

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K**

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

For the fiscal year ended December 31, 2005

OR

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

For the transition period to

Commission File No. 000-50028

**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 offices) (Zip Code)

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

**Securities registered pursuant to Section 12(b) of the Act:**

**None**

**Securities registered pursuant to Section 12(g) of the Act:**

**Common Stock, \$0.01 Par Value**  
(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

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

The aggregate market value of the registrant's voting and non-voting common stock held by non-affiliates based on the closing price as reported on the Nasdaq Stock Market on June 30, 2005 was \$2,246,308,311.

As of March 10, 2006, 99,754,014 shares of the registrant's Common Stock, \$.01 par value, were outstanding.

Portions of the registrant's Proxy Statement for its 2006 Annual Meeting of Stockholders to be filed not later than 120 days after the end of the fiscal year covered by this report are incorporated by reference into Part III of this Form 10-K.

**ITEM 1. BUSINESS**

**Overview**

Wynn Resorts, Limited, led by Chairman and Chief Executive Officer, Stephen A. Wynn, is a leading developer, owner and operator of destination casino resorts. We own and operate “Wynn Las Vegas,” a destination casino resort on the “Strip” in Las Vegas, Nevada, and are constructing and will own and operate “Wynn Macau,” a casino resort development located in the Macau Special Administrative Region of the People’s Republic of China (“Macau”) which is scheduled to open to the public in the third quarter of 2006. We also are developing an expansion of Wynn Las Vegas named “Encore at Wynn Las Vegas”. In addition, we have submitted an application to the Macau government seeking a land concession for 54 acres of additional land on the Cotai Strip in Macau for future development, and we continue to explore opportunities to develop additional gaming or related businesses in other domestic and international markets.

Unless the context otherwise requires, all references herein to “Wynn Resorts,” the “Company,” “we,” “us” or “our,” or similar terms, refer to Wynn Resorts, Limited and its consolidated subsidiaries or, with respect to periods prior to September 24, 2002, to Valvino Lamore, LLC (“Valvino”) and its consolidated subsidiaries, as the predecessor company of Wynn Resorts.

Wynn Resorts has previously filed registration statements and other documents with the Securities and Exchange Commission (“SEC”). Any document Wynn Resorts files may be inspected, without charge, at the SEC’s public reference room at 450 Fifth Street, N.W. Washington, D.C. 20549 or at the SEC’s internet site address at <http://www.sec.gov>. Information related to the operation of the SEC’s public reference room may be obtained by calling the SEC at 1-800-SEC-0330. In addition, through its own internet address at [www.wynnresorts.com](http://www.wynnresorts.com), Wynn Resorts provides a hyperlink to a third-party SEC filing website which posts these filings as soon as reasonably practicable, where they can be reviewed without charge.

**Wynn Las Vegas**

Wynn Las Vegas opened to the public on April 28, 2005. The resort’s accommodations, amenities and exceptional service have allowed us to attract and retain high quality customers. Wynn Las Vegas offers 2,674 rooms and suites in its 45-story tower, plus 36 fairway villas and 6 private-entry villas for our premium guests. The approximately 111,000 square foot casino features 137 table games, a baccarat salon, private VIP gaming rooms, a poker room, 1,960 slot machines, a race and sports book and a keno lounge. The resort’s 22 food and beverage outlets feature six fine dining restaurants, including restaurants helmed by award winning chefs. Wynn Las Vegas also offers a nightclub, an ultra-lounge, a spa and salon, a Ferrari and Maserati automobile dealership, wedding chapels, an 18-hole golf course, approximately 223,000 square feet of meeting space and an approximately 76,000 square foot retail promenade featuring boutiques from Chanel, Christian Dior, Graff, Manolo Blahnik, Jean-Paul Gaultier and Louis Vuitton. Wynn Las Vegas also has two showrooms. The Wynn Theater features “Le Rêve,” a water-based production by Franco Dragone, who created “O,” “Mystère” and Celine Dion’s “A New Day...”. The Broadway Theater currently features the Tony Award winning Broadway musical, “Avenue Q.” We believe that the unique experience of Wynn Las Vegas drives the significant visitation experienced since opening. Since opening, we experienced an overall 92.1% average occupancy and \$274 average daily room rate, which compares favorably to the overall 89.2% average occupancy and \$103 average daily room rate of the Las Vegas Strip.

Since its opening, we have further enhanced and refined Wynn Las Vegas in response to market demands and customer preferences. In addition, we have agreed with the producers of “Avenue Q” that the May 28, 2006 performance of the show will be the last at Wynn Las Vegas. We intend to remodel the Broadway Theater and adjacent areas to accommodate “Monty Python’s Spamalot” winner of the 2005 Tony Award for best musical.

## **Wynn Macau**

We are constructing and will own and operate Wynn Macau, our first destination casino resort in Macau, under a 20-year casino concession agreement granted by the Macau government in June 2002. We are one of only three concessionaires and two sub-concessionaires currently permitted by the government to operate a casino gaming business in Macau. The government of Macau has expressed its desire to transform Macau into the tourist destination of choice in Asia. The Chinese government has also gradually relaxed its travel and currency restrictions, allowing mainland Chinese from certain urban centers and economically developed areas to visit Macau without joining a tour group and increasing the amount of renminbi that Chinese citizens are permitted to bring into Macau. With approximately 100.0 million people within a three hour drive and nearly 1.0 billion people within a three-hour flight from Macau, Wynn Macau is located in what we believe will be one of the largest and fastest-growing gaming markets in the world.

Wynn Macau is being constructed, and will open, in phases. The first phase of the project will utilize approximately 11 of a total site area of 16 acres of land and will include 600 hotel rooms and suites, approximately 100,000 square feet of casino gaming space, seven restaurants, approximately 26,000 square feet of retail space, a spa, a salon, entertainment lounges and meeting facilities. The second phase will include an additional 136,000 square feet of casino space, two restaurants, additional retail space, a theater, and a dramatic front feature attraction. The second phase will be built on the remaining five acres of the Wynn Macau site and will be integrated into the first phase. The second phase is expected to be completed and open to the public by the third quarter of 2007.

On February 23, 2006, we announced our intention to increase the capacity of the second phase of Wynn Macau by an additional 150 table games. The second phase will now include 300 table games, increasing the total number of table games in the facility from 350 tables to 500 tables. The second phase casino expansion and certain improvements to our suite product are expected to cost approximately \$70 million, bringing the total budget of Wynn Macau to approximately \$1.2 billion. Subject to receipt of all necessary approvals from our lenders, these additional project costs are anticipated to be funded through the existing financing structure. The second phase (including the additional 150 tables) remains on target to open by the third quarter of 2007.

On March 4, 2006, the Company entered into an agreement with Publishing & Broadcasting, Ltd. (“PBL”) pursuant to which the Company agreed to sell to PBL a subconcession to operate casino games in Macau for a purchase price of \$900.0 million. The transaction is subject to the approval of the Macau government.

## **Other Development Opportunities**

We have submitted an application to the government of Macau for an additional 54 acres of land in the area commonly known as the Cotai Strip and continue to explore opportunities throughout the world. We continually seek out new opportunities for additional gaming or related businesses, in Las Vegas, other markets in the United States, and worldwide.

## **Construction and Development**

### *Wynn Las Vegas*

Wynn Las Vegas, with the exception of the Broadway Theater, opened on April 28, 2005. The Broadway Theater, presenting “Avenue Q,” opened in late August 2005. The entire Wynn Las Vegas project was constructed at a total cost of approximately \$2.74 billion. This includes the purchase of the land (including the land for Encore) and buildings formerly comprising the Desert Inn, additional land for employee parking, costs of design and construction, financing fees, interest and other pre-opening costs.

Beginning in the third quarter of 2005, in the ordinary course of our business and in order to increase revenues, we made and continue to make certain enhancements and refinements to Wynn Las Vegas. We have

remodeled six of our Fairway Villas, *Corsa Cucina*, the property's contemporary Italian restaurant, *Tryst*, the nightclub formerly known as *La Bête*, and portions of the high-limit gaming areas. We also intend to remodel the Broadway Theater and adjacent areas to accommodate the Tony Award winning show, "Monty Python's Spamalot." As a result, we have incurred and will continue to incur capital expenditures relating to these enhancements and refinements.

#### *Encore at Wynn Las Vegas*

As a result of the strong demand for the amenities and services offered by Wynn Las Vegas, the continued strength of the Las Vegas market, and our desire to maximize the potential of our substantial real estate assets, we intend to develop Encore at Wynn Las Vegas ("Encore") on approximately 20 acres on the Strip, immediately adjacent to Wynn Las Vegas. We have refined the design of Encore to include a 2,054-room hotel tower fully integrated with Wynn Las Vegas, containing 144 suites and 1,910 guest rooms, as well as an approximately 44,000 square foot casino, additional convention and meeting space, as well as restaurants, nightclubs, swimming pools, a spa and salon and retail outlets. We expect to commence construction of Encore in the second quarter of 2006 and open Encore to the public by the end of 2008. The project budget for Encore is approximately \$1.74 billion, including approximately \$70.0 million to be incurred for construction of a new employee parking garage on our Koval property, a related pedestrian bridge and costs to be incurred in connection with preparing the Broadway Theater to host "Monty Python's Spamalot".

#### *Wynn Macau*

In June 2004, we began construction of Wynn Macau. Construction of Wynn Macau is progressing on time and within budget, with the first phase expected to open to the public in the third quarter of 2006. Superstructure works are complete for the podium and tower. Certain areas in the first phase of the project, namely retail and the information technology data center, have been handed over to operations. Construction on the second phase is rapidly moving from the foundations to the structure.

As of December 31, 2005, the Company has incurred approximately \$427.2 million of a total project budget of approximately \$1.2 billion (including the expansion of the second phase), with approximately \$748.4 million to be spent to complete Wynn Macau.

### **Financing**

#### *Wynn Las Vegas and Encore*

On December 14, 2004, we completed a series of transactions that lowered our overall cost of borrowing and raised additional funds to develop Encore. This refinancing consisted of \$1.3 billion of 6 5/8% First Mortgage Notes due 2014 (the "First Mortgage Notes"), a \$400 million term loan facility (the "Term Loan") and a \$600 million revolving credit facility (the "Revolver"). Although a final accounting for Wynn Las Vegas is not expected until the second quarter of 2006, Wynn Las Vegas' estimated \$2.74 billion total project cost has been, and will be, funded from a combination of contributed capital from the original members of Valvino, proceeds from sales of our common stock, proceeds from the issuance of the 12% Second Mortgage Notes due 2010 (the "Second Mortgage Notes") (which were discharged in connection with the December 2004 refinancing), proceeds from the issuance of First Mortgage Notes, and a portion of the Term Loan.

The Revolver is available for Wynn Las Vegas' general corporate purposes and for Encore, and any amounts repaid may be re-borrowed. In the second quarter of 2005, we borrowed \$80.0 million under the Revolver and loaned it to Wynn Macau, S.A. as subordinated debt (the "Macau Subordinated Debt"). Wynn Las Vegas, LLC repaid this amount in the third quarter of 2005. As of December 31, 2005, \$10.0 million was outstanding under the Revolver.

Until the budget, plans and specifications for Encore (the "Encore Budget, Plans and Specs") are approved, our loan documents permit us to spend up to \$100.0 million of financing proceeds on Encore. Through

December 31, 2005, we had spent approximately \$40.7 million. We expect that the remaining proceeds from the First Mortgage Notes, together with availability under the Wynn Las Vegas, LLC credit facilities and cash flow from operations, will be sufficient to pay for expenditures of up to \$1.52 billion on the Encore project without incurring additional debt or receiving additional capital contributions from Wynn Resorts. Project costs exceeding \$1.52 billion will be financed from the issuance of up to \$100.0 million of additional notes and/or contributions from Wynn Resorts.

On March 15, 2006, we amended our Wynn Las Vegas credit facilities to (a) allow the Company to issue up to \$100.0 million of additional First Mortgage Notes; (b) simplify draw procedures under the Disbursement Agreement; (c) consolidate certain accounts under the Disbursement Agreement; (d) amend and clarify certain of the conditions for the Phase II Approval Date; (e) extend the outside opening date for Encore and the outside completion date for Encore to June 30, 2009 and September 30, 2009, respectively; and (f) permit expenditures of up to \$150.0 million on Encore prior to the execution of a guaranteed maximum price contract.

The final costs of Wynn Las Vegas will be paid from previously funded amounts under the First Mortgage Notes and the Term Loan and the ongoing costs of Encore will be paid with funds from the following sources and in the following order of priority:

- First, by using agreed excess cash flow from the operations of Wynn Las Vegas and any equity contributions from Wynn Resorts;
- Second, by using any proceeds from the First Mortgage Notes (including any additional First Mortgage Notes that may be issued in the future), and the proceeds of borrowings under the Credit Facilities, until exhaustion of the First Mortgage Notes proceeds, with amounts funded 66.67% from notes proceeds and 33.33% from the Credit Facilities;
- Third, by using proceeds of additional borrowings under the Credit Facilities; and
- Fourth, by using the funds from the \$50.0 million completion guarantee deposit account.

#### *Wynn Macau*

Financing for Wynn Macau's design, development, construction and pre-opening expenses is provided by a combination of cash on hand in the form of base equity loans totaling \$230 million, the Macau Subordinated Debt, and a senior bank facility. On September 14, 2005, we amended the Wynn Macau, S.A. senior bank facility to expand its availability from \$397 million to \$764 million, including \$729 million of senior term loan facilities, a HK\$117 million revolving credit facility (approximately US\$15 million), and an additional term loan facility of HK\$156 million (approximately US\$20 million). As of December 31, 2005, we have borrowed approximately \$78.9 million under the Wynn Macau, S.A. senior bank facility.

In addition to the above financing sources for Wynn Macau, we have \$30.0 million of long-term restricted cash reserved as contingent equity and a \$72.0 million contingent debt facility from our lenders. Upon receipt of approval by our secured lenders, this contingent debt facility will be used to fund construction of the casino expansion and suite upgrade in the second phase of Wynn Macau.

#### **Our Strategy**

*Capitalize on the "Wynn" Brand.* Steve Wynn is the preeminent designer, developer and operator of destination casino resorts and, as such, has developed a "brand name" status. Mr. Wynn's involvement with our casino resorts provides a distinct advantage over other gaming enterprises. We integrate luxurious surroundings, upscale design, distinctive entertainment and superior amenities, including fine dining and premium retail offerings, to create resorts that appeal to a variety of customers, especially high-end customers. We believe that Wynn Las Vegas sets a new standard of luxury and elegance for destination casino resorts in Las Vegas. We also believe that Mr. Wynn's reputation and the new standard of luxury and elegance brought to the industry by Wynn Las Vegas translate to a high level of anticipation for Wynn Macau and Encore at Wynn Las Vegas. We intend to extend our "Wynn" brand to other domestic and international opportunities as they arise.

*Attract and deliver high-quality service and amenities to high-end gaming customers.* Wynn Las Vegas was designed and built to attract premium gaming customers. Wynn Las Vegas offers luxurious rooms and suites, high-limit table offerings, VIP gaming salons, exquisite fine dining (including our AAA rated, 5-Diamond French restaurant, *Alex*), premium retail shopping, distinctive entertainment and an 18-hole golf course. Our hotel and gaming offerings are designed to meet the expectations of high-budget, premium customers, including our Asian customers. We expect our Asian customer segment to become even more significant upon opening Wynn Macau and intend to capitalize on cross-marketing opportunities between Wynn Las Vegas and Wynn Macau.

