor's bankruptcy, insolvency, liquidation or similar laws of general application and shall in those circumstances be void.

13. Set-Off

The Company authorises the Security Agent (but the Security Agent shall not be obliged to exercise such right) from time to time to, after the delivery of an Enforcement Notice to the Company, set off against any or all of the sums due and payable but unpaid by and/or any or all of the obligations of the Company to the Security Agent under this Agreement any amount or other obligation (contingent or otherwise) owing by the Security Agent to the Company and apply any credit balance to which the Company is entitled on any account with the Security Agent in discharge of such sums payable by and/or such obligations of the Company (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

14. Expenses, Stamp, Taxes and Liability

14.1 Expenses

The Company shall, from time to time on demand of the Security Agent, reimburse the Security Agent (to the extent that the Security Agent has not been reimbursed or indemnified under Clause 9 or Clause 14.3) for:

- (a) at any time prior to the delivery of an Enforcement Notice to the Company, all reasonable costs and expenses (including legal fees); or
- (b) at any time upon or after the delivery of an Enforcement Notice to the Company, all costs and expenses (including legal fees)

on a full indemnity basis incurred by it in connection with:

- (i) the perfection of the security contemplated in this Agreement; and
- (ii) the exercise, preservation and/or enforcement of any of the Security Agent's Rights or the security contemplated by this Agreement or any proceedings instituted by or against the Security Agent as a consequence of taking or holding the security or of enforcing the Security Agent's Rights,

and such costs and expenses (including legal fees) shall carry interest from the date following 14 days after the date of such demand until so reimbursed at the rate and on the basis as mentioned in Clause 19.5 (*Interest on demands*) of the Deed of Appointment and Priority.

14.2 Stamp Taxes

The Company shall pay all stamp, registration and other taxes to which this Agreement, the security contemplated in this Agreement or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Security Agent on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in

paying any such tax other than any liabilities, costs, claims and expenses which arise as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent.

#### 14.3 Indemnity

The Company shall, notwithstanding any release or discharge of all or any part of the security, indemnify the Security Agent, its designees or nominees and any attorneys against any action, proceeding, claims, losses, liabilities and costs which it has sustained as a consequence of any breach by the Company of the provisions of this Agreement, the exercise of any of the rights and powers conferred on them by this Agreement (other than any loss or cost which arises as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent) provided that such costs shall be reasonable prior to the delivery of an Enforcement Notice to the Company. The Company is not liable to indemnify the Security Agent against any costs referred to in this Clause 14.3 to the extent that such costs have been paid by the Company to the Security Agent under Clause 14.1.

#### 14.4 No Liability

Subject to Clause 4.2, none of the Security Agent or its designees or nominee(s) shall be liable by reason of (a) taking any action permitted by this Agreement or (b) any neglect or default in connection with all or any part of the Rights under the Land Concession Contract or (c) enforcing the Assignment, in each case except in the case of gross negligence or wilful default on its part. The Company shall indemnify (to the extent that the Security Agent has not been indemnified under Clause 9) the Security Agent, its designees or nominees and any attorneys against any action, proceeding, claims, losses, liabilities and costs which it has sustained as a consequence of assuming the obligations under the Land Concession Contract if the Security Agent becomes the lessee thereof pursuant to an enforcement of the Assignment authorised by the Government of the Macau SAR other than any loss, liability or cost which arises as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent.

#### 15. Currency Conversion And Indemnity

15.1 For the purpose of or pending the discharge of any or all of the Secured Obligations, the Security Agent may convert any moneys received, recovered or realised or subject to application by the Security Agent pursuant to this Agreement from the currency of such moneys to another for such purpose and any such conversion shall be made at the Security Agent's spot rate of exchange for the time being (or such other rate as may be available to the Security Agent from time to time in the ordinary course of business) for obtaining such other currency with the first currency and the Secured Obligations shall be discharged only to the extent of the net proceeds of such conversion received by the Security Agent.

15.2 If any sum (a "**Sum**") due from the Company under this Agreement or any order or judgment given or made in relation thereto has to be converted from the currency (the "**First Currency**") in which such Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (a) making or filing a claim or proof against the Company; or
- (b) obtaining or enforcing an order or judgment in any court or other tribunal,

the Company shall (through the Security Agent) indemnify each Person to whom such Sum is due from and against any loss suffered or incurred as a result of any discrepancy between (a) the rate of exchange used for such purpose to convert such Sum from the First Currency into the Second Currency and (b) the rate or rates of exchange at which such Person may in the ordinary course of business purchase the First Currency with the Second Currency at the time of receipt of such Sum.

16. Payments Free Of Deduction

All payments to be made by the Company under this Agreement shall be made free and clear of and without deduction for or on account of tax unless the Company is required to make such payment subject to the deduction or withholding of tax, in which case the sum payable by the Company in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Person on account of whose liability to tax such deduction or withholding has been made receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

17. Partial Invalidity

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the security intended to be created by or pursuant to this Agreement is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

18. Discretion And Delegation

18.1 Any liberty or power which may be exercised or any determination which may be made hereunder by the Security Agent may, subject to the terms and conditions of the Deed of Appointment and Priority, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons save that the Security Agent shall act in a reasonable manner if expressly required hereunder.

18.2 The Security Agent shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Agreement on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise of such power, authority or discretion by the Security Agent itself or any subsequent delegation or revocation thereof.

19. Amendment

The terms of this Agreement may be amended by an instrument in writing executed by all parties hereto or their successors or permitted assignees and/or transferees with notarised signatures or in any other form as required by law.

20. Changes to Parties

20.1 The Company may not assign or transfer any or all of its rights (if any) and/or obligations under this Agreement.

20.2 The Security Agent may assign its rights and transfer its obligations (if any) under this Agreement in accordance with the provisions of the Deed of Appointment and Priority provided that it is acknowledged that such assignment or transfer shall not in any way prejudice the priority of the security constituted by this Agreement (which shall be assigned to such successor Security Agent pursuant to the terms of the Deed of Appointment and Priority). Upon such assignment and transfer taking effect, the successor Security Agent shall be and be deemed to be acting as agent for the Secured Parties for the purposes of this Agreement and in place of the former Security Agent.

20.3 Subject to the relevant provisions of the Finance Documents, each Secured Party may assign all or any of its rights under this Agreement (whether direct or indirect) in accordance with the provisions of the Finance Documents. It is acknowledged that none of the Finance Parties has or shall have any obligation under this Agreement.

20.4 The Company irrevocably and unconditionally confirms that:

- (a) it consents to any assignment or transfer by any Secured Party of its rights and/or obligations made in accordance with the provisions of the Finance Documents;
- (b) it shall continue to be bound by the terms of this Agreement, notwithstanding any such assignment or transfer; and
- (c) the assignee or transferee of such Secured Party shall acquire an interest in this Agreement upon such assignment or transfer taking effect.

21. Notices

21.1 Any communication to be made under or in connection with this Agreement shall be made in writing but, unless otherwise stated, may be made by fax or letter.

21.2 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Agreement is identified with its signature below, or any substitute address, fax number or department or officer as the party may notify to the other party by not less than 10 Business Days' notice.

21.3 Any communication or document made or delivered by one Person to another under or in connection with this Agreement shall only be effective:

- (a) if delivered personally or by overnight courier, when left at the relevant address;
- (b) if by way of fax, when received in legible form; or
- (c) if by way of letter, when it has been left at the relevant address or 10 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 21.2, if addressed to that department or officer.

Any communication or document to be made or delivered by one Person to another shall be effective only when actually received by that Person and then only if it is expressly marked for the attention of the department or officer identified with that Person's signature below (or any substitute department or officer as that Person shall specify for this purpose).

22. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Macau.

23. Jurisdiction

23.1 The Company irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Macau to settle any disputes (a "**Dispute**") arising out of, or in connection with this Agreement (including without limitation a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity).

23.2 Notwithstanding Clause 23.1, any Secured Party may take proceedings relating to a Dispute ("**Proceedings**") in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent Proceedings in any number of jurisdictions.

23.3 The Company waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:

- (a) the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and
- (b) the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action *in rem*, for the arrest, detention or sale of any of its assets and revenues.

24. Exercise of Rights

Notwithstanding anything contained in Clause 23.2 to the contrary, the Secured Parties will only exercise their rights under this Agreement through the Security Agent unless and until the appointment of the Security Agent ceases and no successor Security Agent is appointed under Clause 17.1 (*Resignation of Security Agent*) of the Deed of Appointment and Priority.

25. Counterpart

This Agreement may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement.

IN WITNESS WHEREOF this Agreement has been executed on the date first above written.

***Matthew O. Maddox***

Matthew O. Maddox

Address: 429 Avenida da Praia Grande,  
18th Floor, Praia Grande Commercial Centre,  
Macau

Telephone: (853) 371476

Fax: (853) 329966

Attention: Chief Financial Officer

With a copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Telephone: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

**Notária Privada**  
**Maria Amélia António**  
*Maria Amélia António*

***Sun Peng Lui***

Lui Sun Peng

Address: 42/F Edinburgh Tower,  
15 Queen's Road Central,  
Hong Kong

Telephone: (852) 2166-5671/ (852) 2166-5430/ (852) 2166-5665

Fax: (852) 2804-6215

Attention: Sunny Lui/ Raymond Fung/ Sara Wong  
Risk & Agency

**Notária Privada**

**Maria Amélia António**

**Maria Amélia António**

***David Edward Gore***

David Edward Gore

Assignment of Rights

AN AGREEMENT made on 14 September 2004 between:

1. Wynn Resorts (Macau) S.A., a company incorporated in the Special Administrative Region of Macau, with its registered office at 429, Avenida da Praia Grande, 18th Floor, Praia Grande Commercial Centre, Macau (“**the Company**”), herein represented by Mr Matthew O. Maddox, and
2. Société Générale, Hong Kong Branch, with its principal office at 42/F Edinburgh Tower, 15 Queen’s Road Central, Hong Kong, as agent for and on behalf of the Secured Parties (“**the Security Agent**”), herein represented by Mr Lui Sun Peng and Mr David Edward Gore.

WHEREAS:

- A. The Secured Parties have agreed, subject to the terms and conditions in the Finance Documents, to make available to the Company certain loan and other facilities for the purpose of the Projects.
- B. It is a condition of the Secured Parties making the facilities available under the Finance Documents that certain rights of the Company under or derived from the Concession Contract as described herein are assigned in favour of the Security Agent (for and on behalf of the Secured Parties).

NOW, IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, unless otherwise defined herein, all terms defined or referred to in the Deed of Appointment and Priority or, if not defined or referred to in the Deed of Appointment and Priority, the Common Terms Agreement, shall bear the same meaning when used in this Agreement and, in addition:

“Assigned Rights” means the right to any and all Government Amounts.

“Assignment” means the assignment with the scope referred to in Clause 2.

“Deed of Appointment and Priority” means the deed of appointment and priority dated 14 September 2004 and made between, among others, the Company, Société Générale Asia Limited as intercreditor agent, the Security Agent as security agent, the institutions defined therein as Original First Ranking Lenders, Second Ranking Finance Party and Third Ranking Finance Party.



“Gaming Concession” means the concession granted to the Company to operate games of chance or other games in casino in the Special Administrative Region of Macau by Dispatch n° 142/2002 dated 24 June 2002 of the Chief Executive of the Government of the Special Administrative Region of Macau.

“Gaming Concession Consent Agreement” means the agreement relating to security (with the exclusion of land concession and immovable property) dated 14 September 2004 between Macau SAR, the Company and the Security Agent.

“Government Amount” means any sum payable by Macau SAR to the Company:

- (a) under or pursuant to Clause 78(5) of the Concession Contract; and/or
- (b) under a direct determination of any res judicata judgment by the courts of Macau SAR or any final arbitration award arising from the Concession Contract.

“Secured Parties” has the meaning given in the Deed of Appointment and Priority.

“Security Agent’s Rights” means all the rights, powers and remedies of the Security Agent provided by this Agreement or by law.

## 1.2 Interpretation

In this Agreement:

- (a) the principles of construction and interpretation contained or referred to in Clause 1.2 (*Construction*) of the Deed of Appointment and Priority shall apply to the construction and interpretation of this Agreement; and
- (b) any reference to any or all of the Grantors or any or all of the Secured Parties shall be construed so as to include its or their (and any subsequent) successors and any permitted assignees and transferees in accordance with their respective interests.

## 1.3 Non-recourse Liability

Notwithstanding any provision in the Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Finance Document to which such Operative is party. The sole recourse of the Secured Parties for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Finance Documents shall be against the Obligors, and not against any assets or property of any Operative save to the extent such Operative is party to a Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

## 2. Scope of Assignment

2.1 The Company shall discharge and pay to the Security Agent (when due and payable) each of the Secured Obligations in accordance with the Finance Documents provided that:

- (a) neither the obligations of the Company under this Clause 2.1 nor the assignment constituted by this Agreement shall extend to or include any liability or sum which would cause such obligations or security to be unlawful or prohibited by any applicable law; and

- (b) every payment by the Company of any sum in respect of the Secured Obligations to or for the account of any of the Secured Parties to whom the same is due and payable which is made in accordance with the terms of the Finance Documents under which such sum is payable to such Secured Parties shall operate in satisfaction *pro tanto* of such covenant.

2.2 The Company hereby assigns by way of security all of the Assigned Rights to the Security Agent as security for the discharge and payment of the Secured Obligations to the Security Agent.

3. Enforcement of Assignment

3.1 The Security Agent may enforce the Assignment after the Security Agent shall have delivered an Enforcement Notice to the Company by enforcing and/or exercising all or any of the Assigned Rights.

3.2 So long as Wynn Resorts has not delivered a notice under Clause 5.2 of the Wynn Resorts Support Agreement terminating its obligations under Clause 6 thereof, the Security Agent shall, prior to the acceptance of any offer made by a Senior Secured Creditor for the purchase of all or any of the Assigned Rights, give reasonable details of all of the written offers received by the Security Agent for the purchase of such Assigned Rights.

3.3 In making any sale or other disposal of all or any part of the Assigned Rights or any acquisition in the exercise of its powers, the Security Agent may do so for such consideration, in such manner, and generally on such terms and conditions as it thinks fit. Any contract for such sale, disposal or acquisition by the Security Agent may contain conditions excluding or restricting the personal liability of the Security Agent.

4. Representations and Warranties of Company

4.1 The Company hereby makes the following representations and warranties to the Security Agent (for and on behalf of the Secured Parties) and acknowledges that the Secured Parties have relied upon those representations and warranties:

- (a) the Company has not assigned or otherwise disposed or purported to assign or otherwise dispose of any of its right, title or interest in relation to the Assigned Rights or any part thereof (other than the assignment created hereunder);
- (b) save for the giving of notice of the Assignment to the Macau SAR, this Agreement:
  - (i) constitutes an effective assignment over the Assigned Rights; and
  - (ii) enjoys the priority which it is expressed to have;
- (c) it is the sole and absolute owner of all of the Assigned Rights free from any Lien (except for any Lien referred to in paragraph 3(f) or 3(q) of Schedule 5 Part B of the Common Terms Agreement and any Mandatory Permitted Lien);

- (d) all acts, conditions and things required to be done, fulfilled and performed in order (i) to enable it lawfully to enter into, perform and comply with the obligations expressed to be assumed by it in this Agreement, (ii) to ensure that the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable and (iii) to make this Agreement admissible in evidence in Macau SAR, have been done, fulfilled and performed; and
- (e) under the laws of Macau SAR in force at the date hereof, it is not necessary that this Agreement be filed, recorded or enrolled with any court or other authority in Macau SAR or that any stamp, registration or similar tax be paid on or in relation to this Agreement other than a stamp duty of MOP20.00 on this Agreement and a stamp duty of MOP5.00 on any of its counterparts.

4.2 The representations and warranties contained in Clause 4.1 (other than Clauses 4.1(b), 4.1(d)(iii) and 4.1(e)) shall be deemed to be repeated (by reference to the facts and circumstances then existing) by the Company on;

- (a) the CP Satisfaction Date; and
- (b) each Advance Date.

5. Undertakings

The Company undertakes to the Security Agent (for and on behalf of the Secured Parties) at all times during the subsistence of this Agreement as follows:

- (a) the Company shall not assign or otherwise dispose of or undertake to assign or otherwise dispose of to any Person all or any of the Assigned Rights (other than the assignment created hereunder);
- (b) the Company shall not create, grant or permit to exist any Lien over all or any of the Assigned Rights (except for any Lien referred to in paragraph 3(f) or 3(q) of Schedule 5 Part B of the Common Terms Agreement and any Mandatory Permitted Lien);
- (c) the Company shall not, without the prior written consent of the Security Agent, agree to any reduction or settlement of any amount payable by Macau SAR under or pursuant to the Concession Contract unless such amount is less than US\$500,000;
- (d) the Company shall not, without the prior written consent of the Security Agent, revoke or change its request/direction to pay all Government Amounts into the account referred to in paragraph B.6 (*Payment to Designated Account*) of the Gaming Concession Consent Agreement;
- (e) the Company shall promptly notify the Security Agent in writing of:
  - (i) the occurrence of any circumstance (including, without limitation, any breach of any obligations of Macau SAR under the Concession Contract) which could reasonably be expected to give rise to a claim against Macau SAR under the Concession Contract;
  - (ii) the occurrence of any event or the receipt by it of any notice that could reasonably be expected to prejudice (1) materially the value of the Assignment, (2) all or any of the Assigned Rights or (3) the ability of the

Security Agent to enforce its rights hereunder and/or to enforce the Assignment; and

- (iii) each and every Government Amount;
- (f) the Company shall:
  - (i) at any time after the Security Agent shall have delivered an Enforcement Notice and at the written request of the Security Agent, deliver a written notice to the Security Agent within 15 days of such request setting out in reasonable detail all outstanding Government Amounts, the Company acknowledging that, if the Security Agent enforces the Assignment, it will do so in reliance of such notice;
  - (ii) promptly, upon the Security Agent's written request, furnish the Security Agent with all information and documentation in its possession required or convenient for the exercise or enforcement by the Security Agent of its rights under and/or arising under this Agreement unless such disclosure is prohibited by law provided that any such requirement shall be reasonable prior to the delivery of an Enforcement Notice to the Company; and
  - (iii) do and execute all things and documents as the Security Agent shall require it to do or execute for the purpose of exercising the Security Agent's Rights, securing and/or perfecting the Assignment and/or enforcing the Assignment provided that any such requirement shall be reasonable prior to the delivery of an Enforcement Notice to the Company.; and
- (g) if, notwithstanding paragraph B.6 (*Payment to Designated Account*) of the Gaming Concession Consent Agreement, the Company receives any Government Amount prior to the discharge of the security constituted hereunder by the Security Agent as contemplated by Clause 16.20 of the Deed of Appointment and Priority, the Company shall immediately pay such Government Amounts to the Security Agent.

6. Indemnity to the Security Agent

6.1 The Company acknowledges that all actions which the Security Agent shall take in order to enforce the Assignment pursuant to Clause 3.1 shall be executed in the name of the Security Agent for an on behalf of the Company or in the name of the Company and the Company accepts full responsibility for any such actions.

6.2 If legal proceedings are instituted against the Security Agent as a result of the taking of any action referred to in Clause 6.1, save in the case where such legal proceedings arise as a consequence of the gross negligence or wilful misconduct of the Security Agent, the Company undertakes to join the Security Agent in the said legal proceedings as a defendant to the extent permitted by law, accepting the premise that the Security Agent will have recourse against the Company for any sums payable under a judgment obtained in such legal proceedings that is entered against the Security Agent, except for any loss which arises as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent.

6.3 Without prejudice to the provisions of Clauses 6.1 and 6.2, the Company shall on demand indemnify and keep indemnified the Security Agent against any liability and all taxes, including without limitation stamp duty, sums and expenses, including court and legal fees, registration and notary fees and fees of any other nature which the Security Agent may have

to incur, pay or make in order to, or as a result of the taking of any action referred to in Clause 6.1, other than any costs which arise as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent or its designees or assignees.

7. Application of Moneys

7.1 All moneys received or recovered by the Security Agent pursuant to this Agreement or the powers conferred by it shall (subject to (a) the claims of any Person having prior rights thereto and (b) Clause 7.2) be applied by the Security Agent (notwithstanding any purported appropriation by the Company or any other Grantor) in accordance with Clause 15 (*Application of Proceeds*) of the Deed of Appointment and Priority.

7.2 Notwithstanding any other provision of the Finance Documents, the Security Agent may, at any time after the delivery of an Enforcement Notice to the Company, pay any or all of the moneys received, recovered or realised by the Security Agent under this Agreement (including without limitation the proceeds of any conversion of currency) into any suspense or impersonal account (which is interest-bearing provided that there is no tax liability on the Security Agent with respect to any interest in such account) for so long as the Security Agent shall think fit (whether or not any Secured Obligations shall have become due) pending any further application of such moneys (as the Security Agent shall be entitled, but not obliged, to do in its discretion) in accordance with the provisions of Clause 7.1. If the Secured Obligations have been fully discharged or would be fully discharged if the moneys in such suspense or impersonal account were applied towards satisfaction of the Secured Obligations, the Security Agent shall apply the moneys in such suspense or impersonal account towards satisfaction of the Secured Obligations and if there are any moneys remaining in such suspense or impersonal account after the Secured Obligations have been fully discharged, the Security Agent shall pay such remaining moneys to any Person as directed by the Company. Any interest accrued on any moneys in such suspense or impersonal account shall be credited to such suspense or, as the case may be, impersonal account and shall, subject to the terms of this Clause 7.2, be applied towards satisfaction of the Secured Obligations.

8. Effectiveness of Collateral

8.1 No failure or delay on the part of the Security Agent to exercise any Security Agent's Right shall operate as a waiver thereof, nor shall any single or partial exercise of a Security Agent's Right by the Security Agent preclude any other or further exercise of that or any other Security Agent's Right. The Security Agent's Rights hereunder are cumulative to those provided by any other security in respect of the Secured Obligations and not exclusive of any remedies provided by law.

8.2 The Security Agent shall not be obliged, before exercising any Security Agent's Right as against the Company (a) to make any demand of any other Grantor or any other Person, (b) to take any action or obtain judgment in any court against the Company, any other Grantor or any other Person or, (c) to make or file any proof or claim in a liquidation, bankruptcy or insolvency of the Company, any other Grantor or any other Person or (d) to enforce or seek to enforce any other security in respect of the Secured Obligations.

8.3 Until the satisfaction of the requirements set out in Clause 16.20 of the Deed of Appointment and Priority in respect of the release of security, any settlement or discharge hereunder shall be conditional upon no security or payment to the Security Agent by or on

behalf of the Company and/or any other Grantor being avoided or reduced by virtue of the Company's or any other Grantor's bankruptcy, insolvency, liquidation or similar laws of general application and shall in those circumstances be void.

9. Set-Off

The Company authorises the Security Agent (but the Security Agent shall not be obliged to exercise such right) from time to time to, after the delivery of an Enforcement Notice to the Company, set off against any or all of the sums due and payable but unpaid by and/or any or all of the obligations of the Company to the Security Agent under this Agreement any amount or other obligation owing by the Security Agent to the Company and apply any credit balance to which the Company is entitled on any account with the Security Agent in discharge of such sums payable by and/or such obligations of the Company (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

10. Costs, Expenses And Liability

10.1 The Company shall, from time to time on demand of the Security Agent, reimburse the Security Agent for:

- (a) at any time prior to the delivery of an Enforcement Notice to the Company, all reasonable costs and expenses (including legal fees); or
- (b) at any time upon or after the delivery of an Enforcement Notice to the Company, all costs and expenses (including legal fees)

on a full indemnity basis incurred by it in connection with:

- (i) the perfection of the security contemplated in this Agreement; and
- (ii) the exercise, preservation and/or enforcement of any of the Security Agent's Rights or the security contemplated by this Agreement or any proceedings instituted by or against the Security Agent as a consequence of taking or holding the security or of enforcing the Security Agent's Rights,

and such costs and expenses (including legal fees) shall carry interest from the date following 15 days after the date of such demand until so reimbursed at the rate and on the basis as mentioned in Clause 19.5 (*Interest on demands*) of the Deed of Appointment and Priority.

10.2 The Company shall pay all stamp, registration and other taxes to which this Agreement, the assignment contemplated in this Agreement or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Security Agent on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax other than any liabilities, costs, claims and expenses which arise as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent.

10.3 The Company shall, notwithstanding any release or discharge of all or any part of the security, indemnify the Security Agent, its agents and any attorneys against any action, proceeding, claims, losses, liabilities and costs which it has sustained as a consequence of any breach by the Company of the provisions of this Agreement, the exercise of any of the rights and powers conferred on them by this Agreement (other than any loss or cost which arises as a consequence of any gross negligence or wilful misconduct on the part of the

Security Agent) provided that such costs shall be reasonable prior to the delivery of an Enforcement Notice to the Company. The Company is not liable to indemnify the Security Agent against any costs referred to in this Clause 10.3 to the extent that such costs have been paid by the Company to the Security Agent under Clause 10.1.

10.4 Without prejudice to Clause 6 and subject to Clause 3.2, none of the Security Agent or its nominee(s) shall be liable by reason of (a) taking any action permitted by this Agreement or (b) any neglect or default in connection with all or any part of the Assigned Rights or (c) the taking possession or realisation of all or any part of such Assigned Right, except in each case in the case of gross negligence or wilful default upon its part.

#### 11. Currency Conversion and Indemnity.

11.1 For the purpose of or pending the discharge of any or all of the Secured Obligations, the Security Agent may convert any moneys received, recovered or realised or subject to application by the Security Agent pursuant to this Agreement from the currency of such moneys to another for such purpose and any such conversion shall be made at the Security Agent's spot rate of exchange for the time being (or such other rate as may be available to the Security Agent from time to time in the ordinary course of business) for obtaining such other currency with the first currency and the Secured Obligations shall be discharged only to the extent of the net proceeds of such conversion received by the Security Agent.

11.2 If any sum (a "**Sum**") due from the Company under this Agreement or any order or judgment given or made in relation thereto has to be converted from the currency (the "**First Currency**") in which such Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (a) making or filing a claim or proof against the Company; or
- (b) obtaining or enforcing an order or judgment in any court or other tribunal,

the Company shall (through the Security Agent) indemnify each Person to whom such Sum is due from and against any loss suffered or incurred as a result of any discrepancy between (a) the rate of exchange used for such purpose to convert such Sum from the First Currency into the Second Currency and (b) the rate or rates of exchange at which such Person may in the ordinary course of business purchase the First Currency with the Second Currency at the time of receipt of such Sum.

#### 12. Payments Free Of Deduction

All payments to be made by the Company under this Agreement shall be made free and clear of and without deduction for or on account of tax unless the Company is required to make such payment subject to the deduction or withholding of tax, in which case the sum payable by the Company in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Person on account of whose liability to tax such deduction or withholding has been made receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

13. Discretion And Delegation

13.1 Any liberty or power which may be exercised or any determination which may be made hereunder by the Security Agent may, subject to the terms and conditions of the Deed of Appointment and Priority, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons save that the Security Agent shall act in a reasonable manner if expressly required hereunder.

13.2 The Security Agent shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Agreement on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise of such power, authority or discretion by the Security Agent itself or any subsequent delegation or revocation thereof.

14. Amendment

The terms of this Agreement may be amended by an instrument in writing executed by all parties hereto or their successors or permitted assignees and/or transferees with notarised signatures or in any other form as required by law.

15. Changes to Parties

15.1 The Company may not assign or transfer any or all of its rights (if any) and/or obligations under this Agreement.

15.2 The Security Agent may:

- (a) assign all or any of its rights under this Agreement; and
- (b) transfer all or any of its obligations (if any) under this Agreement,

to any successor Security Agent in accordance with the provisions of the Deed of Appointment and Priority, provided that it is acknowledged that such assignment or transfer shall not in any way prejudice the priority of the security constituted by this Agreement (which shall be assigned to such successor Security Agent pursuant to the terms of the Deed of Appointment and Priority). Upon such assignment and transfer taking effect, the successor Security Agent shall be and be deemed to be acting as agent for the Secured Parties for the purposes of this Agreement and in place of the former Security Agent.

15.3 Subject to the relevant provisions of the Finance Documents, each Secured Party may assign all or any of its rights under this Agreement (whether direct or indirect) in accordance with the provisions of the Finance Documents. It is acknowledged that none of the Finance Parties has or shall have any obligation under this Agreement.

15.4 The Company irrevocably and unconditionally confirms that:

- (a) it consents to any assignment or transfer by any Secured Party of its rights and/or obligations made in accordance with the provisions of the Finance Documents;
- (b) it shall continue to be bound by the terms of this Agreement, notwithstanding any such assignment or transfer; and



(c) the assignee or transferee of such Secured Party shall acquire an interest in this Agreement upon such assignment or transfer taking effect.

16. Notices

16.1 Any communication to be made under or in connection with this Agreement shall be made in writing but, unless otherwise stated, may be made by fax or letter.

16.2 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Agreement is identified with its signature below, or any substitute address, fax number or department or officer as the party may notify the other party by not less than 10 Business Days' notice.

16.3 Any communication or document made or delivered by one Person to another under or in connection with this Agreement shall only be effective:

- (a) if delivered personally or by overnight courier, when left at the relevant address;
- (b) if by way of fax, when received in legible form; or
- (c) if by way of letter, when it has been left at the relevant address or 10 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 16.2, if addressed to that department or officer.

16.4 Any communication or document to be made or delivered to the Security Agent shall be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).

17. Partial Invalidity

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the security intended to be created by or pursuant to this Agreement is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

18. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the Special Administrative Region of Macau. The Company hereby submits to the exclusive jurisdiction of the courts of the Special Administrative Region of Macau for any action or proceeding arising out of or with respect to this Agreement.

19. Exercise of Rights

The Secured Parties will only exercise their rights under this Agreement through the Security Agent unless and until the appointment of the Security Agent ceases and no successor Security Agent is appointed under Clause 17.1 (*Resignation of Security Agent*) of the Deed of Appointment and Priority.

20. Counterpart

This Agreement may be executed in any number of counterparts, each of which is an original and all of which together evidence the same Agreement.

IN WITNESS WHEREOF this Agreement has been executed on the date first above written.

For and on behalf of **Wynn Resorts (Macau) S.A.**

**Matthew O. Maddox**

\_\_\_\_\_  
Matthew O. Maddox

Address: 429 Avenida da Praia Grande,  
18th Floor, Praia Grande Commercial Centre, Macau

Telephone: (853) 371476

Fax: (853) 329966

Attention: Chief Financial Officer

With a copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Telephone: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

**Notária Privada**  
**Maria Amélia António**  
*Maria Amélia António*

***Sun Peng Lui***

Lui Sun Peng

***David Edward Gore***

David Edward Gore

Address: 42/F Edinburgh Tower,  
15 Queen's Road Central,  
Hong Kong

Telephone: (852) 2166-5671/ (852) 2166-5430/ (852) 2166-5665

Fax: (852) 2804-6215

Attention: Sunny Lui/ Raymond Fung/ Sara Wong  
Risk & Agency

**Notária Privada**  
**Maria Amélia António**  
*Maria Amélia António*

Assignment of Insurances

AN AGREEMENT made on 14 September 2004 between:

1. Wynn Resorts (Macau) S.A., a company incorporated in the Special Administrative Region of Macau, with its registered office at 429, Avenida da Praia Grande, 18th Floor, Praia Grande Commercial Centre, Macau (“**the Company**”), herein represented by Mr Matthew O. Maddox, and
2. Société Générale, Hong Kong Branch, with its principal office at 42/F Edinburgh Tower, 15 Queen’s Road Central, Hong Kong, as agent for and on behalf of the Secured Parties (“**the Security Agent**”), herein represented by Mr Lui Sun Peng and Mr David Edward Gore.

WHEREAS:

- A. The Secured Parties have agreed, subject to the terms and conditions in the Finance Documents, to make available to the Company certain loan and other facilities for the purpose of the Projects.
- B. It is a condition of the Secured Parties making the facilities available under the Finance Documents that the rights of the Company in and/or under the Onshore Insurance Policies as described herein are assigned in favour of the Security Agent (for and on behalf of the Secured Parties).

NOW, IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, unless otherwise defined herein, all terms defined or referred to in the Deed of Appointment and Priority or, if not defined or referred to in the Deed of Appointment and Priority, the Common Terms Agreement, shall bear the same meaning when used in this Agreement and, in addition:

“Assignment” means the assignment with the scope referred to in Clause 3.1.

“Charged Property” means all the assets and undertaking of the Company which from time to time are the subject of the security created or expressed to be created in favour of the Security Agent by or pursuant to this Agreement.

“Deed of Appointment and Priority” means the deed of appointment and priority dated 14 September 2004 and made between, among others, the Company, Société Générale Asia Limited as intercreditor agent, the Security Agent as security agent, the institutions defined therein as Original First Ranking Lenders, Second Ranking Finance Party and Third Ranking Finance Party.

“Macau Direct Insurer” means a Direct Insurer which is authorized to operate in the Macau SAR.

“Onshore Insurance Policy” means an insurance policy (other than any public liability, third party liability, workers compensation or legal liability insurance or any other insurances the proceeds of which are payable to employees of the Company) in which the Company may from time to time have an interest and which is taken out, placed or effected with a Macau Direct Insurer.

“Security Agent’s Rights” means all rights, powers and remedies of the Security Agent provided by this Agreement or by law.

### 1.2 Interpretation

In this Agreement:

- (a) the principles of construction and interpretation contained or referred to in Clause 1.2 (*Construction*) of the Deed of Appointment and Priority shall apply to the construction and interpretation of this Agreement; and
- (b) any reference to any or all of the Grantors or any or all of the Secured Parties shall be construed so as to include its or their (and any subsequent) successors and any permitted assignees and transferees in accordance with their respective interests.

### 1.3 Non-recourse Liability

Notwithstanding any provision in the Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Finance Document to which such Operative is party. The sole recourse of the Secured Parties for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Finance Documents shall be against the Obligors, and not against any assets or property of any Operative save to the extent such Operative is party to a Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

## 2. Payment of Secured Obligations

The Company shall discharge and pay to the Security Agent (when due and payable) each of the Secured Obligations in accordance with the Finance Documents provided that:

- (a) neither the obligations of the Company under this Clause nor the security constituted by this Agreement shall extend to or include any liability or sum which would, but for this proviso, cause such obligations or security to be unlawful or prohibited by any applicable law; and
- (b) every payment by the Company of any sum in respect of the Secured Obligations to or for the account of any of the Secured Parties to whom the same is due and payable which is made in accordance with the terms of the

3. Assignment

3.1 Assignment

The Company hereby assigns by way of security to the Security Agent as security for the discharge and payment of the Secured Obligations to the Security Agent all the Company's rights, title and interests from time to time in and/or under each of the Onshore Insurance Policies including, without limitation, all proceeds and benefits of all claims in respect of each of the Onshore Insurance Policies, together with cash and other property at any time receivable or distributable in respect of each of the Onshore Insurance Policies.

3.2 Obligations to Perform

Notwithstanding the assignment referred to in Clause 3.1 (*Assignment*), the Company remains liable to perform the obligations imposed on it under or in respect of the Onshore Insurance Policies and neither the Security Agent nor any of the other Secured Parties is liable to perform any of such obligations nor liable for the consequences of non-performance.

3.3 Rights Prior to Enforcement

Notwithstanding any other provision of this Agreement but subject to Clause 8, unless and until the issuance of an Enforcement Notice by the Security Agent to the Company, the Company shall be entitled to exercise all of its rights, title and interests in the Onshore Insurance Policies in accordance with Schedule 7 to the Common Terms Agreement.

4. Perfection of Security

4.1 The Company shall deliver to the Security Agent (or procure the delivery to the Security Agent of):

- (a) in respect of each Onshore Insurance Policy subsisting at the date of this Agreement, as soon as reasonably practicable after execution of this Agreement, a notice of assignment to the Macau Direct Insurer(s) under such Onshore Insurance Policy substantially in the form of the Schedule A (*Form of Notice of Assignment of Onshore Insurance Policy*) (or otherwise in form and substance reasonably satisfactory to the Security Agent) duly executed by, or on behalf of, the Company, and shall procure that each such notice is acknowledged by such Macau Direct Insurer in substantially the form of acknowledgement attached to such notice within 30 days of the date of this Agreement; and
- (b) in respect of each Onshore Insurance Policy effected or coming into existence after the date of this Agreement, as soon as reasonably practicable after the effecting or coming to existence of such Onshore Insurance Policy, a notice of assignment to the Macau Direct Insurer(s) under such Onshore Insurance Policy substantially in the form of the Schedule A (*Form of Notice of Assignment of Onshore Insurance Policy*) (or otherwise in form and substance reasonably satisfactory to the Security Agent) duly executed by, or on behalf

of, the Company, and shall procure that each such notice is acknowledged by such Macau Direct Insurer in substantially the form of acknowledgement attached to such notice within 30 days of the date of the effecting or coming into existence of such Onshore Insurance Policy.

4.2 The assignment of the Company's rights, title and interests in any Onshore Insurance Policy which shall be effected or come into existence after the date of this Agreement, is a promissory assignment and will become definitive upon the Macau Direct Insurer(s) under such Onshore Insurance Policy receiving the notice of assignment in accordance with Clause 4.1(b). If the Company fails to comply with Clause 4.1, the Security Agent may request from the courts in Macau SAR a judgment for specific performance for the conversion of any such promissory assignment into a definitive assignment.

5. Further Assistance

The Company hereby undertakes with the Security Agent that at all times during the subsistence of this Agreement, it will do and execute all things and documents as the Security Agent shall require it do or execute for the purpose of exercising the Security Agent's Rights, securing and/or perfecting and/or enforcing the Assignment provided that any such requirement shall be reasonable prior to the delivery of an Enforcement Notice to the Company.

6. Company's Representations and Warranties

6.1 The Company hereby makes the following representations and warranties to the Security Agent (for and on behalf of the Secured Parties) and acknowledges that the Secured Parties have relied upon those representations and warranties:

- (a) the Company has not assigned or otherwise disposed or purported to assign or otherwise dispose of any of its right, title or interest in relation to the Charged Property or any part thereof;
- (b) this Agreement:
  - (i) constitutes an effective assignment over the Charged Property; and
  - (ii) enjoys the priority which it is expressed to have;
- (c) it is the sole and absolute owner of all of the Charged Property free from any Lien (except for any Permitted Lien and any Mandatory Permitted Lien);
- (d) all acts, conditions and things required to be done, fulfilled and performed in order (i) to enable it lawfully to enter into, and perform and comply with the obligations expressed to be assumed by it in, this Agreement (ii) to ensure that the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable and (iii) to make this Agreement admissible in evidence in its jurisdiction of incorporation and in Macau SAR, have been done, fulfilled and performed; and
- (e) under the laws of Macau in force at the date hereof, it is not necessary that this Agreement be filed, recorded or enrolled with any court or other authority in Macau or that any stamp, registration or similar tax be paid on or in relation to

this Agreement other than a stamp duty of MOP20.00 on this Agreement and a stamp duty of MOP5.00 on any of its counterparts.

6.2 The representations and warranties contained in Clause 6 (other than Clauses 6.1(b), 6.1(d)(iii) and 6.1(e)) shall be deemed to be repeated (by reference to the facts and circumstances then existing) by the Company on:

- (a) the CP Satisfaction Date; and
- (b) each Advance Date.

## 7. Negative Pledge and Disposals

### 7.1 Negative Pledge

The Company undertakes that it will not, at any time during the subsistence of this Agreement, create or permit to subsist any Lien (other than any Permitted Lien and any Mandatory Permitted Lien) over all or any part of the Charged Property.

### 7.2 No Disposal of Interests

The Company undertakes that it will not (and will not agree to) at any time during the subsistence of this Agreement, except as permitted under the Common Terms Agreement or by this Clause 7, make any assignment, transfer or other disposal of all or any part of the Charged Property.

## 8. Claims

### 8.1 Conduct of Claims - Company

Notwithstanding Clause 3 (*Assignment*), but subject to Clause 8.2 (*Default*), the Company has the sole conduct of all claims under the Onshore Insurance Policies other than as expressly provided in Schedule 7 to the Common Terms Agreement.

### 8.2 Conduct of Claims - Default

Notwithstanding any other provisions of this Clause 8, if an Enforcement Notice has been issued, then the Security Agent in consultation with the Insurance Adviser shall have sole conduct of all claims under the Onshore Insurances Policies.

### 8.3 Proceeds of Claims

The proceeds of all claims under the Onshore Insurance Policies shall be applied in accordance with Schedule 7 (*Insurance*) to the Common Terms Agreement.

## 9. Enforcement of Assignment

9.1 Notwithstanding any other provisions of this Agreement, the Security Agent may, at any time after the Security Agent shall have given an Enforcement Notice to the Company enforce the Assignment without prior notice to the Company or prior authorisation from the Company or any court. To this effect, the Security Agent may without limitation give notice to



the Macau Direct Insurer(s) under any Onshore Insurance Policies that all rights, discretions and remedies of the Company in and/or under such Onshore Insurance Policies shall thereafter and until further notice be exercised and enforced by the Security Agent.

9.2 So long as Wynn Resorts has not delivered a notice under Clause 5.2 of the Wynn Resorts Support Agreement terminating its obligations under Clause 6 thereof, the Security Agent shall, prior to the acceptance of any offer made by a Senior Secured Creditor for the purchase of all or any of the Charged Property, give reasonable details of all of the written offers received by the Security Agent for the purchase of such Charged Property.

9.3 In making any sale or other disposal of all or any part of the Charged Property or any acquisition in the exercise of its powers, the Security Agent may do so for such consideration, in such manner, and generally on such terms and conditions as it thinks fit. Any contract for such sale, disposal or acquisition by the Security Agent may contain conditions excluding or restricting the personal liability of the Security Agent.

#### 10. Application of Moneys

10.1 All moneys received or recovered by the Security Agent pursuant to this Agreement or the powers conferred by it shall (subject to (a) the claims of any Person having prior rights thereto and (b) Clause 10.2) be applied by the Security Agent (notwithstanding any purported appropriation by the Company or any other Grantor) in accordance with Clause 9 (*Disposal and Insurance Proceeds*) or, as the case may be, Clause 15 (*Application of Proceeds*) of the Deed of Appointment and Priority.

10.2 Notwithstanding any other provision of the Finance Documents, the Security Agent may, at any time after the delivery of an Enforcement Notice to the Company, pay any or all of the moneys received, recovered or realised by the Security Agent under this Agreement (including without limitation the proceeds of any conversion of currency) into any suspense or impersonal account (which is interest-bearing provided that there is no tax liability on the Security Agent with respect to any interest in such account) for so long as the Security Agent shall think fit (whether or not any Secured Obligations shall have become due) pending any further application of such moneys (as the Security Agent shall be entitled, but not obliged, to do in its discretion) in accordance with the provisions of Clause 10.1. If the Secured Obligations have been fully discharged or would be fully discharged if the moneys in such suspense or impersonal account were applied towards satisfaction of the Secured Obligations, the Security Agent shall apply the moneys in such suspense or impersonal account towards satisfaction of the Secured Obligations and if there are any moneys remaining in such suspense or impersonal account after the Secured Obligations have been fully discharged, the Security Agent shall pay such remaining moneys to any Person as directed by the Company. Any interest accrued on any moneys in such suspense or impersonal account shall be credited to such suspense or, as the case may be, impersonal account and shall subject to the terms of this Clause 10.2, be applied towards satisfaction of the Secured Obligations.

#### 11. Company's Obligations

The obligations of the Company hereunder and the Security Agent's Rights shall not be discharged, impaired or otherwise affected by:

- (a) any winding-up, dissolution, re-organisation, bankruptcy, death or insolvency of, or any change in, the Company or any other Person;

- (b) any of the Secured Obligations being at any time illegal, invalid, unenforceable or ineffective;
- (c) any unenforceability or invalidity of any other agreement or document;
- (d) any time or other indulgence being granted to the Company or any other Person in respect of any of the Secured Obligations;
- (e) any amendment, variation, waiver or release of any of the Secured Obligations except for a release or discharge in accordance with Clause 16.20 of the Deed of Appointment and Priority;
- (f) any variation of the terms upon which the Security Agent holds the security constituted hereby;
- (g) any failure to take or failure to realise the value of any other collateral in respect of the Secured Obligations or any release, discharge, exchange or substitution of any such collateral; or
- (h) any other act, event or omission which but for this provision would or might operate to impair, discharge or otherwise affect any or all of the obligations of the Company or the Security Agent's Rights hereunder.