*Marketing.* We have positioned Wynn Las Vegas as a full-service luxury resort and casino in the leisure, convention and tour and travel markets. We market Wynn Las Vegas directly to gaming customers using database marketing techniques, as well as using traditional incentives, such as reduced room rates and complimentary meals and suites. We offer high-roller gaming customers premium suites and special hotel services, and have a guest loyalty program that integrates all gaming, hotel, food, beverage and retail revenue generated by a particular guest and compares it against incurred expenses to determine the profitability of that guest. Our rewards system offers discounted and complimentary meals, lodging and entertainment for our guests. We also use our integrated database to target specific customers for promotions that might induce them to visit Wynn Las Vegas.

Mr. Wynn and our marketing team have developed a substantial network of long-standing international and domestic high-roller and premium customers. Mr. Wynn's reputation has attracted experienced, high-level international and domestic casino marketing executives to work with the Company. We have marketing executives located in local offices in Tokyo, Hong Kong, Macau, Singapore, Taiwan, Vancouver and southern California, as well as independent marketing representatives in major U.S. and foreign cities.

We also create general market awareness for our properties through conventions and media, including television, radio, newspapers, magazines, the Internet, direct mail and billboards.

*Capitalize on our Opportunity in Macau.* There are three gaming concessionaires and two sub-concessionaires currently permitted by the government of Macau to operate casinos. The government of Macau is encouraging significant investment in new and expanded casino entertainment facilities in Macau to enhance its reputation as a casino resort destination and to attract additional tourists and lengthen stays. We expect tourism in Macau to continue to grow as the Chinese government liberalizes historical restrictions on travel and currency movements. Gaming customers from Hong Kong, southeast China, Taiwan and other locations in Asia can reach Macau in a relatively short period of time, and visitors from more distant locations in Asia can take advantage of short travel times by air to Macau or to Hong Kong. The relatively easy access from major population centers promotes Macau as a popular gaming destination in Asia. We will utilize our brand and significant experience in Las Vegas by providing a Steve Wynn-designed property on an attractive site located on approximately 16 acres in Macau's inner harbor area across from the Hotel Lisboa, Macau's largest and best-known casino. Furthermore, we have submitted an application seeking a land concession for 54 acres of land for further development in the Cotai Strip area of Macau. Our concession provides us with the ability to develop an unlimited number of casino resorts or to sell subconcessions, with Macau government approval, which adds significant value to our Macau opportunity.

*Future Las Vegas Expansion.* Wynn Las Vegas is located on approximately 55 acres on the famed Las Vegas Strip. Our property is located between the approximately 3.0 million square feet of convention space operated by the Las Vegas Convention and Visitors Authority and the expanding Venetian Casino Resort and its adjoining approximately 1.15 million square foot Sands Expo Center; diagonally across from the Mirage and the Treasure Island Hotel and Casino; directly across from the Fashion Show Mall; and across from new developments expected on the current sites of the New Frontier and the Stardust casino resorts. Encore is being developed on 20 acres of land adjacent to Wynn Las Vegas. We also have an approximately 142-acre parcel of land behind Wynn Las Vegas, which is currently used as a golf course. In addition, we have approximately 18 acres of land across Sands Avenue currently used for employee parking.

We are developing a long-range master plan for the 142-acre golf course that will include a large mixed-use hotel, casino entertainment resort complex. The complex may include multiple waterfront hotels built around a lake offering water sports and other entertainment. The complex also may include multiple restaurants, retail offerings and entertainment venues. We have not yet developed specific plans for such a complex, and there can be no assurance that such plans will be developed. We cannot predict the cost of such a development or whether we will be able to obtain the necessary financing for the development on suitable terms, if at all. It is not expected that any construction on the golf course land would begin before 2009.

*Experienced Management Team.* Mr. Wynn and his team bring significant experience in designing, developing and operating casino resorts. Mr. Wynn and many members of current senior management team were responsible for the design, development and operation of The Mirage, Treasure Island at The Mirage, and Bellagio. The senior executive team has an average of approximately 25 years of experience in the hotel and gaming industries. We also have a 77-person design, development and construction subsidiary, the senior management of which has significant experience in all major construction disciplines. Other senior executives joined Mr. Wynn from renowned hospitality companies including Caesars Entertainment and Starwood.

*Opportunities for Future Growth.* We are continually looking for new opportunities for gaming and related businesses in Las Vegas as well as other domestic and international markets through acquisition, investment or development.

## **Market and Competition**

### *Las Vegas*

Las Vegas is the largest gaming market in the United States and is also one of the fastest growing leisure, lodging and entertainment markets in the United States. In 2005, the Las Vegas gaming and hotel markets continued their upward trends with, among other things, a 3.2% increase in visitation, a 13.1% increase in Las Vegas Strip gaming revenue, a 1.3% increase in hotel room inventory and a 14.9% increase in average daily room rates, as compared to 2004.

Many properties on the Las Vegas Strip have opened over the past ten years, including the Bellagio, Mandalay Bay Resort & Casino, New York-New York Hotel and Casino, Paris Las Vegas, Aladdin Resort & Casino and The Venetian. In addition, a number of existing properties on the Las Vegas Strip embarked on expansions during this period, including MGM Grand Hotel and Casino, Luxor Hotel and Casino, Mandalay Bay Resort & Casino and Caesars Palace. As a result, the casino/hotel industry in Las Vegas is highly competitive. Wynn Las Vegas is located on the Las Vegas Strip and competes with these and other high-quality resorts and hotel casinos on the Las Vegas Strip, those in downtown Las Vegas, as well as a large number of hotels and motels in and near Las Vegas.

Many competing properties, such as the Bellagio, Caesars Palace, Luxor Hotel and Casino, Mandalay Bay Resort & Casino, The Mirage, New York-New York Hotel and Casino, Paris Las Vegas, Treasure Island at The Mirage, The Venetian and others, have themes and attractions which draw a significant number of visitors and directly compete with our operations. Some of these facilities are operated by companies that have more than one operating facility and may have greater name recognition and financial and marketing resources than we do while targeting the same demographic group. We seek to differentiate Wynn Las Vegas from other major Las Vegas resorts by concentrating on our fundamental elements of design, atmosphere, personal service and luxury.

Wynn Las Vegas also competes, to some extent, with other hotel/casino facilities in Nevada and Atlantic City, riverboat gaming facilities in other states, casino facilities on Native American lands and elsewhere in the world, state lotteries, Internet gaming and other forms of gaming. The continued proliferation of Native American gaming in California could have a negative impact on our operations. The proliferation of gaming activities in other areas could significantly harm our business as well. In particular, the legalization of casino gaming in or near metropolitan areas, such as New York, Philadelphia, Los Angeles, San Francisco and Boston,

from which we attract customers, could have a substantial negative effect on our business. In addition, new or renovated casinos in Macau or elsewhere in Asia could draw Asian gaming customers, including high-rollers, away from Las Vegas.

In addition to the existing casinos with which Wynn Las Vegas currently competes, several new resorts are expected to open on or near the Las Vegas Strip before 2010. The major projects, which have either been announced or are currently under construction include:

- *Palazzo*—Las Vegas Sands' new development currently under construction adjacent to The Venetian features a 50-floor tower with approximately 3,025 suites, restaurants owned and operated by well-known restaurateurs and a theater that is expected to host a Broadway show. The resort is expected to open in 2007.
- *Echelon Place*—Boyd Gaming's \$4.0 billion development, which includes four distinctive hotels with a total of 5,300 guest rooms and suites (one developed by Boyd Gaming and the other three branded Shangri-la, Delano and Mondrian). The development will also include a 140,000 square foot casino, 25 restaurants and bars, pool and garden areas, a 4,000-seat theater and a 1,500-seat theater that will house smaller shows and touring acts. In addition, Boyd will develop, own, and operate the Las Vegas ExpoCenter at Echelon Place, with 650,000 square feet of exhibition and pre-function space and 175,000 square feet of meeting and conference space. The project is expected to open in 2010.
- *City Center*—a new development by MGM Mirage, consisting of a 4,000-room casino resort, retail and entertainment facilities, boutique hotels and residential developments at an estimated cost of \$7 billion. The project is expected to open in 2010.
- *The New Frontier*—land located across the Las Vegas Strip from Wynn Las Vegas is expected to be redeveloped to include a 2,771 room hotel, a 104,000 square foot casino, approximately 255,000 square feet of convention facilities, and several bars, restaurants, lounges, retail, and related areas. The plan also includes a 500 foot high Ferris wheel with 32 passenger capsules, each able to hold up to 25 people. The timing and budget for the project are still undetermined.
- *The Cosmopolitan*—a \$1.5 billion project being developed by Bruce Eichner, will include a 2,700-unit condominium hotel managed by Hyatt Hotels Corp., a 70,000 square foot casino, retail shops, restaurants, theater, meeting rooms, and a "beach" club. The property will be located south of the Bellagio and is expected to open in 2008.

### *Macau*

Macau, which was a Portuguese colony for approximately 450 years, was transferred in December 1999 from Portuguese to Chinese political control. Macau is administered as a special administrative region of China. Macau is located approximately 37 miles southwest of, and less than one hour away via a ferry system from, Hong Kong and has been a casino gaming destination for more than 40 years. Macau consists principally of a small peninsula on mainland China, and two neighboring islands, Taipa and Coloane, connected by bridges. We believe that Macau is positioned in one of the world's largest concentrations of potential gaming customers. According to Macau Statistical Information, casinos in Macau generated approximately \$5.6 billion in gaming revenue in 2005, a nearly 10% increase over the \$5.1 billion generated in 2004. Macau casinos are primarily table game-oriented and include many private VIP rooms, but relatively few slot machines.

Macau's gaming market is primarily dependent on tourists. According to the Macau Statistics and Census Service Monthly Bulletin of Statistics, 18.7 million people visited Macau in 2005, an increase of 12% over the 16.7 million visitors of 2004. From 1999 through 2005, less than one-third of visitors traveling to Macau stayed overnight in hotels and guestrooms and, for those who stayed overnight in hotels and guestrooms, the average length of stay was only one to two nights. We expect the average length of stay to increase as a result of new, upscale hotel resort accommodations in Macau.



Gaming customers traveling to Macau typically come from nearby destinations in Asia including Hong Kong, mainland China, Taiwan, South Korea and Japan. According to the Macau Statistics and Census Service Monthly Bulletin of Statistics, over 90% of the tourists who visited Macau in 2004 came from Hong Kong, mainland China and Taiwan. Macau completed construction of an international airport in 1995, which accommodates large commercial aircraft and provides direct air service to major cities in Asia, such as Manila, Singapore, Taipei, Bangkok, Beijing, Shanghai and other major cities in China. It is estimated that approximately 1.0 billion people live within a three-hour flight, and approximately 3.0 billion people within a five-hour flight, from Macau.

The Macau government is encouraging significant foreign and domestic investment in new and expanded casino and entertainment facilities in Macau that are intended to promote Macau as a casino resort destination and enhance tourism and lengthen stays. In the past, gaming in Macau was permitted as a government-sanctioned monopoly concession awarded to a single concessionaire. However, under the authority of the Chief Executive and the Casino Tender Commission of Macau, the government of Macau liberalized the gaming industry in 2002 by granting concessions to operate casinos to three concessionaires, who in turn are permitted, subject to the approval of the government of Macau, to grant sub-concessions to other gaming operators. Two sub-concessions have been granted to date. On March 4, 2006, the Company entered into an agreement with Publishing & Broadcasting, Ltd. ("PBL") pursuant to which the Company agreed to sell to PBL a subconcession to operate casino games in Macau for a purchase price of \$900.0 million. The transaction is subject to the approval of the Macau government.

The three concessionaires and two sub-concessionaires currently operate 17 casinos in Macau. Sociedade de Jogos de Macau ("SJM") is one of the concessionaires and operates 15 of the 17 casinos. SJM is controlled by Stanley Ho, who through another entity, controlled the monopoly concession to conduct gaming operations in Macau for more than 40 years. Most of SJM's casinos are relatively small facilities, which are offered as amenities in hotels; however, a few are substantial operations enjoying recognition by gaming customers. Three of the largest casinos in Macau are operated by SJM: the Hotel Lisboa, The Greek Mythology Casino (formerly the New Century Casino), and the Jai Alai. In addition, an affiliate of Mr. Ho owns substantially all of the water ferry services and the helicopter shuttle service that link Macau to Hong Kong.

SJM was obligated under its June 2002 concession agreement with the Macau government to invest at least approximately 4.7 billion patacas (approximately US \$587.5 million) in Macau by December 2004. SJM is currently constructing the Grand Lisboa behind the Hotel Lisboa.

A joint venture of MGM MIRAGE and Pansy Ho Chiu-king (Stanley Ho's daughter) is currently constructing a resort on the Macau peninsula adjacent to Wynn Macau. MGM Grand Macau is jointly owned and operated by MGM MIRAGE and Pansy Ho Chiu-king. The project includes approximately 600 rooms, suites and villas, several restaurants as well as additional entertainment amenities, 345 table games and 1,035 slot machines. The project budget is \$1.1 billion and the opening is anticipated to be in the second half of 2007.

Galaxy Casino Company Limited, referred to herein as Galaxy, also was awarded a casino concession in June 2002. Galaxy is a company controlled by Hong Kong businessman Lui Chi-woo and a group of Hong Kong investors. Galaxy opened the Waldo Hotel/Casino in 2004, which has become a major casino destination, and is currently constructing the Galaxy Star World hotel casino immediately adjacent to the Wynn Macau site. Las Vegas Sands Corp., the owner and operator of The Venetian casino resort in Las Vegas and a former partner of Galaxy, has entered into a sub-concession agreement with Galaxy which allows it to independently develop and operate casinos in Macau. In May 2004, Las Vegas Sands Corp. opened the Sands Macao, the first Las Vegas-style casino to open in Macau. Each of Galaxy Waldo and Sands Macao has captured a significant share of the casino gaming market in Macau. Both Galaxy and Las Vegas Sands Corp. also have announced their intention to build major casino resorts on the Cotai Strip. Galaxy's casino concession agreement requires Galaxy and its sub-concessionaire collectively to invest at least 8.8 billion patacas (approximately US \$1.1 billion) in Macau by June 2012.

The Sands Macao opened in 2004 and currently offers 438 table games, 921 slot machines and 51 rooms. Las Vegas Sands is building the Venetian Macao Resort, a 3,000 suite hotel, casino and convention center complex, and 870,000 square feet of retail, dining and entertainment, all with a Venetian-style theme similar to that of their Las Vegas property. In addition, Las Vegas Sands has proposed a masterplan for over 200 acres on the Cotai Strip that would include: (a) a Four Seasons-branded project with a 400-room luxury hotel, approximately 600 serviced apartment units and 190,000 square feet of retail and related space, and (b) two additional hotel properties, to be built in multiple phases. The Venetian Macao is expected to cost \$2.3 billion and to open in late 2007.

Our subsidiary, Wynn Macau, S.A., was awarded the third casino concession. Wynn Macau will compete with the casinos and casino hotels that are currently operated, under development and to be developed by the two other casino concessionaires and their respective sub-concessionaires. Wynn Macau, S.A.'s casino concession agreement permits the government to grant additional concessions for the operation of casinos after April 1, 2009. If the government of Macau awards additional concessions or permits additional sub-concessionaires, Wynn Macau will face increased competition from casino operators in Macau.