12. Effectiveness of Collateral

12.1 No failure on the part of the Security Agent to exercise, or delay on its part in exercising, any Security Agent's Right shall operate as a waiver thereof, nor shall any single or partial exercise of a Security Agent's Right preclude any further or other exercise of that or any other Security Agent's Right.

12.2 The Security Agent shall not be obliged, before exercising any Security Agent's Right as against the Company (a) to make any demand of any other Grantor or any other Person, (b) to take any action or obtain judgment in any court against the Company, any other Grantor or any other Person, (c) to make or file any proof or claim in a liquidation, bankruptcy or insolvency of the Company, any other Grantor or any other Person or (d) to enforce or seek to enforce any other security in respect of the Secured Obligations.

12.3 Until the satisfaction of the requirements set out in Clause 16.20 of the Deed of Appointment and Priority in respect of the release of security, any settlement or discharge hereunder shall be conditional upon no security or payment to the Security Agent by or on behalf of the Company and/or any other Grantor being avoided or reduced by virtue of the Company's or any other Grantor's bankruptcy, insolvency, liquidation or similar laws of general application and shall in those circumstances be void.

13. Set-Off

The Company authorises the Security Agent (but the Security Agent shall not be obliged to exercise such right) from time to time to, after the delivery of an Enforcement Notice to the Company, set off against any or all of the sums due and payable but unpaid by and/or any or all of the obligations of the Company to the Security Agent under this Agreement any amount or other obligation (contingent or otherwise) owing by the Security Agent to the Company and

apply any credit balance to which the Company is entitled on any account with the Security Agent in discharge of such sums payable by and/or such obligations of the Company (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

#### 14. Expenses, Stamp, Taxes and Liability.

##### 14.1 Expenses

The Company shall, from time to time on demand of the Security Agent, reimburse the Security Agent for:

- (a) at any time prior to the delivery of an Enforcement Notice to the Company, all reasonable costs and expenses (including legal fees); or
- (b) at any time upon or after the delivery of an Enforcement Notice to the Company, all costs and expenses (including legal fees)

on a full indemnity basis incurred by it in connection with:

- (i) the perfection of the security contemplated in this Agreement; and
- (ii) the exercise, preservation and/or enforcement of any of the Security Agent's Rights or the security contemplated by this Agreement or any proceedings instituted by or against the Security Agent as a consequence of taking or holding the security or of enforcing the Security Agent's Rights,

and such costs and expenses (including legal fees) shall carry interest from the date following 15 days after the date of such demand until so reimbursed at the rate and on the basis as mentioned in Clause 19.5 (*Interest on demands*) of the Deed of Appointment and Priority.

##### 14.2 Stamp Taxes

The Company shall pay all stamp, registration and other taxes to which this Agreement, the security contemplated in this Agreement or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Security Agent on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax other than any liabilities, costs, claims and expenses which arise as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent.

##### 14.3 Indemnity

The Company shall, notwithstanding any release or discharge of all or any part of the security, indemnify the Security Agent, its agents and any attorneys against any action, proceeding, claims, losses, liabilities and costs which it has sustained as a consequence of any breach by the Company of the provisions of this Agreement, the exercise of any of the rights and powers conferred on them by this Agreement (other than any loss or cost which arises as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent) provided that such costs shall be reasonable prior to the delivery of an Enforcement Notice to the Company. The Company is not liable to indemnify the Security Agent against any costs referred to in this Clause 14.3 to the extent that such costs have been paid by the Company to the Security Agent under Clause 14.1.

#### 14.4 No Liability

Subject to Clause 9.2, none of the Security Agent or its nominee(s) shall be liable by reason of (a) taking any action permitted by this Agreement or (b) any neglect or default in connection with all or any part of the Charged Property or (c) the taking possession or realisation of all or any part of the Charged Property, except in each case in the case of gross negligence or wilful misconduct upon its part.

#### 15. Currency Conversion and Indemnity

15.1 For the purpose of or pending the discharge of any or all of the Secured Obligations, the Security Agent may convert any moneys received, recovered or realised or subject to application by the Security Agent pursuant to this Agreement from the currency of such moneys to another for such purpose, and any such conversion shall be made at the Security Agent's spot rate of exchange for the time being (or such other rate as may be available to the Security Agent from time to time in the ordinary course of business) for obtaining such other currency with the first currency and the Secured Obligations shall be discharged only to the extent of the net proceeds of such conversion received by the Security Agent.

15.2 If any sum (a "**Sum**") due from the Company under this Agreement or any order or judgment given or made in relation thereto has to be converted from the currency (the "**First Currency**") in which such Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (a) making or filing a claim or proof against the Company; or
- (b) obtaining or enforcing an order or judgment in any court or other tribunal,

the Company shall (through the Security Agent) indemnify each Person to whom such Sum is due from and against any loss suffered or incurred as a result of any discrepancy between (a) the rate of exchange used for such purpose to convert such Sum from the First Currency into the Second Currency and (b) the rate or rates of exchange at which such Person may in the ordinary course of business purchase the First Currency with the Second Currency at the time of receipt of such Sum.

#### 16. Payments Free of Deduction

All payments to be made by the Company under this Agreement shall be made free and clear of and without deduction for or on account of tax unless the Company is required to make such payment subject to the deduction or withholding of tax, in which case the sum payable by the Company in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Person on account of whose liability to tax such deduction or withholding has been made receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

#### 17. Partial Invalidity

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of

the remaining provisions of this Agreement nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the security intended to be created by or pursuant to this Agreement is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

18. Discretion and Delegation

18.1 Any liberty or power which may be exercised or any determination which may be made hereunder by the Security Agent may, subject to the terms and conditions of the Deed of Appointment and Priority, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons save that the Security Agent shall act in a reasonable manner if expressly required hereunder.

18.2 The Security Agent shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Agreement on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise of such power, authority or discretion by the Security Agent itself or any subsequent delegation or revocation thereof.

19. Changes to Parties

19.1 The Company may not assign or transfer any or all of its rights (if any) and/or obligations under this Agreement.

19.2 The Security Agent may:

- (a) assign all or any of its rights under this Agreement; and
- (b) transfer all or any of its obligations (if any) under this Agreement,

to any successor Security Agent in accordance with the provisions of the Deed of Appointment and Priority, provided that it is acknowledged that such assignment or transfer shall not in any way prejudice the priority of the security constituted by this Agreement (which shall be assigned to such successor Security Agent pursuant to the terms of the Deed of Appointment and Priority). Upon such assignment and transfer taking effect, the successor Security Agent shall be and be deemed to be acting as agent for the Secured Parties for the purposes of this Agreement and in place of the former Security Agent.

19.3 Subject to the relevant provisions of the Finance Documents, each Secured Party may assign all or any of its rights under this Agreement (whether direct or indirect) in accordance with the provisions of the Finance Documents. It is acknowledged that none of the Finance Parties has or shall have any obligation under this Agreement.

19.4 The Company irrevocably and unconditionally confirms that:

- (a) it consents to any assignment or transfer by any Secured Party of its rights and/or obligations made in accordance with the provisions of the Finance Documents;
- (b) it shall continue to be bound by the terms of this Agreement, notwithstanding any such assignment or transfer; and

(c) the assignee or transferee of such Secured Party shall acquire an interest in this Agreement upon such assignment or transfer taking effect.

## 20. Notices

20.1 Any communication to be made under or in connection with this Agreement shall be made in writing but, unless otherwise stated, may be made by fax or letter.

20.2 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Agreement is identified with its signature below, or any substitute address, fax number or department or officer as the party may notify to the other party by not less than 10 Business Days' notice.

20.3 Any communication or document made or delivered by one Person to another under or in connection with this Agreement shall only be effective:

- (a) if delivered personally or by overnight courier, when left at the relevant address;
- (b) if by way of fax, when received in legible form; or
- (c) if by way of letter, when it has been left at the relevant address or 10 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 20.2, if addressed to that department or officer.

20.4 Any communication or document to be made or delivered to the Security Agent shall be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).

## 21. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Macau SAR.

## 22. Jurisdiction

22.1 The Company irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Macau to settle any disputes (a "**Dispute**") arising out of, or in connection with this Agreement (including without limitation a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity).

22.2 Notwithstanding Clause 22.1, any Secured Party may take proceedings relating to a Dispute ("**Proceedings**") in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent Proceedings in any number of jurisdictions.

22.3 The Company waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:

- (a) the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and

- (b) the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action *in rem*, for the arrest, detention or sale of any of its assets and revenues.

23. Exercise of Rights

The Secured Parties will only exercise their rights under this Agreement through the Security Agent unless and until the appointment of the Security Agent ceases and no successor Security Agent is appointed under Clause 17.1 (*Resignation of Security Agent*) of the Deed of Appointment and Priority.

24. Counterpart

This Agreement may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement.

IN WITNESS WHEREOF this Agreement has been executed on the date first above written.

**Matthew O. Maddox**

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Matthew O. Maddox

Address: 429 Avenida da Praia Grande,  
18th Floor, Praia Grande Commercial Centre,  
Macau

Telephone: (853) 371476

Fax: (853) 329966

Attention: Chief Financial Officer

With a copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Telephone: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

**Notária Privada**  
**Maria Amélia António**  
**Maria Amélia António**



***Sun Peng Lui***

Lui Sun Peng

Address: 42/F Edinburgh Tower,  
15 Queen's Road Central,  
Hong Kong

Telephone: (852) 2166-5671/ (852) 2166-5430/ (852) 2166-5665

Fax: (852) 2804-6215

Attention: Sunny Lui/ Raymond Fung/ Sara Wong  
Risk & Agency

***David Edward Gore***

David Edward Gore

**Notária Privada**

**Maria Amélia António**

***Maria Amélia António***

**DATED 14 SEPTEMBER 2004**

**COMPANHIA DE SEGUROS DE MACAU, S.A.**

as Assignor

and

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

as Security Agent

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**ASSIGNMENT OF REINSURANCES**

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THIS ASSIGNMENT is made on 14 September 2004

**BY**

- (1) **COMPANHIA DE SEGUROS DE MACAU, S.A.** whose principal and registered office is at Avenida da Praia Grande, No. 594, Edificio BCM, 11o andar, the Macau SAR (the “**Assignor**”) in favour of
- (2) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**, as agent and security trustee for and on behalf of the Secured Parties (the “**Security Agent**”).

**WHEREAS**

- (A) Wynn Resorts (Macau) S.A. (the “**Company**”) has effected certain insurances and may, from time to time, effect certain other insurances with the Assignor, including, without limitation, those summarised in Schedule 1 (the “**Insurances**”).
- (B) By an Assignment of Insurances dated 14 September 2004 (the “**Assignment of Insurances**”) and made between the Company and the Security Agent, the Company has, inter alia, assigned its right, title and interest to the Insurances (other than any public liability, third party liability, workers compensation and legal liability insurances and any insurance the proceeds of which are payable to employees of the Company) to the Security Agent as agent for the Secured Parties.
- (C) In consideration of the Company effecting the Insurances with the Assignor, the Assignor has agreed to assign to the Security Agent as agent and security trustee for the Secured Parties certain of the Assignor’s right, title and interest, present and future, in and to the facultative reinsurances effected by the Assignor from time to time in relation to its risks under the Insurances (other than any public liability, third party liability, workers compensation and legal liability insurances and any insurance the proceeds of which are payable to employees of the Company) (the “**Reinsurances**”) as security for the payment of claims under the Insurances.

**NOW THIS ASSIGNMENT WITNESSES** as follows:

1. **INTERPRETATION**

1.1 **Definitions**

In this Assignment:

“**Collateral Rights**” means all rights, powers and remedies of the Security Agent and the Secured Parties provided by or pursuant to this Assignment or by law.

“**Common Terms Agreement**” means the common terms agreement dated 14 September 2004 between, among others, the Company, the financial institutions defined therein as the Hotel Facility Lenders, the Project Facility Lenders and the Revolving Credit Facility Lenders and Société Générale Asia Limited as intercreditor agent.

“**Deed of Appointment and Priority**” means the deed of appointment and priority dated 14 September 2004 and made between, among others, the Company, Société Générale Asia Limited as intercreditor agent, the Security Agent as security agent, the institutions defined

therein as Original First Ranking Lenders, Second Ranking Finance Party and Third Ranking Finance Party, as amended, varied, novated and/or supplemented from time to time.

“**Hong Kong**” means the Hong Kong Special Administrative Region.

“**Insolvency Event**” means any of the following:

- (a) the Assignor is conclusively unable or expressly admits inability to pay its debts as they fall due or suspends making payments of any of its debts which is due; or
- (b) any action or legal proceedings is taken in relation to:
  - (i) the suspension of payments, winding up or dissolution of the Assignor; or
  - (ii) the appointment of a liquidator or an administrator or other similar officer in respect of the Assignor.

“**Insurance Adviser**” means, as the case may be:

- (a) JLT Risk Solutions Asia as the insurance adviser acting on behalf of all Senior Secured Creditors pursuant to the engagement letter dated 15 September 2003;
- (b) the insurance adviser acting on behalf of all Senior Secured Creditors according to the scope of work and fees agreed by the Senior Secured Creditors and approved by the Company (such approval not to be unreasonably withheld or delayed) before the CP Satisfaction Date (as defined in the Common Terms Agreement); or
- (c) the insurance adviser appointed by the Intercreditor Agent and, unless an Event of Default has occurred and is continuing, approved by the Company (such approval not to be unreasonably withheld or delayed) from time to time after the CP Satisfaction Date (as defined in the Common Terms Agreement) to act on behalf of the Senior Secured Creditors as and when required to advise the Senior Secured Creditors in respect of Projects (as defined in the Common Terms Agreement).

“**Macau SAR**” means the Macau Special Administrative Region.

“**Secured Parties**” shall have the meaning given in the Deed of Appointment and Priority.

“**Security Interest**” means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security.

“**Senior Secured Creditors**” shall have the meaning given in the Common Terms Agreement.

## 1.2 Construction

1.2.1 Unless a contrary indication appears, any reference in this Assignment to:

- (a) the Security Agent, any Secured Party, any Senior Secured Creditor, the Assignor or the Company shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

- (b) any document (including, without limitation, this Assignment) are references to that document as amended, consolidated, supplemented, novated or replaced from time to time;
- (c) a “**person**” includes any natural person, corporation, partnership, firm, association, government, state or agency of a state or any other entity whether acting in an individual, fiduciary or other capacity;
- (d) to any law is a reference to that law as amended, consolidated, supplemented or replaced from time to time;
- (e) any Clause or Schedule shall be to a clause or schedule contained in this Assignment; and
- (f) any document being in substantially a specified form shall be construed as meaning such document being in the same form as the specified form save for the insertion of information left in blank or typographical errors.

1.2.2 Section, Clause and Schedule headings are for ease of reference only.

## 2. **ASSIGNMENT**

### 2.1 **Assignment**

In consideration of the Company effecting the Insurances with the Assignor and for other good and valuable consideration (the receipt whereof is hereby acknowledged), as security for the payment of claims under the Insurances and under the conditions stated in Clause 2.2, the Assignor as beneficial owner HEREBY ASSIGNS absolutely unto the Security Agent (as agent and security trustee for and on behalf of the Secured Parties) ALL THAT right, title and interest, present and future, of the Assignor to:-

- 2.1.1 make and settle any claim (including, without limitation, to take any action, institute any proceedings and enforce or exercise any rights or benefits relating thereto) under or pursuant to the Reinsurances;
- 2.1.2 all sums paid or payable under the Reinsurances (including the return of all premia upon the cancellation of any of the Reinsurances); and
- 2.1.3 take any action, including without limitation the payment of premia and, where the Assignor has not issued renewal instructions not less than thirty days before the expiry date of any Reinsurances, the issuance of the relevant renewal instructions, to ensure that the Reinsurances remain in full force and effect,

TO HOLD the same unto the Security Agent and the Secured Parties absolutely. The abovementioned rights are hereinafter referred to as the “**Assigned Rights**”.

At any time after the expiry of all of the Insurances and the irrevocable payments by the Assignor of all claims made under the Insurances and the satisfaction of all of the Assignor’s other obligations under the Insurances, the Security Agent shall reassign the Assigned Rights to the Assignor and discharge the Security Interests created by this Assignment.

## 2.2 Enforcement of Assignment

- 2.2.1 The Assignor shall remain entitled to exercise and enforce the Assigned Rights in its own name until such time as the Security Agent shall notify the Assignor at any time after the occurrence of an Insolvency Event to the contrary.
- 2.2.2 At any time after the occurrence of an Insolvency Event, the assignment of the Assigned Rights pursuant to Clause 2.1 (*Assignment*) is immediately enforceable and the Security Agent may, without prior authorisation from any court but with prior notice to the Assignor, in its absolute discretion enforce such assignment.

## 2.3 Perfection of Security and Further Assurance

- 2.3.1 The Assignor shall from time to time, at the reasonable request of the Security Agent, do any act, deed or thing or execute all such documents as the Security Agent may reasonably specify to preserve or perfect the security purported to be created over the Assigned Rights under this Assignment or for the exercise of the Collateral Rights or, after the assignment has become enforceable pursuant to Clause 2.2.2, to facilitate the realisation of the Assigned Rights.
- 2.3.2 The Assignor shall take all such necessary action as is available to it:
- (a) to perfect, protect and maintain the security intended to be conferred on the Security Agent and the Secured Parties by or pursuant to this Assignment; and
  - (b) to make all such filings and registrations and to take all such other steps in connection with the creation, perfection, protection or maintenance of any security which it may, or may be required to, create in connection herewith.
- 2.3.3 The Assignor shall promptly notify the Security Agent of all Reinsurances effected by it from time to time. The Assignor shall, forthwith upon execution of this Assignment in respect of any Reinsurances then in effect and promptly after other Reinsurances are effected after the date of this Assignment, execute and deliver to the relevant reinsurers effecting the Reinsurances a notice of assignment in substantially the form set out in Part 1 of Schedule 2 and shall use all reasonable efforts to either cause each of the relevant reinsurers to acknowledge such notice of assignment in substantially the form set out in Part 2 of Schedule 2 or procure the issuance by the reinsurance broker appointed by it (acceptable to the Security Agent) of a reinsurance broker's letter of undertaking in substantially the form set out in Part 3 of Schedule 2, or in such other form as may be approved by the Security Agent. Copies of all such notices shall be delivered by the Assignor to the Security Agent.
- 2.3.4 Unless acknowledgements of notices of assignment have been obtained from each of the relevant reinsurers pursuant to sub-clause 2.3.3 above, the Assignor shall, promptly upon the appointment by it of any other reinsurance broker (who shall be acceptable to the Security Agent), procure the issuance by such reinsurance broker of a reinsurance broker's letter of undertaking substantially in the form set out in Part 3 of Schedule 2 or in such other form as may be approved by the Security Agent.

## 2.4 Power of Attorney

2.4.1 The Assignor by way of security irrevocably appoints the Security Agent to be its attorney and in the Assignor's name and on its behalf and as its act and deed to sign, seal, execute, deliver and perfect all documents and do all things which the Assignor is obliged under this Assignment to do under Clause 2.3.1, Clause 2.3.2 and/or Clause 2.3.3 but has failed to do. The Assignor undertakes to ratify and confirm all things done and documents executed by the Security Agent in the exercise of the power of attorney hereby conferred.

2.4.2 The Assignor is not required to indemnify the Security Agent for any costs incurred by the Security Agent as a result of exercising its power under Clause 2.4.1. The Security Agent shall give notice to the Assignor prior to the exercise of any of the Security Agent's rights under Clause 2.4.1.

## 3. PAYMENT OF PROCEEDS

The parties hereto agree to procure that all moneys hereby assigned and payable in connection with any of the right, title and interest of the Assignor under the Reinsurances shall be forthwith paid directly by the reinsurers in the manner set out in the Appendix to Part 1 of Schedule 2. The Assignor shall irrevocably instruct the reinsurance brokers to procure that the provisions relating to the payment of proceeds of claims under the Reinsurances in the form set out in the Appendix to Part 1 of Schedule 2 shall be duly noted and endorsed upon all slips, cover notes, policies and other instruments of insurance issued or to be issued in connection with the Reinsurances.

## 4. REPRESENTATIONS AND WARRANTIES

### 4.1 Representations and Warranties

The Assignor represents and warrants to the Security Agent that:

4.1.1 it is a limited liability company duly established under the laws of the Macau SAR with power to enter into this Assignment and to exercise its rights and perform its obligations hereunder and all corporate and other action required to authorise its execution of this Assignment has been duly taken;

4.1.2 the obligations expressed to be assumed by it in this Assignment are legal and valid obligations binding on it in accordance with the terms hereof;

4.1.3 the Insurances listed in Schedule 1 are in full force and effect and enforceable in accordance with their respective terms, and it is not aware of any basis on which they may be or become capable of being avoided or invalidated;

4.1.4 except in accordance with the provisions of this Assignment, it has not granted or created and shall not grant, create or permit to exist any Security Interest over its right, title and interest in the Reinsurances;

4.1.5 under the laws of the Macau SAR in force at the date hereof, the claims of the Security Agent and the other Secured Parties against it shall rank at least *pari passu* with the claims of all its other unsecured creditors save those whose claims are



preferred solely by any bankruptcy, insolvency, liquidation or other similar laws of general application; and

4.1.6 it has obtained all the necessary approvals (if any) of the relevant authorities for the execution by it of this Assignment, performance by it of its obligations hereunder and the exercise by the Security Agent of its rights hereunder.

#### 4.2 Further representations

The Assignor further represents to the Security Agent that:

4.2.1 no corporate action nor any other steps have been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against it for its winding-up, dissolution, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or its assets or any part thereof;

4.2.2 its execution of this Assignment and the exercise of its rights and performance of its obligations hereunder do not:

(a) conflict with its constitutive documents and rules and regulations; or

(b) so far as it is aware, conflict with any applicable law, regulation or official or judicial order; and

4.2.3 its execution of this Assignment and its exercise of its rights and performance of its obligations hereunder shall constitute non-governmental and commercial acts done and performed for non-governmental and commercial purposes.

#### 5. FURTHER UNDERSTANDINGS

5.1 It is further agreed that notwithstanding the assignment of the Assigned Rights pursuant to Clause 2.1 (*Assignment*), but without prejudice to the instructions relating to the payment of proceeds as set out in the Appendix to Part 1 of Schedule 2:

5.1.1 the Security Agent may but shall not be obliged to make any reasonable inquiry as to the nature or sufficiency of any payment under the Reinsurances, or, at any time after the occurrence of an Insolvency Event, to make any claim or take any other action to collect any moneys or to enforce any rights and benefits hereby assigned to the Security Agent or to which the Security Agent may be entitled hereunder; and

5.1.2 the Assignor shall remain fully liable under the Insurances and the Reinsurances to perform all the conditions and obligations provided in the Insurances and the Reinsurances to be observed and performed by it (including, without limitation, the obligation to collect from the Company all premia under the Insurances and to pay all premia to the reinsurers under the Reinsurances). Neither this Assignment nor the receipt by the Security Agent or any other Secured Party of any payment pursuant hereto shall cause the Security Agent or any other Secured Party to be under any obligation or liability under the Insurances or the Reinsurances or in respect of the Company's or the Assignor's failure to perform its obligations thereunder. The Assignor shall keep the Security Agent fully indemnified from and against all costs,

expenses and liabilities which the Security Agent incurs as a result of the Assignor failing to perform the conditions and obligations to be performed by it under the Reinsurances.

**6. INFORMATION**

The Assignor shall at all times keep accurate and complete records of the Reinsurances and shall provide certified copies thereof to the Security Agent promptly upon request. The Security Agent may request any other relevant information from the Assignor in respect of the Insurances and the Reinsurances, and the Assignor shall supply such information reasonably requested within a reasonable time to the Security Agent.

**7. MISCELLANEOUS**

**7.1 Continuing Security**

It is understood and agreed by the Assignor that the assignment by it of its proprietary rights in the Assigned Rights (including the moneys receivable thereunder) is a continuing security for the payment of amounts which may now or hereafter from time to time be owing by the Assignor in respect of the Insurances.

**7.2 Partial Invalidity**

If, at any time, any provision of this Assignment is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Assignment nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the security intended to be created by or pursuant to this Assignment is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

**8. CHANGES TO THE PARTIES**

8.1 The Assignor may not assign or transfer any or all of its rights (if any) and/or obligations under this Assignment.

8.2 The Security Agent may:

- (a) assign all or any of its rights under this Assignment; and
- (b) transfer all or any of its obligations (if any) under this Assignment,

to any successor Security Agent in accordance with the provisions of the Deed of Appointment and Priority, provided that it is acknowledged that such assignment or transfer shall not in any way prejudice the priority of the security constituted by this Assignment (which shall be assigned to such successor Security Agent pursuant to the terms of the Deed of Appointment and Priority). Upon such assignment and transfer taking effect, the successor Security Agent shall be and be deemed to be acting as agent and security trustee for the Secured Parties for the purposes of this Assignment and in place of the former Security Agent.

8.3 Subject to the relevant provisions of the Finance Documents (as defined in the Deed of Appointment and Priority), each Secured Party may assign all or any of its rights under this Assignment (whether direct or indirect) in accordance with the provisions of the Finance

Documents (as defined in the Deed of Appointment and Priority). It is acknowledged that none of the Finance Parties (as defined in the Deed of Appointment and Priority) has or shall have any obligation under this Assignment.

8.4 The Assignor irrevocably and unconditionally confirms that:

- (a) it consents to any assignment or transfer by any Secured Party of its rights and/or obligations made in accordance with the provisions of the Finance Documents;
- (b) it shall continue to be bound by the terms of this Assignment, notwithstanding any such assignment or transfer; and
- (c) the assignee or transferee of such Secured Party shall acquire an interest in this Assignment upon such assignment or transfer taking effect.

8.5 The Security Agent may resign in accordance with Clause 17.1 (*Resignation of the Security Agent*) of the Deed of Appointment and Priority and the Assignor agrees to the terms of Clause 17.1 (*Resignation of the Security Agent*) of the Deed of Appointment and Priority.

## 9. NOTICE

9.1 Each communication to be made under this Assignment shall be made in writing and, unless otherwise stated, shall be made by fax or letter.

9.2 Any communication, document or demand to be made or delivered by one person to another pursuant to this Assignment shall:

- (a) if by way of fax (unless that other person has by 5 Business Days' notice to the other specified another number) be made to such other person to the fax number identified with its signature below and shall be deemed to have been received when transmission has been completed; and
- (b) if by way of letter (unless that other person has by 5 Business Days' notice to the other specified another address) be delivered to that other person at the address identified with its signature below and shall be deemed to have been delivered when left at that address or, as the case may be, 10 days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

**provided that** any communication or document to be delivered to the Security Agent shall be effective only if the same is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or such other department or officer as the Security Agent shall from time to time specify to the Assignor in writing for this purpose).

## 9.3 English language

9.3.1 Any notice given under or in connection with this Assignment must be in English.

9.3.2 All other documents provided under or in connection with this Assignment must be:

- (a) in English; or

- (b) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation shall prevail unless the document is a constitutional, statutory or other official document.

10. **COUNTERPARTS**

This Assignment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

11. **LANGUAGE**

The English language is the only official and recognised language of this Assignment. If for any reason a translation of this Assignment is required, such translation shall in the event of any dispute in meaning be secondary to the original English version which shall take precedence.

12. **EFFECTIVENESS**

This Assignment shall become effective on the date of execution by the parties hereto.

13. **GOVERNING LAW**

This Assignment is governed by and to be construed in accordance with laws of Hong Kong.

14. **ENFORCEMENT**

- 14.1 The courts of Hong Kong have jurisdiction to settle any disputes (a "**Dispute**") arising out of, or in connection with this Assignment (including without limitation a dispute regarding the existence, validity or termination of this Assignment or the consequences of its nullity).
- 14.2 The parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.
- 14.3 This Clause 14.3 is for the benefit of the Security Agent only. As a result, the Security Agent shall not be prevented from taking proceedings relating to a Dispute in the courts of Macau SAR. To the extent allowed by law, the Security Agent may take concurrent proceedings in Macau SAR and Hong Kong.
- 14.4 The Assignor agrees that the documents which start any Proceedings and any other documents required to be served in relation to those Proceedings may be served on Law Debenture Corporation (H.K.) Limited. If the appointment of the person mentioned in this Clause 14.4 ceases to be effective, the Assignor shall immediately appoint another person in Hong Kong to accept service of process on its behalf in Hong Kong. If the Assignor fails to do so (and such failure continues for a period of not less than 14 days), the Security Agent shall be entitled to appoint such a person by notice to the Assignor. Nothing contained herein shall restrict the right to serve process in any other manner allowed by law. This Clause 14.4 applies to Proceedings in Hong Kong and to Proceedings elsewhere.

- 14.5 The Assignor waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:
- 14.5.1 the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and
  - 14.5.2 the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action *in rem*, for the arrest, detention or sale of any of its assets and revenues.

**IN WITNESS WHEREOF** this Assignment has been signed on behalf of the Security Agent and executed as a deed by the Assignor and is intended to be and is hereby delivered by the Assignor as a deed on the date specified above.

**The Assignor**

**SIGNED, SEALED and DELIVERED**

as a **DEED** by José Laurindo Reina da Costa  
and Cheung Ming Sai, Ivan  
for and on behalf of  
**COMPANHIA DE SEGUROS DE  
MACAU, S.A.**  
in the presence of:

)  
)  
)  
)  
)  
)  
)

**José Laurindo Reina da Costa**

L.S.

**Cheung Ming Sai, Ivan**

L.S.

**Frances Wong**

Name of Witness: Frances Wong  
Address of Witness: 29/F, Jardine House  
One Connaught Place  
Hong Kong  
Address: Avenida da Praia Grande, No. 594,  
Edifício BCM, 11o. andar,  
Macau SAR  
Fax: (853)551074  
Attention: Tina Ngai (Reinsurance Manager)

**The Security Agent**

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

By: **David Gore**  
Address: 42/F Edinburgh Tower  
15 Queen's Road Central  
Hong Kong  
Telephone: (852) 2166-5671/(852) 2166-5430/(852) 2166-5665  
Fax: (852) 2804-6215  
Attention: Sunny Lui/ Raymond Fung/ Sara Wong  
Risk & Agency

**Sun Peng Lui**

Floating Charge

AN AGREEMENT made on 14 September 2004 between:

1. Wynn Resorts (Macau) S.A., a company incorporated in the Special Administrative Region of Macau (registered number 14917), with its registered office at 429, Avenida da Praia Grande, 18th Floor, Praia Grande Commercial Centre, Macau (“**the Company**”), herein represented by Mr Matthew O. Maddox, and
2. Société Générale, Hong Kong Branch, with its principal office at 42/F Edinburgh Tower, 15 Queen’s Road Central, Hong Kong, as agent for and on behalf of the Secured Parties (“**the Security Agent**”), herein represented by Mr Lui Sun Peng and Mr David Edward Gore.

WHEREAS:

- A. The Secured Parties have agreed, subject to the terms and conditions in the Finance Documents, to make available to the Company certain loan and other facilities for the purpose of the Projects.
- B. It is a condition of the Secured Parties making the facilities available under the Finance Documents that a floating charge over the assets of the Company is granted in favour of the Security Agent (for and on behalf of the Secured Parties).

NOW, IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, unless otherwise defined herein, all terms defined or referred to in the Deed of Appointment and Priority or, if not defined or referred to in the Deed of Appointment and Priority, the Common Terms Agreement, shall bear the same meaning when used in this Agreement and, in addition:

“Assets” means all the assets owned by the Company (including secured and unsecured credits, with the exception of immovable property) that are used by the Company for, applied towards or connected with the operation of all and any of the Enterprises from time to time (other than the Excluded Property (as defined in the IP Direct Agreement) and the items listed in Schedule C to the IP Direct Agreement and any assets charged to the Security Agent by way of fixed charge or assigned to the Security Agent or otherwise subject to a fixed security in favour of the Security Agent under the other Security Documents), each one of such assets being an “Asset”.

“Charge” means the floating charge created by this Agreement.

“Companies Registry” means the Commercial and Movable Property Registry of the Macau SAR.

“Deed of Appointment and Priority” means the deed of appointment and priority dated 14 September 2004 and made between, among others, the Company, Société Générale Asia Limited as intercreditor agent, the Security Agent as security agent, the institutions defined therein as Original First Ranking Lenders, Second Ranking Finance Party and Third Ranking Finance Party.

“Enterprise” or “Enterprises” means the establishment or establishments of the Company that qualify to register as an enterprise or enterprises at the Companies Registry.

“Gaming Concession Consent Agreement” means the Agreement Relating to Security (with the Exclusion of Land Concession and Immovable Property) dated 14 September 2004 between the Macau SAR, the Company and the Security Agent.

“Secured Obligations” means all the Liabilities and all other present and future obligations at any time due, owing or incurred by any Grantor to any Secured Party under the Finance Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity. The relevant particulars of the Secured Obligations, for the purpose of registration only and without prejudice to the provisions of the Finance Documents, are as follows:

- (a) amount – the aggregate maximum principal amount of US\$1,000,000,000 corresponding to MOP 8,031,000,000;
- (b) interest – interest is chargeable at a floating rate which currently varies between [2.88715]% and [7.5]% per annum; in the event of any default in payment, interest is chargeable at a floating rate which currently varies between [4.88715]% and [7.5]% per annum;
- (c) the amount of other payments, expenses, costs and indemnities is US\$100,000,000 corresponding to MOP 803,100,000;
- (d) date of payment – the last repayment date is 14 March 2012 or as otherwise provided in the Finance Documents; and
- (e) place of payment – the place of payment of the Secured Obligations is Hong Kong or as otherwise provided in the Finance Documents.

“Secured Parties” has the meaning given in the Deed of Appointment and Priority.

“Security Agent’s Rights” means all the rights, powers and remedies of the Security Agent provided by this Agreement or by law.

## 1.2 Interpretation

In this Agreement:

- (a) the principles of construction and interpretation contained or referred to in Clause 1.2 (*Construction*) of the Deed of Appointment and Priority shall apply to the construction and interpretation of this Agreement; and
- (b) any reference to any or all of the Grantors or any or all of the Secured Parties shall be construed so as to include its or their (and any subsequent) successors



and any permitted assignees and transferees in accordance with their respective interests.

### 1.3 Non-recourse Liability

Notwithstanding any provision in the Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Finance Document to which such Operative is party. The sole recourse of the Secured Parties for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Finance Documents shall be against the Obligors, and not against any assets or property of any Operative save to the extent such Operative is party to a Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

### 2. Gaming Concession Consent Agreement

The parties hereto agree that in the event of any conflict between the terms of this Agreement and the terms of the Gaming Concession Consent Agreement, the terms of the Gaming Concession Consent Agreement shall prevail.

### 3. Scope of Charge

3.1 The Company shall discharge and pay to the Security Agent (when due and payable) each of the Secured Obligations in accordance with the Finance Documents provided that:

- (a) neither the obligations of the Company under this Clause 3.1 nor the floating charge constituted by this Agreement shall extend to or include any liability or sum which would cause such obligations or security to be unlawful or prohibited by any applicable law; and
- (b) every payment by the Company of any sum in respect of the Secured Obligations to or for the account of any of the Secured Parties to whom the same is due and payable which is made in accordance with the terms of the Common Terms Agreement and this Agreement under which such sum is payable to such Secured Parties shall operate in satisfaction *pro tanto* of such covenant.

3.2 The Company hereby creates a first priority floating charge over all Assets in favour of the Security Agent as security for the discharge and payment of the Secured Obligations to the Security Agent. All items of the Assets so charged secure the full payment of the Secured Obligations irrespective of the proportional value of each particular Asset to the total value of all of the Assets.

3.3 Notwithstanding any other provisions of this Agreement (but subject to the prohibitions and restrictions contained in paragraph 5 of Schedule 5 Part B of the Common Terms Agreement), the Company shall, until consolidation of the Charge by the Security Agent in accordance with Clause 8, be entitled to sell, exchange, deliver in performance of an obligation, assign, transfer, convey or otherwise dispose of the Assets in such manner and generally on such terms as the Company shall in its absolute discretion think fit.

3.4 Upon consolidation of the Charge by the Security Agent in accordance with Clause 8, the Company shall keep possession of the Assets on behalf of the Security Agent in accordance with Article 916 of the Commercial Code of Macau SAR until enforcement by the Security Agent in accordance with Clause 9.

#### 4. Registration of Charge

The Company shall:

- (a) prior to the CP Satisfaction Date, register this Agreement (together with each amendment and/or supplement to this Agreement made prior to such registration) with the Companies Registry in respect of each Enterprise existing on the date of such registration;
- (b) register this Agreement with the Companies Registry in respect of each Enterprise (other than the Enterprise(s) referred to in paragraph (a) above) promptly after the registration of such Enterprise with the Companies Registry;
- (c) register each amendment and/or supplement to this Agreement (made on or after the registration of this Agreement in respect of any Enterprise with the Companies Registry) with the Companies Registry in respect of such Enterprise promptly after the entering into of such amendment or, as the case may be, supplement;
- (d) with regard to each Asset which is itself subject to a specific registration or which is secured and such security is subject to a specific registration, register this Agreement and each amendment and/or supplement to this Agreement in the appropriate register for such Asset or, as the case may be, such security promptly after the Security Agent shall have delivered an Enforcement Notice to the Company; and
- (e) provide evidence of each of the registrations referred to in paragraphs (a) to (d) above to the Security Agent promptly after such registration.

#### 5. Representations and Warranties of Company

The Company hereby makes the following representations and warranties to the Security Agent (for and on behalf of the Secured Parties) and acknowledges that the Secured Parties have relied upon those representations and warranties:

- (a) subject to the registrations referred to in Clause 4, this Agreement constitutes:
  - (i) an effective floating charge over the Assets; and
  - (ii) enjoys the priority which it is expressed to have;
- (b) it is the sole and absolute owner of all of the Assets free from any Lien (except for any Permitted Lien and any Mandatory Permitted Lien);
- (c) all acts, conditions and things required to be done, fulfilled and performed in order (i) to enable it lawfully to enter into, and perform and comply with the obligations expressed to be assumed by it in, this Agreement (ii) to ensure that the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable and (iii) to make this Agreement admissible in Macau SAR, have been done, fulfilled and performed; and

- (d) under the laws of Macau in force at the date hereof, it is not necessary that this Agreement be filed, recorded or enrolled with any court or other authority in Macau or that any stamp, registration or similar tax be paid on or in relation to this Agreement other than a stamp duty of MOP20.00 on this Agreement and a stamp duty of MOP5.00 on any of its counterparts.

6. Repeating Representations

The representations and warranties contained in Clause 5 (other than Clauses 5(a), 5(c)(iii) and 5(d)) shall be deemed to be repeated (by reference to the facts and circumstances then existing) by the Company on:

- (a) the CP Satisfaction Date; and
- (b) each Advance Date.

7. Undertakings

The Company undertakes to the Security Agent (for and on behalf of the Secured Parties) at all times during the subsistence of this Agreement as follows:

- (a) the Company shall register with the Companies Registry each of the Enterprises which relates to the hotel located on land leased to the Company under the Land Concession Contract and/or the casino located on land leased to the Company under the Land Concession Contract (other than the Enterprises referred to in Clause 4(a)) within 30 days of setting up such Enterprise;
- (b) the Company shall, within 45 days after the end of each fiscal quarter which ends after the CP Satisfaction Date, provide a written notification to the Security Agent setting out, in reasonable detail, each Asset (existing as at the end of such fiscal quarter) which is itself subject to a specific registration or which is secured and such security is subject to a specific registration;
- (c) the Company shall, upon consolidation of the Charge by the Security Agent in accordance with Clause 8:
  - (i) register the consolidation with the Companies Registry and, with regard to each Asset which is itself subject to a specific registration or which is secured and such security is subject to a specific registration, register the consolidation in the appropriate register for such Asset or, as the case may be, such security; and
  - (ii) publish or assist the Security Agent with publishing the notification of the consolidation in one Portuguese newspaper and one Chinese newspaper among the most widely circulated in Macau SAR, or as otherwise required by law, within eight days of registering such consolidation in accordance with Clause 7(c)(i);

- (d) at any time upon or after consolidation of the Charge by the Security Agent in accordance with Clause 8, the Company:
  - (i) shall not create, grant or permit to exist any Lien (other than the floating charge created hereunder and other Permitted Liens) over all or any of the Assets;
  - (ii) shall promptly notify the Security Agent in writing of any event or notice received by it that could reasonably be expected to materially prejudice the ability of the Security Agent to enforce the Charge; and
  - (iii) save as otherwise expressly permitted/required by this Agreement, shall not transfer or otherwise dispose or agree to transfer or otherwise dispose of the Assets upon or after such consolidation;
- (e) the Company shall ensure that all documents evidencing the granting of credit to its patrons and/or customers do not have any provision prohibiting the creation of any charge, pledge or assignment of the Company's rights against such patrons and/or customers;
- (f) the Company undertakes that it will not create or permit to subsist any Lien (except for any Permitted Lien and any Mandatory Permitted Lien) over all or any part of the Assets;
- (g) the Company shall do and execute all things and documents as the Security Agent shall require it to do or execute for the purpose of the execution, securing and/or perfection of the Charge and/or the consolidation or lifting of consolidation of the Charge and/or the carrying out of the registration required in respect of the Charge and/or its consolidation or lifting of consolidation with the Companies Registry and/or with the register for any Asset which is itself subject to a specific registration or the register for any security for any Asset which security is subject to a specific registration, provided that any such requirement shall be reasonable prior to the delivery of an Enforcement Notice to the Company; and
- (h) the Company shall do and execute all things and documents as the Security Agent shall require it to do or execute for the purpose of exercising the Security Agent's Rights and/or enforcing the Charge, provided that any such requirement shall be reasonable prior to the delivery of an Enforcement Notice to the Company.

#### 8. Enforcement Notice and Consolidation of Charge

8.1 The Security Agent may only proceed to consolidate the Charge after the Security Agent shall have given an Enforcement Notice to the Company.

8.2 The Charge may only be consolidated by way of a notification from the Security Agent to the Company stating the Event of Default which gives rise to the Security Agent's right to enforce and consolidate the Charge, which notification may be incorporated into an Enforcement Notice from the Security Agent to the Company and shall be registered and published pursuant to the provisions of Clause 7(c)(i) and 7(c)(ii) respectively.

#### 9. Enforcement

9.1 After the Security Agent shall have given an Enforcement Notice to the Company, the security created by this Agreement will become immediately enforceable and the Security

Agent shall be entitled, without prior notice to the Company or prior authorisation from the Company or any court, to enforce all or any part of such security, including without limitation:

- (a) sell the Assets or any particular items thereof through pledge or mortgage enforcement judicial proceedings, in which case the Company hereby irrevocably:
  - (i) consents to a sale by private negotiation or by auction to be conducted within the judicial proceedings,
  - (ii) undertakes to, if so requested by the Security Agent, apply to the court for such sale by private negotiation or by auction, and suggest to the court that the negotiation or the auction be carried out by such entity as the Security Agent shall indicate, and
  - (iii) accepts that the above consent and undertaking shall constitute and may be used in court as evidence of its willingness to have such sale by private negotiation or by auction conducted within the judicial proceedings by the entity indicated by the Security Agent, or
- (b) to the extent permitted by law, have the Assets or any particular items thereof assigned to the Security Agent for a price determined by the court, or
- (c) to the extent permitted by law, subject to Clause 9.3, sell or otherwise dispose of the Assets or any particular items thereof outside any judicial proceedings, by way of private negotiation or auction or otherwise at the times, in the manner and on the terms as the Security Agent may think fit, provided that the Security Agent may not be the purchaser or recipient thereof.

9.2 In the event of a sale or disposal of the Assets under the Charge or any particular items thereof being made outside any judicial proceedings, the Security Agent shall incur no liability and the Company hereby waives any claims against the Security Agent arising from the fact that the price obtained through private negotiation was less than what might be obtained through an auction, even if the Security Agent accepts the first offer received and does not make offers to more than one party, or arising from the fact that a sale conducted within judicial proceedings would have been more advantageous than a sale outside of it, other than any loss which arises as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent.

9.3 So long as Wynn Resorts has not delivered a notice under Clause 5.2 of the Wynn Resorts Support Agreement terminating its obligations under Clause 6 thereof, the Security Agent shall, prior to the acceptance of any offer made by a Senior Secured Creditor for the purchase of all or any of the assets subject to the security created hereunder, give reasonable details of all of the written offers received by the Security Agent for the purchase of such assets.

9.4 In making any sale or other disposal of all or any part of the Assets charged hereunder or any acquisition in the exercise of its powers, the Security Agent may do so for such consideration, in such manner, and generally on such terms and conditions as it thinks fit. Any contract for such sale, disposal or acquisition by the Security Agent may contain conditions excluding or restricting the personal liability of the Security Agent.

10. Application of Moneys

10.1 All moneys received or recovered by the Security Agent pursuant to this Agreement or the powers conferred by it shall (subject to (a) the claims of any Person having prior rights thereto and (b) Clause 10.2) be applied by the Security Agent (notwithstanding any purported appropriation by the Company or any other Grantors) in accordance with Clause 15 (*Application of Proceeds*) of the Deed of Appointment and Priority.

10.2 Notwithstanding any other provision of the Finance Documents, the Security Agent may, at any time after the delivery of an Enforcement Notice to the Company, pay any or all of the moneys received, recovered or realised by the Security Agent under this Agreement (including without limitation the proceeds of any conversion of currency) into any suspense or impersonal account (which is interest-bearing provided that there is no tax liability on the Security Agent with respect to any interest in such account) for so long as the Security Agent shall think fit (whether or not any Secured Obligations shall have become due) pending any further application of such moneys (as the Security Agent shall be entitled, but not obliged, to do in its discretion) in accordance with the provisions of Clause 10.1. If the Secured Obligations have been fully discharged or would be fully discharged if the moneys in such suspense or impersonal account were applied towards satisfaction of the Secured Obligations, the Security Agent shall apply the moneys in such suspense or impersonal account towards satisfaction of the Secured Obligations and if there are any moneys remaining in such suspense or impersonal account after the Secured Obligations have been fully discharged, the Security Agent shall pay such remaining moneys to any Person as directed by the Company. Any interest accrued on any moneys in such suspense or impersonal account shall be credited to such suspense or, as the case may be, impersonal account and shall, subject to the terms of this Clause 10.2, be applied towards satisfaction of the Secured Obligations.

11. Effectiveness of Collateral

11.1 No failure or delay on the part of the Security Agent to exercise any Security Agent's Right shall operate as a waiver thereof, nor shall any single or partial exercise of a Security Agent's Right by the Security Agent preclude any other or further exercise of that or any other Security Agent's Right. The Security Agent's Rights hereunder are cumulative to those provided by any other security in respect of the Secured Obligations and not exclusive of any remedies provided by law.

11.2 The Security Agent shall not be obliged, before exercising any Security Agent's Right as against the Company (a) to make any demand of any other Grantor or any other Person (b) to take any action or obtain judgment in any court against the Company, any other Grantor or any other Person or (c) to make or file any proof or claim in a liquidation, bankruptcy or insolvency of the Company, any other Grantor or any other Person or (d) to enforce or seek to enforce any other security in respect of the Secured Obligations.

11.3 Until the satisfaction of the requirements set out in Clause 16.20 of the Deed of Appointment and Priority in respect of the release of security, any settlement or discharge hereunder shall be conditional upon no security or payment to the Security Agent by or on behalf of the Company and/or any other Grantor being avoided or reduced by virtue of the Company's or any other Grantor's bankruptcy, insolvency, liquidation or similar laws of general application and shall in those circumstances be void.

12. Set-Off

The Company authorises the Security Agent (but the Security Agent shall not be obliged to exercise such right) from time to time to, after the delivery of an Enforcement Notice to the Company, set off against any or all of the sums due and payable but unpaid by and/or any or all of the obligations of the Company to the Security Agent under this Agreement any amount or other obligation owing by the Security Agent to the Company and apply any credit balance to which the Company is entitled on any account with the Security Agent in discharge of such sums payable by and/or such obligations of the Company (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

13. Expenses, Stamp, Taxes and Liability

13.1 Expenses

The Company shall, from time to time on demand of the Security Agent, reimburse the Security Agent for:

- (a) at any time prior to the delivery of an Enforcement Notice to the Company, all reasonable costs and expenses (including legal fees); or
- (b) at any time upon or after the delivery of an Enforcement Notice to the Company, all costs and expenses (including legal fees)

on a full indemnity basis incurred by it in connection with:

- (i) the perfection of the security contemplated in this Agreement;
- (ii) the consolidation of the Charge and/or the lifting of the consolidation of the Charge; and/or
- (iii) the exercise, preservation and/or enforcement of any of the Security Agent's Rights or the security contemplated by this Agreement or any proceedings instituted by or against the Security Agent as a consequence of taking or holding the security or of enforcing the Security Agent's Rights,

and such costs and expenses (including legal fees) shall carry interest from the date following 15 days after the date of such demand until so reimbursed at the rate and on the basis as mentioned in Clause 19.5 (*Interest on demands*) of the Deed of Appointment and Priority.

13.2 Stamp Taxes

The Company shall pay all stamp, registration and other taxes to which this Agreement, the security contemplated in this Agreement or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Security Agent on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax other than any liabilities, costs, claims and expenses which arise as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent.

### 13.3 Indemnity

The Company shall, notwithstanding any release or discharge of all or any part of the security, indemnify the Security Agent, its agents and any attorneys against any action, proceeding, claims, losses, liabilities and costs which it has sustained as a consequence of any breach by the Company of the provisions of this Agreement, the exercise of any of the rights and powers conferred on them by this Agreement (other than any loss or cost which arises as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent) provided that such costs shall be reasonable prior to the delivery of an Enforcement Notice to the Company. The Company is not liable to indemnify the Security Agent against any costs referred to in this Clause 13.3 to the extent that such costs have been paid by the Company to the Security Agent under Clause 13.1.

### 13.4 No Liability

Subject to Clause 9.3, none of the Security Agent or its nominee(s) shall be liable by reason of (a) taking any action permitted by this Agreement or (b) any neglect or default in connection with all or any part of the Assets or (c) the taking possession or realisation of all or any part of the Assets, except in the case of gross negligence or wilful default upon its part.

### 14. Currency Conversion And Indemnity

14.1 For the purpose of or pending the discharge of any or all of the Secured Obligations, the Security Agent may convert any moneys received, recovered or realised or subject to application by the Security Agent pursuant to this Agreement from the currency of such moneys to another for such purpose and any such conversion shall be made at the Security Agent's spot rate of exchange for the time being (or such other rate as may be available to the Security Agent from time to time in the ordinary course of business) for obtaining such other currency with the first currency and the Secured Obligations shall be discharged only to the extent of the net proceeds of such conversion received by the Security Agent.

14.2 If any sum (a "**Sum**") due from the Company under this Agreement or any order or judgment given or made in relation thereto has to be converted from the currency (the "**First Currency**") in which such Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (a) making or filing a claim or proof against the Company; or
- (b) obtaining or enforcing an order or judgment in any court or other tribunal,

the Company shall (through the Security Agent) indemnify each Person to whom such Sum is due from and against any loss suffered or incurred as a result of any discrepancy between (a) the rate of exchange used for such purpose to convert such Sum from the First Currency into the Second Currency and (b) the rate or rates of exchange at which such Person may in the ordinary course of business purchase the First Currency with the Second Currency at the time of receipt of such Sum.

### 15. Payments Free Of Deduction

All payments to be made by the Company under this Agreement shall be made free and clear of and without deduction for or on account of tax unless the Company is required to make



such payment subject to the deduction or withholding of tax, in which case the sum payable by the Company in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Person on account of whose liability to tax such deduction or withholding has been made receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

16. Discretion And Delegation

16.1 Any liberty or power which may be exercised or any determination which may be made hereunder by the Security Agent may, subject to the terms and conditions of the Deed of Appointment and Priority, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons save that the Security Agent shall act in a reasonable manner if expressly required hereunder.

16.2 The Security Agent shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Agreement on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise of such power, authority or discretion by the Security Agent itself or any subsequent delegation or revocation thereof or thereunder.

17. Form of Execution

This Agreement and any amendment hereto shall be authenticated by a notary in Macau SAR. Each document or notice to be issued by the Security Agent in connection with this Agreement (including without limitation, an Enforcement Notice stating, among other things the amount of Secured Obligations as at date of such Enforcement Notice) shall be treated as documents referred to in this Agreement for the purpose of Article 681 of the Code of Civil Procedures of Macau SAR.

18. Changes to Parties

18.1 The Company may not assign or transfer any or all of its rights (if any) and/or obligations under this Agreement.

18.2 The Security Agent may:

- (a) assign all or any of its rights under this Agreement; and
- (b) transfer all or any of its obligations (if any) under this Agreement,

to any successor Security Agent in accordance with the provisions of the Deed of Appointment and Priority, provided that it is acknowledged that such assignment or transfer shall not in any way prejudice the priority of the security constituted by this Agreement (which shall be assigned to such successor Security Agent pursuant to the terms of the Deed of Appointment and Priority). Upon such assignment and transfer taking effect, the successor Security Agent shall be and be deemed to be acting as agent for the Secured Parties for the purposes of this Agreement and in place of the former Security Agent. The successor Security Agent shall arrange for the authentication of this Agreement as an assignee/transferee with a notary in the Macau SAR.

18.3 Subject to the relevant provisions of the Finance Documents, each Secured Party may assign all or any of its rights under this Agreement (whether direct or indirect) in accordance with the provisions of the Finance Documents. It is acknowledged that none of the Finance Parties has or shall have any obligation under this Agreement.

18.4 The Company irrevocably and unconditionally confirms that:

- (a) it consents to any assignment or transfer by any Secured Party of its rights and/or obligations made in accordance with the provisions of the Finance Documents;
- (b) it shall continue to be bound by the terms of this Agreement, notwithstanding any such assignment or transfer; and
- (c) the assignee or transferee of such Secured Party shall acquire an interest in this Agreement upon such assignment or transfer taking effect.

19. Notices

19.1 Any communication to be made under or in connection with this Agreement shall be made in writing but, unless otherwise stated, may be made by fax or letter.

19.2 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Agreement is identified with its signature below, or any substitute address, fax number or department or officer as the party may notify to the other party by not less than 10 Business Days' notice.

19.3 Any communication or document made or delivered by one Person to another under or in connection with this Agreement shall only be effective:

- (a) if delivered personally or by overnight courier, when left at the relevant address;
- (b) if by way of fax, when received in legible form; or
- (c) if by way of letter, when it has been left at the relevant address or 10 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 19.2, if addressed to that department or officer.

19.4 Any communication or document to be made or delivered to the Security Agent shall be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).

20. Partial Invalidity

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of

the remaining provisions of this Agreement nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the security intended to be created by or pursuant to this Agreement is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

21. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the Special Administrative Region of Macau. The Company hereby submits to the exclusive jurisdiction of the courts of the Special Administrative Region of Macau for any action or proceeding arising out or with respect to this Agreement.

22. Language

This Agreement is made in two copies in a Portuguese version and an English version. In case of discrepancy, the Portuguese version shall prevail.

23. Exercise of Rights

The Secured Parties will only exercise their rights under this Agreement through the Security Agent unless and until the appointment of the Security Agent ceases and no successor Security Agent is appointed under Clause 17.1 (*Resignation of the Security Agent*) of the Deed of Appointment and Priority.

23. Counterpart

This Agreement may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement.

IN WITNESS WHEREOF this Agreement has been executed on the date first above written.

For and on behalf of **Wynn Resorts (Macau) S.A.**

**Matthew O. Maddox**

Matthew O. Maddox

Address: 429 Avenida da Praia Grande,  
18th Floor, Praia Grande Commercial Centre,  
Macau

Telephone: 853-371476

Fax: 853-329966

Attention: Chief Financial Officer

With a copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Telephone: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

For and on behalf of **Société Générale, Hong Kong Branch**

**Sun Peng Lui**

Lui Sun Peng

Address: 42/F Edinburgh Tower,  
15 Queen's Road Central,  
Hong Kong

Telephone: (852) 2166 5671/ 2166 5430/ 2166 5665

Fax: (852)2804 6215

Attention: Sunny Lui/ Raymond Fung/ Sara Wong  
Risk & Agency

**Notária Privada  
Maria Amélia António**

*Maria Amélia António*

**David Edward Gore**

David Edward Gore

**Notária Privada  
Maria Amélia António**  
*Maria Amélia António*

**DATED 14 SEPTEMBER 2004**

**WYNN RESORTS (MACAU) S.A.**

as Company

and

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

as Security Agent

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**DEBENTURE**

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**BY**

- (1) **WYNN RESORTS (MACAU) S.A.**, a company incorporated under the laws of the Macau SAR (registered number 14917), whose registered office is at 429 Avenida da Praia Grande, 18th Floor, Praia Grande Commercial Centre, Macau (the “**Company**”) in favour of
- (2) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**, with its principal office at 42/F Edinburgh Tower, 15 Queen’s Road Central, Hong Kong, as agent and security trustee for and on behalf of the Secured Parties (the “**Security Agent**”).

**NOW THIS DEBENTURE WITNESSES** as follow:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Debenture, unless otherwise defined herein, all terms defined or referred to in the Deed of Appointment and Priority or, if not defined or referred to in the Deed of Appointment and Priority, the Common Terms Agreement, shall bear the same meaning when used in this Debenture and, in addition:

“**Charged Property**” means all the assets and undertaking of the Company which from time to time are the subject of the security created or expressed to be created in favour of the Security Agent by or pursuant to this Debenture.

“**Collateral Rights**” means all rights, powers and remedies of the Security Agent provided by or pursuant to this Debenture or by law.

“**Deed of Appointment and Priority**” means the deed of appointment and priority dated 14 September 2004 and made between, among others, the Company, Société Générale Asia Limited as intercreditor agent, the Security Agent as security agent, the institutions defined therein as Original First Ranking Lenders, Second Ranking Finance Party and Third Ranking Finance Party, as amended, varied, novated and/or supplemented from time to time.

“**Intellectual Property**” means any patents, trade marks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered, and the benefit of all applications and rights to use such assets (other than the Excluded Property (as defined in the IP Direct Agreement) and items listed in Schedule C of the IP Agreement) and all Related Rights in relation thereto.

“**Investments**” means each of the Permitted Investments as defined in the Common Terms Agreement (other than paragraphs (a) and (b) in the definition thereof), in each case whether held directly by or to the order of the Company or by any trustee, nominee, fiduciary or clearance system on its behalf and all Related Rights in relation thereto (including all rights against any such trustee, nominee, fiduciary or clearance system).

“**Monetary Claims**” means any debts and monetary claims owing to the Company and any proceeds thereof (including without limitation any claims or sums of money deriving from or in relation to any Offshore Project Documents, any Hedging Agreements, any Intellectual Property, any court order or judgment, any contract or agreement to which the Company is a party and any other assets, property, rights or undertaking of the Company).

“**Offshore Project Documents**” means the Construction Contract, the Prime Contractor’s Completion Guarantee, the Prime Contractor’s Performance Bond, the Project Administration Services Agreement and each Payment and Performance Bond (other than the Prime Contractor’s Completion Guarantee and the Prime Contractor’s Performance Bond).

“**Receiver**” means a receiver or receiver and manager of the whole or any part of the Charged Property.

“**Related Rights**” means, in relation to any asset covered by this Debenture:

- (a) the proceeds of sale of any part of that asset;
- (b) all rights under any licence, agreement for sale or agreement for lease or agreement for any other disposal in respect of that asset;
- (c) all rights, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that asset;
- (d) any moneys and proceeds paid or payable in respect of that asset; and
- (e) (in the case where such asset is a share or other security) all dividends, distributions, interest and moneys payable in respect thereof and any rights/shares/securities deriving therefrom or accruing thereto whether by way of redemption, bonus, preference, option, substitution, conversion or otherwise.

## 1.2 Interpretation

In this Debenture:

- 1.2.1 the principles of construction and interpretation contained or referred to in Clause 1.2 (*Construction*) of the Deed of Appointment and Priority shall apply to the construction and interpretation of this Debenture; and
- 1.2.2 any reference to any or all of the Grantors or any or all of the Secured Parties shall be construed so as to include its or their (and any subsequent) successors and any permitted transferees in accordance with their respective interests.

## 1.3 Third party rights

- 1.3.1 The Contracts (Rights of Third Parties) Act 1999 applies to Clause 1.4 (*Non-Recourse Liability*) but only for the benefit of the Operatives subject always to the terms of Clause 29 (*Governing Law*) and Clause 30 (*Jurisdiction*).



1.3.2 Except as provided in sub-clause 1.3.1 above, a Person who is not a party to this Debenture has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Debenture.

1.3.3 Subject to Clause 24.2 (*Amendment of other Security Documents*) of the Deed of Appointment and Priority, the consent of any Person who is not a party to this Debenture is not required to rescind or vary this Debenture.

#### 1.4 **Non-Recourse Liability**

Notwithstanding any provision in the Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Finance Document to which such Operative is party. The sole recourse of the Secured Parties for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Finance Documents shall be against the Obligors, and not against any assets or property of any Operative save to the extent such Operative is party to a Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

### 2. **PAYMENT OF SECURED OBLIGATIONS**

#### 2.1 **Covenant to Pay**

The Company shall discharge and pay to the Security Agent (when due and payable) each of the Secured Obligations in accordance with the terms of the Finance Documents provided that:

- (a) neither the obligations of the Company under this Clause 2.1 nor the security constituted by this Debenture shall extend to or include any liability or sum which would cause such obligations or security to be unlawful or prohibited by any applicable law; and
- (b) every payment by the Company of any sum in respect of the liabilities hereto covenanted to be discharged by the Company to or for the account of any of the Secured Parties to whom the same is due and payable which is made in accordance with the terms of the Finance Documents under which such sum is payable to such Secured Parties shall operate in satisfaction *pro tanto* of such covenant.

### 3. **ASSIGNMENTS AND FIXED CHARGE**

#### 3.1 **Assignments**

The Company hereby assigns with full title guarantee to the Security Agent as trustee for the Secured Parties for the payment and discharge of the Secured Obligations all the Company's right, title and interest from time to time in and to each of the following assets (subject to obtaining any necessary consent to such assignment from any third party):

- 3.1.1 each of the Offshore Project Documents and all Monetary Claims and Related Rights in relation thereto; and

3.1.2 each of the Hedging Agreements and all Monetary Claims and Related Rights in relation thereto.

### 3.2 **Fixed Charge**

The Company hereby charges with full title guarantee in favour of the Security Agent as trustee for the Secured Parties for the payment and discharge of the Secured Obligations, by way of first fixed charge, all of the Company's rights, title and interest from time to time in and to each of the following assets:

3.2.1 the Intellectual Property to the extent that such rights, title and interest can be subject to a charge in favour of the Security Agent (other than any Intellectual Property which is registered in Macau SAR and which is pledged under the Pledge over Intellectual Property);

3.2.2 the Investments; and

3.2.3 all Monetary Claims attributable to all or any part of the Intellectual Property and/or the Investments other than any claims which are otherwise subject to a fixed charge or assignment (at law or in equity) pursuant to this Debenture and all Related Rights in relation thereto provided that without prejudice to any other provision of this Clause 3.2, the proceeds of such Monetary Claims shall be released automatically from the fixed charge upon those proceeds being credited to any Account.

### 3.3 **Obligations to Perform**

Notwithstanding the assignment referred to in Clause 3.1 (*Assignments*), the Company remains liable to perform the obligations imposed on it under or in respect of the Offshore Project Documents and the Hedging Agreements, and neither the Security Agent nor any of the other Secured Parties is liable to perform any of such obligations nor liable for the consequences of non-performance.

### 3.4 **Charge over Intellectual Property**

3.4.1 The Company shall, promptly upon any acquisition of any rights, title and/or interest in any material Intellectual Property, give written notice of such acquisition to the Security Agent which notice shall include reasonable details of such rights, title and interest.

3.4.2 The Company shall use reasonable endeavour to ensure that all of the Company's rights, title and interest in all Intellectual Property can be charged in favour of the Security Agent and, if any of the Company's rights, title and interest in any material Intellectual Property cannot be charged in favour of the Security Agent after the Company having used its reasonable endeavour to so ensure, the Company shall promptly notify the Security Agent in writing and provide reasonable details of such rights, title and interest which cannot be charged in favour of the Security Agent.

### 3.5 Direct Agreements

Notwithstanding any provision herein, the Security Agent may not exercise any right which is not permitted under the PASA Direct Agreement or the Construction Contract Direct Agreement.

## 4. PERFECTION OF SECURITY

### 4.1 Notices of Assignment

4.1.1 The Company shall give notices of assignment of its rights, title and interest in, to and under each of the Construction Contract and the Project Administration Services Agreement in favour of the Security Agent under the Construction Contract Direct Agreement and the PASA Direct Agreement respectively.

4.1.2 The Company shall deliver to the Security Agent (or procure the delivery to the Security Agent of):

- (a) (in respect of each Offshore Project Document (other than the Construction Contract and the Project Administration Services Agreement) and Hedging Agreement already entered into or subsisting at the date of this Debenture) as soon as shall be reasonably practicable after execution of this Debenture, a notice of assignment to the relevant obligor(s) thereunder substantially in the form of Schedule 1 (*Form of Notice of Assignment of Offshore Project Document*) (or otherwise in form and substance reasonably satisfactory to the Security Agent) duly executed by, or on behalf of, the Company, and shall use reasonable endeavours to procure that each such notice is acknowledged by each Person to whom such notice is expressed to be given in substantially the form of acknowledgement attached to such notice as soon as reasonably practicable thereafter; and
- (b) (in respect of each Offshore Project Document and Hedging Agreement entered into or coming into existence after the date of this Debenture) within 20 days of the entering into or coming to existence of such Offshore Project Document or, as the case may be, such Hedging Agreement, a notice of assignment to the relevant obligor(s) thereunder substantially in the form of Schedule 1 (*Form of Notice of Assignment of Offshore Project Document*) (or otherwise in form and substance reasonably satisfactory to the Security Agent) duly executed by, or on behalf of, the Company, and shall use reasonable endeavours to procure that each such notice is acknowledged by each Person to whom such notice is expressed to be given in substantially the form of acknowledgement attached to such notice within 30 days of the entering into or coming into existence of such Offshore Project Documentation or, as the case may be, such Hedging Agreement.

### 4.2 Notices of Charge

The Company shall deliver to the Security Agent (or procure the delivery to the Security Agent of), in respect of any asset which is the subject of any charge, a notice of charge in respect of such asset (in such form as the Security Agent may reasonably require from

time to time), promptly upon demand of the Security Agent at any time and use its reasonable endeavour to procure that such notice is duly acknowledged by each Person to whom such notice is expressed to be given.

#### 4.3 Further Advances

Subject to the terms of the Finance Documents, each Funding Party is under an obligation to make further advances (or, in the case of a Hedging Counterparty, payments) to the Company and that obligation will be deemed to be incorporated into this Debenture as if set out in this Debenture.

#### 4.4 Registration of Intellectual Property

The Company shall, if requested by the Security Agent, execute all such documents and do all acts that the Security Agent may reasonably require to record the interest of the Security Agent in any registers relating to any registered Intellectual Property which is subject to a charge under or pursuant to Clause 3.2.1.

### 5. FURTHER ASSURANCE

#### 5.1 Further Assurance

The Company shall promptly execute, or procure the execution of, all documents (including without limitation assignments, transfers, mortgages, charges, notices and instructions) and do all things (including without limitation filings and registrations) that the Security Agent may require for the purpose of (a) exercising the Collateral Rights or (b) securing and perfecting its security over or title to all or any part of the Charged Property provided that any such requirement shall be reasonable prior to the delivery of an Enforcement Notice to the Company.

5.2 The Company shall, upon demand from the Security Agent, at any time after the Security Agent shall have given an Enforcement Notice to the Company, (a) procure the transfer of the Charged Property into the name of the Security Agent or its nominee(s), agents or such purchasers as the Security Agent shall direct and (b) execute, or procure the execution of, all documents and do all other things that the Security Agent may require to facilitate the realisation of the Charged Property.

#### 5.3 Consents

The Company shall:

5.3.1 deliver to the Security Agent promptly upon execution of this Debenture, all consents necessary (if any) to enable the assets (which are in existence at the date of this Debenture and expressed to be subject to a fixed charge or an assignment pursuant to Clause 3 (*Assignments and Fixed Charge*)) to be the subject of an effective fixed charge or, as the case may be, assignment pursuant to Clause 3 (*Assignments and Fixed Charge*); and

5.3.2 subject to Clause 3.4.2, obtain and deliver to the Security Agent, promptly after acquisition of any assets or the coming into existence of any assets of the Company after the date of this Debenture (which assets, in either case, are expressed to be subject to a fixed charge or an assignment pursuant to Clause 3 (*Assignments and Fixed Charge*)), all consents necessary to enable such assets

to be the subject of an effective fixed charge or, as the case may be, assignment pursuant to Clause 3 (*Assignments and Fixed Charge*).  
Immediately upon obtaining any consent referred to in Clause 5.3, the asset concerned shall become subject to such security.

#### 5.4 **Implied Covenants for Title**

The obligations of the Company under this Debenture shall be in addition to the covenants for title deemed to be included in this Debenture by virtue of Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994.

### 6. **COMPANY'S REPRESENTATIONS AND WARRANTIES**

6.1 The Company hereby makes the following representations and warranties to the Security Agent (for and on behalf of the Secured Parties) and acknowledges that the Secured Parties have relied upon those representations and warranties:

- (a) the Company has not assigned or otherwise disposed or purported to assign or otherwise dispose of any of its right, title or interest:
  - (i) under any of the Offshore Project Documents or Hedging Agreements; or
  - (ii) in relation to the other Charged Property or any part thereof save in accordance with the terms of the Senior Finance Documents, in each case save for the assignment created hereunder.
- (b) this Debenture:
  - (iii) constitutes an effective security over the Charged Property; and
  - (iv) enjoys the priority which it is expressed to have;
- (c) it is the sole and absolute legal and beneficial owner of all of the Charged Property free from any Lien, except for:
  - (i) in the case of the Offshore Project Documents and the Hedging Agreements and all Monetary Claims in relation thereto, any Lien referred to in paragraph 3(a), 3(f) or 3(q) of Schedule 5 Part B of the Common Terms Agreement and any Mandatory Permitted Lien;
  - (ii) in the case of the Intellectual Property referred to in Clause 3.2.1 and all Monetary Claims in relation thereto, any Permitted Lien and any Mandatory Permitted Lien; and
  - (iii) in the case of the Investments, paragraph 3(a), 3(f) or 3(q) of Schedule 5 Part B of the Common Terms Agreement and any Mandatory Permitted Lien;
- (d) all acts, conditions and things required to be done, fulfilled and performed in order (i) to enable it lawfully to enter into, and perform and comply with the obligations expressed to be assumed by it in this Debenture, (ii) to ensure that

the obligations expressed to be assumed by it in this Debenture are legal, valid, binding and enforceable and (iii) to make this Debenture admissible in evidence in its jurisdiction of incorporation and England, have been done, fulfilled and performed; and

(e) under the laws of its jurisdiction of incorporation and England in force at the date hereof, it is not necessary that this Debenture be filed, recorded or enrolled with any court or other authority in such jurisdictions or that any stamp, registration or similar tax be paid on or in relation to this Debenture.

6.2 The representations and warranties contained in Clause 6.1 (other than Clauses 6.1(b), 6.1(d)(iii) and 6.1(e)) shall be deemed to be repeated (by reference to the facts and circumstances then existing) by the Company on:

(f) the CP Satisfaction Date; and

(g) each Advance Date.

## 7. **NEGATIVE PLEDGE AND DISPOSALS**

### 7.1 **Negative Pledge**

The Company undertakes that it will not, at any time during the subsistence of this Debenture, create or permit to subsist any Lien over all or any part of the Charged Property, except for:

(a) in the case of the Offshore Project Documents and the Hedging Agreements and all Monetary Claims in relation thereto, any Lien referred to in paragraph 3(a), 3(f) or 3(q) of Schedule 5 Part B of the Common Terms Agreement and any Mandatory Permitted Lien;

(b) in the case of the Intellectual Property referred to in Clause 3.2.1 and all Monetary Claims in relation thereto, any Permitted Lien and any Mandatory Permitted Lien; and

(c) in the case of the Investments, paragraph 3(a), 3(f) or 3(q) of Schedule 5 Part B of the Common Terms Agreement and any Mandatory Permitted Lien.

### 7.2 **No Disposal of Interests**

The Company undertakes that it shall not (and shall not agree to) at any time during the subsistence of this Debenture, except as permitted pursuant to the Common Terms Agreement or by this Clause 7:

7.2.1 execute any conveyance, transfer, lease or assignment of, or other right to use, all or any part of the Charged Property;

7.2.2 create any legal or equitable estate or other interest in, or over, or otherwise relating to, all or any part of the Charged Property; or

7.2.3 allow any Person any right to use or occupy or to become entitled to assert any proprietary interest in, or right over, the Charged Property, which may, in each case, adversely affect in any material respect the value of any of the Charged

Property or the ability of the Security Agent to exercise any of the Collateral Rights.

**8. INVESTMENTS**

**8.1 Investments: Payment of Calls**

The Company shall pay when due all calls or other payments which may be or become due in respect of any of the Investments, and in any case of default by the Company in such payment, the Security Agent may, if it thinks fit, make such payment on behalf of the Company in which case any sums paid by the Security Agent shall be reimbursed by the Company to the Security Agent on demand and shall carry interest from the date of payment by the Security Agent until reimbursed at the rate and in accordance with Clause 2.1(a).

**8.2 Investments: Delivery of Documents**

After the delivery of an Enforcement Notice by the Security Agent to the Company, the Company shall promptly on the request of the Security Agent, deliver (or procure delivery) to the Security Agent, and the Security Agent shall be entitled to retain, any document (in such form and substance as the Security Agent may reasonably require) which the Security Agent may reasonably request with a view to perfecting or improving its security over the Investments or to registering any Investment in its name or the name of any nominee(s).

**8.3 Investments: Procedure for Investment**

The Company shall comply with paragraph 10 (*Permitted Investments*) of Schedule 6 (*Accounts*) to the Common Terms Agreement.

**8.4 Investments: Exercise of Rights**

The Company shall not exercise any of its rights and powers in relation to any of the Investments in any manner which could reasonably be expected to prejudice (a) materially the value of, or (b) the ability of the Security Agent to realise, the security created by this Debenture.

**9. INTELLECTUAL PROPERTY**

The Company shall during the subsistence of this Debenture in respect of any Intellectual Property which is material to or required in connection with its business:

9.1.1 take all such steps and do all such acts as may be necessary to preserve and maintain the subsistence and the validity of any such Intellectual Property; and

9.1.2 not use or permit any such Intellectual Property to be used in any way which may materially and adversely affect its value.

**10. ENFORCEMENT OF SECURITY**

**10.1 Enforcement**

After the Security Agent shall have given an Enforcement Notice to the Company, the security created by or pursuant to this Debenture is immediately enforceable and the

Security Agent shall be entitled, without prior notice to the Company or prior authorisation from the Company or any court, to:

10.1.1 enforce all or any part of such security (at the times, in the manner and on the terms it thinks fit) including taking possession of, holding, selling or otherwise disposing of all or any part of the Charged Property at the times, in the manner and on the terms as it may think fit; and

10.1.2 whether or not it has appointed a Receiver, exercise all or any of the powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Debenture) on mortgagees and by this Debenture on any Receiver or otherwise conferred by law on mortgagees or Receivers.

The Security Agent shall be entitled to apply the proceeds of any of the above actions in accordance with Clause 14.1 and/or Clause 14.2.

## **10.2 No Liability as Mortgagee in Possession**

Neither the Security Agent nor any Receiver shall be liable to account as a mortgagee in possession in respect of all or any part of the Charged Property or be liable for any loss upon realisation or for any neglect, default or omission in connection with the Charged Property to which a mortgagee in possession might otherwise be liable other than any loss which arises as a consequence of any gross negligence or wilful default on the part of the Security Agent or Receiver.

## **10.3 Purchase of Assets**

So long as Wynn Resorts has not delivered a notice under Clause 5.2 of the Wynn Resorts Support Agreement terminating its obligations under Clause 6 thereof, the Security Agent shall, prior to the acceptance of any offer made by a Senior Secured Creditor for the purchase of all or any of the assets subject to security hereunder, give reasonable details of all of the written offers received by the Security Agent for the purchase of such assets.

## **11. EXTENSION AND VARIATION OF THE LAW OF PROPERTY ACT 1925**

### **11.1 Extension of Powers**

The power of sale or other disposal conferred on the Security Agent and on any Receiver by this Debenture shall operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Debenture.

### **11.2 Restrictions**

Any restrictions on the consolidation of Liens shall be excluded to the fullest extent permitted by law and the Security Agent shall, so far as it shall be lawful, be entitled to consolidate all or any of the security interests constituted by this Debenture and/or its powers hereunder with any other Liens whether in existence at the date of this Debenture or created thereafter. Without prejudice to the foregoing, the restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Debenture or to the exercise by the Security Agent of its right to consolidate all or any of the security



created by or pursuant to this Debenture with any other security in existence at any time or to its power of sale, which powers may be exercised by the Security Agent without notice to the Company on or at any time after delivery of an Enforcement Notice by the Security Agent to the Company.

### 11.3 Power of Leasing

The statutory powers of leasing may be exercised by the Security Agent at any time after the delivery of an Enforcement Notice by the Security Agent to the Company and the Security Agent and any Receiver may make any lease or agreement for lease, accept surrenders of leases and grant options on such terms as it shall think fit, without the need to comply with any restrictions imposed by Sections 99 and 100 of the Law of Property Act 1925.

### 11.4 Certificate

A certificate in writing by an officer or agent of the Security Agent that any power of sale or other disposal has arisen and is exercisable shall be conclusive evidence (in the absence of manifest error) of that fact, in favour of a purchaser of all or any part of the Charged Property.

## 12. APPOINTMENT OF RECEIVER OR ADMINISTRATOR

### 12.1 Appointment and Removal

After the Security Agent shall have given an Enforcement Notice to the Company or if requested by the Company, the Security Agent may by writing (acting through an authorised officer of the Security Agent) without notice to the Company:

12.1.1 appoint one or more Persons to be a Receiver of the whole or any part of the Charged Property;

12.1.2 remove (so far as it is lawfully able) any Receiver so appointed;

12.1.3 appoint another Person(s) as an additional or replacement Receiver(s); and

12.1.4 appoint one or more Persons to be an administrator of the Company.

### 12.2 Capacity of Receivers

Each Person appointed to be a Receiver pursuant to Clause 12.1 (*Appointment and Removal*) shall be:

12.2.1 entitled to act individually or together with any other Person appointed or substituted as Receiver;

12.2.2 for all purposes deemed to be the agent of the Company which shall be solely responsible for his acts, defaults and liabilities (other than such acts, defaults and liabilities that are attributed to the gross negligence or wilful misconduct of the Receiver) and for the payment of his remuneration and no Receiver shall at any time act as agent for the Security Agent; and

12.2.3 entitled to remuneration for his services at a reasonable rate to be fixed by the Security Agent from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

### 12.3 Statutory Powers of Appointment

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Security Agent under the Law of Property Act 1925 (as extended by this Debenture) or otherwise and such powers shall remain exercisable from time to time by the Security Agent in respect of any part of the Charged Property.

### 13. POWERS OF RECEIVER

In addition to the powers of the Security Agent conferred by Clause 10 (*Enforcement of Security*), every Receiver shall (subject to any limitations or restrictions in the instrument appointing him but notwithstanding any winding-up, insolvency or dissolution of the Company) have and be entitled to exercise, in relation to the Charged Property (and any assets of the Company which, when got in, would be Charged Property) in respect of which he was appointed, and as varied and extended by the provisions of this Debenture (in the name of or on behalf of the Company or in his own name and, in each case, at the cost of the Company):

13.1.1 all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act;

13.1.2 all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);

13.1.3 all the powers and rights of an absolute owner and power to do or omit to do anything which the Company itself could do or omit to do;

13.1.4 the power to do all things (including without limitation bringing or defending proceedings in the name or on behalf of the Company) which are incidental or conducive to (a) any of the functions, powers, authorities or discretions conferred on or vested in him or (b) the exercise of the Collateral Rights (including without limitation realisation of all or any part of the Charged Property) or (c) bringing to his hands any assets of the Company forming part of, or which when got in would be, Charged Property; and

13.1.5 all the powers conferred on him by general law.

13.2 Without prejudice to the generality of the foregoing, each Receiver shall (subject to any limitations or restrictions in the instrument appointing him but notwithstanding any winding-up, bankruptcy, insolvency or dissolution of the Company) have the following powers in relation to the part of the Charged Property (and any assets which, when got in, would be part of such Charged Property) in respect of which he was appointed (and every reference in this Clause 13.2 to the “**Charged Property**” shall be read as a reference to that part of the Charged Property in respect of which such Receiver was appointed):

(a) Take Possession

power to take immediate possession of, collect and get in all or any part of the Charged Property including without limitation all dividends, interests and other moneys arising therefrom or accruing thereto (whether before or after the date

of his appointment) and without prejudice to the foregoing, to cause to be registered all or any part of the Charged Property in its own name or in the name of its nominee(s) or in the name of any purchaser(s) thereof;

(b) Proceedings and Claims

power to bring, prosecute, enforce, defend and abandon applications, claims, disputes, actions, suits and proceedings in connection with the business of the Company or all or any part of the Charged Property or this Debenture in the name of the Company or in his own name and to submit to arbitration, negotiate, compromise and settle any such applications, claims, disputes, actions, suits or proceedings;

(c) Deal with Charged Property

power to sell, transfer, convey and/or dispose of all or any part of the Charged Property (in each case with or without consideration) in such manner and on such terms as he thinks fit;

(d) Voting Rights

exercise (or refrain from exercising) any or all of the voting rights in respect of the Charged Property or any part thereof in such manner and on such terms as he thinks fit;

(e) Acquisitions

power to purchase, lease, hire or otherwise acquire any assets or rights of any description which he shall in his absolute discretion consider necessary or desirable for the improvement or realisation of the whole or any part of the Charged Property or otherwise for the benefit of the whole or any part of the Charged Property;

(f) Redemption of Security

power to redeem, discharge or compromise any security whether or not having priority to the security constituted by this Debenture or any part of it;

(g) Covenants, Guarantees and Indemnities

power to enter into bonds, covenants, guarantees, commitments, indemnities and other obligations or liabilities as he shall think fit, to make all payments needed to effect, maintain or satisfy such obligations or liabilities and to use the company seal(s) (if any) of the Company; and

(h) Exercise of Powers in Company's Name

power to exercise any of the above powers on behalf of and in the name of the Company (notwithstanding any winding-up, bankruptcy, insolvency or dissolution of the Company) or on his own behalf.

13.3 In making any sale or other disposal of all or any part of the Charged Property or any acquisition in the exercise of their respective powers, a Receiver or the Security Agent may do so for such consideration, in such manner, and generally on such terms and conditions as it thinks fit. Any contract for any sale, disposal or acquisition by the Receiver or the Security Agent may contain conditions excluding or restricting the personal liability of the Receiver or the Security Agent.

#### 14. APPLICATION OF MONEYS

14.1 All moneys received or recovered by the Security Agent or any Receiver pursuant to this Debenture or the powers conferred by it shall (subject to (a) the claims of any Person having prior rights thereto and (b) Clause 14.2 and by way of variation of the provisions of the Law of Property Act 1925) be applied by the Security Agent (notwithstanding any purported appropriation by any of the Company or any other Grantors) in accordance with Clause 9 (*Disposal and Insurance Proceeds*) or, as the case may be, Clause 15 (*Application of Proceeds*) of the Deed of Appointment and Priority.

14.2 Notwithstanding any other provision of the Finance Documents, the Security Agent or any Receiver may, at any time after the delivery of an Enforcement Notice to the Company, pay any or all of the moneys received, recovered or realised by the Security Agent or such Receiver under this Debenture and/or the Capital Contributions Account Control Agreement (including without limitation the proceeds of any conversion of currency) into any suspense or impersonal account (which is interest-bearing provided that there is no tax liability on the Security Agent with respect to any interest in such account) for so long as the Security Agent or such Receiver shall think fit (whether or not any Secured Obligations shall have become due) pending any further application of such moneys (as the Security Agent or such Receiver shall be entitled, but not obliged, to do in its discretion) in accordance with the provisions of Clause 14.1 or, as the case may be, section 10 of the Capital Contributions Account Control Agreement. If the Secured Obligations have been fully discharged or would be fully discharged if the moneys in such suspense or impersonal account were applied towards satisfaction of the Secured Obligations, the Security Agent shall apply the moneys in such suspense or impersonal account towards satisfaction of the Secured Obligations and if there are any moneys remaining in such suspense or impersonal account after the Secured Obligations have been fully discharged, the Security Agent shall pay such remaining moneys to any Person as directed by the Company. Any interest accrued on any moneys in such suspense or impersonal account shall be credited to such suspense or, as the case may be, impersonal account and shall, subject to the terms of this clause 14.2, be applied towards satisfaction of the Secured Obligations.

#### 15. PROTECTION OF PURCHASERS

##### 15.1 Consideration

The receipt of the Security Agent or any Receiver in respect of consideration from a purchaser shall be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Property or making any acquisition, the Security Agent or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

**15.2 Protection of Purchasers**

No purchaser or other Person dealing with the Security Agent or any Receiver shall be bound to inquire whether the right of the Security Agent or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Security Agent or such Receiver in such dealings.

**16. POWER OF ATTORNEY**

16.1 The Company hereby by way of security irrevocably (within the meaning of Section 4 of the Powers of Attorney Act 1971) appoints the Security Agent and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to, upon and at all times after the Security Agent shall have delivered an Enforcement Notice to the Company, execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for:

16.1.1 carrying out any obligation imposed on the Company by this Debenture (including without limitation the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Property) and/or any other Finance Documents which the Company has failed to perform in accordance with the terms hereof or thereof; and

16.1.2 enabling the Security Agent and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Debenture or any other Finance Document or by law (including without limitation, after the Security Agent shall have delivered an Enforcement Notice to the Company, the exercise of any right of a legal or beneficial owner of the Charged Property).

16.2 The Company shall ratify and confirm all things done and all documents executed by any attorney in accordance with the terms of this Clause 16 in the exercise of all or any of his powers granted by or in relation to the Company.

**17. COMPANY'S OBLIGATIONS**

The obligations of the Company hereunder and the Collateral Rights shall not be discharged, impaired or otherwise affected by:

- (a) any winding-up, dissolution, re-organisation, bankruptcy, death or insolvency of, or any change in, the Company or any other Person;
- (b) any of the Secured Obligations being at any time illegal, invalid, unenforceable or ineffective;
- (c) any unenforceability or invalidity of any other agreement or document;
- (d) any time or other indulgence being granted to the Company or any other Person with respect to the Secured Obligations;
- (e) any amendment, variation, waiver or release of any of the Secured Obligations except for a release or discharge in accordance with Clause 16.20 of the Deed of Appointment and Priority;

- (f) any variation of the terms upon which the Security Agent holds the security constituted hereby;
- (g) any failure to take or failure to realise the value of any other collateral in respect of the Secured Obligations or any release, discharge, exchange or substitution of any such collateral; or
- (h) any other act, event or omission which but for this provision would or might operate to impair, discharge or otherwise affect any or all of the obligations of the Company or the Collateral Rights hereunder.

**18. EFFECTIVENESS OF COLLATERAL**

- 18.1 The security created by or pursuant to this Debenture and the Collateral Rights shall be cumulative, in addition to and independent of every other security which the Security Agent or any Secured Party may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law. No prior security held by the Security Agent (whether in its capacity as agent or trustee or otherwise) or any of the other Secured Parties over the whole or any part of the Charged Property shall merge into the security constituted by this Debenture.
- 18.2 The security created by or pursuant to this Debenture shall remain in full force and effect as a continuing security for the Secured Obligations unless and until discharged by the Security Agent and shall not cease by reason of any partial payment of any of the Secured Obligations. Notwithstanding the foregoing, if the obligations of the Company under this Debenture cease to be continuing for any reason, the liability of the Company at the date of such cessation shall remain, regardless of any subsequent increase or reduction in the Secured Obligations.
- 18.3 No failure on the part of the Security Agent to exercise, or any delay on its part in exercising, any Collateral Right shall operate as a waiver of that Collateral Right, nor shall any single or partial exercise of any Collateral Right preclude any further or other exercise of that or any other Collateral Right.
- 18.4 The Security Agent shall not be obliged, before exercising any Collateral Right as against the Company (a) to make any demand of any other Grantor or any other Person, (b) to take any action or obtain judgment in any court against the Company, any other Grantor or any other Person, (c) to make or file any proof or claim in a liquidation, bankruptcy or insolvency of the Company, any other Grantor or any other Person or (d) to enforce or seek to enforce any other security in respect of the Secured Obligations.
- 18.5 Until the satisfaction of the requirements set out in Clause 16.20 of the Deed of Appointment and Priority in respect of the release of security, any settlement or discharge hereunder shall be conditional upon no security or payment to the Security Agent by or on behalf of the Company and/or any other Grantor being avoided or reduced by virtue of any Company's or any other Grantor's bankruptcy, insolvency, liquidation or similar laws of general application and shall in those circumstances be void.