A joint venture of Melco, a Hong Kong stock exchange-listed company and PBL, an Australian casino operator are currently developing the Crown Macau and has announced development of a large resort on the Cotai Strip, named City of Dreams.

Wynn Macau will also face competition from casinos located in other areas of Asia, such as Genting Highlands Resort, a major gaming and resort destination located outside of Kuala Lumpur, Malaysia, and casinos in Singapore, South Korea and the Philippines, as well as pachinko and pachislot parlors in Japan. Wynn Macau will encounter competition from other major gaming centers located around the world, such as Australia and Las Vegas, cruise ships in Asia that offer gaming, and other casinos throughout Asia. Further, if current efforts to legalize gaming in Thailand or Penghu, Taiwan are successful or if the reported large-scale new casino entertainment complex proposed in Manila, Philippines is developed, Wynn Macau will face additional regional competition.

## **Regulation and Licensing**

The gaming industry is highly regulated. Gaming registrations, licenses and approvals, once obtained, can be suspended or revoked for a variety of reasons. We cannot assure you that we will obtain all required registrations, licenses and approvals on a timely basis or at all, or that, once obtained, the registrations, findings of suitability, licenses and approvals will not be suspended, conditioned, limited or revoked. If we ever are prohibited from operating one of our gaming facilities, we would, to the extent permitted by law, seek to recover our investment by selling the property affected, but we cannot assure you that we would recover its full value.

### *Nevada*

*Introduction.* The ownership and operation of casino gaming facilities in the State of Nevada are subject to the Nevada Gaming Control Act and the regulations made under the Act, as well as to various local ordinances. Wynn Las Vegas' operations are subject to the licensing and regulatory control of the Nevada Gaming Commission, the Nevada State Gaming Control Board and the Clark County Liquor and Gaming License Board, which we refer to herein collectively as the "Nevada Gaming Authorities."

*Policy Concerns of Gaming Laws.* The laws, regulations and supervisory procedures of the Nevada Gaming Authorities are based upon declarations of public policy. These public policy concerns include, among other things:

- preventing unsavory or unsuitable persons from being directly or indirectly involved with gaming at any time or in any capacity;
- establishing and maintaining responsible accounting practices and procedures;

- maintaining effective controls over the financial practices of licensees, including establishing minimum procedures for internal fiscal affairs, and safeguarding assets and revenue, providing reliable recordkeeping and requiring the filing of periodic reports with the Nevada Gaming Authorities;
- preventing cheating and fraudulent practices; and
- providing a source of state and local revenue through taxation and licensing fees.

Changes in these laws, regulations and procedures could have significant negative effects on Wynn Las Vegas' gaming operations and our financial condition and results of operations.

*Owner and Operator Licensing Requirements.* Our subsidiary, Wynn Las Vegas, LLC, as the owner and operator of Wynn Las Vegas, has been approved by the Nevada Gaming Authorities as a limited liability company licensee, referred to as a company licensee, which includes approval to conduct casino gaming operations, including a race book and sports pool and pari-mutuel wagering. These gaming licenses are not transferable. We cannot assure you that Wynn Las Vegas, LLC will be able to maintain all approvals and licenses from the Nevada Gaming Authorities.

*Company Registration Requirements.* Wynn Resorts was found suitable by the Nevada Gaming Commission to own the equity interests of Wynn Resorts Holdings, LLC ("Wynn Resorts Holdings"), a wholly subsidiary of Wynn Resorts, and to be registered by the Nevada Gaming Commission as a publicly traded corporation, referred to as a registered company, for the purposes of the Nevada Gaming Control Act. Wynn Resorts Holdings was found suitable by the Nevada Gaming Commission to own the equity interests of Wynn Las Vegas, LLC and to be registered by the Nevada Gaming Commission as an intermediary company. In addition to being licensed, Wynn Las Vegas, LLC, as an issuer of the First Mortgage Notes that were registered with the SEC, also qualified as a registered company. Wynn Las Vegas Capital Corp., a co-issuer of the First Mortgage Notes, was not required to be registered or licensed, but may be required to be found suitable as a lender or financing source.

Periodically, we are required to submit detailed financial and operating reports to the Nevada Gaming Commission and provide any other information that the Nevada Gaming Commission may require. Substantially all of our material loans, leases, sales of securities and similar financing transactions must be reported to, or approved by, the Nevada Gaming Commission.

*Individual Licensing Requirements.* No person may become a stockholder or member of, or receive any percentage of the profits of, an intermediary company or company licensee without first obtaining licenses and approvals from the Nevada Gaming Authorities. The Nevada Gaming Authorities may investigate any individual who has a material relationship to or material involvement with us to determine whether the individual is suitable or should be licensed as a business associate of a gaming licensee. Certain of our officers, directors and key employees have been or may be required to file applications with the Nevada Gaming Authorities and are or may be required to be licensed or found suitable by the Nevada Gaming Authorities. All applications required as of the date of this report have been filed. However, the Nevada Gaming Authorities may require additional applications and may also deny an application for licensing for any reason, which they deem appropriate. A finding of suitability is comparable to licensing, and both require submission of detailed personal and financial information followed by a thorough investigation. An applicant for licensing or an applicant for a finding of suitability must pay or must cause to be paid all the costs of the investigation. Changes in licensed positions must be reported to the Nevada Gaming Authorities and, in addition to their authority to deny an application for a finding of suitability or licensing, the Nevada Gaming Authorities have the jurisdiction to disapprove a change in a corporate position.

If the Nevada Gaming Authorities were to find an officer, director or key employee unsuitable for licensing or unsuitable to continue having a relationship with us, we would have to sever all relationships with that person. In addition, the Nevada Gaming Commission may require us to terminate the employment of any person who

refuses to file appropriate applications. Determinations of suitability or questions pertaining to licensing are not subject to judicial review in Nevada.

*Redemption of Securities Owned By an Unsuitable Person.* Wynn Resorts' articles of incorporation provide that, to the extent a gaming authority makes a determination of unsuitability or to the extent deemed necessary or advisable by the board of directors, Wynn Resorts may redeem shares of its capital stock that are owned or controlled by an unsuitable person or its affiliates. The redemption price will be the amount, if any, required by the gaming authority or, if the gaming authority does not determine the price, the sum deemed by the board of directors to be the fair value of the securities to be redeemed. If Wynn Resorts determines the redemption price, the redemption price will be capped at the closing price of the shares on the principal national securities exchange on which the shares are listed on the trading day before the redemption notice is given. If the shares are not listed on a national securities exchange, the redemption price will be capped at the closing sale price of the shares as quoted on The Nasdaq National Market or SmallCap Market, or if the closing price is not reported, the mean between the bid and asked prices, as quoted by any other generally recognized reporting system. Wynn Resorts' right of redemption is not exclusive of any other rights that it may have or later acquire under any agreement, its bylaws or otherwise. The redemption price may be paid in cash, by promissory note, or both, as required, and pursuant to the terms established by, the applicable gaming authority and, if not, as Wynn Resorts elects.

*Consequences of Violating Gaming Laws.* If the Nevada Gaming Commission decides that we have violated the Nevada Gaming Control Act or any of its regulations, it could limit, condition, suspend or revoke our registrations and gaming license. In addition, we and the persons involved could be subject to substantial fines for each separate violation of the Nevada Gaming Control Act, or of the regulations of the Nevada Gaming Commission, at the discretion of the Nevada Gaming Commission. Further, the Nevada Gaming Commission could appoint a supervisor to operate Wynn Las Vegas and, under specified circumstances, earnings generated during the supervisor's appointment (except for the reasonable rental value of the premises) could be forfeited to the State of Nevada. Limitation, conditioning or suspension of any of our gaming licenses and the appointment of a supervisor could, and revocation of any gaming license would, have a significant negative effect on our gaming operations.

*Requirements for Beneficial Securities Holders.* Regardless of the number of shares held, any beneficial holder of Wynn Resorts' voting securities may be required to file an application, be investigated and have that person's suitability as a beneficial holder of voting securities determined if the Nevada Gaming Commission has reason to believe that the ownership would otherwise be inconsistent with the declared policies of the State of Nevada. If the beneficial holder of the voting securities of Wynn Resorts who must be found suitable is a corporation, partnership, limited partnership, limited liability company or trust, it must submit detailed business and financial information including a list of its beneficial owners. The applicant must pay all costs of the investigation incurred by the Nevada Gaming Authorities in conducting any investigation.

The Nevada Gaming Control Act requires any person who acquires more than 5% of the voting securities of a registered company to report the acquisition to the Nevada Gaming Commission. The Nevada Gaming Control Act requires beneficial owners of more than 10% of a registered company's voting securities to apply to the Nevada Gaming Commission for a finding of suitability within 30 days after the Chairman of the Nevada State Gaming Control Board mails the written notice requiring such filing. Under certain circumstances, an "institutional investor," as defined in the Nevada Gaming Control Act, which acquires more than 10%, but not more than 15%, of the registered company's voting securities may apply to the Nevada Gaming Commission for a waiver of a finding of suitability if the institutional investor holds the voting securities for investment purposes only. In certain circumstances, an institutional investor that has obtained a waiver may hold up to 19% of our voting securities for a limited period of time and maintain the waiver. An institutional investor will not be deemed to hold voting securities for investment purposes unless the voting securities were acquired and are held in the ordinary course of business as an institutional investor and not for the purpose of causing, directly or indirectly, the election of a majority of the members of the board of directors of the registered company, a change

in the corporate charter, bylaws, management, policies or operations of the registered company, or any of its gaming affiliates, or any other action which the Nevada Gaming Commission finds to be inconsistent with holding the registered company's voting securities for investment purposes only. Activities which are not deemed to be inconsistent with holding voting securities for investment purposes only include:

- voting on all matters voted on by stockholders or interest holders;
- making financial and other inquiries of management of the type normally made by securities analysts for informational purposes and not to cause a change in its management, policies or operations; and
- other activities that the Nevada Gaming Commission may determine to be consistent with such investment intent.

The articles of incorporation of Wynn Resorts include provisions intended to help it implement the above restrictions.

*Consequences of Being Found Unsuitable.* Any person who fails or refuses to apply for a finding of suitability or a license within 30 days after being ordered to do so by the Nevada Gaming Commission or by the Chairman of the Nevada State Gaming Control Board, or who refuses or fails to pay the investigative costs incurred by the Nevada Gaming Authorities in connection with the investigation of its application, may be found unsuitable. The same restrictions apply to a record owner if the record owner, after request, fails to identify the beneficial owner. Any person found unsuitable and who holds, directly or indirectly, any beneficial ownership of any voting security or debt security of a registered company beyond the period of time as may be prescribed by the Nevada Gaming Commission may be guilty of a criminal offense. We will be subject to disciplinary action if, after we receive notice that a person is unsuitable to hold an equity interest or to have any other relationship with us, we:

- pay that person any dividend or interest upon any voting securities;
- allow that person to exercise, directly or indirectly, any voting right held by that person relating to Wynn Resorts;
- pay remuneration in any form to that person for services rendered or otherwise; or
- fail to pursue all lawful efforts to require the unsuitable person to relinquish such person's voting securities including, if necessary, the immediate purchase of the voting securities for cash at fair market value.

*Gaming Laws Relating to Securities Ownership.* The Nevada Gaming Commission may, in its discretion, require the holder of any debt or similar securities of a registered company, to file applications, be investigated and be found suitable to own the debt or other security of the registered company if the Nevada Gaming Commission has reason to believe that such ownership would otherwise be inconsistent with the declared policies of the State of Nevada. If the Nevada Gaming Commission decides that a person is unsuitable to own the security, then under the Nevada Gaming Control Act, the registered company can be sanctioned, including the loss of its approvals if, without the prior approval of the Nevada Gaming Commission, it:

- pays to the unsuitable person any dividend, interest or any distribution whatsoever;
- recognizes any voting right by the unsuitable person in connection with the securities;
- pays the unsuitable person remuneration in any form; or
- makes any payment to the unsuitable person by way of principal, redemption, conversion, exchange, liquidation or similar transaction.

Wynn Resorts is required to maintain a current stock ledger in Nevada which may be examined by the Nevada Gaming Authorities at any time. If any securities are held in trust by an agent or by a nominee, the record holder may be required to disclose the identity of the beneficial owner to the Nevada Gaming Authorities. A

failure to make the disclosure may be grounds for finding the record holder unsuitable. We are required to render maximum assistance in determining the identity of the beneficial owner of any of Wynn Resorts' voting securities. The Nevada Gaming Commission has the power to require the stock certificates of any registered company to bear a legend indicating that the securities are subject to the Nevada Gaming Control Act. The certificates representing shares of Wynn Resorts' common stock note that the shares are subject to a right of redemption and other restrictions set forth in Wynn Resorts' articles of incorporation and bylaws and that the shares are, or may become, subject to restrictions imposed by applicable gaming laws.

*Approval of Public Offerings.* We may not make a public offering without the prior approval of the Nevada Gaming Commission if the proceeds from the offering are intended to be used to construct, acquire or finance gaming facilities in Nevada, or to retire or extend obligations incurred for those purposes or for similar transactions. On March 24, 2005, the Nevada Gaming Commission granted us and Wynn Las Vegas, LLC prior approval to make public offerings for a period of two years, subject to certain conditions (the "Shelf Approval"). The Shelf Approval also applies to any affiliated company wholly owned by us which is a publicly traded corporation or would thereby become a publicly traded corporation pursuant to a public offering. The Shelf Approval may be rescinded for good cause without prior notice upon the issuance of an interlocutory stop order by the Chairman of the Nevada State Gaming Control Board. The Shelf Approval does not constitute a finding, recommendation or approval by any of the Nevada Gaming Authorities as to the accuracy or adequacy of the offering memorandum or the investment merits of the securities. Any representation to the contrary is unlawful.

*Approval of Changes in Control.* We must obtain prior approval of the Nevada Gaming Commission with respect to a change in control through merger, consolidation; stock or asset acquisitions; management or consulting agreements; or any act or conduct by a person by which the person obtains control of us.

Entities seeking to acquire control of a registered company must satisfy the Nevada State Gaming Control Board and Nevada Gaming Commission with respect to a variety of stringent standards before assuming control of the registered company. The Nevada Gaming Commission may also require controlling stockholders, officers, directors and other persons having a material relationship or involvement with the entity proposing to acquire control to be investigated and licensed as part of the approval process relating to the transaction.

*Approval of Defensive Tactics.* The Nevada legislature has declared that some corporate acquisitions opposed by management, repurchases of voting securities and corporate defense tactics affecting Nevada gaming licenses or affecting registered companies that are affiliated with the operations of Nevada gaming licenses may be harmful to stable and productive corporate gaming. The Nevada Gaming Commission has established a regulatory scheme to reduce the potentially adverse effects of these business practices upon Nevada's gaming industry and to further Nevada's policy to:

- assure the financial stability of corporate gaming operators and their affiliates;
- preserve the beneficial aspects of conducting business in the corporate form; and
- promote a neutral environment for the orderly governance of corporate affairs.

Approvals may be required from the Nevada Gaming Commission before we can make exceptional repurchases of voting securities above their current market price and before a corporate acquisition opposed by management can be consummated. The Nevada Gaming Control Act also requires prior approval of a plan of recapitalization proposed by a registered company's board of directors in response to a tender offer made directly to its stockholders for the purpose of acquiring control.