**19. SUBSEQUENT SECURITY INTERESTS**

If the Security Agent (acting in its capacity as Security Agent or otherwise) or any of the other Secured Parties at any time receives or is deemed to have received notice (which it reasonably believes to be genuine, correct and appropriately authorised) of any subsequent Lien affecting all or any part of the Charged Property or any assignment or transfer of the Charged Property which is prohibited by the terms of this Debenture or the other Finance Documents, all payments thereafter by or on behalf of the Company to the Security Agent (whether in its capacity as Security Agent or otherwise) or any of the other Secured Parties shall be treated as having been credited to a new account of the Company and not as having been applied in reduction of the Secured Obligations as at the time when the Security Agent received such notice until such subsequent Lien (if any) is discharged or concluded not to exist in a form or manner not prohibited by this Agreement or the other Finance Documents.

**20. SET-OFF**

The Company authorises the Security Agent (but the Security Agent shall not be obliged to exercise such right) from time to time to, after the delivery of an Enforcement Notice to the Company, set off against any or all of the sums due and payable but unpaid by and/or any or all of the obligations of the Company to the Security Agent under this Debenture and/or the Capital Contributions Account Control Agreement any amount or other obligation (contingent or otherwise) owing by the Security Agent to the Company and apply any credit balance to which the Company is entitled on any account with the Security Agent in discharge of such sums payable by and/or such obligations of the Company (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

**21. EXPENSES, STAMP TAXES AND LIABILITY**

**21.1 Expenses**

The Company shall, from time to time on demand of the Security Agent, reimburse the Security Agent for:

- (a) at any time prior to the delivery of an Enforcement Notice to the Company, all reasonable costs and expenses (including legal fees); or
- (b) at any time upon or after the delivery of an Enforcement Notice to the Company, all costs and expenses (including legal fees)

on a full indemnity basis incurred by it in connection with:

- (i) the perfection of the security contemplated in this Debenture and the Capital Contributions Account Control Agreement; and
- (ii) the exercise, preservation and/or enforcement of any of the Collateral Rights or the security contemplated by this Debenture and the Capital Contributions Account Control Agreement or any proceedings instituted by or against the Security Agent as a consequence of taking or holding the security or of enforcing the Collateral Rights,

and shall carry interest from the date following 15 days after the date of such demand until so reimbursed at the rate and on the basis as mentioned in Clause 19.5 (*Interest on demands*) of the Deed of Appointment and Priority.

## 21.2 Stamp Taxes

The Company shall pay all stamp, registration and other taxes to which this Debenture, the security contemplated in this Debenture or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Security Agent on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax.

## 21.3 Indemnity

The Company shall, notwithstanding any release or discharge of all or any part of the security, indemnify the Security Agent, its agents, attorneys and any Receiver against any action, proceeding, claims, losses, liabilities and costs which it has sustained as a consequence of any breach by the Company of the provisions of this Debenture, the exercise of any of the rights and powers conferred on them by this Debenture (other than any loss or cost which arises as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent) provided that such costs shall be reasonable prior to the delivery of an Enforcement Notice to the Company. The Company is not liable to indemnify the Security Agent against any costs referred to in this Clause 21.3 to the extent that such costs have been paid by the Company to the Security Agent under Clause 21.1 (*Expenses*).

## 21.4 No Liability

Subject to Clause 10.3 (*Purchase of Assets*), none of the Security Agent, its nominee(s) or any Receiver shall be liable by reason of (a) taking any action permitted by this Debenture or (b) any neglect or default in connection with all or any part of the Charged Property or (c) taking possession of or realising all or any part of the Charged Property, except in each case in the case of gross negligence or wilful default upon its part.

## 22. CURRENCY CONVERSION AND INDEMNITY

### 22.1 Currency Conversion

For the purpose of or pending the discharge of any or all of the Secured Obligations, the Security Agent may convert any moneys received, recovered or realised or subject to application by the Security Agent or any Receiver pursuant to this Debenture and/or the Capital Contributions Account Control Agreement from the currency of such moneys to another for such purpose and any such conversion shall be made at the Security Agent's spot rate of exchange for the time being (or such other rate as may be available to the Security Agent from time to time in the ordinary course of business) for obtaining such other currency with the first currency and the Secured Obligations shall be discharged only to the extent of the net proceeds of such conversion received by the Security Agent.

### 22.2 Currency Indemnity

If any sum (a "Sum") due from the Company under this Debenture and/or the Capital Contributions Account Control Agreement or any order or judgment given or made in relation thereto has to be converted from the currency (the "First Currency") in which such Sum is payable into another currency (the "Second Currency") for the purpose of:

- (a) making or filing a claim or proof against the Company; or



(b) obtaining or enforcing an order or judgment in any court or other tribunal,

the Company shall (through the Security Agent) indemnify each Person to whom such Sum is due from and against any loss suffered or incurred as a result of any discrepancy between (a) the rate of exchange used for such purpose to convert such Sum from the First Currency into the Second Currency and (b) the rate or rates of exchange at which such Person may in the ordinary course of business purchase the First Currency with the Second Currency at the time of receipt of such Sum.

**23. PAYMENTS FREE OF DEDUCTION**

All payments to be made to the Security Agent under this Debenture shall be made free and clear of and without deduction for or on account of tax unless the Company is required to make such payment subject to the deduction or withholding of tax, in which case the sum payable by the Company in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Person on account of whose liability to tax such deduction or withholding has been made receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

**24. PARTIAL INVALIDITY**

If, at any time, any provision of this Debenture is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Debenture nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the security intended to be created by or pursuant to this Debenture is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

**25. DISCRETION AND DELEGATION**

**25.1 Discretion**

Any liberty or power which may be exercised or any determination which may be made under this Debenture or under the Capital Contributions Account Control Agreement by the Security Agent or any Receiver may, subject to the terms and conditions of the Deed of Appointment and Priority, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons save that the Security Agent shall act in a reasonable manner if expressly required hereunder or, as the case may be, under the Capital Contributions Account Control Agreement.

**25.2 Delegation**

Each of the Security Agent and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Debenture (including without limitation the power of attorney under Clause 16 (*Power of Attorney*)) on such terms and conditions as it shall see fit which delegation shall not

preclude either the subsequent exercise any subsequent delegation or any revocation of such power, authority or discretion by the Security Agent or the Receiver itself.

**26. CHANGES TO PARTIES**

26.1 The Company may not assign or transfer any or all of its rights (if any) and/or obligations under this Debenture.

26.2 The Security Agent may:

- (a) assign all or any of its rights under this Debenture; and
- (b) transfer all or any of its obligations (if any) under this Debenture,

to any successor Security Agent in accordance with the provisions of the Deed of Appointment and Priority, provided that it is acknowledged that such assignment or transfer shall not in any way prejudice the priority of the security constituted by this Debenture (which shall be assigned to such successor Security Agent pursuant to the terms of the Deed of Appointment and Priority). Upon such assignment and transfer taking effect, the successor Security Agent shall be and be deemed to be acting as agent and security trustee for the Secured Parties for the purposes of this Debenture and in place of the former Security Agent.

26.3 Subject to the relevant provisions of the Finance Documents, each Secured Party may assign all or any of its rights under this Debenture (whether direct or indirect) in accordance with the provisions of the Finance Documents. It is acknowledged that none of the Finance Parties has or shall have any obligation under this Debenture.

26.4 The Company irrevocably and unconditionally confirms that:

- (a) it consents to any assignment or transfer by any Secured Party of its rights and/or obligations made in accordance with the provisions of the Finance Documents;
- (b) it shall continue to be bound by the terms of this Debenture, notwithstanding any such assignment or transfer; and
- (c) the assignee or transferee of such Secured Party shall acquire an interest in this Debenture upon such assignment or transfer taking effect.

**27. PERPETUITY PERIOD**

The perpetuity period under the rule against perpetuities, if applicable to this Debenture, shall be the period of 80 years from the date of this Debenture.

**28. NOTICES**

28.1 Any communication to be made under or in connection with this Debenture shall be made in writing but, unless otherwise stated, may be made by fax or letter.

28.2 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to

be made or delivered under or in connection with this Debenture is identified with its signature below, or any substitute address, fax number or department or officer as the party may notify to the other party by not less than 10 Business Days' notice.

- 28.3 Any communication or document made or delivered by one Person to another under or in connection with this Debenture shall only be effective:
- (a) if delivered personally or by overnight courier, when left at the relevant address;
  - (b) if by way of fax, when received in legible form; or
  - (c) if by way of letter, when it has been left at the relevant address or 10 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 28.2, if addressed to that department or officer.

- 28.4 Any communication or document to be made or delivered to the Security Agent shall be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).

29. **GOVERNING LAW**

This Debenture and all matters arising from or connected with it are governed by English law.

30. **JURISDICTION**

- 30.1 The courts of England have exclusive jurisdiction to settle any disputes (a "Dispute") arising out of, or in connection with this Debenture (including without limitation a dispute regarding the existence, validity or termination of this Debenture or the consequences of its nullity).
- 30.2 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.
- 30.3 This Clause 30.3 is for the benefit of the Secured Parties only. As a result, no Secured Parties shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Finance Documents, the Secured Parties may take concurrent proceedings in any number of jurisdictions.
- 30.4 The Company agrees that the documents which start any Proceedings and any other documents required to be served in relation to those Proceedings may be served on Law Debenture Corporate Services Limited. If the appointment of the Person mentioned in this Clause 30.4 ceases to be effective, the Company shall immediately appoint another Person in England to accept service of process on its behalf in England. If the Company fails to do so (and such failure continues for a period of not less than 14 days), the

Security Agent shall be entitled to appoint such a Person by notice to the Company. Nothing contained herein shall restrict the right to serve process in any other manner allowed by law. This Clause 30.4 applies to Proceedings in England and to Proceedings elsewhere.

- 30.5 The Company waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:
- 30.5.1 the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and
  - 30.5.2 the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action *in rem*, for the arrest, detention or sale of any of its assets and revenues.

31. **EXERCISE OF RIGHTS**

Notwithstanding anything in Clause 30.3 to the contrary, the Secured Parties will only exercise their rights under this Debenture through the Security Agent unless and until the appointment of the Security Agent ceases and no successor Security Agent is appointed under Clause 17.1 (*Resignation of Security Agent*) of the Deed of Appointment and Priority.

32. **COUNTERPART**

This Debenture may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement.

**IN WITNESS WHEREOF** this Debenture has been signed on behalf of the Security Agent and executed as a deed by the Company and is intended to be and is hereby delivered by the Company as a deed on the date specified above.

SIGNATURES

**The Company**

EXECUTED as a DEED )  
by WYNN RESORTS (MACAU) S.A. ) *Matt Maddox*  
acting by Matthew Maddox )

Address: 429 Avenida da Praia Grande,  
18th Floor, Praia Grande Commercial Centre,  
Macau

Telephone: (853) 371476

Fax: (853) 329966

Attention: Chief Financial Officer

With a copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Telephone: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

**The Security Agent**

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

By: *David Gore* *Sun Peng Lui*

Address: 42/F Edinburgh Tower,  
15 Queen's Road Central,  
Hong Kong

Telephone: (852) 2166-5671/ (852) 2166-5430/ (852) 2166-5665

Fax: (852) 2804-6215

Attention: Sunny Lui/ Raymond Fung/ Sara Wong Risk & Agency

**Dated 14 September 2004**

**WYNN RESORTS, LIMITED**

**WYNN RESORTS (MACAU) S.A.**

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**  
as Security Agent

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**WYNN RESORTS SUPPORT AGREEMENT**

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THIS AGREEMENT is made as a deed on the 14th day of September 2004

**BETWEEN:**

- (1) **WYNN RESORTS, LIMITED** (“Wynn Resorts”);
- (2) **WYNN RESORTS (MACAU) S.A.** (the “Company”); and
- (3) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**, in its capacity as agent and security trustee for and on behalf of the Secured Parties (the “Security Agent”).

**WHEREAS:**

- (A) The Secured Parties have agreed to make available the Facilities and/or to enter into various agreements and arrangements associated therewith on and subject to the terms of the Common Terms Agreement and the other Finance Documents to which they are a party.
- (B) It is a condition to the Secured Parties making the Facilities available and/or entering into such agreements and arrangements that the parties hereto enter into this Agreement which sets out the terms on which Wynn Resorts will support the obligations of the Company in connection with the Projects.

**NOW IT IS HEREBY AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless otherwise defined herein, all terms defined or referred to in the Deed of Appointment and Priority or, if not defined or referred to in the Deed of Appointment and Priority, the Common Terms Agreement shall bear the same meaning when used in this Agreement and, in addition:

“**Common Terms Agreement**” means the common terms agreement dated 14 September 2004 and made between, among others, the Company, the Security Agent, the financial institutions defined therein as Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, the Hotel Facility Agent, the Project Facility Agent and the Intercreditor Agent.

“**Contingent Equity Commitment**” means the commitment by Wynn Resorts to cause Wynn Asia to provide the Contingent Equity pursuant to Clause 3.1 (*Contingent Equity Commitment*).

“**Permitted Transfer**” means a sale, transfer or other disposal in accordance with Clause 6 (*Permitted Transfers*) of Capital Stock in any Person who, legally or beneficially, directly or indirectly, owns or holds any of the Capital Stock of the Company.

“**Securities Account**” means the Bank Account as defined in the Securities Account Control Agreement.

“**Securities Account Shortfall**” has the meaning given in Clause 4.2 (*Securities Account Shortfall*).

“**Sponsor Support Release Date**” means the date on which the following conditions are satisfied:

- (a) the Construction Completion Date has occurred;
- (b) the Leverage Ratio of the Company is less than 4:1 as at two successive Quarterly Dates calculated by reference to the period comprising the four most recent fiscal quarters commencing after the date (the “**relevant date**”) which falls at the end of the first full fiscal quarter commencing after the later of:
  - (i) the Construction Completion Date; and
  - (ii) the last day of the Hotel Facility Availability Period and the Project Facility Availability Period*provided that, if the period between the relevant date and the Quarterly Date on which the Leverage Ratio is tested consists of less than four fiscal quarters, EBITDA shall be calculated on an annualised basis using the sum of EBITDA for each full fiscal quarter within such period; and*
- (c) no Event of Default has occurred and is continuing.

“**Substantial Shareholder**” means Wynn Resorts, Wynn Asia, Wynn International, Wynn Holdings, Wynn HK and any other Transferee Shareholder who, legally or beneficially, directly or indirectly, owns or holds 5% or more of the share capital of the Company.

“**Transferee Shareholder**” means any Person to whom a Permitted Transfer is made.

## 1.2 Interpretation

In this Agreement:

- 1.2.1 the principles of construction and interpretation contained or referred to in clause 1.2 (*Construction*) of the Deed of Appointment and Priority shall apply to the construction and interpretation of this Agreement;
- 1.2.2 each Obligation of Wynn Resorts under this Agreement is independent of, in addition to and in no way prejudiced by any other Obligation of Wynn Resorts or any other Obligor (including any guarantee or security now or subsequently held by any Secured Party);
- 1.2.3 any representation and warranty, covenant, undertaking, indemnity or other agreement given by Wynn Resorts under the terms of this Agreement is given by it for the benefit of the Secured Parties only;
- 1.2.4 any reference to any or all of the Grantors or any or all of the Secured Parties shall be construed so as to include its or their (and any subsequent) successors

and any permitted assignees and transferees in accordance with their respective interests; and

1.2.5 unless the contrary intention appears, a reference to a Clause or a Schedule is a reference to a clause of or a schedule to this Agreement.

### 1.3 **Third party rights**

1.3.1 The Contracts (Rights of Third Parties) Act 1999 applies to Clause 1.4 (*Non-Recourse Liability*) but only for the benefit of the Operatives subject always to the terms of Clause 20 (*Governing Law*) and Clause 21 (*Jurisdiction*).

1.3.2 Except as provided in sub-clause 1.3.1 above, a Person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

1.3.3 Subject to Clause 24.2 (*Amendment of other Security Documents*) of the Deed of Appointment and Priority, the consent of any Person who is not a party to this Agreement is not required to rescind or vary this Agreement.

### 1.4 **Non- Recourse Liability**

Notwithstanding any provision in the Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Finance Document to which such Operative is party. The sole recourse of the Secured Parties for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Finance Documents shall be against the Obligors, and not against any assets or property of any Operative save to the extent such Operative is party to a Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

## 2. **BASE EQUITY FUNDING**

2.1 Wynn Resorts shall ensure that a certificate from the Company addressed to the Security Agent, duly executed by a Responsible Officer of the Company, confirming that an aggregate amount equivalent to not less than the Base Amount is funded to Wynn Asia, Wynn International, Wynn HK and/or the Company, together with bank statements or transfer records evidencing such deposits, are provided to the Security Agent within 7 days after the Signing Date. For the purpose of this Clause 2.1, "**Base Amount**" means an amount equal to USD230,000,000 minus (a) any costs and expenses incurred by the Company up to and including the date that is 7 days after the Signing Date for the purpose of the Projects (provided that such costs and expenses are included in the Project Budget in effect on the Signing Date) and (b) an amount equal to USD50,000,000 (or its equivalent in Macau Patacas or Hong Kong dollars) deposited by or on behalf of the Company with the Second Ranking Finance Party provided in the case of (b) that evidence of such deposit is provided to the Security Agent within 7 days after the Signing Date.

- 2.2 Wynn Resorts shall ensure that the amount funded pursuant to Clause 2.1 is:
- 2.2.1 not repaid, distributed or applied by any of Wynn Asia, Wynn International, Wynn HK or the Company save in accordance with Clause 2.2.2 below; and
  - 2.2.2 applied to fund Base Equity as required by paragraph 11 of Part B of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement prior to the submission of an Advance Request by the Company for the Initial Advance.
3. **CONTINGENT EQUITY**
- 3.1 **Contingent Equity Commitment**
- Wynn Resorts shall cause Wynn Asia to provide the Contingent Equity to the Company for the following purposes:
- 3.1.1 to pay Project Costs (other than Project Costs incurred in respect of a variation to the Project Works which the Company is obliged to fund from additional Equity pursuant to paragraph 15.2.1 of part B of schedule 5 (*Covenants*) of the Common Terms Agreement); and
  - 3.1.2 to be applied towards satisfaction of the Company's Obligations under the Senior Finance Documents, in each case in accordance with this Agreement and the Common Terms Agreement.
- 3.2 **Reduction and increase in Contingent Equity Commitment**
- The Contingent Equity Commitment shall be:
- 3.2.1 reduced by the amount of each contribution of Contingent Equity made by Wynn Asia in accordance with Clause 3.1 (*Contingent Equity Commitment*); and
  - 3.2.2 increased by the US dollar equivalent amount of each Advance made to the Company pursuant to Clause 7.2 (*Rebalancing between Debt and Equity*) of the Common Terms Agreement.
- 3.3 **Full Release of Contingent Equity Commitment**
- The Contingent Equity Commitment shall be released in full on the Sponsor Support Release Date.
4. **FUNDING INTO SECURITIES ACCOUNT**
- 4.1 **Initial Funding**
- 4.1.1 Wynn Resorts shall ensure that, prior to the submission of an Advance Request for the Initial Advance, the amount standing to the credit of the Securities Account is not less than USD30,000,000 (which amount may comprise Permitted Investments made and the value of which is determined in accordance with Section 3.05 of the Securities Account Control Agreement or cash).

4.1.2 Wynn Resorts shall ensure that, within 7 days after the Signing Date, either:

- (a) the amount standing to the credit of the Securities Account is not less than USD30,000,000 (which amount may comprise Permitted Investments made and the value of which is determined in accordance with the terms of Section 3.05 of the Securities Account Control Agreement or cash); or
- (b) an on-demand standby letter of credit, in form and substance reasonably satisfactory to the Security Agent, in an amount equal to USD30,000,000 (or such lesser amount equal to the difference between USD30,000,000 and the amount standing to the credit of the Securities Account) is issued by a bank rated at least "A" by S&P or "A2" by Moody's in favour of the Company with no recourse (directly or indirectly) to the Company and which cannot expire or be cancelled or revoked until such time as the Company draws on such letter of credit to ensure compliance with, or otherwise complies with, Clause 4.1.1 or the Company has otherwise satisfied its obligation under Clause 4.1.2(a).

4.1.3 The performance by Wynn Resorts of its obligations under this Clause 4.1 shall not reduce its obligations under Clause 2.

#### 4.2 **Securities Account Shortfall**

If, on the later to occur of (a) the last day of the Hotel Facility Availability Period and (b) the last day of the Project Facility Availability Period, and after allowing for any deposit made pursuant to paragraph 2.1 of Schedule 6 to the Common Terms Agreement, the balance standing to the credit of the Securities Account is less than USD20,000,000 (which amount may comprise Permitted Investments made and the value of which is determined in accordance with Section 3.05 of the Securities Account Control Agreement or cash), Wynn Resorts shall ensure that on such date an amount equal to the shortfall (the "**Securities Account Shortfall**") is deposited into the Securities Account.

#### 5. **ENFORCEMENT NOTICE**

5.1 Prior to the Sponsor Support Release Date, if the Security Agent shall have delivered an Enforcement Notice, the Security Agent may, by written notice to Wynn Resorts and the Company:

5.1.1 require that Project Costs be funded, as and when required, by the remaining amounts of the Contingent Equity Commitment; and/or

5.1.2 call on and demand that the remaining amounts of the Contingent Equity Commitment be applied towards satisfaction of the Company's Obligations under the Senior Finance Documents,

whereupon Wynn Resorts shall, within 3 Business Days of receipt of notice under this Clause 5, cause such remaining amounts to be paid in accordance with Clause 9 (*Payments*).

- 5.2 Following the issuance of an Enforcement Notice, Wynn Resorts may give notice in writing to the Security Agent terminating its obligations under Clause 6 (*Permitted Transfers*) and in the event that such notice is given, the obligations of Wynn Resorts:
- 5.2.1 under Clause 6 (*Permitted Transfers*) shall terminate and Wynn Resorts and each Transferee Shareholder which is a Substantial Shareholder may sell, transfer or otherwise dispose of any of the Capital Stock of any Person who, legally or beneficially, directly or indirectly, owns or holds any of the Capital Stock of the Company without the prior written consent of the Security Agent; and
- 5.2.2 under Clause 7 (*Representations and Warranties*) and Clause 8 (*Covenants*) shall terminate on the date Wynn Resorts ceases to legally or beneficially, directly or indirectly, own or hold 5% or more of the Capital Stock of the Company.

6. **PERMITTED TRANSFERS**

Wynn Resorts and each Transferee Shareholder which is a Substantial Shareholder undertakes that it will not sell, transfer or otherwise dispose of any of the Capital Stock of any person who, legally or beneficially, directly or indirectly, owns or holds any of the Capital Stock of the Company without the prior written consent of the Security Agent unless the following conditions are met to the satisfaction of the Security Agent:

- (a) a Wynn Event would not occur as a result of such sale, transfer or disposal;
- (b) no other Event of Default would arise as a result of such sale, transfer or disposal;
- (c) all relevant Legal Requirements are complied with in all material respects and the Security Agent receives evidence, in form and substance reasonably satisfactory to it, of any Macau SAR consent or authorisation required in connection with the sale, transfer or disposal;
- (d) the purchaser, transferee or, as the case may be, other disposee has executed and delivered to the Security Agent a deed of accession substantially in the form set out in Schedule 2 (*Form of Deed of Accession*); and
- (e) the Security Agent receives relevant legal opinions, in form and substance reasonably satisfactory to it, concerning the undertakings assumed by the purchaser, transferee or other disposee pursuant to such deed of accession.

7. **REPRESENTATIONS AND WARRANTIES**

7.1 **Matters represented**

Wynn Resorts or any Transferee Shareholder which is a Substantial Shareholder makes to each Secured Party the representations and warranties set out in Schedule 4 (*Representations and warranties*) of the Common Terms Agreement insofar as they expressly relate to Wynn Resorts or to such Transferee Shareholder, in each case, as an

Obligor or, to any of their respective assets, operations, businesses, prospects or other circumstances as at each of the dates specified in Clause 7.2 (*Timing*).

**7.2 Timing**

Unless stated to be made as of an earlier or different date or as provided in Clause 5.2.2, each of the representations and warranties referred to in Clause 7.1 (*Matters represented*) is made by Wynn Resorts and, if applicable, any Transferee Shareholder which is a Substantial Shareholder, on the Signing Date and at the CP Satisfaction Date and is deemed to be repeated by Wynn Resorts and, if applicable, any Transferee Shareholder which is a Substantial Shareholder, on each subsequent Advance Date with reference to the facts and circumstances then existing.

**8. COVENANTS**

**8.1 Content**

Wynn Resorts and each Transferee Shareholder which is a Substantial Shareholder hereby undertakes to each Secured Party that it will comply with the covenants applicable to it set out or referred to in Schedule 1 (*Covenants*).

**8.2 Duration**

Subject to Clause 5.2.2, the undertaking in Clause 8.1 (*Content*) shall remain in force from the Signing Date until the Secured Obligations have been discharged in full or, in the case of any Transferee Shareholder which is a Substantial Shareholder, the earlier of the date on which it ceases to be a Substantial Shareholder and the date on which the Secured Obligations have been discharged in full.

**9. PAYMENTS**

**9.1 Payments by Wynn Resorts**

All payments made by Wynn Resorts under this Agreement:

9.1.1 as Contingent Equity shall be paid into the Capital Contributions Account or, following the issuance of an Enforcement Notice, into such account as the Security Agent may notify Wynn Resorts for the purposes set out in Clause 3.1; and

9.1.2 pursuant to any other provision of this Agreement shall be paid into such account as the Security Agent may notify Wynn Resorts for such purpose.

**9.2 Set-off and counterclaim**

All payments made by Wynn Resorts under this Agreement will be made without set-off or counter-claim.

**9.3 Gross-up**

9.3.1 All payments by Wynn Resorts under this Agreement shall be made without any withholding or deduction and free and clear of, and without deduction for,

or on account of any Taxes, except to the extent that Wynn Resorts is required by law to make payment subject to any Taxes.

9.3.2 If any Tax or amounts in respect of Tax must be withheld or deducted, or any other deductions must be made, from any amounts payable or paid by Wynn Resorts pursuant to sub-clause 9.3.1 above, Wynn Resorts shall (on the due date for payment of the amount subject to deduction) pay such additional amounts as may be necessary to ensure that the relevant recipient receives a net amount equal to the full amount which it would have received had payment not been made subject to Tax.

9.4 **Tax receipts**

All Taxes required by law to be deducted or withheld by Wynn Resorts from any amounts paid or payable under this Agreement shall be paid by Wynn Resorts when due and Wynn Resorts shall, within 15 Business Days of a written request therefor, deliver to the Security Agent for the relevant Secured Party, evidence reasonably satisfactory to that Secured Party (including all relevant tax receipts if received within that time period) that the payment has been duly remitted to the appropriate authority (provided that Wynn Resorts shall not be obliged to provide any such evidence from a Governmental Authority to the extent that it is not provided by such Governmental Authority).

10. **DEFAULT INTEREST**

If Wynn Resorts fails to pay any amount to the Security Agent when due under this Agreement (including any amount payable under this Clause 10), it shall pay interest on the amount outstanding from the due date up to the date of actual payment (both before and after judgment) at the rate determined in accordance with the provisions of Clause 19.5 (*Interest on demands*) of the Deed of Appointment and Priority. Any interest accruing under this Clause 10 shall be immediately payable by Wynn Resorts on demand by the Security Agent.

11. **CURRENCY CONVERSION AND INDEMNITY**

11.1 For the purpose of or pending the discharge of any or all of the Secured Obligations, the Security Agent may convert any moneys received, recovered or realised or subject to application by the Security Agent or any Receiver pursuant to this Agreement from the currency of such moneys to another for such purpose and any such conversion shall be made at the Security Agent's spot rate of exchange for the time being (or such other rate as may be available to the Security Agent from time to time in the ordinary course of business) for obtaining such other currency with the first currency and the Secured Obligations shall be discharged only to the extent of the net proceeds of such conversion received by the Security Agent.

11.2 If any sum (a "**Sum**") due from Wynn Resorts under this Agreement or any order or judgment given or made in relation thereto has to be converted from the currency (the "**First Currency**") in which such Sum is payable into another currency (the "**Second Currency**") for the purpose of:

11.2.1 making or filing a claim or proof against Wynn Resorts; or



11.2.2 obtaining or enforcing an order or judgment in any court or other tribunal,

Wynn Resorts shall (through the Security Agent) indemnify each person to whom such Sum is due from and against any loss suffered or incurred as a result of any discrepancy between (a) the rate of exchange used for such purpose to convert such Sum from the First Currency into the Second Currency and (b) the rate or rates of exchange at which such person may in the ordinary course of business purchase the First Currency with the Second Currency at the time of receipt of such Sum.

**12. EXPENSES**

**12.1 Amendment costs**

If Wynn Resorts requests an amendment, waiver or consent under any Finance Document to which it is a party, Wynn Resorts shall, within 30 days of demand, reimburse the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Security Agent in responding to, evaluating, negotiating or complying with that request.

**12.2 Other expenses**

Wynn Resorts shall, within 15 Business Days of demand, pay to the Security Agent, to the extent the same has not been paid by the Company under the Common Terms Agreement (but without any obligation on the part of the Security Agent to claim first against the Company) the amount of all costs and expenses (including legal fees) incurred by the Secured Parties in connection with action to preserve any rights against Wynn Resorts under this Agreement and/or the enforcement of rights against Wynn Resorts under this Agreement provided that prior to the delivery of an Enforcement Notice, such costs shall be reasonable.

**13. TERMINATION**

Without prejudice to Clause 5.2, the obligations of Wynn Resorts and the Company under this Agreement shall terminate and cease to have any effect on and as from the Release Date.

**14. CHANGES TO THE PARTIES**

14.1 Each of Wynn Resorts and the Company may not assign or transfer any or all of its rights (if any) and/or obligations under this Agreement.

14.2 The Security Agent may:

14.2.1 assign all or any of its rights under this Agreement; and

14.2.2 transfer all or any of its obligations (if any) under this Agreement,

to any successor Security Agent in accordance with the provisions of the Deed of Appointment and Priority, provided that it is acknowledged that such assignment or transfer shall not in any way prejudice the priority of the security constituted by this Agreement (which shall be assigned to such successor Security Agent pursuant to the terms of the Deed of Appointment and Priority). Upon such assignment and transfer

taking effect, the successor Security Agent shall be and be deemed to be acting as agent and trustee for the Secured Parties for the purposes of this Agreement and in place of the former Security Agent.

- 14.3 Subject to the relevant provisions of the Finance Documents, each Secured Party may assign all or any of its rights under this Agreement (whether direct or indirect) in accordance with the provisions of the Finance Documents. It is acknowledged that none of the Finance Parties (other than the Assignor) has or shall have any obligation under this Agreement.
- 14.4 Each of Wynn Resorts and the Company irrevocably and unconditionally confirms that:
- 14.4.1 it consents to any assignment or transfer by any Finance Party of its rights and/or obligations made in accordance with the provisions of the Finance Documents;
- 14.4.2 it shall continue to be bound by the terms of this Agreement, notwithstanding any such assignment or transfer; and
- 14.4.3 the assignee or transferee of such Finance Party shall acquire an interest in this Agreement upon such assignment or transfer taking effect.

**15. NOTICES**

- 15.1 Any communication to be made under or in connection with this Agreement shall be made in writing but, unless otherwise stated, may be made by fax or letter.
- 15.2 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Agreement is identified with its signature below, or any substitute address, fax number or department or officer as the party may notify to the other parties by not less than 10 Business Days' notice.
- 15.3 Any communication or document made or delivered by one Person to another under or in connection with this Agreement shall only be effective:
- 15.3.1 if delivered personally or by overnight courier, when left at the relevant address;
- 15.3.2 if by way of fax, when received in legible form; or
- 15.3.3 if by way of letter, when it has been left at the relevant address or 10 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,
- and, if a particular department or officer is specified as part of its address details provided under Clause 15.2, if addressed to that department or officer.
- 15.4 Any communication or document to be made or delivered to the Security Agent shall be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).

16. **PARTIAL INVALIDITY**

If at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement under the law of such jurisdiction nor of such provisions under the law of any other jurisdiction shall in any way be affected or impaired thereby.

17. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Security Agent, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

18. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement.

19. **LANGUAGE**

The English language shall be the only official and recognised language of this Agreement. If for any reason a translation of this Agreement is required, such translation shall in the event of any dispute be secondary to the original English version which shall take precedence.

20. **GOVERNING LAW**

This Agreement shall be governed by English law.

21. **JURISDICTION**

21.1 **Jurisdiction of English courts**

21.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) (a “**Dispute**”).

21.1.2 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they shall not argue to the contrary.

21.1.3 This Clause 21.1.3 is for the benefit of the Secured Parties only. As a result, no Secured Parties shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Finance Documents, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

**21.2 Service of process**

Without prejudice to any other mode of service allowed under any relevant law, each of Wynn Resorts and the Company:

21.2.1 irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and

21.2.2 agrees that failure by a process agent to notify Wynn Resorts or the Company of the process shall not invalidate the proceedings concerned.

**22. EXERCISE OF RIGHTS**

Notwithstanding anything in Clause 21.1.3 to the contrary, the Secured Parties will only exercise their rights under this Agreement through the Security Agent unless and until the appointment of the Security Agent ceases and no successor Security Agent is appointed under Clause 17.1 (*Resignation of Security Agent*) of the Deed of Appointment and Priority.

**IN WITNESS** whereof this Agreement has been executed and delivered as a deed by Wynn Resorts and signed by the duly authorised representatives of the Company and the Security Agent the day and year first before written.

**SCHEDULE 1**

**COVENANTS**

Wynn Resorts and each Transferee Shareholder which is a Substantial Shareholder undertakes to:

- (a) **Concession Contract** - comply with the requirements of all material provisions of the Concession Contract as may relate to it (including obligations relating to the transfer of shares, notifications relating to shares and the maintaining of proper qualifications under Article 26 of the Concession Contract) and, to the extent it becomes aware of any such failure or circumstance, notify the Security Agent of any failure or any circumstance which may cause a failure by any Substantial Shareholder to maintain proper qualifications under Article 26 of the Concession Contract except to the extent that notification of such failure or circumstance has been given to the Security Agent by any other Obligor.

Wynn Resorts undertakes to:

- (a) **Common Terms Agreement** - perform (or refrain from performing) all such acts or things that the Company is obliged under the Common Terms Agreement (other than paragraph 10.5 and paragraph 22 of Schedule 5 Part A of the Common Terms Agreement) to cause Wynn Resorts to perform or refrain from performing.
- (b) **Default** - promptly give notice to the Security Agent of the occurrence of any Default as soon as it becomes aware of the same except to the extent notification of such occurrence has been given to the Security Agent by any other Obligor.

SIGNATURES

**Wynn Resorts**

Executed as a deed by )  
**WYNN RESORTS, LIMITED**)  
acting by Ronald J. Kramer )

*Ronald Kramer*

Name: Ronald Kramer

Title: President

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Telephone: 1-702-770-2111

Fax: 1-702-770-1520

Attention: General Counsel

SIGNATURE PAGE FOR WYNN RESORTS SUPPORT AGREEMENT

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**The Company**

**WYNN RESORTS (MACAU) S.A.**

By: ***Matt Maddox***

Address: 429 Avenida da Praia Grande,  
18th Floor, Praia Grande Commercial Centre,  
Macau

Telephone: 853-371476

Fax: 853-329966

Attention: Chief Financial Officer

With a copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Telephone: 1-702-770-2111

Fax: 1-702-770-1520

Attention: General Counsel

SIGNATURE PAGE FOR WYNN RESORTS SUPPORT AGREEMENT

---

**The Security Agent**

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

By: *David Gore* *Sun Peng Lui*

Address: 42/F Edinburgh Tower,  
15 Queen's Road Central,  
Hong Kong

Telephone: 852-2166 5671/ 2166 5430/ 2166 5665

Fax: 852-2804 6215

Attention: Sunny Lui/ Raymond Fung/ Sara Wong  
Risk & Agency

SIGNATURE PAGE FOR WYNN RESORTS SUPPORT AGREEMENT



**DATED 14 SEPTEMBER 2004**

**WYNN GROUP ASIA, INC.**  
**WYNN RESORTS INTERNATIONAL, LTD.**  
**WYNN RESORTS (MACAU) HOLDINGS, LTD.**  
**WYNN RESORTS (MACAU), LIMITED**  
as Guarantors

and

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**  
as Security Agent

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**WYNN PLEDGORS' GUARANTEE**

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**BY**

- (1) **WYNN GROUP ASIA, INC.**, a company incorporated under the laws of Nevada (registered number C14057-2002) whose registered office is at 3131 Las Vegas Boulevard South, Las Vegas, Nevada 89109), **WYNN RESORTS INTERNATIONAL, LTD.**, a company incorporated under the laws of the Isle of Man (registered number 105649C) whose registered office is at First Floor, Millennium House, Victoria Road, Douglas, Isle of Man, British Isles, 1M2 4RW, Isle of Man, British Isles, **WYNN RESORTS (MACAU) HOLDINGS, LTD.** a company incorporated under the laws of the Isle of Man (registered number 105650C) whose registered office is at First Floor, Millennium House, Victoria Road, Douglas, Isle of Man, British Isles, 1M2 4RW, and **WYNN RESORTS (MACAU), LIMITED**, a company incorporated under the laws of Hong Kong SAR (registered number 795431) whose registered office is at 2503 Bank of America Tower, 12 Harcourt Road, Central, Hong Kong (together the “**Guarantors**” and each a “**Guarantor**”); in favour of
- (2) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**, with its principal office at 42/F Edinburgh Tower, 15 Queen’s Road Central, Hong Kong, as agent and security trustee for and on behalf of the Secured Parties (the “**Security Agent**”).

**NOW THIS GUARANTEE WITNESSES** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Guarantee, unless otherwise defined herein, all terms defined or referred to in the Deed of Appointment and Priority or, if not defined or referred to in the Deed of Appointment and Priority, the Common Terms Agreement, shall bear the same meaning when used in this Guarantee and, in addition:

“**AT Exchange Agreement**” means the Exchange Agreement dated 1 September 2004 between Kwan Yan Ming, L’Arc de Triomphe Limited, Wynn Resorts International, Ltd. and Wynn Resorts, Limited.

“**AT Release and Discharge**” means the Release and Discharge entered or to be entered into between L’Arc de Triomphe Limited, Wynn Holdings, Wynn Resorts International, Ltd. and Kwan Yan Ming.

“**Collateral Rights**” means all the rights, powers and remedies of the Security Agent provided by this Guarantee or by law.

“**CW Exchange Agreement**” means the Exchange Agreement dated 1 September 2004 between Kwan Yan Ming, Classic Wave Limited, Wynn Resorts International, Ltd. and Wynn Resorts, Limited.

“**CW Release and Discharge**” means the Release and Discharge entered or to be entered into between Classic Wave Limited, Wynn Holdings, Wynn Resorts International, Ltd. and Kwan Yan Ming.

**“Deed of Appointment and Priority”** means the deed of appointment and priority dated 14 September 2004 and made between, among others, the Company, Société Générale Asia Limited as intercreditor agent, the Security Agent as security agent, the institutions defined therein as Original First Ranking Lenders, Second Ranking Finance Party and Third Ranking Finance Party, as amended, varied, novated and/or supplemented from time to time.

**“Exchange Agreements”** means the AT Exchange Agreement, the CW Exchange Agreement, the SKKG Exchange Agreement and the WCS Exchange Agreement.

**“Memorandum of Understanding”** means the Memorandum of Understanding dated 28 August 2004 between SKKG Limited, S.H.W. & Co. Limited, Wynn Holdings, Wynn Resorts International, Ltd., Wynn Resorts, Limited, Kwan Yan Chi, Li Tai Foon and Wong Chi Seng.

**“Option Agreement”** has the meaning given in the Company Share Pledge.

**“Releases”** means the SKKG Release and Discharge, the AT Release and Discharge, the CW Release and Discharge and the WCS Release and Discharge.

**“Shareholders Agreement”** has the meaning given in the Company Share Pledge.

**“SKKG Exchange Agreement”** means the Exchange Agreement dated 1 September 2004 between Wong Chi Seng, SKKG Limited, Wynn Resorts International, Ltd. and Wynn Resorts, Limited.

**“SKKG Release and Discharge”** means the Release and Discharge entered or to be entered into between SKKG Limited, Wynn Holdings, Wynn Resorts International, Ltd. and Wong Chi Seng.

**“Substantial Shareholder”** has the meaning given in the Wynn Resorts Support Agreement.

**“WCS Exchange Agreement”** means the Exchange Agreement dated 28 August 2004 between Wong Chi Seng, S.H.W. & Co. Limited, Wynn Resorts International, Ltd. and Wynn Resorts, Limited.

**“WCS Release and Discharge”** means the Release and Discharge entered or to be entered into between S.H.W. & Co. Limited, Wynn Holdings, Wynn Resorts International, Ltd. and Wong Chi Seng.

**“WRIL Exchange Documents”** means the Exchange Agreements, the Memorandum of Understanding, the Option Agreement, the Shareholders Agreement, the Releases and all other documents incidental to the foregoing.

**“WRMHL Exchange Documents”** means the Memorandum of Understanding, the Releases and all other documents incidental to the foregoing.

## 1.2 Interpretation

In this Guarantee:

- 1.2.1 the principles of construction and interpretation contained or referred to in Clause 1.2 (*Construction*) of the Deed of Appointment and Priority shall apply to the construction and interpretation of this Guarantee; and
- 1.2.2 any reference to any or all of the Grantors or any or all of the Secured Parties shall be construed so as to include its or their (and any subsequent) successors and any permitted assignees and transferees in accordance with their respective interests.

## 1.3 Third party rights

- 1.3.1 The Contracts (Rights of Third Parties) Act 1999 applies to Clause 1.4 (*Non-Recourse Liability*) but only for the benefit of the Operatives subject always to the terms of Clause 16 (*Governing Law*) and Clause 17 (*Jurisdiction*).
- 1.3.2 Except as provided in sub-paragraph 1.3.1 above, a Person who is not a party to this Guarantee has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Guarantee.
- 1.3.3 Subject to Clause 24.2 (*Amendment to other Security Documents*) of the Deed of Appointment and Priority, the consent of any Person who is not a party to this Guarantee is not required to rescind or vary this Guarantee.

## 1.4 Non-Recourse Liability

Notwithstanding any provision in the Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Finance Document to which such Operative is party. The sole recourse of the Secured Parties for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Finance Documents shall be against the Obligors, and not against any assets or property of any Operative save to the extent such Operative is party to a Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

## 2. GUARANTEE AND INDEMNITY

### 2.1 Guarantee and indemnity

In consideration of each of the Secured Parties entering into transactions contemplated by the Finance Documents to which it is a party, each Guarantor irrevocably and unconditionally jointly and severally:

- 2.1.1 guarantees to the Security Agent (as agent and security trustee for the Secured Parties) punctual performance by the Company of all of the Secured Obligations;
- 2.1.2 undertakes with the Security Agent (as agent and security trustee for the Secured Parties) that whenever the Company does not pay any amount when due under or in connection with any Finance Document, such Guarantor shall

immediately on demand by the Security Agent pay that amount as if it was the principal obligor; and

2.1.3 indemnifies each Secured Party immediately on demand by the Security Agent against any cost, loss or liability suffered by that Secured Party if any obligation guaranteed by it is or becomes void, voidable, unenforceable, invalid, illegal or ineffective for any reason whatsoever. The amount of the cost, loss or liability shall be equal to the amount which that Secured Party would otherwise have been entitled to recover,

provided that:

- (a) each Guarantor's liability under this Guarantee shall not exceed the liability of the Company under the Finance Documents (other than this Guarantee) and each Guarantor shall be entitled to avail itself of all limitations of liability available to the Company under the Finance Documents (other than this Guarantee); and
- (b) no demand may be made by the Security Agent before the third Business Day after failure of the Company to make a payment due to the relevant Secured Party(ies) on such due date therefor (excluding any applicable grace period under the relevant Finance Document).

## 2.2 Reinstatement

If any payment by the Company or any discharge given by a Secured Party (whether in respect of the obligations of any Grantor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

2.2.1 the liability of each Guarantor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and

2.2.2 each Secured Party shall be entitled to recover the value or amount of that security or payment from each Guarantor, as if the payment, discharge, avoidance or reduction had not occurred.

## 3. REPRESENTATIONS AND WARRANTIES

### 3.1 Matters represented

Each of the Guarantors makes to each Secured Party the representations and warranties set out in Schedule 4 (*Representations and warranties*) of the Common Terms Agreement insofar as they expressly relate to such Guarantor, in each case, as a Wynn Obligor or, to any of their respective assets, operations, businesses, prospects or other circumstances as at each of the dates specified in Clause 3.2 (*Timing*).

### 3.2 Timing

Unless otherwise specified therein, each of the representations and warranties referred to in Clause 3.1 (*Matters represented*) is made by each of the Guarantors, on the Signing Date and at the CP Satisfaction Date and is deemed to be repeated by each of the

Guarantors on each subsequent Advance Date with reference to the facts and circumstances then existing.

4. **GENERAL UNDERTAKINGS**

4.1 Each of the Guarantors undertakes to:

- 4.1.1 comply with the requirements of all such provisions of the Concession Contract as may relate to it (including without limitation obligations relating to the transfer of shares, notifications relating to shares and the maintaining of proper qualifications under Article 26 of the Concession Contract and notifications under Article 23 of the Concession Contract) and, to the extent it becomes aware of any such failure or circumstance, notify the Security Agent of any failure or any circumstance which may cause a failure by any Substantial Shareholder to maintain proper qualifications under Article 26 of the Concession Contract except to the extent notification of such failure or circumstance has been given to the Security Agent or the Intercreditor Agent by any other Grantor;
- 4.1.2 perform (or refrain from performing) all such acts or things that the Company is expressly obliged under the Common Terms Agreement to cause such Guarantor to perform or refrain from performing;
- 4.1.3 promptly give notice to the Security Agent of the occurrence of any Default as soon as it becomes aware of the same except to the extent notification of such occurrence has been given to the Security Agent or the Intercreditor Agent by any other Grantor; and
- 4.1.4 not carry on any business other than:
  - (a) in the case of Wynn Group Asia, Inc., holding shares in Wynn Resorts International, Ltd., contributing and maintaining the Securities Account in accordance with the Securities Account Control Agreement, borrowing an amount up to the Subordinated Funding from Wynn Resorts or its Affiliates, making Subordinated Funding and Shareholder Loans, borrowing of money for the purpose of making Shareholder Loans, receiving capital contributions for the purpose of making Shareholder Loans, entering into the Senior Finance Documents as a Wynn Obligor and entering into all agreements that are necessary or desirable for the purpose of (i) maintaining its corporate status (including without limitation agreements for the appointment of lawyers and auditors) and (ii) complying with its obligations under the Finance Documents (including without limitation the appointment of process agents);
  - (b) in the case of Wynn Resorts International, Ltd., holding shares in Wynn Resorts (Macau) Holdings, Ltd. and the Company, making Shareholder Loans, borrowing of money for the purpose of making Shareholder Loans, receiving capital contributions for the purpose of making Shareholder Loans, entering into the WRIL Exchange Documents, entering into the

Senior Finance Documents as a Wynn Obligor and entering into all agreements that are necessary or desirable for the purpose of (i) maintaining its corporate status (including without limitation agreements for the appointment of lawyers and auditors) and (ii) complying with its obligations under the Finance Documents (including without limitation the appointment of process agents);

- (c) in the case of Wynn Resorts (Macau) Holdings, Ltd, holding shares in Wynn Resorts (Macau), Limited, making Shareholder Loans, borrowing of money for the purpose of making Shareholder Loans, receiving capital contributions for the purpose of making Shareholder Loans, entering into the WRMHL Exchange Documents, entering into the Senior Finance Documents as a Wynn Obligor and entering into all agreements that are necessary or desirable for the purpose of (i) maintaining its corporate status (including without limitation agreements for the appointment of lawyers and auditors) and (ii) complying with its obligations under the Finance Documents (including without limitation the appointment of process agents); and
- (d) in the case of Wynn Resorts (Macau), Limited, holding shares in the Company, making Shareholder Loans, borrowing of money for the purpose of making Shareholder Loans, receiving capital contributions for the purpose of making Shareholder Loans, entering into the Shareholders Agreement, entering into the Senior Finance Documents as a Wynn Obligor and entering into all agreements that are necessary or desirable for the purpose of (i) maintaining its corporate status (including without limitation agreements for the appointment of lawyers and auditors) and (ii) complying with its obligations under the Finance Documents (including without limitation the appointment of process agents).

4.2 The undertakings in this Clause 4 shall remain in force from the Signing Date until the Secured Obligations have been discharged in full.

#### 5. APPLICATION OF MONEYS

- 5.1 All payments to be made by any Guarantor hereunder shall be paid to the Security Agent and all moneys received or recovered by the Security Agent pursuant to this Guarantee or the powers conferred by it shall (subject to (a) the claims of any Person having prior rights thereto and (b) Clause 5.2) be applied by the Security Agent (notwithstanding any purported appropriation by any Guarantor or any other Grantor) in accordance with Clause 15 (*Application of Proceeds*) of the Deed of Appointment and Priority.
- 5.2 Notwithstanding any other provision of the Finance Documents, the Security Agent may, at any time after the delivery of an Enforcement Notice to the Guarantors, pay any or all of the moneys received, recovered or realised by the Security Agent under this Guarantee (including without limitation the proceeds of any conversion of currency) into any suspense or impersonal account (which is interest-bearing provided that there is no tax liability on the Security Agent with respect to any interest in such account) for so long as the Security Agent shall think fit (whether or not any Secured Obligations shall have



become due) pending any further application of such moneys (as the Security Agent shall be entitled, but not obliged, to do in its discretion) in accordance with the provisions of Clause 5.1. If the Secured Obligations have been fully discharged or would be fully discharged if the moneys in such suspense or impersonal account were applied towards satisfaction of the Secured Obligations, the Security Agent shall apply the moneys in such suspense or impersonal account towards satisfaction of the Secured Obligations and if there are any moneys remaining in such suspense or impersonal account after the Secured Obligations have been fully discharged, the Security Agent shall pay such remaining moneys to any Person as directed by the Company. Any interest accrued on any moneys in such suspense or impersonal account shall be credited to such suspense or, as the case may be, impersonal account and shall, subject to the terms of this Clause 5.2, be applied towards satisfaction of the Secured Obligations.

**6. GUARANTORS' OBLIGATIONS**

The obligations of the Guarantors hereunder and the Collateral Rights shall not be discharged, impaired or otherwise affected by:

- (a) any winding-up, dissolution, re-organisation, bankruptcy, death or insolvency of, or any change in, the Company or any other Person;
- (b) any of the Secured Obligations being at any time illegal, invalid, unenforceable or ineffective;
- (c) any unenforceability or invalidity of any other agreement or document;
- (d) any time or other indulgence being granted to the Company or any other Person in respect of any of the Secured Obligations;
- (e) any amendment, variation, waiver or release of any of the Secured Obligations except for a release or discharge in accordance with Clause 16.20 of the Deed of Appointment and Priority;
- (f) any variation of the terms upon which the Security Agent holds the guarantee constituted hereby;
- (g) any failure to take or failure to realise the value of any other collateral in respect of the Secured Obligations or any release, discharge, exchange or substitution of any such collateral; or
- (h) any other act, event or omission which but for this provision would or might operate to impair, discharge or otherwise affect any or all of the obligations of any Guarantor or the Collateral Rights hereunder.

**7. EFFECTIVENESS**

- 7.1 The guarantee created by or pursuant to this Guarantee and the Collateral Rights shall be cumulative, in addition to and independent of every other guarantee or security which the Security Agent or any Secured Party may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law.

- 7.2 The obligations of each of the Guarantors under or pursuant to this Guarantee shall remain in full force and effect as continuing obligations unless and until discharged by the Security Agent and shall not cease by reason of any partial payment of any of the Secured Obligations. Notwithstanding the foregoing, if the obligations of any Guarantor under this Guarantee cease to be continuing for any reason, the liability of such Guarantor at the date of such cessation shall remain, regardless of any subsequent increase or reduction in the Secured Obligations.
- 7.3 No failure on the part of the Security Agent to exercise, or any delay on its part in exercising, any Collateral Right shall operate as a waiver of that Collateral Right, nor shall any single or partial exercise of any Collateral Right preclude any further or other exercise of that or any other Collateral Right.
- 7.4 The Security Agent shall not be obliged, before exercising any Collateral Right as against any Guarantor (a) to make any demand of the Company, any other Grantor or any other Person (other than as set forth in Clause 2.1(b) hereof in relation to such Guarantor), (b) to take any action or obtain judgment in any court against such Guarantor, the Company, any other Grantor or any other Person, (c) to make or file any proof or claim in a liquidation, bankruptcy or insolvency of such Guarantor, the Company, any other Grantor or any other Person or (d) to enforce or seek to enforce any security in respect of all or any of the Secured Obligations.
- 7.5 Until the security constituted hereby is released by the Security Agent as contemplated by Clause 16.20 of the Deed of Appointment and Priority, none of the Guarantors shall exercise any right which it may at any time have, by reason of the performance of its obligations under this Guarantee, to be indemnified by any Grantor or to receive any collateral from any Grantor or to claim any contribution from any other Person of any Grantor's obligations under all or any of the Finance Documents or to take the benefit (in whole or in part and whether by subrogation or otherwise) of any rights of all or any of the Secured Parties under all or any of the Finance Documents or of any other security taken pursuant to, or in connection with, all or any of the Finance Documents by all or any of the Secured Parties.
- 7.6 Until the satisfaction of the requirements set out in Clause 16.20 of the Deed of Appointment and Priority in respect of the release of security, any settlement or discharge hereunder shall be conditional upon no security or payment to the Security Agent by or on behalf of any Guarantor and/or any other Grantor being avoided or reduced by virtue of any Guarantor's or any other Grantor's bankruptcy, insolvency, liquidation or similar laws of general application and shall in those circumstances be void.
8. **PAYMENTS AND INTEREST**
- 8.1 Save as otherwise provided herein, the provisions in Clause 11 (*Tax Gross Up And Indemnities*) and Clause 26 (*Payment Mechanics*) of the Common Terms Agreement shall apply to payments to be made under this Guarantee.
- 8.2 If the Security Agent makes a demand under this Guarantee, each Guarantor shall pay on each sum demanded interest on such sum (before and after any judgment and to the

extent that interest at a default rate is not otherwise being paid on such sum by any other Guarantor or other Wynn Obligor under any Finance Document) from the date on which such Guarantor is liable to pay such sum until the date of payment calculated on a daily basis at the rate determined in accordance with the provisions of Clause 19.5 (*Interest on demands*) of the Deed of Appointment and Priority provided that to the extent that default interest shall have accrued on such sum and been paid in accordance with the terms of the other First Ranking Finance Documents, interest shall not be payable on such sum under this Clause 8.2.

## 9. CURRENCY CONVERSION AND INDEMNITY

### 9.1 Currency Conversion

For the purpose of or pending the discharge of any or all of the Secured Obligations, the Security Agent may convert any moneys received, recovered or realised or subject to application by the Security Agent pursuant to this Guarantee from the currency of such moneys to another for such purpose and any such conversion shall be made at the Security Agent's spot rate of exchange for the time being (or such other rate as may be available to the Security Agent from time to time in the ordinary course of business) for obtaining such other currency with the first currency and the Secured Obligations shall be discharged only to the extent of the net proceeds of such conversion received by the Security Agent.

### 9.2 Currency Indemnity

If any sum (a "**Sum**") due from any Guarantor under this Guarantee or any order or judgment given or made in relation thereto has to be converted from the currency (the "**First Currency**") in which such Sum is payable into another currency (the "**Second Currency**") for the purpose of:

9.2.1 making or filing a claim or proof against such Guarantor; or

9.2.2 obtaining or enforcing an order or judgment in any court or other tribunal,

such Guarantor shall (through the Security Agent) indemnify each Person to whom such Sum is due from and against any loss suffered or incurred as a result of any discrepancy between (a) the rate of exchange used for such purpose to convert such Sum from the First Currency into the Second Currency and (b) the rate or rates of exchange at which such Person may in the ordinary course of business purchase the First Currency with the Second Currency at the time of receipt of such Sum.

## 10. SET-OFF

Each of the Guarantors authorises the Security Agent (but the Security Agent shall not be obliged to exercise such right) from time to time to, after the delivery of an Enforcement Notice to such Guarantor, set off against any or all of the sums due and payable but unpaid by and/or any or all of the obligations of such Guarantor to the Security Agent under this Guarantee any amount or other obligation (contingent or otherwise) owing by the Security Agent to such Guarantor and apply any credit balance to which such Guarantor is entitled on any account with the Security Agent in discharge of such sums

payable by and/or such obligations of such Guarantor (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

**11. NOTICES**

- 11.1 Any communication to be made under or in connection with this Guarantee shall be made in writing but, unless otherwise stated, may be made by fax or letter.
- 11.2 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Guarantee is identified with its signature below, or any substitute address, fax number or department or officer as the party may notify to the other parties by not less than 10 Business Days' notice.
- 11.3 Any communication or document made or delivered by one Person to another under or in connection with this Guarantee shall only be effective:
- 11.3.1 if delivered personally or by overnight courier, when left at the relevant address;
  - 11.3.2 if by way of fax, when received in legible form; or
  - 11.3.3 if by way of letter, when it has been left at the relevant address or 10 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,
- and, if a particular department or officer is specified as part of its address details provided under Clause 11.2, if addressed to that department or officer.
- 11.4 Any communication or document to be made or delivered to the Security Agent shall be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).

**12. JOINT GUARANTORS**

- 12.1 The liability of each Guarantor under this Guarantee shall be joint and several and every agreement and undertaking contained in this Guarantee shall be construed accordingly.
- 12.2 The liability of any Guarantor under this Guarantee to the Security Agent shall not be discharged or affected in any way (a) by reason of the invalidity, voidability or unenforceability as regards any other Guarantor or any other security or (b) by any Secured Party's releasing, discharging, compounding with or varying the liability under this Guarantee of, or making any other arrangement with, any other Guarantor.
- 12.3 Any demand or notice served (or deemed to have been served) on one Guarantor shall be regarded as effectively served on each other Guarantor provided that the Company is also provided with a copy of such demand or notice.

**13. EXPENSES AND LIABILITY**

**13.1 Expenses**

The Guarantors shall jointly and severally, from time to time on demand of the Security Agent, reimburse the Security Agent for:

13.1.1 at any time prior to the delivery of an Enforcement Notice to any Guarantor, all reasonable costs and expenses (including legal fees); or

13.1.2 at any time upon or after the delivery of an Enforcement Notice to any Guarantor, all costs and expenses (including legal fees)

on a full indemnity basis incurred by it in connection with the exercise, preservation and/or enforcement of any of the Collateral Rights or the transaction contemplated by this Guarantee or any proceedings instituted by or against the Security Agent as a consequence of taking or holding the security or of enforcing the Collateral Rights, and shall carry interest from the date following 15 days after the date of such demand until so reimbursed at the rate and on the basis as mentioned in Clause 8.2.

**13.2 Indemnity**

The Guarantors shall jointly and severally, notwithstanding any release or discharge of all or any part of the security, indemnify the Security Agent, its agents and attorneys against any action, proceeding, claims, losses, liabilities and costs which it has sustained as a consequence of any breach by any of the Guarantors of the provisions of this Guarantee or the exercise of any of the rights and powers conferred on them by this Guarantee (other than any loss or cost which arises as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent) provided that such costs shall be reasonable prior to the delivery of an Enforcement Notice to any Guarantor. None of the Guarantors is liable to indemnify the Security Agent against any costs referred to in this Clause 13.2 to the extent that such costs have been paid by the Guarantors to the Security Agent under Clause 13.1 (*Expenses*).

**13.3 No Liability**

The Security Agent shall not be liable by reason of taking any action permitted by this Guarantee except in the case of gross negligence or wilful default upon its part.

**14. CHANGES TO PARTIES**

14.1 None of the Guarantors may assign or transfer any or all of its rights (if any) and/or obligations under this Guarantee.

14.2 The Security Agent may:

14.2.1 assign all or any of its rights under this Guarantee; and

14.2.2 transfer all or any of its obligations (if any) under this Guarantee,

to any successor Security Agent in accordance with the provisions of the Deed of Appointment and Priority. Upon such assignment and transfer taking effect, the successor Security Agent shall be and be deemed to be acting as agent and security trustee for the Secured Parties for the purposes of this Guarantee and in place of the former Security Agent.

14.3 Subject to the relevant provisions of the Finance Documents, each Secured Party may assign all or any of its rights under this Guarantee (whether direct or indirect) in accordance with the provisions of the Finance Documents. It is acknowledged that none of the Finance Parties has or shall have any obligation under this Guarantee.

14.4 Each Guarantor irrevocably and unconditionally confirms that:

- (a) it consents to any assignment or transfer by any Secured Party of its rights and/or obligations made in accordance with the provisions of the Finance Documents;
- (b) it shall continue to be bound by the terms of this Guarantee, notwithstanding any such assignment or transfer; and
- (c) the assignee or transferee of such Secured Party shall acquire an interest in this Guarantee upon such assignment or transfer taking effect.

15. **PARTIAL INVALIDITY**

If, at any time, any provision of this Guarantee is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Guarantee nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the guarantee intended to be created by or pursuant to this Guarantee is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the guarantee.

16. **GOVERNING LAW**

This Guarantee and all matters arising from or connected with it are governed by English law.

17. **JURISDICTION**

17.1 **Jurisdiction of English courts**

17.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Guarantee (including a dispute regarding the existence, validity or termination of this Guarantee or the consequences of its nullity) (a “**Dispute**”).

17.1.2 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they shall not argue to the contrary.

17.1.3 This Clause 17.1.3 is for the benefit of the Secured Parties only. As a result, no Secured Parties shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Finance Documents, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

**17.2 Service of process**

Without prejudice to any other mode of service allowed under any relevant law, each of the Guarantors:

17.2.1 irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Guarantee; and

17.2.2 agrees that failure by a process agent to notify such Guarantor of the process shall not invalidate the proceedings concerned.

**18. EXERCISE OF RIGHTS**

Notwithstanding anything in Clause 17.1.3 to the contrary, the Secured Parties will only exercise their rights under this Guarantee through the Security Agent unless and until the appointment of the Security Agent ceases and no successor Security Agent is appointed under Clause 17.1 (*Resignation of Security Agent*) of the Deed of Appointment and Priority.

**19. COUNTERPART**

This Guarantee may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement.

**IN WITNESS WHEREOF** this Guarantee has been signed on behalf of the Security Agent and executed as a deed by each of the Guarantors and is intended to be and is hereby delivered by the Guarantors as a deed on the date specified above.

SIGNATURES

**The Guarantors**

Executed as a deed by )  
**WYNN GROUP ASIA, INC.** )  
acting by Matthew Maddox ) *Matt Maddox*  
under the board resolution )  
of 10 September 2004 )

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Telephone: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel



Executed as a deed by )  
**WYNN RESORTS INTERNATIONAL, LTD.** )  
acting by Matt Maddox )  
its duly authorised attorney ) **Matt Maddox**  
under a power of attorney dated 10 September 2004 )  
)  
)  
in the presence of: **Eva Lo** )

Name of Witness: Eva Lo  
Address of Witness: 29/F Jardine House  
Central  
Hong Kong

Address: First Floor  
Millennium House  
Victoria Road  
Douglas  
Isle of Man IM2 4RW

Telephone: (44) 1624-616669

Fax: (44) 1624-616667

Attention: The Company Secretary

With a copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Telephone: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

Executed as a deed by )  
**WYNN RESORTS (MACAU) HOLDINGS, LTD.** )  
acting by Matt Maddox )  
its duly authorised attorney ) **Matt Maddox**  
under a power of attorney dated 10 September 2004 )  
)  
in the presence of: **Eva Lo** )

Name of Witness: Eva Lo  
Address of Witness: 29/F Jardine House  
Central  
Hong Kong

Address: First Floor  
Millennium House  
Victoria Road  
Douglas  
Isle of Man IM2 4RW

Telephone: (44) 1624-616669

Fax: (44) 1624-616667

Attention: The Company Secretary

With a copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Telephone: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

The common seal of )  
**WYNN RESORTS (MACAU), LIMITED** )  
was affixed to this Guarantee )  
in the presence of: )

*Common Seal*

***Matt Maddox***

Address: 2503 Bank of America Tower  
12 Harcourt Road  
Central  
Hong Kong

Telephone: (852) 2525-2141

Fax: (852) 2810-4196

Attention: General Counsel

With a copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Telephone: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

**The Security Agent**

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

By: **David Gore**                      **Sun Peng Lui**

Address: 42/F Edinburgh Tower,  
15 Queen's Road Central,  
Hong Kong

Telephone: (852) 2166-5671/(852) 2166-5430/(852) 2166-5665

Fax: (852) 2804-6215

Attention: Sunny Lui/ Raymond Fung/ Sara Wong  
Risk & Agency

**DATED 14 SEPTEMBER 2004**

**WYNN RESORTS (MACAU) S.A.**

the Company

**WYNN GROUP ASIA, INC.**

**WYNN RESORTS INTERNATIONAL, LTD.**

**WYNN RESORTS (MACAU) HOLDINGS, LTD.**

**WYNN RESORTS (MACAU), LIMITED**

as Wynn Companies

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

as Security Agent

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**SPONSORS' SUBORDINATION DEED**

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**BETWEEN**

- (1) **WYNN RESORTS (MACAU) S.A.**, a company incorporated under the laws of Macau SAR (registered number 14917) whose registered office is at 429, Avenida da Praia Grande, 18th Floor, Praia Grande Commercial Centre, Macau (the "**Company**");
- (2) **WYNN GROUP ASIA, INC.**, a company incorporated under the laws of Nevada (registered number C14057-2002) whose registered office is at 3131 Las Vegas Boulevard South, Las Vegas, Nevada 89109 ("**Wynn Asia**");
- (3) **WYNN RESORTS INTERNATIONAL, LTD.**, a company incorporated under the laws of the Isle of Man (registered number 105649C) whose registered office is at First Floor, Millennium House, Victoria Road, Douglas, Isle of Man, British Isles 1M2 4RW ("**Wynn International**");
- (4) **WYNN RESORTS (MACAU) HOLDINGS, LTD.** a company incorporated under the laws of the Isle of Man (registered number 105650C) whose registered office is at First Floor, Millennium House, Victoria Road, Douglas, Isle of Man, British Isles 1M2 4RW ("**Wynn Holdings**");
- (5) **WYNN RESORTS (MACAU), LIMITED**, a company incorporated under the laws of Hong Kong SAR (company number 795431) whose registered office is at 2503 Bank of America Tower, 12 Harcourt Road, Central, Hong Kong ("**Wynn HK**"); and
- (6) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**, with its principal office at 42/F Edinburgh Tower, 15 Queen's Road Central, Hong Kong, as agent and security trustee for the Secured Parties (the "**Security Agent**").

**NOW THIS DEED WITNESSES** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed, unless otherwise defined herein, all terms defined or referred to in the Deed of Appointment and Priority or, if not defined or referred to in the Deed of Appointment and Priority, the Common Terms Agreement, shall bear the same meaning when used in this Deed and, in addition:

"**Accession Deed**" means a deed in substantially the form set out in Schedule 1 (*Form of Accession Deed*).

"**Collateral Rights**" means all rights, powers and remedies of the Security Agent provided by this Deed or by law.

"**Deed of Appointment and Priority**" means the deed of appointment and priority dated 14 September 2004 and made between, among others, the Company, Société Générale Asia Limited as intercreditor agent, the Security Agent as security agent, the institutions

defined therein as Original First Ranking Lenders, Second Ranking Finance Party and Third Ranking Finance Party.

“**Licensor**” has the meaning given in the Common Terms Agreement.

“**Licensor Repeating Representations**” means each of the representations set out in Clause 12.1 other than Clauses 12.1.8 and 12.1.9.

“**Priority Indebtedness**” means the Liabilities.

“**Receiver**” means a receiver or receiver and manager of the whole or any part of the Subordinated Indebtedness.

“**Subordinated Indebtedness**” means all sums (whether of principal, interest or otherwise) payable and all obligations owing to any or all of the Wynn Companies by the Company whether present or future, actual or contingent (and whether incurred by the Company alone or jointly, and whether as principal or surety or in some other capacity) other than:

- (a) the Third Ranking Liabilities owed to a Wynn Company (if any);
- (b) any sum or obligations owing to any or all of the Wynn Companies under any transaction with such Wynn Company(ies) which transaction is permitted under paragraph 10(a) of Part B of Schedule 5 to the Common Terms Agreement (other than any sum or obligations owing under or pursuant to the IP Agreement); and
- (c) any bona fide, actual out-of-pocket expenses incurred by a Wynn Company for the purposes of the Projects to be paid or indemnified by the Company

(and “**Subordinated Indebtedness**” in relation to any Wynn Company means all sums (whether of principal, interest or otherwise) payable and all obligations owing to such Wynn Company by the Company whether present or future, actual or contingent (and whether incurred by the Company alone or jointly, and whether or principal or surety or in some other capacity)).

“**Wynn Assignors**” means Wynn Asia, Wynn International, Wynn Holdings and Wynn HK and “**Wynn Assignor**” means each of them.

“**Wynn Assignors Repeating Representations**” means each of the representations set out in Clauses 12.3.2 and 12.3.3.

“**Wynn Companies**” means the Licensor Wynn Asia, Wynn International, Wynn Holdings and Wynn HK and “**Wynn Company**” means each of them.

## 1.2 Interpretation

In this Deed:

1.2.1. the principles of construction and interpretation contained or referred to in Clause 1.2 (*Construction*) of the Deed of Appointment and Priority shall apply to the construction and interpretation of this Deed; and



1.2.2. any reference to any or all of the Wynn Companies, any or all of the other Grantors or any or all of the Secured Parties shall be construed so as to include its or their (and any subsequent) successors and any permitted assignees and transferees in accordance with their respective interests.

### 1.3 **Third party rights**

1.3.1. The Contracts (Rights of Third Parties) Act 1999 applies to Clause 1.4 (*Non-Recourse Liability*) but only for the benefit of the Operatives subject always to the terms of Clause 24 (*Governing Law*) and Clause 25 (*Jurisdiction*).

1.3.2. Except as provided in sub-clause 1.3.1 above, a Person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

1.3.3. Subject to Clause 24.2 (*Amendment of other Security Documents*) of the Deed of Appointment and Priority, the consent of any Person who is not a party to this Deed is not required to rescind or vary this Deed.

### 1.4 **Non-Recourse Liability**

Notwithstanding any provision in the Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Finance Document to which such Operative is party. The sole recourse of the Secured Parties for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Finance Documents shall be against the Obligors, and not against any assets or property of any Operative save to the extent such Operative is party to a Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

## 2. **SUBORDINATION**

2.1 Except as set forth in Clause 2.2, each of the Company and the Wynn Companies agrees with each other and with the Security Agent that, so long as any Priority Indebtedness is outstanding, the Subordinated Indebtedness and the claims of any or all of the Wynn Companies (whether in respect of principal, interest or otherwise) in respect of the Subordinated Indebtedness shall be subordinated to the Priority Indebtedness and postponed to the claims of the Secured Parties in respect thereof.

2.2 Each of the Company and the Wynn Companies hereby covenants and undertakes with the Security Agent and agrees and acknowledges that, unless and until the Priority Indebtedness has been discharged in full:

2.2.1. no Subordinated Indebtedness (nor any part thereof) shall be payable or repayable, paid or repaid, provided that Subordinated Indebtedness may accrue interest in accordance with its terms and Subordinated Indebtedness may be paid (i) as a Restricted Payment at the times and subject to the conditions referred to in paragraph 6 of Part B of Schedule 5 (*Covenants*) of the Common

Terms Agreement or (ii) to the extent permitted under paragraph 20 of Part B of Schedule 5 (*Covenants*) of the Common Terms Agreement;

2.2.2. no Subordinated Indebtedness (nor any part thereof) shall be secured by any Lien over all or any part of the assets of the Company or any other Person other than any Mandatory Permitted Liens;

2.2.3. no Wynn Company shall (without the prior written consent of the Security Agent):

- (a) exercise, enforce or seek to exercise or enforce any right or remedy which it may have against the Company or any other Person in respect of any or all of the Subordinated Indebtedness or (save as pursuant to this Deed) expressly waive any of such rights and remedies;
- (b) demand, accelerate, sue or prove for, receive or retain payment of, or demand any distribution in respect of or on account of, any Subordinated Indebtedness in cash or in kind from the Company or any other Person;
- (c) amend, vary or cancel (or agree to any amendment, variation or cancellation of) the terms on which any of the Subordinated Indebtedness is or continues to be or may become owing to any Wynn Company other than any amendment, variation or cancellation which is of an administrative nature or any other amendment, variation or cancellation of any term which does not adversely affect the interest of the Secured Parties;
- (d) petition or take any other step for the winding-up, liquidation or dissolution of the Company;
- (e) exercise any right to be indemnified by the Company or claim any contribution from any other guarantor of the Company's obligations under any or all of the Finance Documents or from any other Wynn Company, in each case in respect of any or all of the Subordinated Indebtedness; or
- (f) take the benefit (in whole or in part and whether by subrogation or otherwise) of any rights of any Secured Party or any other security taken pursuant to, or in connection with, any Finance Document by any Secured Party in respect of any or all of the Subordinated Indebtedness; and

2.2.4. none of the Wynn Companies or the Company shall at any time have or claim any right of set-off, deduction or counterclaim in respect of any or all of the Subordinated Indebtedness, and each of the Wynn Companies and the Company agrees that none of them shall exercise any such right which it may otherwise have and hereby waives all such rights.

2.3 If, notwithstanding the provisions of Clauses 2.1 and 2.2, any moneys or proceeds in respect of any or all of the Subordinated Indebtedness (other than those which are permitted to be paid under Clause 2.2.1) shall be received or recovered by any Wynn Company at a time when any of the Priority Indebtedness is outstanding:

2.3.1. such Wynn Company shall forthwith pay and/or transfer such moneys or proceeds to the Security Agent (as trustee for the Secured Parties); and

2.3.2. the Security Agent shall apply any moneys or proceeds received from any Wynn Company pursuant to sub-clause 2.3.1 in accordance with Clause 9 (*Application Of Proceeds*).

The parties hereto acknowledge that any receipt of moneys or proceeds by any of the Wynn Companies in respect of any or all of the Subordinated Indebtedness (other than those which are permitted to be paid under Clause 2.2.1) shall constitute a breach of covenant of such Wynn Company which shall give rise to a trust over such moneys or proceeds in favour of the Security Agent (as trustee for the Secured Parties).

### 3. **SUBORDINATION IN INSOLVENCY**

3.1 Without prejudice to the provisions of Clause 2.1, if an Insolvency Event occurs and is continuing in relation to the Company, then the Subordinated Indebtedness shall be subordinated in right of payment to the Priority Indebtedness.

3.2 Without prejudice to the provisions of Clause 2.1, in any of the circumstances referred to in Clause 3.1, each Wynn Company shall cooperate with the Security Agent to preserve, and shall take such steps as the Security Agent may reasonably require for the preservation of, the subordination (in respect of the Subordinated Indebtedness in relation to such Wynn Company) effected or contemplated by this Deed, failing which the Security Agent may, and is irrevocably authorised on behalf of such Wynn Company to:

3.2.1. claim, enforce and prove for the Subordinated Indebtedness or any part thereof;

3.2.2. file claims and proofs, give receipt and take all such proceedings and do all such things as the Security Agent sees fit to recover any amount outstanding in respect of the Subordinated Indebtedness or any part thereof; and

3.2.3. receive all distributions in respect of the Subordinated Indebtedness for application by the Security Agent in accordance with Clause 9 (*Application Of Proceeds*).

If and to the extent that the Security Agent is not entitled to do any of the things mentioned above in relation to any Subordinated Indebtedness of any Wynn Company, such Wynn Company shall do so in good time and as directed by the Security Agent acting reasonably. Any amount or distribution received or recovered by the Security Agent pursuant to the foregoing shall be applied in accordance with the provisions of Clause 9 (*Application Of Proceeds*).

3.3 Without prejudice to the provisions of Clause 2.3, in any of the circumstances referred to in Clause 3.1, each Wynn Company expressly undertakes and agrees that it shall not demand or retain payment of any distributions in respect of or on account of any Subordinated Indebtedness until the Secured Parties shall have received payment in full of the Priority Indebtedness and acknowledges that any payment and/or distribution in cash or in kind received by it before such time in respect of or on account of any

Subordinated Indebtedness shall constitute a breach of this undertaking which shall give rise to a trust over such payment or distribution so received by it for the benefit of the Security Agent (as trustee for and on behalf of the Secured Parties) and shall forthwith pay and/or transfer the same to the Security Agent for application in accordance with Clause 9 (*Application Of Proceeds*).

**4. UNDERTAKINGS**

- 4.1 The Company undertakes that, for so long as any Priority Indebtedness is outstanding, it will not (except with the prior written consent of the Security Agent):
- 4.1.1. pay, prepay, redeem, purchase or otherwise acquire any of the Subordinated Indebtedness save as permitted in accordance with Clause 2.2.1;
  - 4.1.2. create or permit to subsist any Lien (other than any Lien referred to in paragraph 3(a), 3(f) or 3(q) of Schedule 5 Part B of the Common Terms Agreement and any Mandatory Permitted Lien) over any of its assets for, or any guarantee or indemnity against financial loss in respect of, any of the Subordinated Indebtedness;
  - 4.1.3. amend or supplement any of the terms on which any of the Subordinated Indebtedness is or continues to be or may become owing to any Wynn Company other than any amendment of an administrative nature or any other amendment, variation or cancellation of any term which does not adversely affect the interest of the Secured Parties;
  - 4.1.4. novate, assign or release any of the terms on which any of the Subordinated Indebtedness is or continues to be or may become owing to any Wynn Company; or
  - 4.1.5. take or omit any action whereby the subordination contemplated by this Deed is reasonably expected to be impaired.
- 4.2 Each Wynn Company undertakes that, for so long as any Priority Indebtedness is or may become outstanding, it will not (except with the prior written consent of the Security Agent):
- 4.2.1. permit (save as permitted by Clause 2.2.1) or require the Company to pay, prepay, redeem, purchase or otherwise acquire any of the Subordinated Indebtedness;
  - 4.2.2. take, accept, demand or receive the benefit of any Lien (other than Lien arising by operation of law), guarantee or indemnity against financial loss in respect of any of the Subordinated Indebtedness;
  - 4.2.3. agree to any amendment, supplement, novation, assignment or release to or of any of the terms on which any of the Subordinated Indebtedness is or continues to be or may become owing to it other than any amendment which is of an administrative nature or any other amendment of any term which does not adversely affect the interest of the Secured Parties;

4.2.4. assign, transfer, factor, create or permit to subsist any Lien (other than Lien arising by operation of law) over, or otherwise dispose of, any of its rights in respect of any or all of the Subordinated Indebtedness (except pursuant to Clause 5 (*Assignment of Subordinated Indebtedness*) or Clause 21.5); or

4.2.5. take or omit to take any action whereby the subordination contemplated by this Deed is reasonably expected to be impaired.

**5. ASSIGNMENT OF SUBORDINATED INDEBTEDNESS**

5.1 Each Wynn Assignor shall discharge and pay to the Security Agent (when due and payable) each of the Priority Indebtedness in accordance with the Finance Documents provided that:

5.1.1. if such Wynn Assignor fails to pay such sum on the due date for payment of that sum such Wynn Assignor shall pay interest on such sum (before and after any judgment and to the extent that interest at a default rate is not otherwise being paid on such sum by any other Wynn Assignor under any Finance Document) from the date of demand until the date of payment calculated on a daily basis at the rate determined in accordance with the provisions of Clause 19.5 (*Interest on demands*) of the Deed of Appointment and Priority provided that to the extent that default interest shall have accrued on such sum and been paid in accordance with the terms of the other Finance Documents, interest shall not be payable on such sum under this sub-clause 5.1.1;

5.1.2. the aggregate liability of such Wynn Assignor under this Clause 5.1 shall (save as otherwise expressly provided herein) be limited to the maximum value of the Subordinated Indebtedness (in relation to such Wynn Assignor) from time to time; and

5.1.3. neither the obligations of such Wynn Assignor under nor the security constituted by this Clause 5 shall extend to or include any liability or sum which would cause such obligations or security to be unlawful or prohibited by any applicable law.

The limit on the liabilities of the Wynn Assignors pursuant to sub-clause 5.1.2 shall not apply to any sum payable by or obligation/liability of any Wynn Assignor under any other provision of this Deed.

5.2 Each Wynn Assignor hereby assigns, with full title guarantee, to the Security Agent as agent and security trustee for the Secured Parties, as security for the payment and discharge of the Secured Obligations, all of such Wynn Assignor's right, title and interest from time to time in and to the Subordinated Indebtedness (in relation to such Wynn Assignor).

5.3 The execution of this Deed by the Company shall constitute notice to the Company of the assignment of the Subordinated Indebtedness by the Wynn Assignors. The Company hereby consents to such assignment (and any further assignment or disposal of the Subordinated Indebtedness or any part thereof by the Security Agent or any Receiver pursuant to this Deed) and confirms to each Wynn Assignor and the Security Agent that

it shall continue to be bound by the terms on which the Subordinated Indebtedness has been or shall have been made available to it.

5.4 Subject to the terms of the Finance Documents, each Funding Party is under an obligation to make further advances (or, in the case of a Hedging Counterparty, payments) to the Company and that obligation will be deemed to be incorporated into this Deed as if set out in this Deed.

**6. FURTHER ASSURANCE**

6.1 Wynn Asia hereby irrevocably authorises the Security Agent at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Subordinated Indebtedness falls within the scope of Article 9 of the Uniform Commercial Code of the State of Nevada or any other Uniform Commercial Code jurisdiction and (b) provide any other information required by part 5 of Article 9 of the Uniform Commercial Code of the State of Nevada, or any other Uniform Commercial Code jurisdiction, for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Wynn Asia is an organisation, the type of organisation and any organisational identification number issued to Wynn Asia. Wynn Asia agrees to furnish any such information to the Security Agent promptly upon the Security Agent's request.

6.2 Each of Wynn International and Wynn Holdings shall procure that this Deed together with prescribed particulars thereof shall be presented to the Isle of Man Companies Registry upon the execution of this Deed (and in any event within one month of the date of execution of this Deed).

6.3 Wynn HK shall procure that prescribed particulars of this Deed shall be presented to the Hong Kong Companies Registry upon the execution of this Deed (and in any event within five weeks of the date of execution of this Deed).

6.4 Each of the Company and the Wynn Companies undertakes with the Security Agent that it shall forthwith upon the request of the Security Agent from time to time, if the Security Agent considers it necessary for the creation, perfection, protection or enforcement of the subordination contemplated by this Deed, execute such further documents or take such further action as the Security Agent may require, provided that any such request to any Wynn Company shall be reasonable prior to the delivery of an Enforcement Notice to any Wynn Company.

6.5 Without prejudice to Clause 6.4, each Wynn Assignor shall promptly execute all documents and do all things (including without limitation the delivery, transfer or assignment of all or part of the Subordinated Indebtedness (in relation to such Wynn Company) to the Security Agent or its nominee(s)) which the Security Agent may reasonably specify for the purpose of (i) exercising the Collateral Rights or (ii) securing and perfecting the Security Agent's security over or title to all or any part of the Subordinated Indebtedness (in relation to such Wynn Assignor).

6.6 Each Wynn Assignor shall, upon receipt of an Enforcement Notice from the Security Agent, (i) procure the transfer of the Subordinated Indebtedness (in relation to such

Wynn Assignor) into the name of the Security Agent or its nominee(s), agents or such purchasers as it shall direct and (ii) execute all documents and do all other things that the Security Agent may require to facilitate the realisation of the Subordinated Indebtedness (in relation to such Wynn Assignor).

**7. ENFORCEMENT OF SECURITY ASSIGNMENT**

- 7.1 After the Security Agent shall have given an Enforcement Notice to any Wynn Assignor, the security created by or pursuant to Clause 5 (*Assignment of Subordinated Indebtedness*) is immediately enforceable and the Security Agent may, without notice to any Wynn Assignor and/or the Company or prior authorisation from any court, in its absolute discretion enforce all or any part of that security (at the times, in the manner and on the terms it thinks fit) and get in, collect, hold, sell, assign or otherwise dispose of all or any part of the Subordinated Indebtedness (on such terms as it may think fit).
- 7.2 Any restrictions on the consolidation of Liens shall be excluded to the fullest extent permitted by law and the Security Agent shall, so far as it shall be lawful, be entitled to consolidate all or any of the security interests constituted by this Deed and/or its powers hereunder with any other Lien(s) whether in existence at the date of this Deed or created thereafter.
- 7.3 Neither the Security Agent nor any Receiver shall be liable to account as a mortgagee in possession in respect of all or any part of the Subordinated Indebtedness or be liable for any loss upon realisation in connection with the Subordinated Indebtedness (or any part thereof) to which a mortgagee in possession might otherwise be liable other than any loss which arises as a consequence of any gross negligence or wilful default on the part of the Security Agent or Receiver.
- 7.4 The power of sale or other disposal conferred on the Security Agent and on any Receiver by this Deed shall operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Deed. The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Deed or to any exercise by the Security Agent of its right to consolidate mortgages or its power of sale.
- 7.5 A certificate in writing by an officer or agent of the Security Agent that the power of sale or disposal has arisen and is exercisable shall be conclusive evidence (in the absence of manifest error) of that fact in favour of a purchaser of all or any part of the Subordinated Indebtedness.
- 7.6 So long as Wynn Resorts has not delivered a notice under Clause 5.2 of the Wynn Resorts Support Agreement terminating its obligations under Clause 6 thereof, the Security Agent shall, prior to the acceptance of any offer made by a Senior Secured Creditor for the purchase of all or any of the assets subject to the security created hereunder, give reasonable details of all of the written offers received by the Security Agent for the purchase of such assets.

8. **RECEIVER**

8.1 After the Security Agent shall have given an Enforcement Notice to any Wynn Assignor or if requested to do so by the relevant Wynn Assignor, the Security Agent may by deed or otherwise (acting through an authorised officer of the Security Agent), without prior notice to any Wynn Assignor or the Company:

8.1.1. appoint one or more Persons to be a Receiver of the whole or any part of the Subordinated Indebtedness;

8.1.2. remove (so far as it is lawfully able) any Receiver so appointed; and

8.1.3. appoint another Person(s) as an additional or replacement Receiver(s).

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Security Agent under the Laws of Property Act 1925 (as extended by this Deed) or otherwise and such powers shall remain exercisable from time to time by the Security Agent in respect of any Subordinated Indebtedness in respect of which he was appointed (in the name of or on behalf of the relevant Wynn Assignor(s) or in his own name and, in each case, at the cost of the relevant Wynn Assignor(s)).