*Fees and Taxes.* License fees and taxes, computed in various ways depending on the type of gaming or activity involved, are payable to the State of Nevada and to the counties and cities in which the licensed subsidiaries' respective operations are conducted. Depending upon the particular fee or tax involved, these fees and taxes are payable either monthly, quarterly or annually and are based upon either:

- a percentage of the gross revenue received;
- the number of gaming devices operated; or
- the number of table games operated.

A live entertainment tax also is imposed on admission charges and sales of food, beverages and merchandise where live entertainment is furnished.

*Foreign Gaming Investigations.* Any person who is licensed, required to be licensed, registered, required to be registered, or is under common control with those persons (collectively, "licensees"), and who proposes to become involved in a gaming venture outside of Nevada, is required to deposit with the Nevada State Gaming Control Board, and thereafter maintain, a revolving fund in the amount of \$10,000 to pay the expenses of investigation of the Nevada State Gaming Control Board of the licensee's or registrant's participation in such foreign gaming. The revolving fund is subject to increase or decrease in the discretion of the Nevada Gaming Commission. Licensees and registrants are required to comply with the foreign gaming reporting requirements imposed by the Nevada Gaming Control Act. A licensee or registrant is also subject to disciplinary action by the Nevada Gaming Commission if it:

- knowingly violates any laws of the foreign jurisdiction pertaining to the foreign gaming operation;
- fails to conduct the foreign gaming operation in accordance with the standards of honesty and integrity required of Nevada gaming operations;
- engages in any activity or enters into any association that is unsuitable because it poses an unreasonable threat to the control of gaming in Nevada, reflects or tends to reflect, discredit or disrepute upon the State of Nevada or gaming in Nevada, or is contrary to the gaming policies of Nevada;
- engages in activities or enters into associations that are harmful to the State of Nevada or its ability to collect gaming taxes and fees; or
- employs, contracts with or associates with a person in the foreign operation who has been denied a license or finding of suitability in Nevada on the ground of unsuitability.

*Licenses for Conduct of Gaming and Sale of Alcoholic Beverages.* The conduct of gaming activities and the service and sale of alcoholic beverages at Wynn Las Vegas are subject to licensing, control and regulation by the Clark County Liquor and Gaming Licensing Board, which has granted Wynn Las Vegas licenses for such purposes. In addition to approving Wynn Las Vegas, the Clark County Liquor and Gaming License Board has the authority to approve all persons owning or controlling the stock of any corporation controlling a gaming license. All licenses are revocable and are not transferable. The county agency has full power to limit, condition, suspend or revoke any license. Any disciplinary action could, and revocation would, have a substantial negative impact upon our operations.

#### *Macau*

*General.* As a casino concessionaire, Wynn Macau, S.A. is subject to the regulatory control of the Government of Macau. The government has adopted Laws and Administrative Regulations governing the operation of casinos in Macau. Only concessionaires are permitted to operate casinos. To compete for concessions, candidates were required to tender proposals pursuant to procedures prescribing the content and timing of submissions and the evaluation criteria involved in the selection process. Applicants were evaluated according to suitability criteria, including their financial capacity, business experience and reputation, and the reputation of their affiliates and associates. Applicants were required to pay the costs of investigation and to

make a deposit against such costs as part of the submission of proposals. The selection process included consultation and negotiation between the applicants and the Macau government, which selected the applicants that were awarded concessions. Although subconcessions may be awarded subject to the approval of the Macau government, under the current Law and Administrative Regulations, a maximum of three such concessions can be awarded. Each concessionaire was required to enter into a concession agreement with the Macau government which, together with the Law and Administrative Regulations, forms the framework for the regulation of the activities of the concessionaire.

Under the Law and Administrative Regulations, concessionaires are subject to suitability requirements relating to background, associations and reputation, as are stockholders of 5% or more of a concessionaire's equity securities, officers, directors and key employees. The same requirements apply to any entity engaged by a concessionaire to manage casino operations. Concessionaires are required to satisfy minimum capitalization requirements, to demonstrate and maintain adequate financial capacity to operate the concession and to submit to continuous monitoring of their casino operations by the Macau government. Concessionaires also are subject to periodic financial reporting requirements and reporting obligations with respect to, among other things, certain contracts, financing activities and transactions with directors, financiers and key employees. Transfers or the encumbering of interests in concessionaires must be reported to the Macau government and are ineffective without government approval.

Each concessionaire is required to engage an executive director who must be a permanent resident of Macau and the holder of at least 10% of the capital stock of the concessionaire. The appointment of the executive director and of any successor is ineffective without the approval of the Macau government. All contracts for the management of a concessionaire's casino operation also are ineffective without the approval of the Macau government.

Concessionaires are subject to a special gaming tax of 35% of gross gaming revenue, and must also make an annual contribution of up to 5% of gross gaming revenue (Wynn Macau, S.A. must pay 4% under its concession agreement) for the promotion of public interests, social security, infrastructure and tourism. Concessionaires also are obligated to withhold, subject to partial exemption, a 5% tax from any commissions paid to junket representatives. A junket representative is a person who, for the purpose of promoting casino gaming activity, arranges customer transportation, accommodations, food and beverage services and entertainment in exchange for commissions or other compensation from a concessionaire.

Macau law provides that junket representatives must be licensed by the Macau government in order to do business with and receive compensation from concessionaires. For a license to be obtained, direct and indirect stockholders of 5% or more of a junket representative's equity securities (where applicable), its directors and its key employees must be found suitable. Applicants are required to pay the cost of license investigations, and are required to maintain suitability standards during the period of licensure. The term of a junket representative license is one year, and licenses can be renewed for additional periods upon the submission of renewal applications. Natural person junket representative licensees are subject to a suitability verification process every three years and business entity licensees are subject to the same requirement every six years.

Under Macau law, licensed junket representatives must identify outside contractors who assist them in junket activity. Such contractors are subject to disapproval by the Macau government. Changes in the management structure of business entity junket representative licensees must be reported to the Macau government and any transfer or the encumbering of interests in such licensees is ineffective without prior government approval. To conduct junket activity, junket representative licensees must be registered with one or more concessionaires and must have written contracts with such concessionaires, copies of which must be submitted to the Macau government.

Macau law further provides that concessionaires are jointly responsible with their junket representatives for the activities of such representatives and their directors and contractors in the concessionaires' casinos, and for their compliance with applicable laws and regulations. Concessionaires must submit annual lists of their junket



representatives for the following year, and must update such lists on a quarterly basis. The Macau government may designate a maximum number of junket representatives and specify the junket representatives a concessionaire is permitted to engage. Concessionaires are subject to periodic reporting requirements with respect to commissions paid to their junket representatives and are required to oversee their activities and report instances of unlawful activity.

The government of Macau may assume temporary custody and control over the operation of a concession in certain circumstances. During any such period, the costs of operations must be borne by the concessionaire. The government of Macau also may redeem a concession starting at an established date after the entering into effect of a concession. The government of Macau also may terminate a concession for cause, including, without limitation, failure of the concessionaire to fulfill its obligations under law or the concession contract.

Subconcessionaires are subject to the same conditions as the concessionaires including, but not limited to, the evaluation of suitability, financial capacity, business experience and reputation. As with concessionaires, sub-concessionaires must appoint a permanent resident holding 10% of the capital stock as executive director and must pay to the government of Macau the special gaming tax of 35% of gross revenue. The transfer or encumbering of an interest in the subconcessionaire is subject to prior approval of Macau.

*Concession Agreement.* The concession agreement between Wynn Macau S.A. and the Macau government requires Wynn Macau, S.A. to construct and operate one or more casino gaming properties in Macau, including, at a minimum, one full-service casino resort by the end of December 2006, and to invest not less than a total of 4 billion patacas (approximately US\$501 million) in Macau-related projects by June 2009. If Wynn Macau, S.A. does not invest 4 billion patacas in Macau casino projects by June 2009, it is obligated to invest the remaining amount in projects related to its gaming operations in Macau that the Macau government approves, or in projects of public interest designated by the Macau government.

Wynn Macau, S.A. was also obligated to obtain, and did obtain, a 700 million pataca (approximately US\$87.7 million) bank guarantee from Banco Nacional Ultramarino, S.A. (“BNU”) that is effective until March 31, 2007. The amount of this guarantee will be reduced to 300 million patacas (approximately US\$37.6 million) for the period from April 1, 2007 until 180 days after the end of the term of the concession agreement. 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. Wynn Macau, S.A. is obligated to promptly, upon demand by BNU, repay any claim made on the guarantee by the Macau government. BNU is paid an annual fee by Wynn Macau, S.A. for the guarantee not to exceed 12,250,000 patacas (approximately US\$1.5 million).

The concession agreement requires that Wynn Macau, S.A. adhere to an agreed-upon construction schedule for the completion of Wynn Macau, but the agreement provides that the deadlines in the construction schedule may be extended with governmental approval. The government of Macau may suspend Wynn Macau, S.A.’s construction of a casino if it determines that Wynn Macau, S.A. has failed to adequately implement the construction plans or violated the concession agreement or applicable law.

The government of Macau may redeem the concession beginning on June 24, 2017, and in such event Wynn Macau, S.A. will be entitled to fair compensation or indemnity. The amount of such compensation or indemnity will be determined based on the amount of revenue generated during the tax year prior to the redemption.

The government of Macau may unilaterally rescind the concession if Wynn Macau, S.A. fails to fulfill its fundamental obligations under the concession agreement. The concession agreement expressly provides that the government of Macau may unilaterally rescind the concession agreement if Wynn Macau, S.A.:

- conducts unauthorized games or activities that are excluded from its corporate purpose;
- abandons or suspends gaming operations in Macau for more than seven consecutive days (or more than 14 days in a civil year) without justification;

- defaults in payment of taxes, premiums, contributions or other required amounts;
- does not comply with government inspections or supervision;
- systematically fails to observe its obligations under the concession system;
- fails to maintain bank guarantees or bonds satisfactory to the government;
- is the subject of bankruptcy proceedings or becomes insolvent;
- engages in serious fraudulent activity, damaging to the public interest; or
- repeatedly and seriously violates applicable gaming laws.

If the government of Macau unilaterally rescinds the concession agreement, Wynn Macau, S.A. will be required to compensate the government in accordance with applicable law, and the areas defined as casino under Macau law and all of the gaming equipment pertaining to the gaming operations of Wynn Macau will be transferred to the government without compensation. In addition, the government of Macau may, in the public interest, unilaterally terminate the concession at any time, in which case Wynn Macau, S.A. would be entitled to reasonable compensation.

The government of Macau enacted legislation, effective July 1, 2004, that enables casinos operating in Macau to lawfully extend credit to gaming customers and to enforce gaming debts. We continue to pursue certain favorable determinations relating to Macau's tax regulations, however, we cannot assure you that we will be able to obtain the desired determinations. The government of Macau is currently considering various proposed changes to its laws and regulations relating to the regulation and control of casino gaming. Such changes could affect the profitability of contemplated casino operations in Macau. In addition, some of the laws and regulations summarized above have not yet been applied by the government of Macau to an operating concessionaire. Therefore, the effectiveness, reasonableness and fairness of the regulatory system cannot be fully assessed at this time.

### **Seasonality**

We may experience fluctuations in revenues and cash flows from month to month, however, we do not expect that our business will be unusually impacted by seasonality.

### **Employees**

As of February 28, 2006, we have a total of approximately 9,300 employees (including approximately 300 in Macau). Wynn Las Vegas is fully staffed and we are undertaking a major recruiting effort to staff Wynn Macau for its opening in the third quarter of 2006.

Wynn Las Vegas entered into an agreement with the Culinary and Bartenders Union local pursuant to which the union has recently been recognized as the exclusive bargaining agent of certain of our employees. As a result of this recognition, Wynn Las Vegas is obligated to negotiate a collective bargaining agreement with the union. Certain other unions may seek to organize the workers at Wynn Las Vegas. Unionization, pressure to unionize or other forms of collective bargaining could increase our labor costs.

As with Wynn Las Vegas, an extensive training and recruiting program will be used to staff Wynn Macau. This program will accelerate in the second quarter of 2006 as the development of Wynn Macau progresses. We expect that Wynn Macau, S.A. will employ approximately 4,400 employees by the opening of Wynn Macau.

### **Intellectual Property**

Our most important marks are our trademarks and service marks that use the name "WYNN". Wynn Resorts has filed applications with the U.S. Patent and Trademark Office ("PTO"), to register a variety of the WYNN-

related trademarks and service marks in connection with a variety of goods and services. These marks include “WYNN RESORTS,” “WYNN DESIGN AND DEVELOPMENT,” “WYNN LAS VEGAS,” and “WYNN MACAU.” Some of the applications are based upon ongoing use and others are based upon a bona fide intent to use the marks in the future.

A common element of these marks is the use of the surname, “WYNN.” As a general rule, a surname (or a mark primarily constituting a surname) is not registerable unless the surname has acquired “secondary meaning.” To date, Wynn Resorts has been successful in demonstrating to the PTO such secondary meaning for the Wynn name in certain of the applications based upon Mr. Wynn’s prominence as a resort developer, but we cannot assure you that Wynn Resorts will be successful with the other pending applications.

Even if Wynn Resorts is able to obtain registration of the WYNN-related marks, such federal registrations are not completely dispositive of the right to such marks. Third parties who claim prior rights with respect to similar marks may nonetheless challenge our right to obtain registrations or our use of the marks and seek to overcome the presumptions afforded by such registrations.

On August 6, 2004, we entered into agreements with Mr. Wynn that confirm and clarify our rights to use the “Wynn” name and Mr. Wynn’s persona in connection with our casino resorts. Under a Surname Rights Agreement, Mr. Wynn has granted us 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 our affiliates. Under a Rights of Publicity License, Mr. Wynn has granted us 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 our affiliates, until October 24, 2017.

### **Forward-Looking Statements**

The Private Securities Litigation Reform Act of 1995 provides a “safe harbor” for forward-looking statements. Certain information included in this Annual Report on Form 10-K contains statements that are forward-looking, including, but not limited to, statements relating to our business strategy and development activities as well as other capital spending, financing sources, the effects of regulation (including gaming and tax regulations), expectations concerning future operations, margins, profitability and competition. Any statements contained in this report that are not statements of historical fact may be deemed to be forward-looking statements. Without limiting the generality of the foregoing, in some cases you can identify forward-looking statements by terminology such as “may,” “will,” “should,” “would,” “could,” “believe,” “expect,” “anticipate,” “estimate,” “intend,” “plan,” “continue” or the negative of these terms or other comparable terminology. Such forward-looking information involves important risks and uncertainties that could significantly affect anticipated results in the future and, accordingly, such results may differ from those expressed in any forward-looking statements made by us. These risks and uncertainties include, but are not limited to, conditions precedent to funding under the agreements governing the disbursement of the proceeds of certain of our debt and equity offerings and borrowings under our credit facilities, competition in the casino/hotel and resort industries, completion of our Wynn Macau casino resort on time and within budget, our intention to fund a substantial portion of the development and construction costs of Encore with anticipated cash flows generated at Wynn Las Vegas, doing business in foreign locations such as Macau (including the risks associated with Macau’s developing gaming regulatory framework), new development and construction activities of competitors, our limited operating history, our dependence on Stephen A. Wynn and existing management, our dependence on one property and, later a limited number of properties, for all of our cash flow, leverage and debt service (including sensitivity to fluctuations in interest rates), levels of travel, leisure and casino spending, general domestic or international economic conditions, pending or future legal proceedings, changes in federal or state tax laws or the administration of such laws, changes in gaming laws or regulations (including the legalization of gaming in certain jurisdictions), applications for licenses and approvals under applicable jurisdictional laws and regulations (including gaming laws and regulations), the impact that an outbreak of an infectious disease, such as

avian flu, or the impact of a natural disaster, such as the tsunami which struck southeast Asia in December 2004, may have on the travel and leisure industry, and the consequences of the war in Iraq and other military conflicts in the Middle East and any future security alerts and/or terrorist attacks. Further information on potential factors that could affect our financial condition, results of operations and business are included in this report and our other filings with the SEC. You should not place undue reliance on any forward-looking statements, which are based only on information currently available to us. We undertake no obligation to publicly release any revisions to such forward-looking statements to reflect events or circumstances after the date of this report.