8.2 Each Person appointed to be a Receiver pursuant to Clause 8.1 shall be:

8.2.1. entitled to act individually or together with any other Person appointed or substituted as Receiver;

8.2.2. for all purposes deemed to be the agent of the Wynn Assignor (in respect of whose Subordinated Indebtedness such Receiver is appointed) which shall be solely responsible for his acts, defaults and liabilities (other than such acts, defaults and liabilities that are attributed to the gross negligence or wilful misconduct of the Receiver) and for the payment of his remuneration and no Receiver shall at any time act as agent for the Security Agent; and

8.2.3. entitled to remuneration for his services at a rate to be fixed by the Security Agent from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

8.3 In addition to the powers of the Security Agent conferred by Clause 7 (*Enforcement Of Security Assignment*), each Receiver shall (subject to any limitations or restrictions in the instrument appointing him but notwithstanding any winding-up, insolvency, or dissolution of any Wynn Assignor) have, in relation to the part of the Subordinated Indebtedness in respect of which he was appointed (in the name of or on behalf of the relevant Wynn Assignor(s) or in his own name and, in each case, at the cost of the relevant Wynn Assignor(s)):

8.3.1. all the powers and rights of an absolute owner and power to do or omit to do anything which the relevant Wynn Assignor(s) itself/themselves could do or omit to do (disregarding, in this case, the restrictions imposed on the powers of such Wynn Assignor(s) by this Deed);



- 8.3.2. the power to do all things (including without limitation bringing or defending proceedings in the name(s) or on behalf of the relevant Wynn Assignor(s)) which seem to such Receiver to be incidental or conducive to (i) any of the functions, powers, authorities or discretions conferred on or vested in him or (ii) the exercise of the Collateral Rights (including without limitation realisation of such part of such Subordinated Indebtedness) or (iii) bringing to his hands any assets forming, or which when got in would be, part of such Subordinated Indebtedness;
- 8.3.3. all the powers conferred on him by general law; and
- 8.3.4. all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act and all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver).
- 8.4 Without prejudice to the generality of the foregoing, each Receiver shall (subject to any limitations or restrictions in the instrument appointing him but notwithstanding any winding-up, insolvency or dissolution of any Wynn Assignor) have the following powers in relation to the part of the Subordinated Indebtedness (and any assets which, when got in, would be part of such Subordinated Indebtedness) in respect of which he was appointed (and every reference in this Clause 8.4 to the “**Subordinated Indebtedness**” shall be read as a reference to that part of the Subordinated Indebtedness in respect of which such Receiver was appointed):
- 8.4.1. **Collection**  
power to collect and get in the Subordinated Indebtedness including without limitation amounts and distributions (whether in cash or in kind) payable in respect thereof;
- 8.4.2. **Proceedings and Claims**  
power to bring, prosecute, enforce, defend and abandon applications, claims, disputes, actions, suits and proceedings in connection with all or any part of the Subordinated Indebtedness or this Deed in the name(s) of the relevant Wynn Assignor(s) or in his own name and to submit to arbitration, negotiate, compromise and settle any such applications, claims, disputes, actions, suits or proceedings;
- 8.4.3. **Deal with Subordinated Indebtedness**  
power to sell, assign, transfer, factor or otherwise dispose of the Subordinated Indebtedness or any part thereof or concur in any of the foregoing on behalf of the relevant Wynn Assignor(s) in such manner and generally on such terms as he thinks fit;

#### 8.4.4. **Redemption of Security**

power to redeem, discharge or compromise any security whether or not having priority to the security constituted by this Deed or any part of it;

#### 8.4.5. **Covenants, Guarantees and Indemnities**

power to enter into bonds, covenants, guarantees, commitments, indemnities and other obligations or liabilities as he shall think fit, to make all payments needed to effect, maintain or satisfy such obligations or liabilities and to use the company seal(s) (if any) of the relevant Wynn Assignor(s); and

#### 8.4.6. **Exercise of Powers in Wynn Assignors' Name**

power to exercise any or all of the above powers on behalf of and in the name of any or all of the relevant Wynn Assignor(s) (notwithstanding any winding-up, insolvency, dissolution of any or all of the relevant Wynn Assignor(s)) or on his own behalf.

- 8.5 In making any sale or other disposal of all or any part of the Subordinated Indebtedness or any acquisition in the exercise of their respective powers, a Receiver or the Security Agent may do so for such consideration, in such manner, and generally on such terms and conditions as it thinks fit. Any contract for such sale, disposal or acquisition by the Receiver or the Security Agent may contain conditions excluding or restricting the personal liability of the Receiver or the Security Agent.

### 9. **APPLICATION OF PROCEEDS**

- 9.1 All moneys and/or proceeds received or recovered by the Security Agent or any Receiver pursuant to this Deed or the powers conferred by it (including without limitation the proceeds of any conversion of currency) shall, subject to Clause 9.2, and by way of variation of the provisions of the Law of Property Act 1925, be applied by the Security Agent (notwithstanding any purported appropriation by any Wynn Company or any other Grantor) in accordance with Clause 15 (*Application of Proceeds*) of the Deed of Appointment and Priority. In the case of proceeds (otherwise than in cash) received or recovered by the Security Agent or any Receiver, the Security Agent or any Receiver may at its discretion realise such proceeds on such terms as it may think fit and apply the proceeds thereof in accordance with the provisions of Clause 15 (*Application of Proceeds*) of the Deed of Appointment and Priority. The provisions of Clause 8.5 shall apply to such realisation.
- 9.2 Notwithstanding any other provision of the Finance Documents, the Security Agent or any Receiver may, at any time after the delivery of an Enforcement Notice to the Company, pay any or all of the moneys received, recovered or realised by the Security Agent or such Receiver under this Deed (including without limitation the proceeds of any conversion of currency) into any interest bearing suspense or impersonal account (which is interest-bearing provided that there is no tax liability on the Security Agent with respect to any interest in such account) for so long as the Security Agent or such Receiver shall think fit (whether or not any or all of the Secured Obligations in relation to any or all of the Wynn Companies shall have become due) pending any further

application of such moneys (as the Security Agent or such Receiver shall be entitled, but not obliged, to do in its discretion) in accordance with the provisions of Clause 9.1. If the Secured Obligations have been fully discharged or would be fully discharged if the moneys in such suspense or impersonal account were applied towards satisfaction of the Secured Obligations, the Security Agent shall apply the moneys in such suspense or impersonal account towards satisfaction of the Secured Obligations and if there are any moneys remaining in such suspense or impersonal account after the Secured Obligations have been fully discharged, the Security Agent shall pay such remaining moneys to any Person as directed by the Company. Any interest accrued on any moneys in such suspense or impersonal account shall be credited to such suspense or, as the case may be, impersonal account and shall subject to the terms of this Clause 9.2, be applied towards satisfaction of the Secured Obligations.

**10. PROTECTION OF PURCHASERS**

- 10.1 The receipt of the Security Agent or any Receiver shall be conclusive discharge to a purchaser of any part of the Subordinated Indebtedness from the Security Agent or any Receiver.
- 10.2 No purchaser or other Person dealing with the Security Agent or any Receiver shall be bound to inquire whether the right of the Security Agent or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Security Agent or such Receiver in such dealings.

**11. POWER OF ATTORNEY**

- 11.1 Each Wynn Assignor hereby by way of security irrevocably (within the meaning of Section 4 of the Powers of Attorney Act 1971) appoints the Security Agent and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to, upon and at all times after the Security Agent shall have delivered an Enforcement Notice to any Wynn Assignor, execute, deliver and perfect all documents (including without limitation any instruments of transfer) and do all things which the attorney may consider to be required or desirable for:
- 11.1.1. carrying out any obligation imposed on such Wynn Assignor by this Deed (including without limitation the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Subordinated Indebtedness) and/or any other Finance Documents which such Wynn Assignor has failed to perform in accordance with the terms hereof or thereof; and
- 11.1.2. enabling the Security Agent and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Deed or any other Finance Document or by law (including without limitation, after the Security Agent shall have delivered an Enforcement Notice to any Wynn Assignor, the exercise of any right of a legal or beneficial owner of the Subordinated Indebtedness).
- 11.2 Each Wynn Assignor shall ratify and confirm all things done and all documents executed by any attorney in accordance with the terms of this Clause 11 in the exercise of all or any of his powers granted by or in relation to such Wynn Assignor.

**12. REPRESENTATIONS AND WARRANTIES**

- 12.1 The Licensor makes the following representations and warranties to the Security Agent (for and on behalf of the Secured Parties) on the Licensor Accession Date (as defined in Clause 21.5) and acknowledges that the Secured Parties have relied upon those representations and warranties:
- 12.1.1. it is duly organised, incorporated and validly existing under the laws of Nevada;
  - 12.1.2. the obligations expressed to be assumed by it in this Deed and the IP Agreement and the IP Direct Agreement are legal and valid obligations binding on it and enforceable against it in accordance with the terms hereof, subject only to bankruptcy, insolvency, liquidation or other similar laws of general application and principles of equity;
  - 12.1.3. its execution and delivery of this Deed, the IP Agreement and the IP Direct Agreement and the performance of its obligations hereunder do not and will not:
    - (i) result in a breach of its constitutive documents or any other Legal Requirement then applicable to or binding on it; or
    - (ii) result in any breach or constitute any default under, or result in or require the creation or imposition of any Lien upon any of its assets (other than any Lien referred to in paragraph 3(a), 3(f) or 3(q) of Schedule 5 Part B of the Common Terms Agreement and any Mandatory Permitted Lien) or under any security or agreement or instrument to which it is a party or by which it or any of its assets may be bound;
  - 12.1.4. it has the power to execute, deliver and perform under this Deed, the IP Agreement and the IP Direct Agreement and all corporate and other action required to authorise its execution and delivery of this Deed, the IP Agreement and the IP Direct Agreement and the performance of its obligations hereunder has been duly taken;
  - 12.1.5. its execution of this Deed, the IP Agreement and the IP Direct Agreement constitutes, and the performance of its obligations hereunder will constitute, private and commercial acts done and performed for private and commercial purposes;
  - 12.1.6. it is the sole and absolute beneficial owner of all of the Subordinated Indebtedness under the IP Agreement free from any Lien (except for any Lien referred to in paragraph 3(a), 3(f) or 3(q) of Schedule 5 Part B of the Common Terms Agreement and any Mandatory Permitted Lien);
  - 12.1.7. save as otherwise expressly required by this Deed or pursuant hereto or permitted hereunder, neither it nor any of its nominees has sold, transferred or otherwise disposed of, or agreed to sell, transfer or otherwise dispose of, the benefit of all or any of its rights, title and interest in the Subordinated Indebtedness or any part thereof;

- 12.1.8. all acts, conditions and things required to be done, fulfilled and performed in order (a) to enable it lawfully to enter into, and perform and comply with the obligations expressed to be assumed by it in this Deed, the IP Agreement and the IP Direct Agreement, (b) to ensure that the obligations expressed to be assumed by it in this Deed, the IP Agreement and the IP Direct Agreement are legal, valid, binding and enforceable and (c) to make this Deed, the IP Agreement and the IP Direct Agreement admissible in evidence in its jurisdiction of incorporation and England, have been done, fulfilled and performed; and
- 12.1.9. under the laws of its jurisdiction of incorporation and England in force at the date hereof, it is not necessary that this Deed, the IP Agreement and the IP Direct Agreement be filed, recorded or enrolled with any court or other authority in such jurisdictions or that any stamp, registration or similar tax be paid on or in relation to this Deed, the IP Agreement and the IP Direct Agreement.
- 12.2 The Licensor Repeating Representations shall be deemed to be repeated (by reference to the facts and circumstances then existing) by the Licensor on:
- 12.2.1. the CP Satisfaction Date; and
- 12.2.2. each Advance Date.
- 12.3 Each of the Wynn Assignors hereby makes the following representations and warranties to the Security Agent (for and on behalf of the Secured Parties) and acknowledges that the Secured Parties have relied upon those representations and warranties:
- 12.3.1. this Deed constitutes:
- (i) an effective security over the Subordinated Indebtedness; and
  - (ii) enjoys the priority which it is expressed to have;
- 12.3.2. it is the sole and absolute beneficial owner of all of the Subordinated Indebtedness in relation to it free from any Lien (except for any Lien referred to in paragraph 3(a), 3(f) or 3(q) of Schedule 5 Part B of the Common Terms Agreement and any Mandatory Permitted Lien);
- 12.3.3. save as otherwise expressly required by this Deed or pursuant hereto, neither it nor any of its nominees has sold, transferred or otherwise disposed of, or agreed to sell, transfer or otherwise dispose of, the benefit of all or any of its rights, title and interest in the Subordinated Indebtedness or any part thereof;
- 12.3.4. save for the registration referred to in Clause 6 within the prescribed time limit, all acts, conditions and things required to be done, fulfilled and performed in order (a) to enable it lawfully to enter into, and perform and comply with the obligations expressed to be assumed by it in this Deed, (b) to ensure that the obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable and (c) to make this Deed admissible in evidence in its

jurisdiction of incorporation and England, have been done, fulfilled and performed; and

12.3.5. save for the registration referred to in Clause 6 within the prescribed time limit, under the laws of its jurisdiction of incorporation and England in force at the date hereof, it is not necessary that this Deed be filed, recorded or enrolled with any court or other authority in such jurisdictions or that any stamp, registration or similar tax be paid on or in relation to this Deed.

12.4 The Wynn Assignors Repeating Representations shall be deemed to be repeated (by reference to the facts and circumstances then existing) by each of the Wynn Assignors on:

12.4.1. the CP Satisfaction Date; and

12.4.2. each Advance Date.

### 13. **EFFECTIVENESS OF SECURITY**

13.1 The collateral constituted by this Deed and the Collateral Rights shall be cumulative, in addition to and independent of every other security which the Security Agent may at any time hold for the Secured Obligations or any rights, powers and remedies provided by law. No prior security held by the Security Agent (whether in its capacity as agent or trustee or otherwise) or any of the other Secured Parties over the whole or any part of the Subordinated Indebtedness shall merge into the collateral hereby constituted.

13.2 This Deed shall remain in full force and effect as a continuing security for the Secured Obligations unless and until discharged by the Security Agent in accordance with the Deed of Appointment and Priority and shall not cease by reason of any partial payment of any of the Secured Obligations. Notwithstanding the foregoing, if the obligations of any Wynn Company under this Deed cease to be continuing for any reason, the liability of such Wynn Company at the date of such cessation shall remain, regardless of any subsequent increase or reduction in the Secured Obligations. The Security Agent shall, as soon as reasonably practicable following satisfaction of the requirements in respect of the release of security set forth in Clause 16.20 of the Deed of Appointment and Priority, release the security interests created by this Deed. Payments of Subordinated Indebtedness (to the extent permitted under Cause 2.2.1) when made will not be subject to the security created by this Deed.

13.3 No failure on the part of the Security Agent to exercise, or delay on its part in exercising, any Collateral Right shall operate as a waiver thereof, nor shall any single or partial exercise of a Collateral Right preclude any further or other exercise of that or any other Collateral Right.

13.4 The Security Agent shall not be obliged, before exercising any Collateral Right as against any Wynn Company: (a) to make any demand of such Wynn Company, any other Grantor or any other Person, (b) to take any action or obtain judgment in any court against the Company, such Wynn Company, any other Grantor or any other Person, (c) to make or file any proof or claim in a liquidation, bankruptcy or insolvency of the such

Wynn Company, any other Grantor or any other Person or (d) to enforce or seek to enforce any other security in respect of the Secured Obligations.

- 13.5 So long as any Wynn Company is under any actual or contingent obligation in respect of the Secured Obligations, such Wynn Company shall not exercise any right which it may at any time have, by reason of the performance of its obligations under this Deed, to be indemnified by any Grantor or to claim any contribution from any other Person or to take the benefit (whether by subrogation or otherwise) of any right, entitlement, interest or remedy which the Security Agent may hold in relation to any or all of the Secured Obligations.
- 13.6 None of the Wynn Companies shall accept or permit to subsist any collateral from any Grantor or any other Person in respect of any rights such Wynn Company have arising out of this Deed. Notwithstanding the foregoing, if any such collateral shall be accepted or subsisting, each Wynn Company acknowledges that such Wynn Company's rights under such collateral shall be held on trust for the Security Agent.
- 13.7 Until the satisfaction of the requirements set out in Clause 16.20 of the Deed of Appointment and Priority, any settlement or discharge hereunder shall be conditional upon no security or payment to the Security Agent by or on behalf of each Wynn Company and/or any other Grantor being avoided or reduced by virtue of any Wynn Company's or any other Grantor's bankruptcy, insolvency, liquidation or similar laws of general application and shall in those circumstances be void.
- 13.8 None of the obligations of any Wynn Company hereunder and the Collateral Rights shall be discharged, impaired or otherwise affected by:
- 13.8.1. any winding-up, dissolution, re-organisation, bankruptcy, death or insolvency of, or any change in, the Company or any other Person;
  - 13.8.2. any of the Secured Obligations being at any time illegal, invalid, unenforceable or ineffective;
  - 13.8.3. any unenforceability or invalidity of any other agreement or document;
  - 13.8.4. any time or other indulgence being granted to the Company or any other Person in respect of any of the Secured Obligations;
  - 13.8.5. any amendment, variation, waiver or release prior to the discharge of the security hereunder by the Security Agent in accordance with the Deed of Appointment and Priority of any of the Secured Obligations;
  - 13.8.6. any variation of the terms upon which the Security Agent holds the security constituted hereby;
  - 13.8.7. any failure to take or failure to realise the value of any other collateral in respect of the Secured Obligations or any release, discharge, exchange or substitution of any such collateral; or

13.8.8. any other act, event or omission which but for this provision would or might operate to impair, discharge or otherwise affect any or all of the obligations of the Company or any Wynn Company or the Collateral Rights hereunder.

14. **SUBSEQUENT SECURITY INTERESTS**

If the Security Agent (acting in its capacity as Security Agent or otherwise) or any of the other Secured Parties at any time receives or is deemed to have received notice of any subsequent Lien affecting all or any part of the Subordinated Indebtedness relating to any Wynn Assignor or any assignment or transfer of the Subordinated Indebtedness relating to any Wynn Assignor which is prohibited by the terms of any Finance Document all payments thereafter by or on behalf of such Wynn Assignor to the Security Agent (whether in its capacity as Security Agent or otherwise) or any of the other Secured Parties shall be treated as having been credited to a new account of such Wynn Assignor and not as having been applied in reduction of any or all of the Secured Obligations in relation to such Wynn Assignor as at the time when the Security Agent or such other Secured Party received such notice.

15. **SET-OFF**

Each Wynn Company authorises the Security Agent (but the Security Agent shall not be obliged to exercise such right) from time to time, after the delivery of an Enforcement Notice to such Wynn Company, to set off against any or all of the sums due and payable but unpaid by and/or any or all of the obligations of such Wynn Company to the Security Agent under this Deed any amount or other obligation (contingent or otherwise) owing by the Security Agent to such Wynn Company and apply any credit balance to which such Wynn Company is entitled on any account with the Security Agent in discharge of such sums payable by and/or such obligations of such Wynn Company (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

16. **CURRENCY CONVERSION AND INDEMNITY**

16.1 For the purpose of or pending the discharge of any or all of the Secured Obligations in relation to any Wynn Company hereunder, the Security Agent may convert any moneys received, recovered or realised or subject to application by the Security Agent or any Receiver pursuant to this Deed (in respect of such Wynn Company) from the currency of such moneys to another for such purpose and any such conversion shall be made at the Security Agent's spot rate of exchange for the time being (or such other rate as may be available to the Security Agent from time to time in the ordinary course of business) for obtaining such other currency with the first currency and the Secured Obligations in relation to such Wynn Company shall be discharged only to the extent of the net proceeds of such conversion received by the Security Agent.

16.2 If any sum (a "**Sum**") due from any Wynn Company under this Deed or any order or judgment given or made in relation thereto has to be converted from the currency (the "**First Currency**") in which such Sum is payable into another currency (the "**Second Currency**") for the purpose of:

16.2.1. making or filing a claim or proof against such Wynn Company; or



16.2.2. obtaining or enforcing an order or judgment in any court or other tribunal,

such Wynn Company shall (through the Security Agent) indemnify each Person to whom such Sum is due from and against any loss suffered or incurred as a result of any discrepancy between (a) the rate of exchange used for such purpose to convert such Sum from the First Currency into the Second Currency and (b) the rate or rates of exchange at which such Person may in the ordinary course of business purchase the First Currency with the Second Currency at the time of receipt of such Sum.

## **17. COSTS, EXPENSES AND LIABILITY**

### **17.1 Expenses**

Each Wynn Company shall, from time to time on demand of the Security Agent, reimburse the Security Agent for:

17.1.1. at any time prior to the delivery of an Enforcement Notice to such Wynn Company, all reasonable costs and expenses (including legal fees); or

17.1.2. at any time upon or after the delivery of an Enforcement Notice to such Wynn Company, all costs and expenses (including legal fees)

on a full indemnity basis incurred by it in connection with:

(i) the perfection of the security contemplated in this Deed; and

(ii) the exercise, preservation and/or enforcement of any of the Collateral Rights or the security contemplated by this Deed or any proceedings instituted by or against the Security Agent as a consequence of taking or holding the security or of enforcing the Collateral Rights,

and shall carry interest from the date following 15 days after the date of such demand until so reimbursed at the rate and on the basis as mentioned in Clause 5.1.1. Any limitation on such Wynn Company's liability set out in Clause 5.1.2 shall not apply to sums payable by it under this Clause 17.1.

### **17.2 Stamp Taxes**

Each Wynn Company shall pay all stamp, registration and other taxes to which this Deed, the security contemplated in this Deed or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Security Agent on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax other than any costs which arise as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent.

### **17.3 Indemnity**

Each Wynn Company shall, notwithstanding any release or discharge of all or any part of the security, indemnify the Security Agent, its agents, attorneys and any Receiver against any action, proceeding, claims, losses, liabilities and costs which it has sustained as a consequence of any breach by any Wynn Company of the provisions of this Deed, the

exercise of any of the rights and powers conferred on them by this Deed (other than any loss or cost which arises as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent) provided that such costs shall be reasonable prior to the delivery of an Enforcement Notice to any Wynn Company. None of the Wynn Companies is liable to indemnify the Security Agent against any costs referred to in this Clause 17.3 to the extent that such costs have been paid by the relevant Wynn Company to the Security Agent under Clause 17.1.

**17.4 No Liability**

Subject to Clause 7.6, none of the Security Agent, its nominee(s) or any Receiver shall be liable by reason of (a) taking any action permitted by this Deed or (b) any neglect or default in connection with all or any part of the Subordinated Indebtedness or (c) the taking possession or realisation of all or any part of such Subordinated Indebtedness, except in the case of gross negligence or wilful default upon its part.

**18. PAYMENTS FREE OF DEDUCTION**

All payments to be made by any Wynn Company under this Deed shall be made free and clear of and without deduction for or on account of tax unless such Wynn Company is required to make such payment subject to the deduction or withholding of tax, in which case the sum payable by such Wynn Company in respect of which such deduction or withholding is required to be made shall be increased (notwithstanding any limit on such Wynn Company's liability pursuant to Clause 5.1.2) to the extent necessary to ensure that, after the making of such deduction or withholding, the Person on account of whose liability to tax such deduction or withholding has been made receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

**19. PARTIAL INVALIDITY**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Deed nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the security intended to be created by or pursuant to this Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

**20. DISCRETION AND DELEGATION**

20.1 Any liberty or power which may be exercised or any determination which may be made hereunder by the Security Agent or any Receiver may, subject to the terms and conditions of the Deed of Appointment and Priority, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons save that the Security Agent shall act in a reasonable manner if expressly required hereunder.

20.2 Each of the Security Agent and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this

Deed (including without limitation the power of attorney under Clause 11) on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise of such power, authority or discretion by the Security Agent or the Receiver itself or any subsequent delegation or revocation thereof.

21. **CHANGE OF PARTIES**

- 21.1 Subject to Clause 21.6, none of the Company or the Wynn Companies may assign or transfer any or all of its rights (if any) and/or obligations under this Deed.
- 21.2 The Security Agent may:
- 21.2.1. assign all or any of its rights under this Deed; and
- 21.2.2. transfer all or any of its obligations (if any) under this Deed,
- to any successor Security Agent in accordance with the provisions of the Deed of Appointment and Priority, provided that it is acknowledged that such assignment or transfer shall not in any way prejudice the priority of the security constituted by this Deed (which shall be assigned to such successor Security Agent pursuant to the terms of the Deed of Appointment and Priority). Upon such assignment and transfer taking effect, the successor Security Agent shall be and be deemed to be acting as agent and trustee for the Secured Parties for the purposes of this Deed and in place of the former Security Agent.
- 21.3 Subject to the relevant provisions of the Finance Documents, each Finance Party may assign all or any of its rights under this Deed (whether direct or indirect) in accordance with the provisions of the Finance Documents. It is acknowledged that none of the Finance Parties (other than the Assignor) has or shall have any obligation under this Deed.
- 21.4 Each of the Company and the Wynn Companies irrevocably and unconditionally confirms that:
- 21.4.1. it consents to any assignment or transfer by any Finance Party of its rights and/or obligations made in accordance with the provisions of the Finance Documents;
- 21.4.2. it shall continue to be bound by the terms of this Deed, notwithstanding any such assignment or transfer; and
- 21.4.3. the assignee or transferee of such Finance Party shall acquire an interest in this Deed upon such assignment or transfer taking effect.
- 21.5 The Company shall procure that the Licensor, at the same time as the Company enters into the IP Agreement and the IP Direct Agreement with the Licensor, (i) accedes to this Deed by executing and delivering to the Security Agent an Accession Deed and (ii) delivers to the Security Agent a legal opinion, in form and substance reasonably satisfactory to the Security Agent, in respect of the Licensor's obligations under this Deed. With effect from the date (the "**Licensor Accession Date**") which is the later of (i) the date of acceptance by the Security Agent of an Accession Deed and (ii) the date

specified in the Accession Deed, the Licensor executing such Accession Deed shall become a party hereto as the Licensor and shall assume the same obligations and become entitled to the same right as the Licensor specified herein and as a Wynn Company, as if it had been an original party to this Deed.

- 21.6 The Licensor may not transfer or assign all or any of its rights under the IP Agreement and/or the IP Direct Agreement (the “**Assigning Licensor**”) unless (i) the transferee or, as the case may be, assignee (such transferee or assignee, the “**Acceding Licensor**”) has executed and delivered to the Security Agent an Accession Deed and (ii) the Security Agent has received a legal opinion, in form and substance reasonably satisfactory to the Security Agent, in respect of the Acceding Licensor’s obligations under this Deed. With effect from the date (the “**Effective Date**”) which is the later of (i) the date of acceptance by the Security Agent of an Accession Deed and (ii) the date specified in the Accession Deed, the Acceding Licensor shall assume the same obligations and become entitled to the same right, in each case, as the Assigning Licensor, as if it had been an original party to this Deed.
- 21.7 The Company may not incur any Shareholder Loans from any Person who is not a party to this Deed unless such Person (i) accedes to this Deed by executing and delivering to the Security Agent an Accession Deed and (ii) delivers to the Security Agent a legal opinion, in form and substance reasonably satisfactory to the Security Agent, in respect of such Person’s obligations under this Deed. With effect from the date which is the later of (i) the date of acceptance by the Security Agent of an Accession Deed and (ii) the date specified in the Accession Deed, such Person shall assume the same obligations and become entitled to the same right as a Wynn Company and a Wynn Assignor, as if it had been an original party to this Deed.
- 21.8 If the Assigning Licensor transfers or assigns all of its rights under the IP Agreement and IP Direct Agreement in accordance with Clause 21.6, it shall cease to have any rights or obligations under this Deed save for any rights or obligations accrued prior to the Effective Date.
- 21.9 Each of the parties hereto appoints the Security Agent to receive on its behalf each Accession Deed delivered to the Security Agent and to accept and sign it if, in the Security Agent’s opinion, it is complete and appears on its face to be authentic and duly executed and until accepted and signed by the Security Agent that document shall not be effective.

## 22. **PERPETUITY PERIOD**

The perpetuity period under the rule against perpetuities, if applicable to this Deed, shall be the period of 80 years from the date of this Deed.

## 23. **NOTICES**

- 23.1 Any communication to be made under or in connection with this Deed shall be made in writing but, unless otherwise stated, may be made by fax or letter.
- 23.2 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to

be made or delivered under or in connection with this Deed is identified with its signature below, or any substitute address, fax number or department or officer as the party may notify to the other parties by not less than 10 Business Days' notice.

- 23.3 Any communication or document made or delivered by one Person to another under or in connection with this Deed shall only be effective:
- 23.3.1. if delivered personally or by overnight courier, when left at the relevant address;
  - 23.3.2. if by way of fax, when received in legible form; or
  - 23.3.3. if by way of letter, when it has been left at the relevant address or 10 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,
- and, if a particular department or officer is specified as part of its address details provided under Clause 23.2, if addressed to that department or officer.
- 23.4 Any communication or document to be made or delivered to the Security Agent shall be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).

24. **GOVERNING LAW**

This Deed shall be governed by and construed in accordance with the English law.

25. **JURISDICTION**

25.1 **Jurisdiction of English courts**

- 25.1.1. The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or the consequences of its nullity) (a "**Dispute**").
- 25.1.2. The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they shall not argue to the contrary.
- 25.1.3. This Clause 25.1.3 is for the benefit of the Secured Parties only. As a result, no Secured Parties shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Finance Documents, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

25.2 **Service of process**

Without prejudice to any other mode of service allowed under any relevant law, each Wynn Company and the Company:

- 25.2.1. irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Deed; and

25.2.2. agrees that failure by a process agent to notify such Wynn Company of the process shall not invalidate the proceedings concerned.

**26. EXERCISE OF RIGHTS**

Notwithstanding anything in Clause 25.1.3 to the contrary, the Secured Parties will only exercise their rights under this Deed through the Security Agent unless and until the appointment of the Security Agent ceases and no successor Security Agent is appointed under Clause 17.1 (*Resignation of Security Agent*) of the Deed of Appointment and Priority.

**27. COUNTERPART**

This Deed may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement.

**IN WITNESS WHEREOF** this Deed has been signed on behalf of the Security Agent and executed as a deed by the Company and each of the Wynn Companies and is intended to be and is hereby delivered by the Company and each of the Wynn Companies as a deed on the date specified above.

SIGNATURES

**The Company**

Executed as a deed by )  
**WYNN RESORTS (MACAU) S.A.** ) *Matt Maddox*  
acting by Matthew Maddox )

Address: 429 Avenida da Praia Grande,  
18th Floor, Praia Grande Commercial Centre,  
Macau

Telephone: (853) 371476

Fax: (853) 329966

Attention: Chief Financial Officer

With a copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Telephone: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

**The Wynn Companies**

Executed as a deed by )  
**WYNN GROUP ASIA, INC.** )  
acting by Matthew Maddox ) ***Matt Maddox***  
under the board resolution )  
of 10 September 2004 )

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Phone: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel



Executed as a deed by )  
**WYNN RESORTS INTERNATIONAL, LTD.** )  
acting by Matt Maddox )  
its duly authorised attorney )  
under a power of attorney dated 10 September 2004 ) **Matt Maddox**  
)

in the presence of: **Eva Lo**

Name of Witness: Eva Lo

Address of Witness: Eva Lo  
29/F Jardine House  
Central  
Hong Kong

Address: First Floor  
Millennium House  
Victoria Road  
Douglas  
Isle of Man 1M2 4RW

Phone: (44) 1624-616669

Fax: (44) 1624-616667

Attention: The Company Secretary

With a copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Phone: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

Executed as a deed by )  
**WYNN RESORTS (MACAU) HOLDINGS, LTD.** )  
acting by Matt Maddox )  
its duly authorised attorney )  
under a power of attorney dated 10 September 2004 ) **Matt Maddox**  
)  
)

in the presence of: **Eva Lo**

Name of Witness: Eva Lo

Address of Witness: Eva Lo  
29/F Jardine House  
Central  
Hong Kong

Address: First Floor  
Millennium House  
Victoria Road  
Douglas  
Isle of Man 1M2 4RW

Phone: (44) 1624-616669

Fax: (44) 1624-616667

Attention: The Company Secretary

With a copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Phone: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

The common seal of )  
**WYNN RESORTS (MACAU), LIMITED** )  
was affixed to this Deed )  
in the presence of: )

*Matt Maddox*

***Eva Lo***

Eva Lo  
29/F Jardine House  
Central  
Hong Kong

***Common Seal***

Address: 2503 Bank of America Tower  
12 Harcourt Road  
Central  
Hong Kong

Phone: (852) 2525-2141

Fax: (852) 2810-4196

Attention: General Counsel

With copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Phone: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

---

**The Security Agent**

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

By: *David Gore* *Sun Peng Lui*

Address: 42/F Edinburgh Tower,  
15 Queen's Road Central,  
Hong Kong

Telephone: (852) 2166-5671/ (852) 2166-5430/ (852) 2166-5665

Fax: (852) 2804-6215

Attention: Sunny Lui/ Raymond Fung/ Sara Wong  
Risk & Agency

THIS BANK GUARANTEE REIMBURSEMENT AGREEMENT (this "Agreement") is made and entered into as of September 14, 2004, by and between Wynn Resorts (Macau) S.A., a company organized and existing in the Macau Special Administrative Region (the "Macau SAR"), having its registered address at Avenida de Praia Grande, 429, 18<sup>th</sup> floor, Praia Grande Commercial Centre, Macau (the "Company") and Banco Nacional Ultramarino, S.A., a company organized and existing in the Macau Special Administrative Region, having its registered address at Avenida Almeida Ribeiro, No.22, Macau ("BNU"). The Company and BNU are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties".

WHEREAS:

A. The Company has been granted a concession to operate games of chance or other games in casinos in the Macau SAR pursuant to a certain Concession Contract for the Operation of Games of Chance or Other Games in Casinos in the Macau SAR, dated June 24, 2002, between the Macau SAR and the Company (the "Concession Contract").

B. Pursuant to Clause 61 of the Concession Contract, the Company is required to deliver and maintain a certain bank guarantee issued by BNU in favor of the Macau SAR to guarantee the fulfillment of the Company's legal or contractual obligations under the Concession Contract.

C. BNU has, on behalf of the Company, issued a bank guarantee for MOP700,000,000 dated May 2, 2002 (the "Existing Guarantee") to the Macau SAR to secure the performance of certain of the Company's obligations as provided under the Concession Contract.

D. The Company has requested that BNU issue and maintain, and BNU is willing to issue and maintain (or continue to maintain), the Bank Guarantee in favor of the Macau SAR as required by the Concession Contract, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, agreements and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

#### ARTICLE 1 DEFINITIONS AND INTERPRETATION

Section 1.1 Defined Terms. In this Agreement, the following capitalized terms will have the following meanings:

"Authorized Officer" means, with respect to the Company, a director, the president or the chief financial officer.

"Bank Guarantee" means the Existing Guarantee and any replacement bank guarantee thereof issued by BNU under this Agreement and meeting the requirements of the Concession Contract.

"Business Day," means any day other than Saturday, Sunday and any other day on which commercial banks in Macau or Hong Kong are authorized or required to close.

“Cash Deposit” means US\$50,000,000 (or its equivalent in Macau Patacas or Hong Kong dollars), which amount constitutes part of the Base Equity.

“Common Terms Agreement” means the Common Terms Agreement dated as of September 14, 2004, with the financial institutions defined therein as Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, the Hotel Facility Agent, the Project Facility Agent, the Security Agent and the Intercreditor Agent, in order to finance the development, construction and operation of a hotel and casino resort project in the Macau SAR.

“Confirmation Letter” means a letter or other document issued by the Macau SAR confirming that it will not draw any amounts under the Bank Guarantee during the construction of the Project.

“Effective Date” means the date on which all of the conditions specified in Section 2.1 are satisfied.

“MOP” means Macau Patacas.

“Senior Debt Interest Rate” means the blended interest rate under the Hotel Facility Agreement and the Project Facility Agreement, based on the interest rates of the weighted average of amounts outstanding thereunder, or if no amounts are outstanding at the time of calculating an interest rate hereunder, 7.0% per annum.

“Senior Unsecured Creditors” means any creditors other than the Senior Secured Creditors as defined in the Common Terms Agreement.

In addition, the following terms have the meaning as set forth in the Common Terms Agreement: “Deed of Appointment and Priority”, “Default”, “Event of Default”, “Facility Agreements”, “Permitted Investments”, “Projects”, “Security”, “Security Agent”, “Security Documents”, “Senior Debt”, “Senior Finance Documents” and “Senior Secured Creditors.”

Section 1.2 Interpretation. Each of the following rules of usage and interpretation shall apply to this Agreement unless otherwise required by the context or unless otherwise specified herein:

- (a) words denoting the singular shall include the plural; the word “or” shall not be interpreted as exclusive; and words denoting one gender shall include all others; and
- (b) reference to any agreement means such agreement as amended, modified, extended or supplemented from time to time in accordance with the applicable provisions thereof.

## **ARTICLE 2 BANK GUARANTEE**

Section 2.1 Conditions to Effectiveness. The Effective Date of this Agreement shall occur upon the satisfaction of the conditions set out below:

- (a) the Company shall have obtained its construction permit to commence construction of the Projects and shall have delivered a copy thereof to BNU;

- (b) the Company shall have caused the Cash Deposit to be deposited in an interest-bearing account with BNU;
- (c) the Company shall have signed or, simultaneously with the execution of this Agreement, will sign, the Senior Finance Documents; and
- (d) the Company shall have delivered to BNU:
  - (i) a copy of the constitutional documents of the Company;
  - (ii) a true copy of a board resolution of the Company approving the execution, delivery and performance of this Agreement, certified by a Macau notary;
  - (iii) a certificate of an Authorized Officer setting out the names and signatures of the persons authorized to sign, on behalf of the Company, this Agreement and any documents to be delivered by the Company pursuant hereto;
  - (iv) a copy of the most recent audited financial statements of the Company; and
  - (v) an endorsement and pledge of the Company's certificate of deposit with respect to the Cash Deposit to BNU as security for the Bank Guarantee.

Section 2.2 Form of Bank Guarantee. Any Bank Guarantee issued or to be issued by BNU under this Agreement shall be in the form of the Existing Guarantee, or in such other form as agreed by the Macau SAR, BNU and the Company.

Section 2.3 The Existing Guarantee. From the date hereof until the earlier of (a) a replacement Bank Guarantee (if any) on the same terms as the Existing Guarantee having been issued and delivered by BNU, and the Macau SAR having confirmed that it has received and is satisfied with such replacement Bank Guarantee; and (b) 180 days after the termination of the Concession Contract, BNU shall ensure that the Existing Guarantee remains in full force and effect.

Section 2.4 Payment of Annual Fees. For so long as the Bank Guarantee remains issued and outstanding to the Macau SAR, the Company shall pay to BNU an annual fee that is calculated as follows:

- (a) from the Effective Date until March 31, 2007, an amount equal to  $X$  plus  $Y$  or, if the Macau SAR delivers a Confirmation Letter, an amount equal to  $Z$ ; and
- (b) from April 1, 2007 until 180 days after the termination of the Concession Contract, an amount equal to  $X$ .

where:

$X$  is calculated as follows: (i) from the Effective Date until the commencement of casino gaming activities, an amount equal to either 0.75% of MOP300,000,000 (if and from the

time the Macau SAR confirms that the maximum amount it may draw under the Bank Guarantee during construction is MOP400,000,000) or 1.75% of MOP300,000,000 (if no such confirmation is received from the Macau SAR); and (ii) from the commencement of casino gaming activities until 180 days after the termination of the Concession Contract, an amount equal to 1.75% of MOP300,000,000.

Y equals either 0.5% of MOP400,000,000 (if the Cash Deposit remains on deposit with and for the benefit of BNU) or 1.75% of MOP400,000,000 (if the Cash Deposit is no longer held on deposit with and for the benefit of BNU).

Z equals 0.61% of MOP700,000,000.

Section 2.5 Payment of the Annual Fees. Commencing on the earlier of (i) the date of signing and closing of the financing contemplated by the Common Terms Agreement, and (ii) September 15, 2004, the Company shall pay the annual fees calculated in accordance with Section 2.4 by way of quarterly payments (pro-rated for any partial calendar quarter), not later than the first Business Day of the respective calendar quarter.

Section 2.6 Debits on the Company Account. The Company allows BNU to debit the Company's operating account at BNU for the amounts due in payment of the Annual Fees in accordance with Section 2.5.

### **ARTICLE 3 CREDIT FACILITY**

Section 3.1 Reimbursement Upon Discharge of the Senior Debt. If (a) the Senior Debt shall have been discharged in full and (b) any amount covered by the Bank Guarantee shall have been drawn by the Macau SAR, BNU may, by giving written notice to the Company, demand the immediate repayment of such drawn amount. Upon receipt of a notice issued in accordance with this Section 3.1, the Company shall immediately repay the amount so drawn by the Macau SAR; *provided, however*, that the Company is not obligated to repay any principal to BNU until after the Senior Debt shall have been discharged in full. The Company shall, within ninety (90) days after the Senior Debt having been discharged in full, repay all amounts owed to BNU under this Agreement.

Section 3.2 Mandatory Reimbursement. If the Senior Secured Creditors shall have waived an Event of Default under either the Senior Finance Documents or the Security Documents that is caused by the Bank Guarantee having been drawn by the Macau SAR, the Company may, to the extent permitted by Clause 5.2(b)(ii) of the Deed of Appointment and Priority and subject to the application of Section 5.3 hereof, repay BNU any amounts owed by the Company under this Agreement within thirty (30) days of receiving such waiver.

Section 3.3 Optional Reimbursement. The Company may (but is not obligated to), from time to time and without any penalty, repay BNU any amounts owed by the Company under this Agreement.

Section 3.4 Interest. If any amount covered by the Bank Guarantee is drawn by the Macau SAR and is not repaid upon written demand by BNU, such amount shall accrue interest at the Senior Debt Interest Rate until repayment thereof.



**ARTICLE 4**  
**SECURITY INTEREST; RANKING**

Section 4.1 Security Interest. As security for the performance of the Company's obligations under this Agreement, the Company agrees (a) that this Agreement with BNU also constitutes a pledge agreement over the Cash Deposit to BNU, and (b) to enter into the Deed of Appointment and Priority pursuant to which the Security Agent will hold for and on behalf of BNU, as Second Ranking Finance Party, an interest over the Security.

Section 4.2 Ranking. The Company shall ensure that, for so long as the Bank Guarantee is in place, the security interests granted to BNU under the Security Documents shall rank ahead of all claims of Senior Unsecured Creditors of the Company to the extent and as provided in the Deed of Appointment and Priority, the Common Terms Agreement and the other Security Documents but shall be fully subordinated to those security interests granted to the Senior Secured Creditors pursuant to the Senior Finance Documents.

Section 4.3 Deed of Appointment and Priority. BNU agrees to enter into a Deed of Appointment and Priority with the Senior Secured Creditors and the Company covering such matters as subordination, repayment, exercise of remedies, declaration of defaults and voting. In the event of any conflict between the Deed of Appointment and Priority and this Agreement, the Deed of Appointment and Priority will control.

Section 4.4 Waivers, Consents and Approvals. The covenants of Schedule 5 of the Common Terms Agreement (or the covenants of any amended, supplemented, refinanced or replacement Senior Finance Documents) shall apply *mutatis mutandis* to BNU where the context permits such construction, and to the extent the context does not permit such construction, such provisions shall apply as closely as possible under the circumstances. Any and all waivers, including of a Default or of an Event of Default, consents or approvals made or given, or deemed given, by the holders of the Senior Debt (or any agent or adviser acting on their behalf) under the Facility Agreements shall apply to BNU with the same effect as if the waiver had been given by BNU.

**ARTICLE 5**  
**CASH DEPOSIT**

Section 5.1 Accrued Interest. BNU shall, from time to time and upon the request of the Company, release any and all interest accrued on the Cash Deposit to the Company.

Section 5.2 Release of the Cash Deposit. BNU shall release the Cash Deposit and any pledge or assignment of the investment and investment rights thereon to the Company free of any claim, charge, lien, security interest or similar interest upon the earlier of:

- (a) certification by an Authorized Officer of the Company to BNU that (i) the Company has utilized all of its total Base Equity (other than the Cash Deposit) and (ii) the Cash Deposit will be used to fund Project Costs (together, the "Cost Certification"); and
- (b) cancellation of the Bank Guarantee by the Macau SAR.

Section 5.3 Set-off of the Cash Deposit. If any amount owed by the Company to BNU is not repaid within fourteen (14) days after a notice having been validly issued and

delivered to the Company in accordance with Section 3.1, BNU may set off such amount against any remaining Cash Deposit. Upon set off by BNU against any of the assets of the Company, any amount owed by the Company under this Agreement shall be reduced by such set-off amount.

Section 5.4 Permitted Investments. The Company and BNU shall discuss and agree on the type of investments in which the Company may, from time to time, invest any and all of the Cash Deposit (including any accrued interest thereon), provided that (a) the investment rights are assigned to BNU by way of pledge or endorsement and subject to the terms of this Agreement, (b) BNU shall not unreasonably withhold its approval on any investments proposed by the Company and (c) such investments shall be limited to those that are Permitted Investments.

## **ARTICLE 6 REPRESENTATIONS AND WARRANTIES**

On the Effective Date, the Company will confirm the following representations and warranties to BNU:

Section 6.1 Corporate Existence. The Company is a limited liability company duly organized and existing under the laws of the Macau SAR with power to enter into this Agreement and to exercise its rights and perform its obligations hereunder.

Section 6.2 Due Authorization; Consent. The Company has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution of this Agreement by the Company does not require any filing with, or approval of, any government entity in the Macau SAR.

Section 6.3 Valid, Binding and Enforceable. This Agreement has been duly executed and delivered by the Company and, assuming due and valid authorization, execution and delivery by BNU, is a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms except (a) as limited by applicable bankruptcy, insolvency, fraudulent conveyance and other similar laws of general application affecting enforcement of creditors' rights generally and (b) the availability of the remedy of specific performance or injunctive or other forms of equitable relief may be subject to equitable defenses and would be subject to the discretion of the court before which any proceeding therefore may be brought.

Section 6.4 No Conflicts. None of the execution, delivery or performance of this Agreement by the Company will materially conflict with, or result in any material breach of, any provision of the constitutional documents of the Company.

Section 6.5 Full Disclosure. The Company is not aware of any material information having been provided to BNU relating to this Agreement which contains an untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading.

Section 6.6 No Material Litigation. There is no material action, suit or proceeding by or before any court pending against or involving the Company that calls into question or challenges the Company's authority to enter into this Agreement or perform its obligations hereunder.

**ARTICLE 7  
UNDERTAKINGS**

Commencing on and after the Effective Date, the following undertakings shall apply:

Section 7.1 Compliance with Laws. The Company shall, at all times during the term of this Agreement, comply with applicable laws of the Macau SAR where a failure to do so is likely to have a material adverse effect on the financial condition of the Company.

Section 7.2 No Merger. The Company shall not voluntarily enter into any merger, amalgamation or consolidation with any other entity without BNU's consent.

Section 7.3 Business. The Company shall continue to carry on the business of developing, constructing, owning or operating casino and hotel resorts.

Section 7.4 Taxes. The Company shall promptly pay, or caused to be paid, all taxes as they fall due, and all penalties, surcharges, additional interest and levies imposed on the Company in connection with the Company's failure to promptly discharge its liabilities under this Section 7.4 (other than such taxes that the Company is disputing in good faith with the relevant governmental authorities).

Section 7.5 Corporate Existence. The Company shall preserve and keep in full force and effect its existence as a limited liability company under the laws of the Macau SAR.

Section 7.6 Books and Records. The Company shall keep and maintain (a) books and records in relation to its business and (b) adequate accounting, management information and cost accounting systems for its business.

Section 7.7 Maintenance of Controlling Interest. The Company shall undertake to cause the existing controlling shareholders of the Company to, for so long as the Bank Guarantee is outstanding, maintain a controlling interest in the Company.

**ARTICLE 8  
MISCELLANEOUS**

Section 8.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Macau SAR.

Section 8.2 No Set-Off. Except as expressly permitted in Section 5.3, BNU may not set-off or otherwise appropriate or apply any and all deposits (general or special, time or demand, provisional or final) and any other indebtedness at any time held or owing by BNU (including by branches and agencies of BNU wherever located) to or for the credit or the account of the Company against and on account of any obligations of the Company then due and owing to BNU under this Agreement.

Section 8.3 Notices. All notices, requests and demands to or upon the respective Parties to be effective shall be in writing and delivered or sent to the relevant Party at its address or facsimile number set out below (or such other address or facsimile number as a Party has by five (5) days' prior written notice specified to the other Party).

To the Company:

Wynn Resorts (Macau) S.A.  
429, Avenida da Praia Grande,

18<sup>th</sup> Floor, Praia Grande Commercial Building,  
Macau  
Facsimile No. (853) 336 057  
Telephone No. (853) 371 476  
Attention: Chief Financial Officer

with a copy to:

Wynn Resorts, Limited  
Legal Department  
3145 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA  
Facsimile No. (1 702) 733 4596  
Attention: General Counsel

To BNU:

Banco Nacional Ultramarino, S.A.  
Av. Almeida Ribeiro, 22  
Macau SAR  
Attention: Dr. Herculano de Sousa

Any notice, demand or request so addressed to the relevant Party shall be deemed to have been duly received by such Party (a) if given or made by letter via delivery-certified mail, three (3) days after dispatch to the relevant address, (b) if given or made by facsimile, when dispatched with a simultaneous confirmation of transmission, and (c) if made personally, when delivered; *provided, that* if such day is not a working day in the place to which it is sent, such notice, demand or other communication shall be deemed delivered on the next following working day at such place.

Section 8.4 Assignment. Neither Party may assign its rights or obligations under this Agreement to another entity.

Section 8.5 Language. All documents, notices, waivers and all other communications written or otherwise between the Parties in connection with this Agreement shall be in the English language.

Section 8.6 Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 8.7 Survival. The termination of this Agreement shall not relieve any Party of any obligation that by its nature should survive such termination, and the obligations of each Party shall survive any restructuring or other reorganization of such Party.

Section 8.8 Entire Agreement. This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof. All previous documents, drafts of documents, undertakings and agreements (including the term sheet dated March 15, 2004), whether verbal, written or otherwise, between the Parties concerning the subject matter hereof are hereby cancelled and annulled, and shall not affect or modify any of the terms or conditions set forth in, or be used in the interpretation of, this Agreement.

*[Signatures appear on following page]*



WYNN RESORTS (MACAU), S.A.

\$122,000,000

7.5% Subordinated Notes

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NOTE PURCHASE AGREEMENT

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Dated September 14, 2004

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SCHEDULE B —	PURCHASE FOR INVESTMENT
EXHIBIT 1 —	Form of 7.5% Subordinated Note

Wynn Resorts (Macau), S.A.  
Avenida da Praia Grande, 429-18 andar  
Edificio central comercial da Praia Grande  
Macau

7.5% Subordinated Notes

September 14, 2004

Wynn Group Asia, Inc.  
3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Ladies and Gentlemen:

Wynn Resorts (Macau), S.A., a company organized under the laws of the Macau Special Administrative Region of the People's Republic of China (the "**Company**"), agrees with Wynn Group Asia, Inc., a Nevada corporation ("**you**" or "**Purchaser**") as follows:

**1. AUTHORIZATION OF NOTES**

The Company will authorize the issuance and sale of at least \$122,000,000 aggregate principal amount of its 7.5% Subordinated Notes (the "**Notes**", such term to include any such notes issued in substitution therefor pursuant to this Agreement). The Notes shall be substantially in the form set out in Exhibit 1, with such changes therefrom, if any, as may be agreed to by you and the Company. Certain capitalized terms used in this Agreement are defined in Schedule A. References to a "Schedule" or an "Exhibit" are, unless otherwise specified, to a Schedule or an Exhibit to this Agreement.

**2. SALE AND PURCHASE OF NOTES**

Subject to the terms and conditions of this Agreement, the Company will issue and sell to you and you will purchase from the Company, at the Closing(s) provided for in Section 3, Notes in \$122,000,000 aggregate principal amount at the purchase price of 100% of the principal amount thereof.

**3. CLOSING**

The sale and purchase of the Notes shall occur at the offices of the Company, in such amounts, on such days and at such times as requested by the Company in one or more

written notices (each, a “**Drawdown Notice**”) delivered to you at least 30 days prior to the requested date, at one or more closings (each, a “**Closing**”), or in such other amount, at such other place, day or time as may be agreed upon by the Company and you. Each Drawdown Notice shall request a draw of \$50,000,000; provided, that the final Drawdown Notice shall request a draw of \$22,000,000. At each Closing the Company will deliver to you the Note to be purchased by you at such Closing in the form of a single Note dated the date of such Closing and registered in your name, against delivery by you to the Company or its order of immediately available funds in the amount of the purchase price therefor by wire transfer of immediately available funds for the account of the Company to account number [ ] at [ ] Bank, [Insert Bank address, ABA number for wire transfers, and any other relevant wire transfer information].

#### **4. CONDITIONS TO CLOSING**

Your obligation to purchase and pay for the Notes to be sold to you at the relevant Closing is subject to the fulfillment, prior to or at the relevant Closing, of the following conditions:

##### **4.1. Representations and Warranties**

The representations and warranties of the Company in this Agreement shall be true and correct in all material respects on the date of this Agreement and at the time of the Closing (unless any such representation or warranty is expressly stated to be given as of a different date).

##### **4.2. Performance; No Default**

The Company shall have performed and complied in all material respects with all agreements and conditions contained in this Agreement required to be performed or complied with by it prior to or at the relevant Closing. There shall not have occurred and be continuing an Event of Default under this Agreement or the Senior Loan Facilities.

##### **4.3. Compliance Certificates**

(a) Officer’s Certificate. The Company shall have delivered to you an Officer’s Certificate, dated the date of the Closing, certifying that the conditions specified in Sections 4.1 and 4.2 have been fulfilled.

(b) Secretary’s Certificate. The Company shall have delivered to you a certificate certifying as to the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of the Notes and the Agreement.

##### **4.4. Purchase Permitted By Applicable Law, etc.**

On the date of the Closing your purchase of Notes shall (i) be permitted by the laws and regulations of the Macau Special Administrative Region of the People’s Republic of China, the United States of America and the State of Nevada and (ii) not violate any applicable law or regulation that could reasonably be expected to restrain, prevent or otherwise impose materially adverse conditions on the issuance of the Notes.

#### **4.5. Base Equity**

Not less than \$230,000,000 shall have been irrevocably and unconditionally contributed as “Base Equity” (as defined in the Common Terms Agreement) to the Company.

#### **4.6. Litigation**

There shall not be pending or, to our knowledge, threatened, any action, suit, investigation, litigation or proceeding in any court or before any arbitrator or governmental instrumentality that would reasonably be expected to have a material adverse effect on the issuance of or performance of the Notes.

### **5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company represents and warrants to you that:

#### **5.1. Organization; Power and Authority**

The Company has been duly organized and is validly existing as a company under the laws of the Macau Special Administrative Region of the People’s Republic of China, with power and authority to own or lease and operate its properties and conduct its business and to enter into and to perform its obligations under this Agreement and the Notes.

#### **5.2. Authorization, etc.**

The execution and delivery of, and the performance by the Company of its obligations under, this Agreement and the Notes have been duly and validly authorized by all necessary action on the part of the Company, and this Agreement has been, and each Note will be at the Closing, duly executed and delivered by the Company.

#### **5.3. Enforceability**

Assuming due and valid authorization, execution and delivery thereof by you, this Agreement is, and when issued and delivered in accordance with the terms of this Agreement, each Note will be, a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws of general application affecting enforcement of creditors’ rights generally and (ii) the availability of the remedy of specific performance or injunctive or other forms of equitable relief may be subject to equitable defenses and would be subject to the discretion of the court before which any proceeding therefor may be brought.

#### **5.4. No Material Adverse Change**

There is no action, suit, claim or proceeding pending or, to the knowledge of the Company, threatened (A) against the Company or (B) that has as the subject thereof any officer or director of, or property owned or leased by or to, the Company, in each case, before any court or administrative agency or otherwise where, in any such case, there is both a reasonable possibility of such action, suit or proceeding being determined adversely to the Company and where any such action, suit, claim or proceeding, if so determined adversely, would reasonably be expected to result in a Material Adverse Change, or prevent, adversely

affect, hinder or delay the consummation of the transactions contemplated by this Agreement or the performance by the Company of its obligations hereunder or under the Notes.

## **6. REPRESENTATIONS OF THE PURCHASER**

You represent and warrant to the Company that:

### **6.1. Organization; Power and Authority**

Purchaser has been duly organized and is validly existing as a corporation in good standing under the laws of its jurisdiction of organization, with power and authority to enter into and to perform its obligations under this Agreement.

### **6.2. Authorization, etc.**

The execution and delivery of, and the performance by Purchaser of its obligations under, this Agreement have been duly and validly authorized by all necessary action on its part, and Purchaser has duly executed and delivered this Agreement.

### **6.3. Enforceability**

Assuming due and valid authorization, execution and delivery thereof by the Company, this Agreement is a valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws of general application affecting enforcement of creditors' rights generally and (ii) the availability of the remedy of specific performance or injunctive or other forms of equitable relief may be subject to equitable defenses and would be subject to the discretion of the court before which any proceeding therefor may be brought.

## **7. PREPAYMENT OF THE NOTES**

### **7.1. Mandatory Prepayments**

From and after the date on which all obligations under the Senior Loan Facilities have been discharged, the mandatory prepayment provisions of Schedule 9 of the Common Terms Agreement (or the prepayment provisions of any amended, supplemental, refinanced or replacement Senior Loan Facilities) shall apply *mutatis mutandis* to the Notes where the context permits such construction, and to the extent the context does not permit such construction, such provisions shall apply as closely as possible under the circumstances.

### **7.2. Mandatory Disposition or Redemption Pursuant to Gaming Laws**

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

(a) require the holder or beneficial owner to dispose of its Notes within 30 days (or such lesser period as required by the Gaming Authority) following the earlier of:

(1) the termination of the period described above for the holder or beneficial owner to apply for a license, qualification or finding of suitability; or

(2) the receipt of the notice from the Gaming Authority that the holder or beneficial owner shall not be licensed, qualified or found suitable by the Gaming Authority; or

(b) redeem the Notes of the holder or beneficial owner at a redemption price equal to:

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

(2) if the Gaming Authority does not determine a price, the lesser of:

(A) the principal amount of the Notes; and

(B) the price that the holder or beneficial owner paid for the Notes,

and in the case of (A) or (B), together with accrued and unpaid interest on the Notes to the earlier of (1) the date of redemption or such earlier date as is required by the Gaming Authority or (2) the date of the finding of unsuitability by the Gaming Authority, which may be less than 30 days following the notice of redemption. Immediately upon a determination by a Gaming Authority that a holder or beneficial owner of Notes shall not be licensed, qualified or found suitable, the holder or beneficial owner shall not have any further rights with respect to the Notes to:

(i) exercise, directly or indirectly, through any Person, any right conferred by the Notes, this Agreement or the Deed of Appointment and Priority; or

(ii) receive any interest or any other distribution or payment with respect to the Notes, or any remuneration in any form from the Company for services rendered or otherwise, except the redemption price of the Notes.

The Company is not required to pay or reimburse any holder or beneficial owner of Notes who is required to apply for such license, qualification or finding of suitability for the costs relating thereto. Those expenses shall be the obligation of the holder or beneficial owner.

### **7.3. Optional Prepayments**

The Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, the Notes at 100% of the principal amount so prepaid, without premium. The Company will give you written notice of each optional prepayment under this Section 7.3 not less than 7 days and not more than 30 days prior to the date fixed for such prepayment. Each such notice shall specify such date, the aggregate principal amount of the Notes to be prepaid on such date, and the interest to be paid on the prepayment date with respect to such principal amount being prepaid.

#### **7.4. Maturity; Surrender, etc.**

In the case of each prepayment of Notes pursuant to this Section 7, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and cancelled.

### **8. COVENANTS OF THE COMPANY**

#### **8.1. Senior Loan Facilities Covenants**

The covenants of Schedule 5 of the Common Terms Agreement (or the covenants of any amended, supplemented, refinanced or replacement Senior Loan Facilities) shall apply *mutatis mutandis* to the Notes where the context permits such construction, and to the extent the context does not permit such construction, such provisions shall apply as closely as possible under the circumstances. Any and all waivers, consents or approvals made or given, or deemed given, by the holders of the Senior Indebtedness (or any agent or adviser acting on their behalf) under the Senior Loan Facilities shall apply to the Notes with the same effect as if the waiver had been given by the holders of the Notes.

#### **8.2. Aggregate Principal Amount of Senior Indebtedness**

Notwithstanding Section 8.1, the Company shall not amend, supplement, refinance or replace the Senior Loan Facilities such that the principal amount of funded Senior Indebtedness outstanding at any time exceeds \$800,000,000 (or if the Company incurs Financial Indebtedness (as defined in the Common Terms Agreement) permitted under paragraph 2(f) of Schedule 5 Part B of the Common Terms Agreement, \$800,000,000 plus an amount being 150% of the aggregate amount of such Financial Indebtedness incurred by the Company).

### **9. COVENANTS OF THE HOLDERS OF NOTES**

It is the express intention of the parties that the Company is entitled to have outstanding at any time up to \$800,000,000 (or if the Company incurs Financial Indebtedness (as defined in the Common Terms Agreement) permitted under paragraph 2(f) of Schedule 5 Part B of the Common Terms Agreement, \$800,000,000 plus an amount being 150% of the aggregate amount of such Financial Indebtedness incurred by the Company) aggregate principal amount of funded Senior Indebtedness. To this end, each holder of Notes shall cooperate with the Company in its incurrence of Senior Indebtedness by taking all actions requested by the Company to facilitate such incurrence, including, without limitation, entering into intercreditor agreements that, taken as a whole, are not less favorable to the holders of Notes than the terms of the Deed of Appointment and Priority.

### **10. EVENTS OF DEFAULT**

The events of default in Schedule 10 of the Common Terms Agreement (or the events of default of any amended, supplemented, refinanced or replacement Senior Loan Facilities) (each, an **"Event of Default"**) shall apply *mutatis mutandis* to the Notes where the

context permits such construction, and to the extent the context does not permit such construction, such provisions shall apply as closely as possible under the circumstances. Any and all waivers of a Default or an Event of Default given, or deemed given, by the holders of the Senior Indebtedness (or any agent or adviser acting on their behalf) under the Senior Loan Facilities shall apply to the Notes with the same effect as if the waiver had been given by the holders of the Notes.

## **11. REMEDIES ON DEFAULT, ETC.**

### **11.1. Deed of Appointment and Priority**

No holder of Notes may exercise any rights or remedies or take any action in respect of the breach of any provision of this Agreement or the Notes or upon the occurrence and continuation of an Event of Default except as provided in the Deed of Appointment and Priority (or the provisions of any amended, supplemented, refinanced or replacement agreement governing intercreditor arrangements). Any proceeds from the exercise of remedies in accordance with the Deed of Appointment and Priority shall be applied in accordance with the terms of the Deed of Appointment and Priority (or the provisions of any amended, supplemented, refinanced or replacement agreement governing intercreditor arrangements).

## **12. REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES**

### **12.1. Registration of Notes**

The Company shall keep at its principal executive office a register for the registration (and registration of transfers) of Notes. The name and address of each holder of Notes, and, subject to Section 12.2, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary.

### **12.2. Transfer and Exchange of Notes**

Except as provided in the Deed of Appointment and Priority or in Section 7.2 hereof, the rights of each holder of Notes under this Agreement and the Notes may not be assigned or transferred without the consent of the holders of the Senior Indebtedness, such consent not to be unreasonably withheld. Except as provided in the Deed of Appointment and Priority, the rights of each holder of Notes under this Agreement and the Notes may not be assigned or transferred without the prior written consent of the Company. Subject to compliance with applicable law, obtaining the requisite consents and to the execution of deeds of accession acceptable to the holders of the Senior Indebtedness and the Company, upon surrender of any Note at the principal executive office of the Company for registration of transfer or exchange (and in the case of a surrender for registration of transfer, duly endorsed or accompanied by a written instrument of transfer duly executed by the registered holder of such Note or his attorney duly authorized in writing and accompanied by the address for notices of each transferee of such Note or part thereof), the Company shall execute and deliver, at the Company's expense (except as provided below), one or more new Notes (as requested by the holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note



shall be payable to such Person as such holder may request and shall be substantially in the form of Exhibit 1. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Each Note may be transferred only in whole, and not in part. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representations set forth in Schedule B as of the date of transfer and shall be deemed to have agreed to, and shall be subject to, all terms and provisions of this Agreement and the Notes.

### **12.3. Replacement of Notes**

Upon receipt by the Company of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note, and

(a) in the case of loss, theft or destruction, of an indemnity reasonably satisfactory to it, or

(b) in the case of mutilation, upon surrender and cancellation thereof,

the Company at its own expense shall execute and deliver, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

## **13. PAYMENTS ON NOTES**

### **13.1. Place of Payment**

The Company will pay, or arrange for payment of, all sums becoming due on such Note for principal and interest by wire transfer of immediately available funds to an account specified in writing by the holder of such Note. Upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Note, you shall surrender such Note for cancellation, promptly after any such request, to the Company at its principal executive office. Prior to any sale or other disposition of any Note held by you, you will surrender such Note to the Company in exchange for a new Note or Notes in accordance with Section 12.2.

## **14. EXPENSES, ETC.**

### **14.1. Transaction Expenses**

All costs and expenses incurred by the Purchaser in connection with this Agreement and the consummation of the transactions contemplated hereby shall be paid by the Purchaser, and all costs and expenses incurred by the Company in connection with this Agreement and the consummation of the transactions contemplated hereby shall be paid by the Company.

## 15. ENTIRE AGREEMENT

This Agreement, the Notes and the Deed of Appointment and Priority, embody the entire agreement and understanding between you and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

## 16. AMENDMENT AND WAIVER

### 16.1. Requirements

Except as otherwise provided in Sections 8 and 10, this Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), with (and only with) the written consent of the Company and the Required Holders, except that (a) no amendment or waiver of any of the provisions of Section 1, 2, 3 or 4 hereof will be effective as to you unless consented to by you in writing, and (b) no such amendment or waiver may, without the written consent of the holder of each Note at the time outstanding affected thereby, (i) subject to the provisions of Sections 8 and 10, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of interest on the Notes, or (ii) change the percentage of the principal amount of the Notes the holders of which are required to consent to any such amendment or waiver.

### 16.2. Binding Effect, etc.

Any amendment or waiver consented to as provided in this Agreement applies equally to all holders of Notes and is binding upon them and upon each future holder of any Note and upon the Company without regard to whether such Note has been marked to indicate such amendment or waiver. No course of dealing between the Company and the holder of any Note nor any delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of any holder of such Note. As used herein, the term “**this Agreement**” and references thereto shall mean this Agreement as it may from time to time be amended or supplemented.

## 17. NOTICES

All notices and communications provided for hereunder shall be in writing and sent (a) by facsimile if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by a recognized overnight delivery service (with charges prepaid). Any such notice must be sent:

(i) if to you, at the address specified on the first page of this Agreement, or at such other address as you shall have specified to the Company in writing,

(ii) if to any other holder of any Note, to such holder at such address as such other holder shall have specified to the Company in writing, or

(iii) if to the Company, to the Company at its address set forth on the first page of this Agreement beginning hereof to the attention of the General Counsel, or at such other address as the Company shall have specified to the holder of each Note in writing.

Notices under this Section 17 will be deemed given on the third Business Day after transmittal.

## **18. CONFIDENTIAL INFORMATION**

For the purposes of this Section 18, “**Confidential Information**” means information delivered to you or your representatives by or on behalf of the Company in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature or confidential information of the Company or any Affiliate of the Company, provided, that such term does not include information that (a) was publicly known prior to the time of such disclosure, or (b) subsequently becomes publicly known through no act or omission by you or any Person acting on your behalf. You will maintain the confidentiality of such Confidential Information and not disclose it to any other Person; provided, that you may deliver or disclose Confidential Information to (i) your directors, officers, employees, agents, attorneys and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by your Notes), (ii) your financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with the terms of this Section 18, (iii) any other Person to which such delivery or disclosure may be necessary or appropriate (A) to effect compliance with any law, rule, regulation or order applicable to you, (B) in response to any subpoena or other legal process, (C) in connection with any litigation to which you are a party, or (D) as may be provided for in the Deed of Appointment and Priority.

## **19. CROSS ACCELERATION**

If the maturity of the Senior Indebtedness is accelerated following the occurrence of an event of default thereunder, the maturity of the Notes shall be accelerated to the maturity date of the Senior Indebtedness upon receipt by the Company of a written notice signed by the Required Holders stating their election to accelerate the maturity of the Notes. Any exercise of rights or remedies by the holders of the Notes shall be subject to the provisions of Section 11.

## **20. MISCELLANEOUS**

### **20.1. Security**

The performance by the Company of its obligations under the Notes is secured as set forth in the Deed of Appointment and Priority.

### **20.2. Subordination**

The obligations of the Company under the Notes and this Agreement, and all security interests, liens and encumbrances granted to secure such obligations, are subordinated as set forth in the Deed of Appointment and Priority.

### **20.3. Successors and Assigns**

All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective permitted successors and assigns.

**20.4. Payments Due on Non-Business Days**

Anything in this Agreement or the Notes to the contrary notwithstanding, any payment of principal or interest on any Note that is due on a date other than a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day.

**20.5. Severability**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

**20.6. Construction**

Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

**20.7. Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

**20.8. Governing Law**

This Agreement and the Notes shall be governed by and construed in accordance with the internal laws of the State of New York including, without limitation, Sections 5-1401 and 5-1402 of the New York general obligations law and Rule 327(b) of the New York Civil Practice Laws and Rules. The Company and Purchaser hereby irrevocably submit to the jurisdiction of any New York state court sitting in the Borough of Manhattan in the City of New York or any federal court sitting in the Borough of Manhattan in the City of New York in respect of any suit, action or proceeding arising out of or relating to this Agreement or the Notes, and irrevocably accepts for itself and in respect of its property, generally and unconditionally, jurisdiction of the aforesaid courts. The Company and Purchaser irrevocably waive, to the fullest extent they may effectively do so under applicable law, any objection which they may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

\* \* \* \* \*

*[Signatures Appear on Following Page]*

If you are in agreement with the foregoing, please sign the form of agreement on the accompanying counterpart of this Agreement and return it to the Company, whereupon the foregoing shall become a binding agreement between you and the Company dated as of the first day written above.

Very truly yours,

WYNN RESORTS (MACAU), S.A.

By: \_\_\_\_\_ /s/ MATT MADDOX

Name: **Matt Maddox**

Title: **Chief Financial Officer**

ACKNOWLEDGED AND AGREED:

WYNN GROUP ASIA, INC.

By: \_\_\_\_\_ /s/ MATT MADDOX

Name: **Matt Maddox**

Title: **Attorney**

**DEFINED TERMS**

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

**"Affiliate"** means, at any time, and with respect to any Person, (a) any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person, and (b) any Person beneficially owning or holding, directly or indirectly, 10% or more of any class of voting or equity interests of the Company or any Subsidiary or any corporation of which the Company and its Subsidiaries beneficially own or hold, in the aggregate, directly or indirectly, 10% or more of any class of voting or equity interests. As used in this definition, **"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Unless the context otherwise clearly requires, any reference to an "Affiliate" is a reference to an Affiliate of the Company.

**"Business Day"** means any day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York or the Macau Special Administrative Region of the People's Republic of China are required or authorized to be closed.

**"Closing"** is defined in Section 3.

**"Common Terms Agreement"** means the Common Terms Agreement, dated as of September \_\_, 2004, by and among the Company, the holders of the Senior Indebtedness and the other parties thereto, relating to the financing of the Company's proposed hotel-casino resort in Macau.

**"Company"** is defined in the first paragraph of this Agreement.

**"Confidential Information"** is defined in Section 18.

**"Deed of Appointment and Priority"** means the Deed of Appointment and Priority, dated as of September \_\_, 2004, by and among the Company, the Purchaser and the other parties thereto.

**"Event of Default"** is defined in Section 10.

**"holder"** means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company pursuant to Section 13.1.

**"Gaming Authority"** means any agency, authority, board, bureau, commission, department, office or instrumentality of any nature whatsoever of the United States federal government, any foreign government, any state, province or city or other

political subdivision or otherwise, whether now or hereafter in existence, including the Nevada Gaming Commission, the Nevada State Gaming Control Board, the Clark County Liquor and Gaming Licensing Board, and similar or analogous agency or authority in the Macau Special Administrative Region of the People's Republic of China, and any other applicable gaming regulatory authority or agency, in each case, with authority to regulate any gaming operation (or proposed gaming operation) owned, managed or operated by the Company or any of its Affiliates.

**"Gaming Law"** means the gaming laws, rules, regulations or ordinances of any jurisdiction or jurisdictions to which the Company or any of its Affiliates is, or may be at any time after the date hereof, subject.

**"Material Adverse Change"** means a material adverse change in the business, properties, assets, operations or financial condition of the Company and its subsidiaries taken as a whole, whether or not occurring in the ordinary course of business.

**"Notes"** is defined in Section 1.

**"Officer's Certificate"** means a certificate of the President, General Manager, Chief Financial Officer, Treasurer or any Vice President of the Company.

**"Person"** means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

**"Purchaser"** is defined in the first paragraph of this Agreement.

**"Required Holders"** means, at any time, the holders of in excess of 50% in principal amount of the Notes at the time outstanding.

**"\$"** denotes the lawful currency of the United States of America.

**"Securities Act"** means the Securities Act of 1933, as amended.

**"Senior Loan Facilities"** means the credit facilities, loan agreements, letters of credit or other agreements pursuant to which Senior Indebtedness is incurred, and initially includes the Senior Finance Documents (as defined in the Common Terms Agreement).

**"Senior Indebtedness"** means indebtedness designated by the Company in an amount funded at any given time not in excess of \$800,000,000 (or if the Company incurs Financial Indebtedness (as defined in the Common Terms Agreement) permitted under paragraph 2(f) of Schedule 5 Part B of the Common Terms Agreement, \$800,000,000 plus an amount being 150% of the aggregate amount of such Financial Indebtedness incurred by the Company) (exclusive of any indebtedness under the "Performance Bond Facility Agreement" (as defined in the Common Terms Agreement)), which shall rank senior to the Notes in accordance with the Deed of Appointment and Priority.

**AMENDED AND RESTATED  
SHAREHOLDERS' AGREEMENT**

by and among

**WYNN RESORTS (MACAU), LIMITED,  
WYNN RESORTS INTERNATIONAL, LTD.,**

**WONG CHI SENG,**

and

**WYNN RESORTS (MACAU), S.A.**

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as of September 16, 2004



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**AMENDED AND RESTATED  
SHAREHOLDERS' AGREEMENT**

**THIS AMENDED AND RESTATED SHAREHOLDERS' AGREEMENT** is made and entered into as of September 16, 2004, by and among **WONG CHI SENG, WYNN RESORTS INTERNATIONAL, LTD., WYNN RESORTS (MACAU), LIMITED, and WYNN RESORTS (MACAU), S.A.**

**R E C I T A L S:**

**WHEREAS**, the Company was established on October 17, 2001 to (a) participate in a public tender for a concession to conduct casino games of chance and other games in the MSAR, and (b) operate a business to conduct casino games of chance, other games, and other activities in the MSAR if a concession to conduct such activities were granted to it; and

**WHEREAS**, on February 8, 2002, the Company was named as a provisional concessionaire pursuant to an executive order of the Chief Executive of the MSAR; and

**WHEREAS**, on June 24, 2002 the Company and the MSAR Government entered into the Concession Contract pursuant to which the Company was granted the right to engage in casino games of chance and other games in the MSAR; and

**WHEREAS**, the shareholders have amended the Articles of Association of the Company to make certain changes to the Company's Class A Shares and the role and duties of the Company's Executive Director; and

**WHEREAS**, the Company has obtained the rights to use the Land; and

**WHEREAS**, the entire authorized capitalization of the Company consists solely of the Shares; and

**WHEREAS**, Wong is the registered and beneficial owner of Twenty Thousand Ten (20,010) Class A Shares, which Shares represent (a) Ten Percent (10%) of the authorized voting power of the Company, (b) a nominal right to receive a Class A Annual Dividend of up to One Macau Pataca (MOP1) per year from the Company, and (c) a nominal right to receive a Class A Capital Distribution of up to One Macau Pataca (MOP1) upon the liquidation of the Company or amortization of the Class A Shares; and

**WHEREAS**, Wynn Hong Kong is the registered and beneficial owner of One Hundred Two Thousand Fifty-One (102,051) Class B Shares, which Shares represent Fifty-One Percent (51%) of the authorized voting power in, capital of, and rights to receive dividends and

other distributions from, the Company, after payment of the Class A Annual Dividend and the Class A Capital Distribution in respect of the Class A Shares; and

**WHEREAS**, Wynn International is the registered and beneficial owner of Seventy-Eight Thousand Thirty-Nine (78,039) Class C Shares, which Shares represent (a) Thirty-Nine Percent (39%) of the authorized voting power in, and capital of, the Company, and (b) Forty-Nine Percent (49%) of the rights to receive dividends and other distributions from the Company, after payment of the Preferential Annual Dividend and the Preferential Capital Distribution in respect of the Class A Shares; and

**WHEREAS**, the Shareholders wish to record their understandings regarding certain aspects of the management of the Company and the structure of their respective investments in the Company and to provide for future dealings in the Class A Shares and any interests therein;

**NOW, THEREFORE**, in consideration of the foregoing recitals, the mutual representations, warranties, covenants, and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and adequacy of which hereby are acknowledged, the Parties agree as follows:

**ARTICLE 1**  
**DEFINITIONS AND REFERENCES**

**1.1 Definitions.**

For purposes of this Agreement, the following capitalized terms have the following respective meanings:

“**Affiliate**” of a Person means any Person that, directly or indirectly, through one (1) or more intermediaries, owns, is owned by, or is under common ownership with such first Person, to the extent of more than Twenty Percent (20%) of (a) the beneficial interests of such Person, or (b) the voting power of such Person. For the purpose of determining ownership of any Person other than an individual, an individual shall be considered as owning any voting securities or other beneficial interests owned by members of such individual’s parents, spouse, lineal descendants, and siblings, if any (including, without limitation, any individual related by or through legal adoption), or a trust for the exclusive benefit of any of the foregoing.

“**Agreement**” means this Amended and Restated Shareholders’ Agreement by and among the Parties.

“**Amended Articles**” means the Amended and Restated Articles of Association of the Company, effective as of \_\_\_\_\_, 2004, a copy of which is attached as Exhibit A.

“**Board**” means the Board of Directors of the Company.

“**Business Day**” means a day on which banks are open for business in the MSAR and New York.

“**Casino Complex**” means the gaming casino, luxury resort, and ancillary facilities including, without limitation, guest rooms and suites, food and beverage facilities, banquet or function areas, ballrooms, entertainment facilities, convention facilities, spa and personal care facilities, automobile parking facilities, and retail establishments operated in connection therewith, to be developed, constructed, outfitted, equipped, and operated on the Land.

“**Chairman**” means the Chairman of the Board of Directors of the Company, as appointed pursuant to Section 2.3.

“**Class A Annual Dividend**” has the meaning ascribed to that term in Section 3.1.

“**Class A Capital Distribution**” has the meaning ascribed to that term in Section 3.1.

“**Class A Shares**” means (a) the Twenty Thousand Ten (20,010) Class A Shares of the Company’s Class A voting stock of One Thousand Macau Patacas (MOP1,000) par value each that are designated for ownership by the Executive Director, and which currently are registered in the name of, and beneficially owned by, Wong, and (b) any other Shares owned at any time by any Executive Director.

“**Class B Shares**” means the One Hundred Two Thousand Fifty-One (102,051) Shares of the Company’s Class B voting stock of One Thousand Macau Patacas (MOP1,000) par value each, which currently are registered in the name of, and beneficially owned by, Wynn Hong Kong.

“**Class C Shares**” means the Seventy-Eight Thousand Thirty-Nine (78,039) Shares of the Company’s Class C voting stock of One Thousand Macau Patacas (MOP1,000) par value each, which currently are registered in the name of, and beneficially owned by, Wynn International.

“**Company**” means Wynn Resorts (Macau), S.A., a company limited by shares organized with limited liability and existing under the laws of the MSAR.

“**Concession Contract**” means the Concession Contract to Conduct Casino Games of Chance and Games of Other Forms by and between the MSAR Government and the Company dated June 24, 2002.

“**Defaulting Shareholder**” has the meaning ascribed to that term in Section 7.3.

“**Default Price**” has the meaning ascribed to that term in Section 7.3.

“**Director**” means a member of the Board, including, but not limited to, the Executive Director and the Chairman.

“**Directors**” means more than one (1) Director.

“**Dollars**” and “**\$**” means units of the lawful currency of the United States of America.

“**Effective Date**” means the date first set forth above.

“**Event of Default**” means any of the events described in Section 7.2.

“**Executive Director**” has the meaning ascribed to that term in Section 2.5.

“**First Round Class B Offer**” has the meaning ascribed to that term in Section 5.3(a)(A).

“**First Round Class C Offer**” has the meaning ascribed to that term in Section 5.4(a)(A).

“**FCPA**” has the meaning ascribed to that term in Section 6.1(f).

“**Gaming Authority**” means those national, state, local, and other governmental, regulatory, and administrative authorities, agencies, boards, and officials responsible for or involved in the regulation of gaming or gaming activities or the interpretation or enforcement of Gaming Laws in any jurisdiction and, within (a) the MSAR, specifically, the MSAR Gambling Inspection and Coordination Bureau and the MSAR Gaming Commission, and (b) the State of Nevada, specifically, the Nevada Gaming Commission, the Nevada State Gaming Control Board, and the Clark County Liquor and Gaming Licensing Board.

“**Gaming Laws**” means those laws pursuant to which any Gaming Authority possesses regulatory, licensing, or permit authority over gaming within any jurisdiction and, within (a) the MSAR, specifically, Law No. 16/2001, Administrative Regulations No. 26/2001, and any Concession Contract granting to the Company the concession to conduct casino games of chance and other games in the MSAR, as any of the same may be amended from time to time, and (b) the State of Nevada, specifically, the Nevada Gaming Control Act, as codified in Nevada Revised Statutes Chapter 463, the

regulations of the Nevada Gaming Commission promulgated thereunder, and the Clark County Code, as any of the same may be amended from time to time.

**“Gaming Licenses”** means all concessions, licenses, permits, approvals, authorizations, registrations, findings of suitability, franchises, and entitlements issued by any Gaming Authority necessary for or relating to the conduct of activities under any Gaming Laws.

**“Gaming Problem”** means, with respect to any Shareholder or any of its Affiliates, any circumstance such that such Shareholder’s participation in the Company or any of its Affiliates is deemed likely, in the sole and absolute discretion of the Company or Wynn International, based on verifiable information or information received from any Gaming Authority or otherwise, to preclude or materially delay, impede, or impair the ability of the Company, Wynn International, any Affiliate of either of them, or any business entity with respect to which the Company, Wynn International, or such Affiliate holds a Gaming License, to obtain or retain any Gaming License, or to result in the imposition of disciplinary action, including, without limitation, materially burdensome terms and conditions on any Gaming License.

**“Indemnified Party”** means a Party entitled to be indemnified pursuant to Article 8.

**“Indemnifying Party”** means a Party required to indemnify an Indemnified Party pursuant to Article 8.

**“Information”** has the meaning ascribed to that term in Article 9.

**“Land”** means the plot of land granted to the Company by way of a lease with the area of 64,528 (sixty-four thousand five hundred and twenty-eight square meters), named Lot B1, located in the MSAR at Zone B in NAPE, Rua Cidade de Sintra, Avenida de Sagres e Avenida 24 de Junho, for the purpose of constructing on such plot of land the resort-hotel-casino complex mentioned in the Investment Plan appended to the Concession Contract for the operation of games of chance and other games in casinos in MSAR.

**“Macau Patacas”** and **“MOP”** means units of the lawful currency of the MSAR.

**“MSAR”** means the Macau Special Administrative Region of the People’s Republic of China.

**“Notice”** has the meaning ascribed to that term in Section 10.1.

“**Option Agreement**” means the Option Agreement by and among Wong, Wynn International, and the Company, dated of even date herewith, a copy of which is attached as Exhibit C.

“**Parties**” means all of Wong, Wynn International, Wynn Hong Kong, and the Company.

“**Party**” means any one (1) of the Parties.

“**Person**” means any individual, partnership, association, corporation, company, trust, governmental authority, or other entity having a separate legal personality.

“**Reference Rate**” means the three (3)-month, Dollar (\$) London Interbank Offered Rate in effect from time to time (or such other rate as the Parties shall agree if such rate shall not be in effect at any time).

“**Second Round Class B Offer**” has the meaning ascribed to that term in Section 5.3(a)(B).

“**Second Round Class C Offer**” has the meaning ascribed to that term in Section 5.4(a)(B).

“**Securities Authority**” means those national, state, local, and other governmental, regulatory, and administrative authorities, agencies, boards, and offices responsible for or involved in the regulation of securities, the offer, sale, and trading of securities, and the administration or enforcement of laws relating to securities.

“**Securities Problem**” means, with respect to any Shareholder or any of his or its Affiliates, any circumstances such that such Shareholder’s participation in the Company or any of its Affiliates is deemed likely, in the sole and absolute discretion of the Company or Wynn International, based on verifiable information or information received from any Securities Authority or otherwise, to preclude or materially delay, impede, or impair the ability of the Company, Wynn International, or any Affiliate of either of them to offer, sell, or trade securities, or to result in the imposition of disciplinary action including, without limitation, materially burdensome terms and conditions on any such offer, sale, or trading of securities.

“**Shareholder**” means any one (1) of the Shareholders.

“**Shareholders**” means all of the holders of Shares.

“**Share**” means one of the Shares.



“**Shares**” means the Class A Shares, the Class B Shares, the Class C Shares, and any other future equity interests in the Company.

“**SHW**” means S.H.W. & Co. Limited, a private company limited by shares organized with limited liability and existing under the laws of the Isle of Man.

“**Transfer**” has the meaning ascribed to that term in Section 5.1(a).

“**Transferring Class B Shareholder**” has the meaning ascribed to that term in Section 5.3(a)(A).

“**Transferring Class C Shareholder**” has the meaning ascribed to that term in Section 5.4(a)(A).

“**Wong**” means Wong Chi Seng, an individual.

“**Wynn Holdings**” means Wynn Resorts (Macau) Holdings, Ltd., a private company limited by shares organized with limited liability and existing under the laws of the Isle of Man.

“**Wynn Hong Kong**” means Wynn Resorts (Macau), Limited, a private company limited by shares organized with limited liability and existing under the laws of the Hong Kong Special Administrative Region of the People’s Republic of China.

“**Wynn International**” means Wynn Resorts International, Ltd., a private company limited by shares organized with limited liability and existing under the laws of the Isle of Man.

“**Wynn Resorts**” means Wynn Resorts, Limited, a corporation organized with limited liability and existing under the laws of the State of Nevada of the United States of America.

## 1.2 **References.**

(a) **Articles, Sections, and Exhibits.** Any reference in this Agreement to an Article, Section, or Exhibit is, unless otherwise stated, a reference to an Article, Section, or Exhibit of or to this Agreement.

(b) **Headings.** Headings set forth in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.

(c) **References to Documents.** References to this Agreement or any other agreement, instrument, or document referred to in this Agreement shall be construed as references to this Agreement or, as the case may be, such other agreement,

instrument, or document, as the same may have been, or may from time to time be, amended, varied, novated, or supplemented.

(d) **Number.** Words importing the singular include the plural and vice versa.

(e) **Gender.** Words importing a gender include any gender or neuter.

(f) **Speech; Grammar.** Other parts of speech and grammatical forms of a word or phrase defined in this Agreement have corresponding meanings.

(g) **Parties.** A reference to a Party to this Agreement includes that Party's successors and permitted assigns.

(h) **Business Day.** Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the immediately succeeding Business Day.

(i) **Preparation of Documents.** No rule of construction shall apply to the disadvantage of a Party because that Party or its legal counsel was responsible for the preparation of this Agreement or any part of it.

**ARTICLE 2**  
**MANAGEMENT OF THE COMPANY**

**2.1 Charter Documents.**

The Company shall operate pursuant to the terms of the Amended Articles and this Agreement. To the extent that the terms of this Agreement conflict with the terms of the Amended Articles, the terms of the Amended Articles shall prevail. In all other cases, the terms of this Agreement shall prevail. Each Shareholder hereby agrees to vote all Shares and take all other actions necessary or appropriate to ensure that the Amended Articles do not at any time conflict with the provisions of this Agreement and shall not vote to approve (or consent to the approval of) any amendment to the Amended Articles which would be inconsistent with or contrary to the intention of this Agreement.

**2.2 Business of the Company.**

The businesses to be conducted by the Company and its Affiliates shall be as follows:

(a) **Concession.** The Company shall conduct casino games of chance and other games in the MSAR pursuant to the terms of the Concession Contract and the Gaming Laws of the MSAR.