## ITEM 1A. RISK FACTORS

The following risk factors, among others, could cause our financial performance to differ significantly from the goals, plans, objectives, intentions and expectations expressed in this Annual Report on Form 10-K. If any of the following risks and uncertainties or other risks and uncertainties not currently known to us or not currently considered to be material actually occurs, our business, financial condition or operating results could be harmed substantially.

### *Risks Related to our Substantial Indebtedness*

*We are highly leveraged and future cash flow may not be sufficient for us to meet our obligations, and we might have difficulty obtaining more financing.*

We have a substantial amount of consolidated debt in relation to our equity. With the completion of Wynn Las Vegas, as of December 31, 2005, we have total outstanding debt of approximately \$2.1 billion. If the Encore Budget, Plans and Specs are approved in accordance with our loan documents, we will be able to incur up to an additional \$590.0 million under the credit facilities to fund the construction of Encore. In addition our credit agreement will permit us to incur additional indebtedness in connection with potential expansion plans under certain circumstances in the future. Lastly, our credit facilities for the development and construction of Wynn Macau will, subject to certain circumstances, allow us to incur up to \$672.0 million (as of December 31, 2005) of additional debt to complete Wynn Macau. Our substantial indebtedness could have important consequences. For example:

- if we do not complete construction of each phase of Wynn Macau by the scheduled completion dates, or if we fail to meet our payment obligations or otherwise default under the agreements governing our indebtedness, the lenders under those agreements will have the right to accelerate the indebtedness and exercise other rights and remedies against us. These rights and remedies include rights to:
  - repossess and foreclose upon the assets that serve as collateral,
  - initiate judicial foreclosure against us,
  - petition a court to appoint a receiver for us or for substantially all of our assets, and
  - if we are insolvent, initiate involuntary bankruptcy proceedings against us, in each case, subject to procedural restraints and limitations applicable to secured creditors generally and also those imposed by applicable gaming laws, rules and regulations;
- we are required to use a substantial portion of our cash flow from the Wynn Las Vegas operations to service and amortize our Wynn Las Vegas indebtedness and to pay development costs of Encore, which will reduce the available cash flow to fund working capital, other capital expenditures and other general corporate purposes;
- we may have a limited ability to respond to changing business and economic conditions and to withstand competitive pressures, which may affect our financial condition;
- we may have a limited ability to obtain additional financing, if needed, to fund development and construction costs of Encore, satisfy working capital requirements, or pay for other capital expenditures, debt service or other obligations;

- under our credit facilities, rates with respect to a portion of the interest we pay will fluctuate with market rates and, accordingly, our interest expense will increase if market interest rates increase;

Under the terms of the documents governing our debt facilities, we will be permitted to incur additional indebtedness, including secured senior and subordinated indebtedness. If we incur additional indebtedness, the risks described above will be exacerbated.

*The agreements governing our debt facilities contain covenants that restrict our ability to engage in certain transactions and may impair our ability to respond to changing business and economic conditions.*

The agreements governing our debt facilities contain covenants that restrict our ability to engage in certain transactions and may impair our ability to respond to changing business and economic conditions. The debt facilities impose operating and financial restrictions on us and our restricted subsidiaries, including, among other things, limitations on the ability to:

- pay dividends or distributions or repurchase equity;
- incur additional debt;
- make investments;
- create liens on assets to secure debt;
- enter into transactions with affiliates;
- issue stock of, or member's interests in, subsidiaries;
- enter into sale-leaseback transactions;
- engage in other businesses;
- merge or consolidate with another company;
- transfer and sell assets;
- issue disqualified stock;
- create dividend and other payment restrictions affecting subsidiaries; and
- designate restricted and unrestricted subsidiaries.

The debt facilities require us to satisfy various financial covenants, which include minimum interest coverage and total debt to earnings before interest, tax, depreciation and amortization. Future indebtedness or other contracts could contain financial or other covenants more restrictive than those applicable to the existing debt facilities.

Our ability to comply with these provisions may be affected by general economic conditions, industry conditions, and other events beyond our control. As a result, we may not be able to comply with these covenants. Our failure to comply with the covenants contained in the debt facilities, including failure as a result of events beyond our control, could result in an event of default, which could materially and adversely affect our operating results and our financial condition.

If there were an event of default under one of our debt instruments, the holders of the defaulted debt could cause all amounts outstanding with respect to that debt to be due and payable immediately. We cannot assure you that our assets or cash flow would be sufficient to fully repay borrowings under our outstanding debt instruments if accelerated upon an event of default, or that we would be able to repay, refinance or restructure the payments on those debt securities.

*Our subsidiaries' indebtedness is secured by a substantial portion of their assets.*

Subject to applicable laws, including gaming laws, and certain agreed upon exceptions, our subsidiaries' debt is secured by liens on substantially all of the assets of our subsidiaries. In the event of a default by any of our subsidiaries under their financing documents, or if certain of our subsidiaries experience insolvency, liquidation, dissolution or reorganization, the holders of our subsidiaries' secured debt instruments would first be entitled to payment from their collateral security, and only then would holders of our subsidiaries' unsecured debt be entitled to payment from their remaining assets.

### ***Risks Relating to our Business***

*A downturn in general economic conditions may adversely affect our results of operations.*

Our business operations are affected by international, national and local economic conditions. A recession or downturn in the general economy, or in a region constituting a significant source of customers for our property, could result in fewer customers visiting, or spending less at, our properties, which would adversely affect our revenues.

*We have a limited operating history.*

Our operations are subject to the significant business, economic, regulatory and competitive uncertainties and contingencies frequently encountered by new businesses in competitive environments, many of which are beyond our control. Because we have a limited operating history, it may be more difficult for us to prepare for and respond to these types of risks compared to a company with an established business. If we are not able to manage these risks successfully, it could negatively impact our operations.

*We are entirely dependent on one property for all of our cash flow, which subjects us to greater risks than a gaming company with more operating properties.*

We do not expect to have material assets or operations other than Wynn Las Vegas until the opening of Wynn Macau in the third quarter of 2006. Until that time, we are entirely dependent upon Wynn Las Vegas for all of our cash flow. As a result, we are subject to a greater degree of risk than a gaming company with more operating properties. The risks to which we have a greater degree of exposure include the following:

- local economic and competitive conditions;
- changes in local and state governmental laws and regulations, including gaming laws and regulations;
- natural and other disasters;
- an increase in the cost of utilities for Wynn Las Vegas as a result of, among other things, power shortages in California or other western states with which Nevada shares a single regional power grid or a shortage of natural resources such as water;
- a decline in the number of visitors to Las Vegas; and
- a decrease in gaming and non-gaming activities at Wynn Las Vegas.

Any of the factors outlined above could negatively affect our ability to generate sufficient cash flow to make payments with respect to our debt.

*Our casino, hotel, convention and other facilities face intense competition.*

*Competition for Wynn Las Vegas.* The casino/hotel industry is highly competitive and additional developments are currently underway. Resorts located on or near the Las Vegas Strip compete with other Las Vegas Strip hotels and with other hotel casinos in Las Vegas on the basis of overall atmosphere, range of

amenities, level of service, price, location, entertainment, theme and size. Wynn Las Vegas also competes with a large number of other hotels located in and near Las Vegas, as well as other resort destinations. Some of our competitors have established gaming operations, are subsidiaries or divisions of large public companies, and may have greater financial and other resources than we do.

Wynn Las Vegas also competes, to some extent, with other hotel/casino facilities in Nevada and in Atlantic City, riverboat gaming facilities in other states, casino facilities on Native American lands and elsewhere in the world, state lotteries, Internet gaming and other forms of gaming. The continued proliferation of Native American gaming in California could have a negative impact on our operations. The proliferation of gaming activities in other areas could significantly harm our business as well. In particular, the legalization of casino gaming in or near metropolitan areas, such as New York, Philadelphia, Los Angeles, San Francisco and Boston, from which we attract customers, could have a substantial negative effect on our business. In addition, new or renovated casinos in Macau or elsewhere in Asia could draw Asian gaming customers, including high-rollers, away from Wynn Las Vegas.

*Competition for Wynn Macau.* The Macau government has granted concessions to operate casinos to three companies. Two sub-concessions have also been granted and additional subconcessions are expected. The three concessionaires and two sub-concessionaires currently operate 17 casinos in Macau. On March 4, 2006, the Company entered into an agreement with PBL pursuant to which the Company agreed to sell to PBL a subconcession to operate casino games in Macau. The transaction is subject to the approval of the Macau government. PBL, in partnership with Melco, is currently constructing the Crown Macau on Taipa and has announced the City of Dreams project in Cotai.

SJM, controlled by Stanley Ho, who through another entity controlled the monopoly concession to conduct gaming operations in Macau for more than 40 years, is one of the concessionaires and operates 15 of the 17 casinos that are currently operating in Macau. SJM is also constructing the Grand Lisboa, a resort opposite the rear entrance of the Hotel Lisboa, one of the main competitors in Macau gaming. Las Vegas Sands opened the Sands Macao in May 2004 and is currently building the Venetian Macao Resort, an all-suites hotel, casino and convention center complex, with a Venetian-style theme similar to that of their Las Vegas property. In addition, MGM MIRAGE is building the MGM Grand Macau, a resort on the Macau peninsula adjacent to Wynn Macau, jointly owned and operated by MGM MIRAGE and Pansy Ho Chiu-king (Stanley Ho's daughter).

Wynn Macau will face additional competition from ongoing development in Macau and from casinos located in other areas of Asia, such as Genting Highlands Resort, a major gaming and resort destination located outside of Kuala Lumpur, Malaysia and casinos to be developed in Singapore, South Korea and the Philippines, as well as pachinko and pachislot parlors in Japan. Wynn Macau will also encounter competition from other major gaming centers located around the world, such as Australia and Las Vegas, cruise ships in Asia that offer gaming, and other casinos throughout Asia. Further, if current efforts to legalize gaming in Thailand or Penghu, Taiwan are successful or if the reported large-scale new casino entertainment complex proposed in Manila, Philippines is developed, Wynn Macau will face additional regional competition.

*Our business relies on high-end, international customers to whom we often extend credit, and we may not be able to collect gaming receivables from our credit players or credit play may decrease.*

*General.* A significant portion of our table game revenue at Wynn Las Vegas is, and at Wynn Macau will be, attributable to the play of a limited number of international customers. The loss or a reduction in the play of the most significant of these customers could have a substantial negative effect on our future operating results. A downturn in economic conditions in the countries in which these customers reside could cause a reduction in the frequency of visits by and revenue generated from these customers.

We conduct our gaming activities on a credit as well as a cash basis. This credit is unsecured. Table games players typically are extended more credit than slot players, and high-stakes players typically are extended more credit than patrons who tend to wager lower amounts. High-end gaming is more volatile than other forms of

gaming, and variances in win-loss results attributable to high-end gaming may have a positive or negative impact on cash flow and earnings in a particular quarter.

In addition, the collectibility of receivables from international customers could be negatively affected by future business or economic trends or by significant events in the countries in which these customers reside. We will extend credit to those customers whose level of play and financial resources, in the opinion of management, warrant such an extension.

*Wynn Las Vegas.* While gaming debts evidenced by a credit instrument, including what is commonly referred to as a “marker,” and judgments on gaming debts are enforceable under the current laws of Nevada, and judgments on gaming debts are enforceable in all states under the Full Faith and Credit Clause of the United States Constitution, other jurisdictions may determine that direct or indirect enforcement of gaming debts is against public policy. Although courts of some foreign nations will enforce gaming debts directly and the assets in the United States of foreign debtors may be used to satisfy a judgment, judgments on gaming debts from U.S. courts are not binding on the courts of many foreign nations. We cannot assure you that we will be able to collect the full amount of gaming debts owed to us, even in jurisdictions that enforce gaming debts. Our inability to collect gaming debts could have a significant negative impact on our operating results.

*Wynn Macau.* Although the law in Macau was changed to permit casino operators to extend credit to gaming customers, Wynn Macau may not be able to collect all of its gaming receivables from its credit players. We expect that Wynn Macau will be able to enforce these obligations only in a limited number of jurisdictions, including Macau. To the extent that gaming customers of Wynn Macau are expected to be visitors from other jurisdictions, Wynn Macau may not have access to a forum in which it will be able to collect all of its gaming receivables because, among other reasons, courts of many jurisdictions do not enforce gaming debts and Wynn Macau may encounter forums that will refuse to enforce such debts. Wynn Macau’s inability to collect gaming debts could have a significant negative impact on its operating results.

Currently, the gaming tax in Macau is calculated as a percentage of gross gaming revenue. However, unlike Nevada, the gross gaming revenue calculation in Macau does not include deductions for credit losses. As a result, if we extend credit to our customers in Macau and are unable to collect on the related receivables from them, we would have to pay taxes on our winnings from these customers even though we were unable to collect on the related receivables from them. If the laws are not changed, our business in Macau may not be able to realize the full benefits of extending credit to our customers. Although there are proposals to revise the gaming tax laws in Macau, there can be no assurance that the laws will be changed.

*We are subject to extensive state and local regulation, and licensing and gaming authorities have significant control over our operations, which could have a negative effect on our business.*

*General.* The operation of Wynn Las Vegas and Wynn Macau is contingent upon our obtaining and maintaining all regulatory licenses, permits, approvals, registrations, findings of suitability, orders and authorizations. The laws, regulations and ordinances requiring these licenses, permits and other approvals generally relate to the responsibility, financial stability and character of the owners and managers of gaming operations, as well as persons financially interested or involved in gaming operations. The scope of the approvals required to open and operate a facility is extensive. We received all approvals and opened Wynn Las Vegas on April 28, 2005, however, we are subject to ongoing regulation to maintain its operation. We will open Wynn Macau in the third quarter of 2006, however, failure to obtain or maintain the necessary approvals could prevent or delay the completion or opening of all or part of the facilities.

*Wynn Las Vegas.* The Nevada Gaming Commission may, in its discretion, require the holder of any securities we issue to file applications, be investigated and be found suitable to own Wynn Resorts’ securities if it has reason to believe that the security ownership would be inconsistent with the declared policies of the State of Nevada.



Nevada regulatory authorities have broad powers to request detailed financial and other information, to limit, condition, suspend or revoke a registration, gaming license or related approval and to approve changes in our operations. Substantial fines or forfeiture of assets for violations of gaming laws or regulations may be levied. The suspension or revocation of any license which may be granted to us or the levy of substantial fines or forfeiture of assets could significantly harm our business, financial condition and results of operations. Furthermore, compliance costs associated with gaming laws, regulations and licenses are significant. Any change in the laws, regulations or licenses applicable to our business or a violation of any current or future laws or regulations applicable to our business or gaming licenses could require us to make substantial expenditures or could otherwise negatively affect our gaming operations.

Wynn Resorts' articles of incorporation provide that, to the extent a gaming authority makes a determination of unsuitability or to the extent deemed necessary or advisable by the board of directors, Wynn Resorts may redeem shares of its capital stock that are owned or controlled by an unsuitable person or its affiliates. The redemption price may be paid in cash, by promissory note, or both, as required, and pursuant to the terms established by, the applicable gaming authority and, if not, as Wynn Resorts elects.

*Wynn Macau.* Wynn Macau's operations will be subject to unique risks, including risks related to Macau's developing regulatory framework. Wynn Macau may need to develop operating procedures which are different from those used in United States casinos. Failure to adapt to the regulatory and gaming environment in Macau could result in the revocation of Wynn Macau, S.A.'s concession or otherwise negatively affect its operations in Macau. Moreover, we would be subject to the risk that Macau's gaming regulatory framework will not develop in a way that would permit us as a United States gaming operator, to conduct operations in Macau in a manner consistent with the way in which we intend, or the Nevada gaming authorities require us, to conduct our operations in the United States. Our subconcession sale is also subject to the approval of the Macau government.

*There are significant risks associated with major construction projects that may prevent completion of Encore and/or Wynn Macau on schedule and within budget.*

Major construction projects of the scope and scale of Encore and Wynn Macau entail significant risks, including:

- shortages of materials or skilled labor;
- unforeseen engineering, environmental and/or geological problems;
- work stoppages;
- weather interference;
- unanticipated cost increases; and
- unavailability of construction equipment.

Construction, equipment or staffing problems or difficulties in obtaining any of the requisite licenses, permits and authorizations from regulatory authorities could increase the total cost, delay or prevent the construction or opening or otherwise affect the design and features of Encore and/or Wynn Macau.

We anticipate that only some of the subcontractors engaged for these projects will post bonds guaranteeing timely completion of a subcontractor's work and payment for all of that subcontractor's labor and materials. These bonds may not be adequate to ensure completion of the work.

We have not yet entered into a final agreement with a general contractor or any trade contractors with respect to the construction of Encore. We may not agree with general or trade contractors on financial and other terms that will meet our forecasted \$1.74 billion cost budget and schedule.

Encore and/or Wynn Macau may not commence operations on schedule or that construction costs for these projects will not exceed budgeted amounts. Failure to complete any of these projects on schedule or within budget may have a significant negative effect on us and on our ability to make payments on our debt.

*Simultaneous construction of our Wynn Macau and Encore Projects may stretch management time and resources and may impact Wynn Las Vegas.*

Both the construction of Wynn Macau and the development and preconstruction efforts for Encore continue. Since there is significant overlap of the development and construction of these projects, members of our senior management are simultaneously involved in planning and developing both of these projects. Constructing Wynn Macau simultaneously with the planned development and construction of Encore may divert management resources from the construction and/or opening of any one project. Management's inability to devote sufficient time and attention to any one project may delay the construction or opening of any, or all of the projects. Any delay caused by such circumstances could have a negative effect on our business and operations.

In addition, although we intend to construct Encore with minimal impact on Wynn Las Vegas, we cannot assure you that the construction will not disrupt the operations of Wynn Las Vegas or that it will be implemented as planned. Therefore, the construction of Encore may adversely impact the business, operations and revenues of Wynn Las Vegas.

*Terrorism and the uncertainty of military conflicts, as well as other factors affecting discretionary consumer spending, may harm our operating results.*

The strength and profitability of our business depends on consumer demand for hotel casino resorts in general and for the type of luxury amenities Wynn Las Vegas and Wynn Macau offer. Changes in consumer preferences or discretionary consumer spending could harm our business. The terrorist attacks of September 11, 2001, other terrorist activities in the United States and elsewhere, military conflicts in Iraq and in the Middle East, and past outbreaks of infectious disease have had negative impacts on travel and leisure expenditures, including lodging, gaming and tourism. We cannot predict the extent to which similar events and conditions may continue to affect us, directly or indirectly, in the future. An extended period of reduced discretionary spending and/or disruptions or declines in airline travel and business conventions could significantly harm our operations. In particular, because our business will rely heavily upon high-end customers, particularly international customers, factors resulting in a decreased propensity to travel internationally could have a negative impact on our operations.

In addition to terrorist activities, military conflicts, the outbreak of infectious diseases such as the avian flu or the impact of a natural disaster such as a tsunami or typhoon, other factors affecting travel and discretionary consumer spending, including general economic conditions, disposable consumer income, fears of recession and reduced consumer confidence in the economy, may negatively impact our business. Negative changes in factors affecting discretionary spending could reduce customer demand for the products and services we offer, thus imposing practical limits on pricing and harming our operations.

*Our insurance coverage may not be adequate to cover all possible losses that we could suffer, and our insurance costs may increase.*

The terrorist attacks of September 11, 2001 have substantially affected the availability of insurance coverage for certain types of damages or occurrences. We currently have insurance coverage for occurrences of terrorist acts with respect to Wynn Las Vegas and Wynn Macau for up to \$500.0 million and \$100.0 million, respectively, of losses that could result from these acts. However, these types of acts could expose us to losses that exceed our coverage and could have a significant negative impact on our operations.

In addition, insurance premiums have increased on available coverage, and we may not have sufficient insurance coverage in the event of a catastrophic property or casualty loss. We may also suffer disruption of our business in the event of a terrorist attack or other catastrophic property or casualty loss or be subject to claims by third parties injured or harmed. While we currently carry general liability insurance and business interruption insurance, such insurance may not be adequate to cover all losses in such event. In the event that insurance premiums continue to increase, we may not be able to maintain the insurance coverages we currently have or otherwise be able to maintain adequate insurance protection.

*If a third party successfully challenges our ownership of, or right to use, the Wynn-related service marks, our business or results of operations could be harmed.*

We have filed applications with the United States Patent and Trademark Office (“PTO”), to register a variety of WYNN-related trademarks and service marks in connection with a variety of goods and services. These marks include “WYNN LAS VEGAS” and “WYNN MACAU.” Some of the applications are based upon ongoing use and others are based upon a bona fide intent to use the marks in the future.

A common element of these marks is the use of the surname, “WYNN.” As a general rule, a surname (or a mark primarily constituting a surname) cannot be registered unless the surname has acquired “secondary meaning.” To date, we have been successful in demonstrating to the PTO such secondary meaning for the Wynn name, in certain of the applications, based upon Mr. Wynn’s prominence as a resort developer, but we cannot assure you that we will be successful with the other pending applications.

Even if we are able to obtain registration of the WYNN-related marks, such federal registrations are not completely dispositive of the right to such marks. Third parties who claim prior rights with respect to similar marks may nonetheless challenge our right to obtain registrations or our use of the marks and seek to overcome the presumptions afforded by such registrations.

*If a third party asserts other forms of intellectual property claims against us, our business or results of operations could be adversely affected.*

Historically, trademarks and service marks have been the principal form of intellectual property right of relevance to the gaming industry. However, due to the increased use of technology in computerized gaming machines and in business operations generally, other forms of intellectual property rights (such as patents and copyrights) are becoming of increased relevance. It is possible that, in the future, third parties might assert superior intellectual property rights or allege that their intellectual property rights cover some aspect of our operations. The defense of such allegations may result in substantial expenses, and, if such allegations should be true, may have a material impact on our business.

*The loss of Stephen A. Wynn could significantly harm our business.*

Our ability to maintain our competitive position is dependent to a large degree on the efforts and skills of Stephen A. Wynn, the Chairman of the Board, Chief Executive Officer and one of the principal stockholders of Wynn Resorts. In 2004, we extended the term of Mr. Wynn’s employment agreement until October 2017. However, we cannot assure you that Mr. Wynn will remain with us. If we lose the services of Mr. Wynn, or if he is unable to devote sufficient attention to our operations for any other reason, our business may be significantly impaired. In addition, if Mr. Wynn is no longer either employed by us as Chief Executive Officer or serving as Chairman of the Board, other than as a result of death or disability or other limited circumstances, it would constitute a change of control that would require Wynn Las Vegas to offer to repay the First Mortgage Notes and would constitute an event of default under its credit facilities and Wynn Macau, S.A.’s credit facilities.

*Our two largest stockholders are able to exert significant control over our operations and future direction.*

Mr. Wynn and Aruze USA, Inc. each own slightly less than 25% of our outstanding common stock. As a result, Mr. Wynn and Aruze USA, Inc., to the extent they vote their shares in a similar manner, virtually are able to control all matters requiring our stockholders’ approval, including the approval of significant corporate transactions.

In addition, Mr. Wynn and Aruze USA, Inc., together with Baron Asset Fund, have entered into a stockholders’ agreement. Under the stockholders’ agreement, Mr. Wynn and Aruze USA, Inc., have agreed to vote their shares of our common stock for a slate of directors, a majority of which will be designated by

Mr. Wynn, of which at least two will be independent directors, and the remaining members of which will be designated by Aruze USA, Inc. As a result of this voting arrangement, Mr. Wynn, as a practical matter, controls the slate of directors to be elected to our board of directors.

*Because we own real property, we are subject to extensive environmental regulation, which creates uncertainty regarding future environmental expenditures and liabilities.*

We have incurred costs to comply with environmental requirements, such as those relating to discharges to air, water and land, the handling and disposal of solid and hazardous waste and the cleanup of properties affected by hazardous substances. Under these and other environmental requirements we may be required to investigate and clean up hazardous or toxic substances or chemical releases at our property. As an owner or operator, we could also be held responsible to a governmental entity or third parties for property damage, personal injury and investigation and cleanup costs incurred by them in connection with any contamination.

These laws typically impose cleanup responsibility and liability without regard to whether the owner or operator knew of or caused the presence of the contaminants. The liability under those laws has been interpreted to be joint and several unless the harm is divisible and there is a reasonable basis for allocation of the responsibility. The costs of investigation, remediation or removal of those substances may be substantial, and the presence of those substances, or the failure to remediate a property properly, may impair our ability to use our property.

In connection with the demolition of the existing buildings situated on the 20-acre parcel where we intend to construct Encore, we discovered a small amount of asbestos which we incurred costs to dispose of appropriately. We may be required to incur costs to remediate other potential environmental hazards or to mitigate environmental risks in the future.

#### ***Risks Associated with Wynn Macau***

*A number of new casino resort developments underway or planned for the near future will require us to compete for limited labor resources in Macau.*

We will need to recruit a substantial number of new employees before Wynn Macau opens and retain them in order to have a successful operation. Wynn Macau will compete with the large number of new casino resort developments currently underway in Macau and expected in the near future for the limited qualified employees. We may have to seek employees from other countries to adequately staff Wynn Macau. We cannot be certain that we will be able to recruit and retain a sufficient number of qualified employees for Wynn Macau.

*The development costs of Wynn Macau are estimates only, and actual development costs may be higher than expected.*

We expect the total development costs of Wynn Macau to be approximately \$1.2 billion, including the budgeted design and construction costs, cost of the land payments (through opening), capitalized interest, pre-opening expenses and all financing fees. The required cash interest payments and commitment fees on the bank facility which will become due through the estimated commencement date of operations of Wynn Macau have been included in our estimate of the total development costs.

While we believe that the overall budget for the development costs of Wynn Macau is reasonable, these development costs are estimates and the actual development costs may be higher than expected. Although we have certain owners' contingencies, a \$72.0 million contingent debt facility (which, upon receipt of lender consent will be applied to the casino expansion in phase two and certain suite enhancements) and \$30.0 million of contingent equity set aside to cover cost overruns, these contingencies may not be sufficient to cover the full amount of such overruns. If these contingencies are not sufficient to cover these costs, we may not have the funds required to pay the excess costs.

*Not all of the construction costs of Wynn Macau are covered by a guaranteed maximum price construction contract, and we will be responsible for any cost overruns of these excluded items.*

We have entered into a guaranteed maximum price construction contract for the design and construction of Wynn Macau with Leighton Contractors (Asia) Limited, China State Construction Engineering (Hong Kong) Limited and China Construction Engineering (Macau) Company Limited, acting together as general contractor (“Leighton/China State”). The contract covers approximately \$457.2 million of the budgeted \$685.0 million design and construction costs for Wynn Macau. We are responsible for cost overruns with respect to any budgeted components that are not part of the amended guaranteed maximum price contract.

*The amended guaranteed maximum price under the Leighton/China State construction contract may increase, and we would be responsible for the amount of any increase.*

Although we have a \$457.2 million guaranteed maximum price construction contract with Leighton/China State for the construction of Wynn Macau, it provides that the guaranteed maximum price will be appropriately increased, and the deadline for the contractor’s obligation to complete construction will be appropriately adjusted, on account of scope changes or delays by us and certain other factors, some of which are beyond our control.

If any of these events occurs and the guaranteed maximum price is increased, we may not be able to complete Wynn Macau within the amount budgeted.

*The financial resources of our contractor may be insufficient to fund cost overruns or liquidated damages for which it is responsible under the amended guaranteed maximum price contract.*

Under the terms and subject to the conditions and limitations of the guaranteed maximum price construction contract, Leighton/China State is responsible for all construction costs covered by the construction contract that exceed the approximately \$457.2 million guaranteed maximum price contained in the contract. The parent companies of the contractor have provided a continuing guaranty by which they guarantee the contractor’s full performance under the construction contract until final payment under that contract. We cannot assure you that the contractor or its parent companies will have sufficient financial resources to fund any cost overruns or liquidated damages for which they are responsible under the guaranteed maximum price contract. Furthermore, neither is contractually obligated to maintain the financial resources to cover cost overruns. If they do not have the resources to meet their obligations and we are unable to obtain funds from them in a timely manner, we may need to pay these excess costs in order to complete construction of Wynn Macau.

*Wynn Macau may be affected by adverse political and economic conditions.*

The success of Wynn Macau will depend on political and economic conditions in Macau. In December 1999, after approximately 450 years of Portuguese control, Portugal returned Macau to Chinese administration. The People’s Republic of China established Macau as a special administrative region. As a result of this change in control, Macau’s legislative, regulatory, legal, economic and cultural institutions are in a period of transition. We cannot predict how these systems and cultural institutions will develop, or how developments would affect the business of Wynn Macau.

Wynn Macau’s operations will be subject to significant political, economic and social risks inherent in doing business in an emerging market such as China. For example, fiscal decline and civil, domestic or international unrest in Macau, China or the surrounding region could significantly harm Wynn Macau’s business, not only by reducing customer demand for casino resorts, but also by increasing the risk of imposition of taxes and exchange controls or other governmental restrictions that might impede its ability to repatriate funds.

*Macau may not have an adequate transportation infrastructure to accommodate the demand from future development.*

Because of additional casino projects which may be developed in the future, the ferry and helicopter services which provide transportation between Macau and Hong Kong may need to be expanded to accommodate the increased visitation of Macau. If transportation facilities to and from Macau are inadequate to meet the demands of an increased volume of gaming customers visiting Macau, the desirability of Macau as a gaming destination, as well as the results of operations of Wynn Macau, could be negatively impacted.

*Extreme weather conditions may have an adverse impact on Wynn Macau.*

Macau's subtropical climate and location on the South China Sea are subject to extreme weather conditions including typhoons and heavy rainstorms. Unfavorable weather conditions could negatively affect the profitability of Wynn Macau by disrupting our ability to timely construct the project and by preventing guests from traveling to Macau.