**(b) Land and Casino Complex.** The Company shall (i) hold the rights to use the Land, and (ii) be engaged in (A) the development, construction, outfitting, and equipping of the Casino Complex on the Land, and (B) the management and operation of the Land and the Casino Complex, subject to the terms and conditions of this Agreement, the Land Concession Agreement and the Gaming Laws of the MSAR.

**(c) Related Activities.** In addition to the activities described in Sections 2.2(a) and 2.2(b), the Company may engage in activities related to the activities described in No. 2 of Article 2 of the Amended Articles.

**(d) Other Activities.** In addition to the matters described above, the Company may be engaged in the conduct of (i) the purchase, construction, or development of one (1) or more casinos in the MSAR in addition to the Casino Complex, (ii) any activities related to Sections 2.2(a), 2.2(b), 2.2(c), and 2.2(d)(i), to the extent permitted by the laws of the MSAR or authorized by any relevant governmental authorities of the MSAR, and (iii) such other businesses as the Board may decide to undertake from time to time, whether or not associated with the foregoing, to the extent permitted by the laws of the MSAR or authorized by any relevant governmental authorities of the MSAR.

### **2.3 Composition of the Board.**

Subject to the terms of this Agreement, the Company shall be managed by the Board. The Shareholders shall elect the members of the Board. The Board shall appoint one (1) of its members to serve as Chairman of the Board. The Chairman of the Board shall nominate, and the Board shall elect, the Executive Director. The members of the Board have agreed, and the MSAR Government has approved, that Stephen A. Wynn shall serve as the initial Chairman of the Board of Directors, Marc Schorr shall serve as an initial Director, and Wong shall serve as the initial Executive Director.

### **2.4 Meetings of the Board.**

Meetings of the Board may be called at any time by the Chairman at such locations and at such times as the Chairman shall designate. Meetings of the Board may be held in person or by any other means permitted by law. The presence in person or by proxy of at least two (2) Directors shall be required to constitute a quorum for any meeting of the Board. Decisions of the Board shall be made by majority vote of the Directors present, in person or by proxy, at any duly constituted meeting of the Board at which a quorum is present. The Chairman of the Board shall have an additional casting or tie-breaking vote in the event of a deadlock in votes of the Directors.

### **2.5 The Executive Director.**

To the extent required by the laws of the MSAR, the Company shall at all times have one (1) Director who is a permanent resident of the MSAR and who shall be designated as

the Executive Director of the Company in accordance with the rules set forth in Article 19 of MSAR Law No. 16/2001 (the “Executive Director”). The Executive Director shall (a) be a Director designated by the Shareholders to serve as the Executive Director of the Company, (b) participate as a member of the Board, (c) be appointed by, and serve at the pleasure of, the Board, (d) report to and be subject to the direction of, the Board, and (e) be delegated such management authority as the Board shall from time to time grant to the Executive Director, in writing, subject always to Article 466.3 of the Macau Commercial Code, and the Executive Director’s authority shall not exceed the authority so delegated. The current role and duties of the Executive Director are set forth in Article 16.4 of the Amended Articles and on Exhibit B. The Directors have designated Wong to serve as the initial Executive Director.

**2.6 Meetings of the Shareholders.**

Meetings of the Shareholders may be called at any time by any Shareholder, upon at least fifteen (15) days’ Notice to all Shareholders. The Shareholders shall ensure that such meetings are held at least once each year at such locations and at such times as the Chairman of the Board shall designate. Meetings of the Shareholders may be held in person or by any other means permitted by law. The presence, in person or by proxy, of the holders of at least Seventy-Five Percent (75%) of the total number of Shares or their designated representatives shall be required to constitute a quorum for any meeting of the Shareholders. If no quorum is present at a Shareholders’ meeting called by a Shareholder, a second Shareholders’ meeting shall be called fifteen (15) days after the first Shareholders’ meeting. Decisions of the Shareholders shall be made by majority vote of the Shares by the holders of such Shares or their designated representatives present, in person or by proxy, at a duly-constituted Shareholders’ meeting at which a quorum is present.

**2.7 Design, Development, and Management Agreements.**

Wynn International or one (1) or more of its Affiliates will enter into one (1) or more agreements with the Company relating to the design, development, and operation of the Casino Complex and any other of the projects to be owned or operated by the Company, at fees to be agreed by such parties.

**ARTICLE 3**  
**SHARES**

**3.1 Capital of the Company.**

The entire registered capital of the Company consists solely of Two Hundred Million One Hundred Thousand Macau Patacas (MOP200,100,000) divided into Two Hundred Thousand One Hundred (200,100) Shares of One Thousand Macau Patacas (MOP1,000) par value each, including Twenty Thousand Ten (20,010) Class A Shares, One Hundred Two Thousand Fifty-One (102,051) Class B Shares, and Seventy-Eight Thousand Thirty-Nine (78,039) Class C Shares. Each Share entitles the holder thereof to identical voting and social rights (subject always to Section 2.3) in the Company. All of the Shares are duly

authorized, validly issued, outstanding, owned legally and beneficially by the Shareholders in the proportions set forth in Sections 3.2 to 3.4, and are free and clear of any lien, mortgage, other interest or encumbrance, or restriction on the right of Transfer thereof, except as provided in this Agreement and the Option Agreement. There are no Shares held in the treasury of the Company. Except as provided in this Agreement, there are no outstanding warrants, options, contracts, calls, convertible securities, or other rights of any kind with regard to authorized, but unissued, or issued but not outstanding, Shares or other securities of the Company of any kind. Except as provided in this Agreement, the Company has no right or obligation to purchase or redeem any Shares or other securities of the Company of any kind.

### **3.2 Class A Shares.**

The Class A Shares, in the aggregate, represent Ten Percent (10%) of the authorized social rights and voting power of the Company. The holder of the Class A Shares, as a group, are entitled to a preferential annual dividend in an amount in the aggregate of up to One Macau Pataca (MOP1) (the "Class A Annual Dividend") and a preferential distribution in the event of the liquidation of the Company or amortization of the Class A Shares in an amount in the aggregate of up to One Macau Pataca (MOP1) (the "Preferential Capital Distribution"), and shall be entitled to no other dividends, distributions, capital, liquidation proceeds, return of par value, or other emoluments of any type from the Company. All other rights to dividends and other distributions from the Company shall accrue to, and be vested in, the Class B Shares and the Class C Shares. The Class A Shares shall have no obligation to contribute capital to the Company and in the event that any return of dividend, distribution, capital, liquidation proceeds, par value, or emolument of any type other than the Class A Annual Dividend or the Class A Capital Distribution shall ever be received by the holder of the Class A Shares, such holder shall immediately transfer such dividend, distribution, capital, liquidation proceeds, par value, or emolument to the holders of the issued and outstanding Class C Shares, in proportion to their ownership thereof. To the extent required by the laws of the MSAR, the holder of the Class A Shares shall at all times be a permanent resident of the MSAR and shall serve as the Company's Executive Director. Wong currently owns all Twenty Thousand Ten (20,010) of the authorized, issued, and outstanding Class A Shares.

### **3.3 Class B Shares.**

The Class B Shares, in the aggregate, represent Fifty-One Percent (51%) of (a) the authorized voting power of the Company, and (b) the rights to receive dividends and other distributions from, and capital of, the Company, after payment of the Class A Annual Dividend and the Class A Capital Distribution in respect of Class A Shares. Wynn Hong Kong currently owns all One Hundred Two Thousand Fifty-One (102,051) of the authorized, issued, and outstanding Class B Shares.

### **3.4 Class C Shares.**

The Class C Shares in the aggregate represent (a) Thirty-Nine Percent (39%) of the authorized voting power of the Company, and (b) Forty-Nine Percent (49%) of the rights to

receive dividends and other distributions from, and capital of, the Company, after payment of the Class A Annual Dividend and the Class A Capital Distribution in respect of Class A Shares. The holders of the Class C Shares, in proportion to their ownership thereof, shall be entitled to receive any dividends, distributions, capital, liquidation proceeds, par value, or other emoluments that may at any time be paid to or received by the holders of the Class A Shares, except the Class A Annual Dividends and the Class A Capital Distribution. Wynn International currently owns all Seventy-Eight Thousand Thirty-Nine (78,039) of the authorized, issued, and outstanding Class C Shares.

#### **ARTICLE 4** **FINANCING**

##### **4.1 Initial Capital Contributions.**

(a) **Wong.** Wong has contributed Twenty Million Ten Thousand Macau Patacas (MOP20,010,000) to the capital of the Company in exchange for the Class A Shares. Wong has assigned his right to return of such capital to Wynn International as part of an exchange by Wong and SHW of shares in Wynn Holdings for shares in Wynn Resorts.

(b) **Wynn Hong Kong.** Wynn Hong Kong has contributed One Hundred Two Million Fifty-One Thousand Macau Patacas (MOP102,051,000) to the capital of the Company in exchange for the Class B Shares.

(c) **Wynn International.** Wynn International has contributed Seventy-Eight Million Thirty-Nine Thousand Macau Patacas (MOP78,039,000) to the capital of the Company in exchange for the Class C Shares.

##### **4.2 Reimbursement of Expenses.**

The Company shall reimburse Wynn International and its Affiliates, at cost, for all out-of-pocket costs and expenses incurred by them in the establishment, maintenance, and operation of the Company, Wynn Hong Kong, Wynn Holdings, Wynn International, and their respective businesses.

#### **ARTICLE 5** **TRANSFERS OF SHARES**

##### **5.1 Restrictions on Transfer of Class A Shares.**

The holder of the Class A Shares shall be able to, directly or indirectly, sell, assign, give, bequeath, transfer, pledge, or encumber (a "Transfer") any direct or indirect interest in any Class A Shares, or any portion of them. However, such ability to dispose of his shares is subject to the provisions of this Article 5. Any attempted or purported Transfer in violation of

this Article 5 shall not be recognized by the Company, shall be void, and will produce no effect towards the non-Transferring Shareholders, the Company, or any purported Transferee.

## 5.2 **Purchase of Class A Shares.**

**(a) Purchase.** Wynn International holds an option to purchase or designate a Person to purchase all the Class A Shares and any other shares or equity interests in the Company held by Wong at any time pursuant to the terms and subject to the conditions of the Option Agreement. In addition, unless Wynn International exercises such option, in the event of (i) the Executive Director's (A) death, legal disability, or retirement, removal or resignation from the office of Executive Director, (B) failure to remain a permanent resident of the MSAR, (C) revocation of appointment to serve in the capacity of Executive Director, or (D) other failure to serve in the capacity of Executive Director, (ii) the occurrence of an Event of Default by or with respect to the Executive Director, (iii) the determination by any Gaming Authority or the gaming counsel of the Company or any of its Affiliates that (A) the Executive Director is unsuitable to continue to serve in the capacity of Executive Director of the Company, or (B) a Gaming Problem exists or may exist, or (iv) the determination by any Securities Authority or the securities counsel of the Company or any of its Affiliates that (A) the Executive Director is unsuitable to continue to serve in the capacity of Executive Director of the Company, or (B) a Securities Problem exists or may exist, then the Company shall have the right (but not the obligation) to redeem, purchase, or appoint a Person to purchase all of the Class A Shares in the manner prescribed in Section 5.2(c). Neither the former Executive Director nor his estate, personal representative, or successor in interest shall have any further rights as the owner of the Class A Shares from and after (I) the date of the exercise by Wynn International or its designee of the right to purchase the Class A Shares pursuant to the Option Agreement, or (II) the date of exercise by the Company or its designee of the option to purchase the Class A Shares. The purchase of Class A Shares is subject to prior MSAR Government approval in accordance with the Concession Contract and such Class A Shares shall at all times be held by a Person who satisfies the requirements of the Gaming Laws.

**(b) Price.** The price to be paid by Wynn International or its designee for all of the Class A Shares is prescribed in the Option Agreement. The price to be paid by the Company or its designee for all of the Class A Shares in the event of a purchase of the Class A Shares upon the occurrence of an event described in Section 5.2(a) shall be One Macau Pataca (MOP1).

**(c) Manner of Purchase.** The purchase of the Class A Shares described in Section 5.2(a) shall be effected (i) by Wynn International or its designee in the manner prescribed in the Option Agreement, or (ii) by the Company or its designee giving Notice to the former Executive Director or his estate within ninety (90) days after the occurrence of an event described in Section 5.2(a), specifying the place, date (within ninety (90) days after the date of such Notice), and time at which payment shall be made to the former Executive Director or his estate, personal representative, or successor in

interest, as the case may be, for the Class A Shares. On that date, and at that place and time, Wynn International, the Company, or the relevant designee, who shall be designated as the replacement Executive Director, shall deliver the purchase price for the Class A Shares, determined in the manner provided in Section 5.2(b), to the former Executive Director or his estate, personal representative, or successor in interest, as the case may be, in cash or by registered or certified check, and all of the Class A Shares, together with all stock powers and other signed documents deemed by Wynn International, the Company, or the relevant designee, as the case may be, to be necessary to transfer the Class A Shares, shall be delivered to Wynn International, the Company, or the relevant designee, as the case may be, by the former Executive Director or his estate, personal representative, or successor in interest.

**(d) Purchase Price Full Payment for Class A Shares.** Payment of the purchase price for the Class A Shares pursuant to the Option Agreement or Sections 5.2(b) and 5.2(c) shall be in full payment for the Class A Shares and in lieu of any other payment to the former Executive Director or his estate, personal representative, or successor in interest, as the case may be, of any kind.

### **5.3 Purchase of Class B Shares.**

**(a) Right of First Refusal.** Except as provided in Section 5.5, no Shareholder of Class B Shares shall Transfer any direct or indirect interest in Class B Shares unless (i) such Transferring Class B Shareholder first shall have made a First Round Class B Offer to sell such Class B Shares in the manner prescribed in Section 5.3(a)(A) and such First Round Class B Offer shall not have been accepted as prescribed in Section 5.3(b), and (ii) such Transferring Class B Shareholder first shall have made a Second Round Class B Offer to sell such Class B Shares to the Shareholders of Class C Shares in the manner prescribed in Section 5.3(a)(B) and such Second Round Class B Offer shall not have been accepted as prescribed in Section 5.3(b).

**(A) First Round Class B Offer.** If a Shareholder of Class B Shares (the “Transferring Class B Shareholder”) proposes to Transfer any interest in Class B Shares to any Person, the Transferring Class B Shareholder first shall make an offer to sell such Class B Shares to all other Shareholders of Class B Shares, in proportion to their ownership of Class B Shares, upon the terms and subject to the conditions of the proposed Transfer (a “First Round Class B Offer”). The First Round Class B Offer shall set forth the name and address of the prospective Transferee and the terms and conditions of the proposed Transfer. In the event not all Shareholders of Class B Shares wish to accept the First Round Class B Offer, the Shareholders of Class B Shares who have elected to accept the First Round Class B Offer shall be entitled to acquire all Class B Shares subject to the First Round Class B Offer for which acceptances have not previously been received, in proportion to their ownership of Class B Shares.



**(B) Second Round Class B Offer.** In the event that not all Class B Shares that are the subject of a First Round Class B Offer are purchased by Shareholders of Class B Shares, the Transferring Class B Shareholder first shall make an offer to sell all Class B Shares that Shareholders of Class B Shares did not elect to purchase pursuant to the First Round Class B Offer to all Shareholders of Class C Shares, in proportion to their ownership of Class C Shares, upon the terms and subject to the conditions of the proposed Transfer (a “Second Round Class B Offer”). The Second Round Class B Offer shall set forth the name and address of the prospective Transferee and the terms and conditions of the proposed Transfer. In the event not all Shareholders of Class C Shares wish to accept the Second Round Class B Offer, the Shareholders of Class C Shares who have elected to accept the Second Round Class B Offer shall be entitled to acquire all Class B Shares subject to the Second Round Class B Offer for which acceptances have not previously been received, in proportion to their ownership of Class C Shares.

**(b) Acceptance of Class B Offer.** After receiving a First Round Class B Offer or a Second Round Class B Offer, as the case may be, a Shareholder shall have thirty (30) days within which to elect to purchase the interest in Class B Shares offered to such Shareholder. Notice of such acceptance shall be communicated to the Transferring Class B Shareholder within such thirty (30)-day period.

**(c) Consummation of Transfers.** Any Transfer by a Transferring Class B Shareholder of any interest in Class B Shares to another Shareholder pursuant to this Section 5.3 shall be consummated within thirty (30) days after the Shareholder’s acceptance of the Transferring Class B Shareholders’ offer. In addition, the purchase of Class B Shares is subject to prior MSAR Government approval in accordance with the Concession Contract.

**(d) Release from Restriction.** If (i) a First Round Class B Offer or a Second Class B Offer is not accepted pursuant to Section 5.3(b), or (ii) a purchase is not consummated within the thirty (30)-day time limit provided for in Section 5.3(c), the Transferring Class B Shareholder may make a bona fide Transfer to the prospective Transferee named in the Offer, only in strict accordance with the terms and conditions stated in such offer and only if, prior to such Transfer, such prospective Transferee shall have agreed to be bound by the terms of this Agreement as though he or it were a Shareholder and this Agreement shall have been amended to reflect the Transfer to such prospective Transferee. If the Transferring Class B Shareholder shall fail to make such Transfer within thirty (30) days after the expiration of the time provided for the acceptance of its offer by the last Shareholder to which it has made an offer, however, such Shares again shall become subject to all of the restrictions of this Section 5.3.

#### 5.4 **Purchase of Class C Shares.**

**(a) Right of First Refusal.** Except as provided in Section 5.5, no Shareholder of Class C Shares shall Transfer any direct or indirect interest in Class C Shares unless (i) such Transferring Class C Shareholder first shall have made a First Round Class C Offer to sell such Class C Shares in the manner prescribed in Section 5.4(a)(A) and such First Round Class C Offer shall not have been accepted as prescribed in Section 5.4(b), and (ii) such Transferring Class C Shareholder first shall have made a Second Round Class C Offer to sell such Class C Shares to the Shareholders of Class B Shares in the manner prescribed in Section 5.4(a)(B) and such Second Round Class C Offer shall not have been accepted as prescribed in Section 5.4(b).

**(A) First Round Class C Offer.** If a Shareholder of Class C Shares (the “Transferring Class C Shareholder”) proposes to Transfer any interest in Class C Shares to any Person, the Transferring Class C Shareholder first shall make an offer to sell such Class C Shares to all other Shareholders of Class C Shares, in proportion to their ownership of Class C Shares, upon the terms and subject to the conditions of the proposed Transfer (a “First Round Class C Offer”). The First Round Class C Offer shall set forth the name and address of the prospective Transferee and the terms and conditions of the proposed Transfer. In the event not all Shareholders of Class C Shares wish to accept the First Round Class C Offer, the Shareholders of Class C Shares who have elected to accept the First Round Class C Offer shall be entitled to acquire all Class C Shares subject to the First Round Class C Offer for which acceptances have not previously been received, in proportion to their ownership of Class C Shares.

**(B) Second Round Class C Offer.** In the event that not all Class C Shares that are the subject of a First Round Class C Offer are purchased by Shareholders of Class C Shares, the Transferring Class C Shareholder first shall make an offer to sell all Class C Shares that Shareholders of Class C Shares did not elect to purchase pursuant to the First Round Class C Offer to all Shareholders of Class B Shares, in proportion to their ownership of Class B Shares, upon the terms and subject to the conditions of the proposed Transfer (a “Second Round Class C Offer”). The Second Round Class C Offer shall set forth the name and address of the prospective Transferee and the terms and conditions of the proposed Transfer. In the event not all Shareholders of Class B Shares wish to accept the Second Round Class C Offer, the Shareholders of Class B Shares who have elected to accept the Second Round Class C Offer shall be entitled to acquire all Class C Shares subject to the Second Round Class C Offer for which acceptances have not previously been received, in proportion to their ownership of Class B Shares.

**(b) Acceptance of Class C Offer.** After receiving a First Round Class C Offer or a Second Round Class C Offer, as the case may be, a Shareholder shall have thirty (30) days within which to elect to purchase the interest in Class C Shares

offered to such Shareholder. Notice of such acceptance shall be communicated to the Transferring Class C Shareholder within such thirty (30)-day period.

**(c) Consummation of Transfers.** Any Transfer by one Shareholder of any interest in Class C Shares to another Shareholder pursuant to this Section 5.4 shall be consummated within thirty (30) days after the Shareholder's acceptance of the Transferring Class C Shareholders' offer. In addition, the purchase of Class C Shares is subject to prior MSAR Government approval in accordance with the Concession Contract

**(d) Release from Restriction.** If (i) a First Round Class C Offer or a Second Class C Offer is not accepted pursuant to Section 5.4(b), or (ii) a purchase is not consummated within the thirty (30)-day time limit provided for in Section 5.4(c), the Transferring Class C Shareholder may make a bona fide Transfer to the prospective Transferee named in the Offer, only in strict accordance with the terms and conditions stated in such offer and only if, prior to such Transfer, such prospective Transferee shall have agreed to be bound by the terms of this Agreement as though he or it were a Shareholder and this Agreement shall have been amended to reflect the Transfer to such prospective Transferee. If the Transferring Class C Shareholder shall fail to make such Transfer within thirty (30) days after the expiration of the time provided for the acceptance of its offer by the last Shareholder to which it has made an offer, however, such Shares again shall become subject to all of the restrictions of this Section 5.4.

#### **5.5 Transfer to Affiliates.**

The terms of Sections 5.3 and 5.4 shall not apply to Transferors to Affiliates of the Company's dominant Shareholder (within the meaning of the Gaming Laws); provided, however, that (i) any such Transferee shall be bound by all terms and conditions of this Agreement, and (ii) the Transferor shall remain liable for all of its obligations under this Agreement.

#### **5.6 Legends on Share Certificates; Safekeeping of Share Certificates.**

All certificates representing Shares or other direct or indirect interests in the Company or any Affiliate of the Company shall be kept under the control of the Chairman or his designee. Each certificate representing the Shares or any other direct or indirect interest in the Company or any Affiliate of the Company, now or hereafter held by the Shareholders or their respective Affiliates shall be stamped with certain legends required by the laws of the MSAR and a legend in substantially the following form:

"The transfer and encumbrance of, and rights in, the shares represented by this certificate are restricted under (a) the terms of a Shareholders' Agreement, as amended from time to time, a copy of which is on file at the office of Wynn Resorts (Macau), S.A., and (b) rules of the gaming and securities authorities of various jurisdictions."

**ARTICLE 6**  
**REPRESENTATIONS, WARRANTIES, AND COVENANTS**

**6.1 Representations and Warranties of the Shareholders.**

Each of the Shareholders hereby represents and warrants to the other Parties that:

**(a) Company Shareholders.** Each of the Shareholders that is a company (i) is a private company limited by shares duly organized, validly existing, and in good standing under the laws of its jurisdiction of formation, (ii) possesses full beneficial ownership of all legal and economic rights associated with the Class B Shares or Class C Shares, as the case may be, held in its name, (iii) does not act as a nominee or representative for any Person in respect of any interest in such Class B Shares or Class C Shares, as the case may be, and (iv) has made all required disclosures to all relevant Gaming Authorities.

**(b) Wong.** Wong (i) is an individual who is a citizen and permanent resident of the MSAR, (ii) possesses full beneficial ownership of all legal and economic rights associated with the Class A Shares, (iii) does not act as a nominee or representative for any Person in respect of any interest in the Class A Shares, and (iv) has made all required disclosures to all relevant Gaming Authorities.

**(c) Power and Authority.** He or it has all requisite power and authority, corporate or otherwise, to carry on his or its business as contemplated by this Agreement.

**(d) Authorization of Agreement.** He or it has all requisite power and authority, corporate or otherwise, to enter into this Agreement and to consummate the transactions contemplated hereby. This Agreement (i) has been duly executed by him or it and delivered to the other Parties, (ii) has been effectively authorized by all necessary action, corporate or otherwise, of him or it, and (iii) constitutes a legal, valid, and binding obligation of him or it.

**(e) No Breach of Other Instruments.** None of the execution, delivery, or performance of this Agreement or any of the transactions contemplated hereby or the fulfillment by him or it of each of the terms and conditions hereof shall violate or conflict with, result in a breach of any of the terms or conditions of, constitute a default (or any event which, with notice or lapse of time or both, would constitute a default) under, result in the termination of, accelerate the performance required by, result in the forfeiture of any right of him or it under, or create any lien, security interest, charge, or encumbrance on any of his or its properties pursuant to any material agreement, indenture, mortgage, bond, deed of trust, promissory note, lease, franchise, permit, license, registration, qualification, or other obligation or instrument to which he or it is a party or by which he or it or any of his or its properties or assets is bound or affected, pursuant to the terms, conditions, and provisions of (i) any such agreement or instrument,

(ii) any law, rule, or regulation applicable to him or it, (iii) any order, writ, injunction, decree, or judgment of any court, governmental body, or arbitrator by which he or it is bound, or (iv) its Charter Documents.

**(f) Foreign Corrupt Practices Act.** He or it has made or ordered no payment, taken no action, and has directed no Person to make any payment or take any action, that violates or could violate the United States Foreign Corrupt Practices Act of 1977, as amended (the "FCPA").

**(g) Delivery of Resolution of Consent.** Wynn International and Wynn Hong Kong have delivered to the Company the resolutions of their respective Boards of Directors confirming their assent to this Agreement and the transactions contemplated hereby, copies of which are attached hereto as Exhibits E-1 and E-2, respectively.

## **6.2 Representations and Warranties of the Company.**

The Company represents and warrants to the Shareholders that:

**(a) Organization, Good Standing, and Authority.** It is a company limited by shares duly organized, validly existing, and in good standing under the laws of the MSAR. The Company has the corporate power and authority to own and use its properties and to carry on all business contemplated by this Agreement.

**(b) Articles of Association.** A copy of the current and effective Articles of Association of the Company is set forth as Exhibit A attached hereto.

**(c) Capitalization of the Company.** Its entire registered, authorized, and outstanding capital is as described in Article 3.

**(d) Authorization of Agreement.** It has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. This Agreement (i) has been duly executed and delivered to the Shareholders by the Company, (ii) has been effectively authorized by all necessary action, corporate or otherwise, of the Company, and (iii) constitutes a legal, valid, and binding obligation of the Company.

**(e) No Breach of Other Instruments.** None of the execution, delivery, or performance of this Agreement or any of the transactions contemplated hereby or the fulfillment by the Company of each of the terms and conditions hereof shall violate or conflict with, result in a breach of any of the terms or conditions of, constitute a default (or any event which, with notice or lapse of time or both, would constitute a default) under, result in the termination of, accelerate the performance required by, result in the forfeiture of any right of the Company under, or create any lien, security interest, charge, or encumbrance on any of the properties of the Company pursuant to any material

agreement, indenture, mortgage, bond, deed of trust, promissory note, lease, franchise, permit, license, registration, qualification, or other obligation or instrument to which the Company is a party or by which the Company or any of the properties or assets of the Company is bound or affected, pursuant to the terms, conditions, and provisions of (i) any such agreement or instrument, (ii) any law, rule, or regulation applicable to the Company, (iii) any order, writ, injunction, decree, or judgment of any court, governmental body, or arbitrator by which the Company is bound, or (iv) the Charter Documents of the Company.

**(f) Foreign Corrupt Practices Act.** It has made no payment and taken no action, and has directed no Person to make any payment or take any action, that violates or could violate the FCPA.

**(g) Delivery of Resolutions of Consent.** It has delivered to the Shareholders the resolutions of the Board confirming its assent to this Agreement and the transactions contemplated hereby, a copy of which is attached hereto as Exhibit F.

### **6.3 Covenants of Wong.**

Wong hereby covenants and agrees that, during the term of this Agreement, he shall:

- (a) take no action and shall direct no Person to take any action that violates or could violate the FCPA, any Gaming Laws, or any Securities Laws;
- (b) retain full beneficial ownership of all legal and economic rights associated with his or its interest in the Company, as set forth in Article 4;
- (c) make all disclosures required of him to all relevant Gaming Authorities and Securities Authorities and cooperate with Wynn International and its Affiliates to make any disclosures required of them to any relevant Gaming Authority or Securities Authority;
- (d) faithfully observe the restrictions on Transfers of interests in or portions of Class A Shares set forth in Article 5; and
- (e) perform all obligations required of him under this Agreement.

Wong shall provide a sworn and notarized declaration of the matters contained in Section 6.1 and this Section 6.3 in the form attached hereto as Exhibit D.

**ARTICLE 7**  
**TERM AND TERMINATION**

**7.1 Term.**

This Agreement will continue in effect for so long as Wynn International, Wynn Hong Kong, or any of their respective Affiliates, or Wong owns any of the Shares, unless it is earlier terminated pursuant to the terms of this Agreement; provided, however, that notwithstanding the termination of the Company under the laws of the MSAR, this Agreement shall continue in effect as a contract among the Shareholders with respect to such provisions as impose a continuing obligation upon any of them.

**7.2 Events of Default.**

The occurrence and continuation of any of the following events or circumstances by or with respect to any holder of Class A Shares shall constitute an Event of Default by such Shareholder:

- (a) The liquidation, bankruptcy, dissolution, or appointment of an administrator for such Shareholder;
- (b) Any failure by such Shareholder to cure its material breach of any material provision of this Agreement within thirty (30) days following Notice from the Company of such breach;
- (c) The commission by such Shareholder of any act of fraud or embezzlement or any other intentional misconduct that may adversely affect the business or affairs of the Company, Wynn International, or any of their respective Affiliates;
- (d) The existence or occurrence of any Gaming Problem or Securities Problem, or any violation of the FCPA, by or with respect to the Executive Director; or
- (e) The Transfer or attempted Transfer by such Shareholder of any Class A Shares, except in accordance with Article 5 and as authorized by the MSAR Government.

**7.3 Remedies Upon Events of Default.**

If an Event of Default described in Section 7.2 has occurred and is continuing, the Company or any Person designated by the Company shall have the right (but not the obligation) to redeem or purchase all Class A Shares owned by the Shareholder to which the Event of Default relates (the "Defaulting Shareholder") at an aggregate price equal to One Macau Pataca (MOP1) (the "Default Price"). The exercise by the Company of a right to redeem or purchase Class A Shares pursuant to this Section 7.3 imposes no obligation on the Company to redeem or purchase any Shares and will not alter any other rights to which the Company or the

other Shareholders may be entitled at law or in equity, including, without limitation, any personal liability of any Party.

**7.4 Manner of Exercise.**

The Company may exercise the option under Section 7.3 by Notice to the Defaulting Shareholder stating that all or part of the Shares directly or indirectly owned by such Defaulting Shareholder is being purchased and specifying the Event of Default giving rise to the option.

**7.5 Closing.**

The closing of any redemption, purchase, or sale made pursuant to Sections 7.3 and 7.4 shall be held at a date, time, and place specified by the Company.

**7.6 Enforcement of Rights.**

Any Transferring Shareholder or any other Shareholder against whom the Company is contemplating exercising some right or option or pursuing some remedy under this Agreement, hereby covenants and agrees that he or it, as a Shareholder and, subject to any fiduciary duties as a Director, officer, or manager of the Company, shall vote the same way as the majority of the other Shareholders or directors, shareholders, officers, or managers (as the case may be) in all matters relating to the exercise of such right or option or the pursuit of such remedy.

**ARTICLE 8  
INDEMNIFICATION**

**8.1 Indemnification by the Shareholders.**

Each Shareholder hereby indemnifies the Company and holds the Company harmless in respect of any and all claims, losses, damages, liabilities, and expenses (including, without limitation, settlement costs and any legal, accounting, and other expenses of investigating or defending any actions, claims, or legal proceedings or threatened actions, claims, or legal proceedings, and any taxes or other governmental charges payable in respect of any indemnification payments hereunder) incurred by the Company, together with interest on cash disbursements in connection therewith at the Reference Rate from the date such cash disbursements were made by the Company until paid by the Shareholder, in connection with the misrepresentation or breach of any representation, warranty, covenant, agreement, or obligation of the Shareholder contained in this Agreement or any other instrument contemplated by this Agreement.



## **8.2 Indemnification by the Company.**

The Company hereby indemnifies the Shareholders and holds the Shareholders and their respective Affiliates harmless in respect of any and all claims, losses, damages, liabilities, and expenses (including, without limitation, settlement costs and any legal, accounting, or other expenses of investigating or defending any actions, claims, or legal proceedings or threatened actions, claims, or legal proceedings and any taxes or other governmental charges payable in respect of any indemnification payments hereunder) incurred by the Shareholders or their respective Affiliates, together with interest on cash disbursements in connection therewith at the Reference Rate from the date that such cash disbursements were made by the Shareholders or their respective Affiliates until paid by the Company, in connection with the misrepresentation or breach of any representation, warranty, covenant, agreement, or obligation of the Company contained in this Agreement or any other instrument contemplated by this Agreement.

## **8.3 Claims for Indemnification.**

Whenever any claim shall arise for indemnification hereunder, the Indemnified Party shall promptly give Notice to the Indemnifying Party of the claim and, when known, the facts constituting the basis for such claim. In the event of any claim for indemnification hereunder resulting from or in connection with any action, claim, or legal proceedings by a Person who is not a Party, the Notice to the Indemnifying Party shall specify, if known, the amount or an estimate of the amount of the liability arising therefrom. The Indemnified Party shall not settle or compromise any action, claim, or legal proceeding by a third Person for which it is entitled to indemnification hereunder without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed) unless such action, claim, or legal proceeding shall have been instituted against it and the Indemnifying Party shall not have taken control of such action, claim, or legal proceeding after Notice thereof.

## **8.4 Defense by Indemnifying Party.**

In connection with any claim giving rise to indemnification hereunder resulting from or arising out of any action, claim, or legal proceeding by a Person who is not a Party, the Indemnifying Party at its sole cost and expense may, upon Notice to the Indemnified Party, assume the defense of any such action, claim, or legal proceeding if it acknowledges to the Indemnified Party in writing its obligation to indemnify the Indemnified Party pursuant to this Agreement in respect of such action, claim, or legal proceeding. The Indemnified Party shall be entitled to participate in (but not control) the defense of any such action, claim, or legal proceeding with its own counsel and at its own expense. If the Indemnifying Party assumes the defense of any such action, claim, or legal proceeding, the Indemnifying Party shall select counsel reasonably acceptable to the Indemnified Party to conduct the defense of such action, claim, or legal proceeding, and the Indemnifying Party, at its sole cost and expense, shall take all steps necessary in the defense or settlement thereof. The Indemnifying Party shall not consent to a settlement of, or the entry of any judgment arising from, any such action, claim, or legal proceeding without the prior written consent (which consent shall not be unreasonably withheld

or delayed) of the Indemnified Party. If the Indemnifying Party does not assume the defense of any such action, claim, or legal proceeding (a) the Indemnified Party may defend against such action, claim, or legal proceeding, in such manner as it may deem appropriate, including, without limitation, settling such action, claim, or legal proceeding, after giving Notice of the same to the Indemnifying Party, on such terms as the Indemnified Party may deem appropriate, and (b) the Indemnifying Party shall be entitled to participate in (but not control) the defense of such action, claim, or legal proceeding with its own counsel and at its own expense. If the Indemnifying Party thereafter seeks to question the manner in which the Indemnified Party defended such third Person's action, claim, or legal proceeding or the amount or nature of any such settlement, the Indemnifying Party shall have the burden to prove by a preponderance of the evidence that the Indemnified Party did not defend or settle such action, claim, or legal Proceeding in a reasonably prudent manner.

**8.5 Manner of Indemnification.**

All indemnification provided hereunder shall be effected, at the sole option of the Indemnified Party (a) out of a holdback or set-off against any payment of any amount of any type payable to the Indemnifying Party or any of its Affiliates by the Indemnified Party or any of its Affiliates, (b) by (i) the payment of cash in United States Dollars, (ii) delivery of a certified or official bank check in United States Dollars, or (iii) a wire or telegraphic transfer of funds in United States Dollars, in each case by the Indemnifying Party.

**ARTICLE 9  
CONFIDENTIALITY**

Each of the Company, Wong, and Wynn Hong Kong acknowledges that Wynn International and its Affiliates will make available to the Company, Wong, and Wynn Hong Kong certain technical assistance, documentation, information, and other matters in connection with the design, construction, development, maintenance, and operation of the Casino Complex and any other casinos to be owned or operated by the Company and in connection therewith may provide the Company, Wong, and Wynn Hong Kong with certain documentation and information regarding Wynn Resorts, Wynn International, Wynn Holdings, Wynn Hong Kong, the Company, their respective Affiliates, and their respective businesses, (collectively, the "Information"). All of the Information shall remain the property of Wynn International and its Affiliates and the disclosure of the Information shall not be deemed to confer upon the Company, Wong, Wynn Hong Kong, or any of their respective Affiliates, officers, directors, shareholders, employees, or agents any rights whatsoever in respect of any part of the Information. In consideration of receiving the Information, each of the Company, Wong, and Wynn Hong Kong hereby undertakes with Wynn International, on behalf of itself and each of its respective Affiliates, officers, directors, shareholders, employees, and agents, whether or not any such Information is strictly confidential or proprietary:

(a) not to make any use of the Information for any purpose other than in accordance with this Agreement, and in particular, but without limitation, not to use any of the Information for any commercial purpose;

(b) to hold all of the Information in the strictest confidence and not to disclose or divulge any part of the Information to any third Person without the prior written consent of Wynn International, which may be withheld by Wynn International for any reason whatsoever, or, in the sole discretion of Wynn International, given on such terms and conditions as Wynn International considers appropriate;

(c) not to make or solicit any announcement or disclosure regarding Wynn International or the Company's business, unless Wynn International gives its express prior written consent;

(d) to restrict access to the Information to those of its responsible employees and professional advisers who absolutely require such access and to impose upon all such employees and professional advisers obligations of confidentiality equivalent to those contained in this Agreement;

(e) not to copy, reproduce, or part with possession of any of the Information except as is strictly necessary and as is consistent with its obligations contained in this Agreement;

(f) immediately on request by Wynn International at any time, to return to Wynn International or as Wynn International may direct all of the Information and all documents and other material containing or embodying the Information (or any part thereof) together with all copies thereof, and in any event to promptly return all of such Information to Wynn International upon the termination of this Agreement; and

(g) except in accordance with this Agreement, not to, in any way, form, or manner whatsoever, make any use of the Information or any of the ideas, concepts, materials, or documents comprising the Information, whether in connection with the Casino Complex, any other casinos to be owned or operated by the Company, or otherwise.



Skadden, Arps, Slate, Meagher & Flom LLP  
30<sup>th</sup> Floor, Tower 2,  
Lippo Centre  
89 Queensway  
Central  
Hong Kong  
Attn: Alan G. Schiffman  
Telefax: (852) 2820-0727

The effective date of any Notice will be deemed to be (i) the date of receipt, if delivered personally, (ii) the date seven (7) Business Days after posting, if mailed or sent by courier, or (iii) twelve (12) hours after transmission by telefax with confirmed answerback. The address of any Person set forth above may be changed at any time and from time to time by such Person by Notice given pursuant to this Section 10.1.

**10.2 Assignment.**

Except as expressly provided in this Agreement, none of the Parties has any right to Transfer any of the rights, duties, or obligations granted by or imposed in this Agreement. Any purported Transfer by any Party of any of the rights, duties, or obligations granted by or imposed in this Agreement shall be void and without effect.

**10.3 Successors and Permitted Transferees.**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted Transferees; provided, however, that this provision shall not be deemed to authorize the Transfer of any Shares or any interest therein or portion thereof, which may be accomplished only as expressly permitted pursuant to this Agreement.

**10.4 Governing Law.**

This Agreement shall be governed by, and construed, interpreted, and enforced in accordance with, the internal laws and not the laws pertaining to choice or conflicts of laws, of the MSAR. The Parties hereby submit to the exclusive jurisdiction of the courts of the MSAR in all actions relating to the construction, interpretation, or enforcement of this Agreement and all rights and obligations relating hereto.

**10.5 Modifications, Amendments, and Waivers.**

No modification, amendment, or waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Party to be charged. No failure by any Party to (a) object to or act upon any breach by any other Party of any provision of this Agreement, (b) insist upon strict performance of any of the terms or provisions of this Agreement, or (c) exercise any option, right, or remedy provided for in this Agreement shall operate or be construed (except as expressly provided in this Agreement) as a waiver or as a relinquishment for

the future of the same or any other term, provision, option, right, or remedy provided for in this Agreement. The provisions of this Section 10.5 may not be modified, amended, or waived except in accordance with this Section 10.5.

**10.6 Not for Benefit of Creditors.**

The provisions of this Agreement are intended only for the regulation of relations between the Parties. This Agreement is not intended for the benefit of non-Party creditors and no rights are granted to non-Party creditors under this Agreement.

**10.7 Force Majeure.**

Except as provided in this Agreement, no Party shall be liable to the other Party for any breach of, or failure of performance under, this Agreement caused by or resulting from any act of God, act of state, natural or man-made disaster, or any other cause beyond its reasonable control ("Force Majeure"), to the extent and throughout the duration of such condition of Force Majeure.

**10.8 Time of Essence.**

The time and exactitude of the performance of each of the terms, obligations, covenants, and conditions of this Agreement are hereby declared and acknowledged by the Parties to be of the essence.

**10.9 Severability.**

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid, legal, and effective and to achieve the intent of the Parties to the fullest extent possible and shall be enforced to the fullest extent permitted by law. Any term or provision of this Agreement, or the application thereof to any Party or circumstances, that is determined to any extent or for any reason to be invalid, illegal, or unenforceable in any jurisdiction, shall as to that jurisdiction, be ineffective only to the extent of such invalidity, illegality, or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provision of this Agreement invalid, illegal, or unenforceable in any other jurisdiction or in any other circumstances.

**10.10 Survival.**

The provisions of Articles 5, 6, 7, 8, 9, and 10 and all obligations to make or complete any payments due at the time of or as a result of any termination of this Agreement shall remain in full force and effect notwithstanding the termination of this Agreement, the dissolution of any of the Parties, the cessation of the carrying on of the business by any of the Parties, and any investigation at any time made by or on behalf of any Party, and shall expire only upon the expiration of the applicable statute of limitations, if any.

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**10.11 Specific Performance.**

The Parties agree that it is impossible to measure in money the damages that would accrue to a Party by reason of a failure of the other to perform any of its obligations under this Agreement. Therefore, if any Party shall institute any action, claim, or legal proceeding to enforce the provisions of this Agreement, any Party against whom such action, claim, or legal proceeding is brought hereby waives the claim or defense that such Party has an adequate remedy at law and this Agreement may be enforced by injunction or other equitable relief ordered by any court of competent jurisdiction.

**10.12 Entire Agreement.**

This Agreement, including the Exhibits attached hereto and incorporated herein, constitutes the entire agreement among the Parties relating to the matters contained in and covered by this Agreement and, except as expressly provided herein, supersedes all prior oral and written and all contemporaneous oral agreements, arrangements, negotiations, commitments, statements, writings, understandings, and undertakings among the Parties with respect thereto.

**10.13 Counterparts.**

This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original, but all of which together constitute one (1) and the same instrument.





**WONG:**

in the presence of:

By: \_\_\_\_\_ /s/ LAM MAN KUEN  
Name: **Lam Man Kuen**

\_\_\_\_\_ /s/ WONG CHI SENG  
**WONG CHI SENG**, an individual

**Certification of Chief Executive Officer  
of Periodic Report Pursuant to Rule 13a-14(a) and Rule 15d-14(a)**

I, Stephen A. Wynn, certify that:

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

Date: November 4, 2004

/s/ STEPHEN A. WYNN

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

**Certification of Chief Financial Officer  
of Periodic Report Pursuant to Rule 13a-14(a) and Rule 15d-14(a)**

I, John Strzemp, certify that:

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

Date: November 4, 2004

/s/ JOHN STRZEMP

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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**

In connection with the Quarterly Report on Form 10-Q of Wynn Resorts, Limited (the "Company") for the quarterly period ended September 30, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Stephen A. Wynn, as Chief Executive Officer of the Company and John Strzemp, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

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

/s/ STEPHEN A. WYNN

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Name: Stephen A. Wynn  
Title: Chairman and Chief Executive Officer  
(Principal Executive Officer)  
Date: November 4, 2004

/s/ JOHN STRZEMP

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Name: John Strzemp  
Title: Executive Vice President, Chief  
Financial Officer and Treasurer  
(Principal Financial and Accounting Officer)  
Date: November 4, 2004

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.