*Our investment in Macau may be subject to potential taxation.*

Our investment in Macau is owned through a number of wholly owned and partially owned domestic and foreign entities. Although we believe that transfers to these entities of the assets and stock of the Wynn Macau companies were accomplished on a tax-free basis, there is a risk that the Internal Revenue Service could assert that any appreciation in the transferred assets or stock was taxable at the time of such transfers.

*Currency exchange controls and currency export restrictions could negatively impact Wynn Macau.*

Currency exchange controls and restrictions on the export of currency by certain countries may negatively impact the success of Wynn Macau. For example, there are currently existing currency exchange controls and restrictions on the export of the renminbi, the currency of China. Restrictions on the export of the renminbi may impede the flow of gaming customers from China to Macau, inhibit the growth of gaming in Macau and negatively impact Wynn Macau's gaming operations.

*Any violation of the Foreign Corrupt Practices Act could have a negative impact on Wynn Macau.*

We are subject to regulations imposed by the Foreign Corrupt Practices Act, or the FCPA, which generally prohibits U.S. companies and their intermediaries from making improper payments to foreign officials for the purpose of obtaining or retaining business. Any determination that we have violated the FCPA could have a material adverse effect on our financial condition.

*The Macau government can terminate our subconcession under certain circumstances without compensation to us, which would have a material adverse effect on our operations and financial condition.*

The Macau government has the right to unilaterally terminate our concession in the event of our material non-compliance with the basic obligations under the concession and applicable Macau laws. The concession agreement expressly provides that the government of Macau may unilaterally rescind the concession agreement if Wynn Macau, S.A.:

- conducts unauthorized games or activities that are excluded from its corporate purpose;
- suspends gaming operations in Macau for more than seven consecutive days without justification;
- defaults in payment of taxes, premiums, contributions or other required amounts;
- does not comply with government inspections or supervision;
- systematically fails to observe its obligations under the concession system;
- fails to maintain bank guarantees or bonds satisfactory to the government;

- is the subject of bankruptcy proceedings or becomes insolvent;
- engages in serious fraudulent activity, damaging to the public interest; or
- repeatedly violates applicable gaming laws.

If the government of Macau unilaterally rescinds the concession agreement, Wynn Macau, S.A. will be required to compensate the government in accordance with applicable law, and the areas defined as casino space under Macau law and all of the gaming equipment pertaining to the gaming operations of Wynn Macau will be transferred to the government without compensation. The loss of our concession would prohibit us from conducting gaming operations in Macau, which could have a material adverse effect on our operations and financial condition.

*We will stop generating any revenues from our Macau gaming operations if we cannot secure an extension of our concession in 2022 or if the Macau government exercises its redemption right in 2017.*

Our concession agreement expires in June 2022. Unless our concession is extended, on that date, all of our casino operations and related equipment in Macau will be automatically transferred to the Macau government without compensation to us and we will cease to generate any revenues from these operations. Beginning in December 2017, the Macau government may redeem the concession agreement by providing us at least one year prior notice. In the event the Macau government exercises this redemption right, we are entitled to fair compensation or indemnity. The amount of such compensation or indemnity will be determined based on the amount of revenue generated during the tax year prior to the redemption. We cannot assure you that we will be able to renew or extend our concession agreement on terms favorable to us or at all. We also cannot assure you that if our concession is redeemed, the compensation paid will be adequate to compensate us for the loss of future revenues.

*The Macau government has the ability to grant additional rights to conduct gaming in the future, which could have a material adverse effect on our financial condition, results of operations and cash flows.*

We hold a concession under one of only three gaming concessions and two sub-concessions authorized by the Macau government to operate casinos in Macau, and the Macau government is precluded from granting any additional gaming concessions until 2009. However, we cannot assure you that the laws will not be changed to permit the Macau government to grant additional gaming concessions before 2009. MGM Mirage's joint venture has obtained a subconcession under SJM's existing concession. If the Macau government were to allow additional competitors to operate in Macau through the grant of additional concessions or subconcessions, we would face additional competition, which could have a material adverse effect on our financial condition and results of operations.

*Certain Nevada gaming laws would apply to Wynn Macau's planned gaming activities and associations.*

Certain Nevada gaming laws also apply to gaming activities and associations in jurisdictions outside the State of Nevada. As we develop Wynn Macau, we and our subsidiaries that must be licensed to conduct gaming operations in Nevada will be required to comply with certain reporting requirements concerning gaming activities and associations in Macau proposed to be conducted by our Macau-related subsidiaries. We and our licensed Nevada subsidiaries also will be subject to disciplinary action by the Nevada Gaming Commission if our Macau-related subsidiaries:

- knowingly violate any Macau laws relating to their Macau gaming operations;
- fail to conduct Wynn Macau's operations in accordance with the standards of honesty and integrity required of Nevada gaming operations;
- engage in any activity or enter into any association that is unsuitable for us because it poses an unreasonable threat to the control of gaming in Nevada, reflects or tends to reflect discredit or disrepute upon the State of Nevada or gaming in Nevada, or is contrary to Nevada gaming policies;

- engage in any activity or enter into any association that interferes with the ability of the State of Nevada to collect gaming taxes and fees; or
- employ, contract with or associate with any person in the foreign gaming operation who has been denied a license or a finding of suitability in Nevada on the ground of unsuitability, or who has been found guilty of cheating at gambling.

Such disciplinary action could include suspension, conditioning, limitation or revocation of the registration, licenses or approvals held by us and our licensed Nevada subsidiaries, including Wynn Las Vegas, LLC, and the imposition of substantial fines.

In addition, if the Nevada State Gaming Control Board determines that any actual or intended activities or associations of our Macau-related subsidiaries may be prohibited pursuant to one or more of the standards described above, the Nevada State Gaming Control Board can require us and our licensed Nevada subsidiaries to file an application with the Nevada Gaming Commission for a finding of suitability of the activity or association. If the Nevada Gaming Commission finds that the activity or association in Macau is unsuitable or prohibited, our Macau-related subsidiaries will either be required to terminate the activity or association, or will be prohibited from undertaking the activity or association. Consequently, should the Nevada Gaming Commission find that our Macau-related subsidiaries' gaming activities or associations in Macau are unsuitable, those subsidiaries may be prohibited from undertaking their planned gaming activities or associations in Macau, or be required to divest their investment in Macau, possibly on unfavorable terms.

*Unfavorable changes in currency exchange rates may increase Wynn Macau's obligations under the concession agreement and cause fluctuations in the value of our investment in Macau.*

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

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

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

*The sale of our subconcession is subject to the approval of the Macau government.*

#### ***Risks Associated with the Development of Encore***

*There are conditions precedent to the funding of the remaining components of the financing for Encore.*

As of December 31, 2005, we had approximately \$175.4 million in remaining net proceeds from the offering of our First Mortgage Notes held in a notes proceeds account, and availability under our credit facilities,



which we intend to use to fund construction of Encore. We expect that the remaining proceeds from the First Mortgage Notes, together with availability under the credit facilities and cash flow from operations, will be sufficient to fund Encore project costs of up to \$1.52 billion without incurring additional debt or receiving additional capital contributions from Wynn Resorts.

We have entered into a disbursement agreement with the agent under the credit facilities and the trustee under the indenture for the First Mortgage Notes, which sets forth the sequence of funding and establishes conditions for the disbursement of funds for the Wynn Las Vegas and Encore projects. Our ability to borrow, from time to time, under the credit facilities and receive advances from the notes proceeds account is subject to various conditions precedent set forth in the disbursement agreement.

We cannot assure you that we will be able to satisfy the conditions to funding at the time drawdowns are required to make payments of our construction costs. Satisfaction of various conditions is subject to the discretion of the disbursement agent and the lenders under the credit facilities and/or their consultants and agent and may therefore be beyond our control. Failure to satisfy the conditions to the drawdowns under the credit facilities could impact our ability to develop and construct Encore. We may not have access to alternative sources of funds necessary to develop and construct Encore on satisfactory terms or at all.

*Availability under our credit facilities will be reduced by \$550.0 million if the Encore Budget, Plans and Specs are not approved by March 31, 2006.*

Our credit facilities provide that a majority of the arrangers or a majority of the lenders under the credit facilities must approve the Encore Budget, Plans and Specs on or before March 31, 2006. If the Encore Budget, Plans and Specs are not approved by such date, availability under the new credit facilities will be reduced by \$550.0 million. We will submit required documentation to our lenders on March 15, 2006, and will seek necessary consents and approvals from our lenders. We cannot assure you that the Encore Budget, Plans and Specs will be satisfactory to the arrangers or lenders under our credit facilities. Such decisions are subject to lender discretion and are beyond our control. If we do not have this availability under the credit facilities or are unable to obtain the required consents, we may not have access to alternative sources of funds necessary to develop and construct Encore on satisfactory terms or at all.

*We intend to fund a substantial portion of the development costs of Encore and our substantial debt service and other obligations with cash flows generated at Wynn Las Vegas, which may not be sufficient to fund such development costs and debt service obligations.*

Our ability to fund a substantial portion of the development costs of Encore, and to make interest payments under the credit facilities, the notes and any other indebtedness, is dependent on our ability to generate sufficient cash flow from our operations at Wynn Las Vegas. We cannot assure you that Wynn Las Vegas will continue to be able to generate sufficient cash flow to fund such development costs and make the interest payments under the new credit facilities, the First Mortgage Notes and any other indebtedness. Our ability to generate cash flow depends on many factors, including:

- our operating performance;
- the demand for services that we provide;
- general economic conditions and economic conditions affecting Nevada or the hotel/casino industry in particular;
- our ability to hire and retain employees at a reasonable cost;
- competition; and
- legislative and regulatory factors affecting our operations and business.

Some of these factors are beyond our control. Any inability to generate sufficient cash flows to fund the development of Encore or meet our debt service obligations would have a material adverse effect on our operating results and financial condition. In addition, the financing documents for our Wynn Macau project contain restrictions on the distribution to Wynn Resorts of any cash flow generated by the Wynn Macau casino. Thus, any cash flow generated by Wynn Macau may not be available to fund development costs of Encore or service our debt.

## **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

## **ITEM 2. PROPERTIES**

### **Las Vegas Land**

We currently own approximately 235 acres of land on or near the Las Vegas Strip. Our wholly-owned indirect subsidiary, Wynn Las Vegas, LLC owns a total of approximately 75 acres of land consisting of approximately 55 acres at the northeast corner of the intersection of Las Vegas Boulevard and Sands Avenue and an additional parcel of 20 acres fronting Las Vegas Boulevard next to the Wynn Las Vegas site on which we will construct Encore. Wynn Golf, LLC, a wholly-owned subsidiary of Wynn Las Vegas, LLC owns the approximately 142-acre golf course behind Wynn Las Vegas, which is leased to Wynn Las Vegas, LLC. Wynn Sunrise, LLC, a wholly-owned subsidiary of Wynn Las Vegas, LLC, owns approximately 18 acres located across from the Wynn Las Vegas site at Koval Lane and Sands Avenue, which is currently being used for employee parking.

### **Las Vegas Water Rights**

We own, subject to proof of beneficial use and approval of the State of Nevada Division of Water Resources, approximately 934 acre-feet of permitted domestic and recreation water rights through our subsidiary, Wynn Golf, LLC, which we currently use to irrigate the golf course. We also own, subject to proof of beneficial use and approval of the State of Nevada Division of Water Resources, approximately 52 acre-feet of permitted (and some certificated) quasi-municipal water rights through our subsidiary, Wynn Las Vegas, LLC, which is used to supply the water for the Wynn Las Vegas lake/mountain feature. There are significant cost savings and conservation benefits associated with using water supplied pursuant to our water rights. We anticipate using our water rights to support future development of the golf course land.

### **Macau Land Lease**

The government of Macau owns most of the land in Macau and, in most cases, private interests in real property located in Macau are obtained only through long-term leases and other grants of rights to use land from the government. In July 2004, our subsidiary, Wynn Macau, S.A., entered into a land concession contract under which Wynn Macau, S.A. leases from the Macau government an approximately 16-acre parcel of land in downtown Macau's inner harbor area, opposite the Hotel Lisboa, Macau's largest and best-known hotel casino. The term of the land concession contract is 25 years, and it may be renewed at our option for successive periods. Wynn Macau, S.A. is obligated to pay, in 10 semiannual installments, a total land concession premium of approximately 319.0 million patacas (approximately US \$40 million) plus interest at 5%. Annual rents of approximately 2.2 million patacas (approximately US \$275,000) for the first two years and 3.2 million patacas (approximately US \$395,000) thereafter will also be paid in accordance with the land concession contract. In addition, Wynn Macau, S.A. paid a third party affiliated with Stanley Ho approximately 144.2 million patacas (approximately US \$18 million) for relinquishing its rights to use a portion of that site.

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**ITEM 3. LEGAL PROCEEDINGS**

We are occasionally 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. We are not currently party to any material legal proceedings.

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

There were no matters submitted to a vote of our security holders during the fourth quarter of 2005.

**PART II**

**ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

**Market Information**

Our common stock trades on the NASDAQ exchange under the symbol "WYNN." The following table sets forth the high and low sale prices for the indicated periods, as reported by the NASDAQ National Market Securities.

	<u>High</u>	<u>Low</u>
<b>Year Ended December 31, 2005</b>		
First Quarter	\$ 76.45	\$ 60.40
Second Quarter	\$ 68.00	\$ 42.32
Third Quarter	\$ 58.20	\$ 43.27
Fourth Quarter	\$ 61.50	\$ 42.06
<b>Year Ended December 31, 2004</b>		
First Quarter	\$ 40.26	\$ 27.50
Second Quarter	\$ 43.77	\$ 34.60
Third Quarter	\$ 52.97	\$ 34.18
Fourth Quarter	\$ 72.99	\$ 50.51

**Holders**

There were approximately 36,678 beneficial holders of our common stock as of February 28, 2006.

**Dividends**

We have never declared or paid cash dividends on any shares of our common stock. We currently intend to retain all available funds and any future consolidated earnings to fund the development and growth of our business and therefore do not anticipate paying any cash dividends.

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

## ITEM 6. SELECTED FINANCIAL DATA

The following reflects the selected consolidated financial data of Wynn Resorts and its subsidiaries or Valvino and its subsidiaries. Amounts for 2004 and 2003 have been restated as more fully described in footnote 17 to the notes to Wynn Resorts' consolidated financial statements. This data should be read together with Wynn Resorts' consolidated financial statements and notes thereto, "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" and the other information contained in this Annual Report on Form 10-K.

	Years Ended December 31,				
	2005	(As Restated)	(As Restated)	2002	2001
		2004	2003		
	(in thousands, except per share amounts)				
<b>Consolidated Statement of Operations Data:</b>					
Net revenues	\$ 721,981	\$ 195	\$ 643	\$ 544	\$ 793
Pre-opening costs	\$ (96,940)	\$ (81,321)	\$ (46,744)	\$ (24,532)	\$ (12,999)
Operating loss	\$ (24,556)	\$ (89,798)	\$ (53,335)	\$ (34,400)	\$ (20,060)
Net loss	\$ (90,836)	\$ (204,171)	\$ (40,099)	\$ (31,713)	\$ (17,726)
Basic and diluted loss per share	\$ (0.92)	\$ (2.35)	\$ (0.50)	\$ (0.68)	\$ (0.45)

	As of December 31,				
	2005	(As Restated)	(As Restated)	2002	2001
		2004	2003		
	(in thousands)				
<b>Consolidated Balance Sheet Data:</b>					
Cash and cash equivalents	\$ 434,289	\$ 330,261	\$ 341,552	\$ 109,644	\$ 39,268
Restricted cash and investments[1]	\$ 442,602	\$ 942,367	\$ 400,432	\$ 792,877	\$ 524
Construction in progress	\$ 286,570	\$ 1,499,284	\$ 570,988	\$ 90,189	\$ 27,475
Total assets	\$ 3,945,283	\$ 3,464,413	\$ 1,733,323	\$ 1,398,601	\$ 388,543
Total long-term obligations[2]	\$ 2,137,082	\$ 1,660,169	\$ 659,319	\$ 382,697	\$ 326
Stockholders' equity	\$ 1,562,895	\$ 1,644,492	\$ 1,001,815	\$ 991,613	\$ 384,230

[1] Restricted cash and investments primarily reflects the proceeds of our debt and equity financings that are restricted for the construction of Wynn Las Vegas and Wynn Macau and for the development of Encore. These proceeds are primarily in relatively short-term government-backed debt securities.

[2] Includes the current portion of long-term debt amounting to approximately \$15.5 million, \$718,000, \$41,000, \$38,000, and \$35,000 as of December 31, 2005, 2004, 2003, 2002, and 2001, respectively. December 31, 2005 and 2004 also includes approximately \$9.0 million and \$9.5 million, respectively, for the current portion of the required contract premium payments under our land concession contract relating to Wynn Macau.

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATION

The following discussion should be read in conjunction with, and is qualified in its entirety by, the consolidated financial statements and the notes thereto included elsewhere in this Annual Report on Form 10-K, and gives effect to the restatement discussed in Note 17 to the consolidated financial statements.

### Overview

We are a developer, owner and operator of destination casino resorts. Wynn Las Vegas, our first resort in Las Vegas, Nevada, opened on April 28, 2005. Until the opening of Wynn Las Vegas, we were solely a development stage company.

## *Wynn Las Vegas*

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

- An approximately 111,000 square foot casino offering a full range of games, including private baccarat salons, a poker room, and a race and sports book;
- Luxury hotel accommodations in 2,716 spacious hotel rooms, suites and villas;
- Casual and fine dining in 18 outlets featuring signature chefs, including the Five Diamond award-winning restaurant, Alex;
- A Ferrari and Maserati automobile dealership;
- Approximately 76,000 square feet of high-end, brand-name retail shopping, including stores and boutiques featuring Brioni, Chanel, Dior, Graff, Louis Vuitton, Jean-Paul Gaultier and Manolo Blahnik;
- Recreation and leisure facilities, including an 18-hole golf course, five swimming pools, private cabanas and full service spa and salon; and
- Showroom, nightclub and lounge entertainment

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

In the 248 days since its opening, Wynn Las Vegas generated Net Revenues of \$722.0 million and Adjusted EBITDA of \$212.0 million. Net Revenues are comprised of \$353.7 million in Net Gaming Revenues (49.0% of total net revenues) and \$368.3 million of Net Non-Gaming Revenues (51.0% of total net revenues). The quality of the resort's non-gaming amenities, combined with the goal of providing guests with an unparalleled total resort experience, has driven a premium in Wynn Las Vegas' average daily room rates and other non-gaming revenues. Consequently, we believe that revenues from Wynn Las Vegas' non-gaming activities will comprise a higher percentage of total revenues than that of many of its competitors.

Since its opening, we have further enhanced and refined Wynn Las Vegas in response to market demands and customer preferences. In the fourth quarter of 2005, we remodeled six of our Fairway Villas, *Corsa Cucina*, the property's contemporary Italian restaurant, *Tryst*, the nightclub formerly known as *La Bête*, and portions of the high-limit gaming areas. Improvements and refinements will continue be made throughout 2006. We have agreed with the producers of "Avenue Q" to end Avenue Q's exclusive run at Wynn Las Vegas at the end of May 2006. We intend to remodel the Broadway Theater and adjacent areas to accommodate "Monty Python's Spamalot" winner of the 2005 Tony Award for best musical. We have not yet determined the total costs of remodeling the theater and adjacent areas, nor have we determined the opening date for the new production.

## *Encore at Wynn Las Vegas*

As a result of the strong demand for the amenities and services offered by Wynn Las Vegas, the continued strength of the Las Vegas market, and our desire to maximize the potential of our substantial real estate assets, we intend to develop Encore at Wynn Las Vegas ("Encore") on approximately 20 acres on the Strip, immediately adjacent to Wynn Las Vegas. We have recently refined the design of Encore to feature a 2,054-room hotel tower fully integrated with Wynn Las Vegas, consisting of 144 suites and 1,910 guest rooms, as well as an approximately 44,000 square foot casino, additional convention and meeting space, in addition to restaurants, nightclubs, swimming pools, a spa and salon and retail outlets. We expect to commence construction of Encore in the second quarter of 2006 and to open Encore to the public by the end of 2008. The project budget for Encore is approximately \$1.74 billion, including approximately \$70.0 million to be incurred for construction of a new employee parking garage on our Koval property, a related pedestrian bridge and costs to be incurred in connection with preparing the Broadway Theater to host "Monty Python's Spamalot".

We are constructing and will own and operate Wynn Macau, our first destination casino resort in Macau, under a 20-year casino concession agreement granted by the Macau government in June 2002. We are one of only three concessionaires and two sub-concessionaires currently permitted by the government to operate a casino gaming business in Macau. The government of Macau has expressed its desire to transform Macau into the tourist destination of choice in Asia. The Chinese government has also gradually relaxed its travel and currency restrictions, allowing mainland Chinese from certain urban centers and economically developed areas to visit Macau without joining a tour group and increasing the amount of renminbi that Chinese citizens are permitted to bring into Macau. With approximately 100.0 million people within a three-hour drive and nearly 1.0 billion people within a three-hour flight from Macau, Wynn Macau is located in what we believe will be one of the largest and fastest-growing gaming markets in the world.

Wynn Macau is being constructed, and will open, in phases. The first phase of the project will utilize approximately 11 of a total site area of 16 acres of land and includes 600 hotel rooms and suites, approximately 100,000 square feet of casino gaming space, seven restaurants, approximately 26,000 square feet of retail space, a spa, a salon, entertainment lounges and meeting facilities. The second phase will include an additional 136,000 square feet of casino space, two restaurants, retail, a theater, and a dramatic front feature attraction. The second phase will be built on the remaining five acres of the Wynn Macau site and will be integrated into the first phase of Wynn Macau. The second phase is expected to be completed and open to the public by the third quarter of 2007.

On February 23, 2006, we announced an increase in the capacity of the second phase by the addition of 150 table games. The second phase will now include 300 table games increasing the total table count of Wynn Macau from 350 tables to 500 tables. The addition to the casino in the second phase, along with enhancements to certain of our suites, is expected to cost approximately \$70.0 million, bringing the total budget of Wynn Macau to approximately \$1.2 billion. Subject to our obtaining all necessary approvals from our secured lenders, the addition to the casino and suite product enhancements will be funded through bank facilities under the existing financing structure. The second phase, including the additional 150 tables, remains on target to open by the third quarter of 2007.

#### *Future Growth*

We have submitted an application for a land concession for an additional 54 acres of land on the Cotai Strip in Macau for future development. We also continue to evaluate additional domestic and international opportunities as they arise.

#### **Results of Operations**

We are currently reliant solely upon the operations of Wynn Las Vegas for our operating cash flow. Prior to opening Wynn Las Vegas, we had not commenced operations, nor generated any significant revenues. Because we have not operated for a full year, we believe that our results of operations for the years ended December 31, 2005, 2004 and 2003 are not indicative of future results.

We incurred a net loss for the year ended December 31, 2005 of \$90.8 million, which represents a \$113.3 million or 56% decrease from the net loss of \$204.2 million for the year ended December 31, 2004 and a \$50.7 million or 127% increase from the net loss incurred for the year ended December 31, 2003. Overall, this reflects the cycle of increasing pre-opening expenses as Wynn Las Vegas approached opening. We expect that our pre-opening expenses, which were a significant contributor to the net losses incurred for the years ended December 31, 2005, 2004 and 2003, will decrease in the near term. We will no longer incur pre-opening expenses associated with Wynn Las Vegas (excluding Encore). However, pre-opening expenses relating to Wynn Macau will increase as the construction of Wynn Macau progresses and as staffing increases prior to opening. In addition, pre-opening expenses associated with Encore will increase as development of Encore continues and construction commences.

We monitor our operations and evaluate our earnings by reviewing the assets and operations of Wynn Las Vegas (including Encore) and Wynn Macau. The following table sets forth our financial results for the years 2005, 2004 and 2003, by segment and reconciles Adjusted EBITDA to net loss (amounts in thousands):

	For the Year Ended December 31,		
	2005	2004	2003
<b>Revenues(1)</b>			
Casino	\$ 353,663	\$ —	\$ —
Rooms	170,315	—	—
Food and beverage	173,700	—	—
Entertainment, retail and other	125,230	195	643
Gross revenues	822,908	195	643
Less promotional allowances	(100,927)	—	—
Net revenues	<u>\$ 721,981</u>	<u>\$ 195</u>	<u>\$ 643</u>
Adjusted EBITDA(1, 2)	\$ 212,007	\$ (208)	\$ (201)
<b>Other operating costs and expenses</b>			
Preopening expenses:			
Wynn Las Vegas (including Encore)	(67,454)	(41,073)	(18,936)
Wynn Macau	(20,402)	(15,970)	(8,382)
Corporate and other	(9,084)	(24,278)	(19,426)
Depreciation and amortization:			
Wynn Las Vegas (including Encore)	(94,297)	(3,793)	(2,119)
Wynn Macau	(6,429)	(1,704)	—
Corporate and other	(2,618)	(1,482)	(3,624)
Property charges and other:			
Wynn Las Vegas (including Encore)	(14,183)	(1,290)	(425)
Wynn Macau	—	—	—
Corporate and other	(114)	—	(222)
Corporate expenses and other	(21,982)	—	—
Total	<u>(236,563)</u>	<u>(89,590)</u>	<u>(53,134)</u>
Operating loss	(24,556)	(89,798)	(53,335)
<b>Other non-operating costs and expenses</b>			
Interest and other income	36,419	10,048	19,138
Interest expense, net	(102,699)	(2,687)	(9,031)
Loss on early extinguishment of debt	—	(122,788)	—
Total	<u>(66,280)</u>	<u>(115,427)</u>	<u>10,107</u>
Minority interest	—	1,054	3,129
Net loss	<u>\$ (90,836)</u>	<u>\$ (204,171)</u>	<u>\$ (40,099)</u>

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

(2) “Adjusted EBITDA” is earnings before interest, taxes, depreciation, amortization, pre-opening expenses, property charges, corporate expenses, earnings or losses from unconsolidated affiliates and other non operating income and expenses. Adjusted EBITDA is presented exclusively as a supplemental disclosure because management believes that it is widely used to measure the performance, and as a principal basis for valuation, of gaming companies. Management uses Adjusted EBITDA as the primary measure of the operating performance of its segments—Wynn Las Vegas and Wynn Macau—and to compare the operating performance of its properties with those of its competitors. The Company also presents Adjusted EBITDA



because it is used by some investors as a way to measure a company's ability to incur and service debt, make capital expenditures and meet working capital requirements. Gaming companies have historically reported EBITDA as a supplemental performance measure to generally accepted accounting principles in the United States ("GAAP") financial measures. In order to view the operations of their casinos on a more stand-alone basis, gaming companies, including Wynn Resorts, Limited, have historically excluded preopening expenses, property charges and corporate expenses, which do not relate to the management of specific casino properties from their EBITDA calculations. However, Adjusted EBITDA should not be considered as an alternative to operating income as an indicator of the Company's performance, as an alternative to cash flows from operating activities as a measure of liquidity, or as an alternative to any other measure determined in accordance with GAAP. Unlike net income, Adjusted EBITDA does not include depreciation or interest expense and therefore does not reflect current or future capital expenditures or the cost of capital. We compensate for these limitations by using Adjusted EBITDA as only one of several comparative tools, together with the common GAAP measurements, to assist in the evaluation of operating performance. Such GAAP measurements include operating income (loss), net income (loss), cash flows from operations and cash flow data. The Company has significant uses of cash flows, including capital expenditures, interest payments, debt principal repayments and taxes, which are not reflected in Adjusted EBITDA. Also, Wynn Resorts' calculation of Adjusted EBITDA may be different from the calculation methods used by other companies and, therefore, comparability may be limited.

***Financial results for the year ended December 31, 2005 compared to financial results for the year ended December 31, 2004.***

The 248 days of operations during the 2005 fiscal year have no comparisons to either 2004 or 2003 as we were solely a development stage company prior to the opening of Wynn Las Vegas on April 28, 2005.

*Revenues*

Wynn Las Vegas' net gaming revenues were \$353.7 million for the 248 days of operations during the 2005 fiscal year. During that period, the average table games win percentage (before discounts) was within the expected range of 18% to 22%, and the slot win percentage was within the expected range of 5% to 6% of handle.

For the 248 days of operations in 2005, Wynn Las Vegas' gross room revenues were approximately \$170.3 million. Average daily rate ("ADR") and occupancy for that period were \$274 and 92%, respectively, generating revenues per available room ("REVPAR") of \$253. Other non-gaming revenues included food and beverage revenues of approximately \$173.7 million, retail revenues of approximately \$51.2 million, entertainment revenues of approximately \$41.8 million, and other revenues from outlets, including the spa and salon, of approximately \$32.2 million.

*Adjusted EBITDA*

Wynn Las Vegas' Adjusted EBITDA was approximately \$212.0 million for the 248 days of operations during 2005. Included in Adjusted EBITDA are direct departmental expenses not present in the corresponding 2004 periods. During 2005, these departmental expenses included casino expenses of \$155.1 million, rooms expenses of \$44.2 million, food and beverage expenses of \$118.7 million, and entertainment, retail and other expenses of \$80.2 million. Also included are general and administrative expenses of approximately \$119.0 million and approximately \$16.2 million charged as a provision for doubtful accounts receivable. At opening, Wynn Las Vegas employed approximately 9,200 persons to accommodate increased opening needs. Natural staffing attrition reduced the number of employees at the end of 2005 to approximately 8,900 persons, reflecting a more normalized staffing level. We expect Wynn Las Vegas' operating margins to improve, as we benefit from the decrease in the number of full-time equivalent employees required to operate the resort and as a result of efficiencies gained through experience with the Wynn Las Vegas resort.

*Pre-opening expenses*

Wynn Las Vegas' pre-opening expenses increased by \$26.4 million or 64% in 2005 over the prior year. Once it opened for business in April 2005, Wynn Las Vegas no longer incurred pre-opening expenses; however, \$1.6 million of pre-opening expenses relating to Encore are included in the Wynn Las Vegas segment. There also

was a substantial increase in staffing immediately preceding the opening of Wynn Las Vegas, which contributed to the increased level of pre-opening expenses in 2005. As the Encore development progresses in 2006, we expect associated pre-opening expenses to increase.

Wynn Macau's pre-opening expenses increased by \$4.4 million or 28% from 2004 to 2005, due primarily to the increased pre-opening activity commensurate with the progress of the resort's construction. We expect that Wynn Macau's pre-opening expenses will continue to increase in the first three quarters of 2006 as construction and development continue toward opening, similar to the trend experienced with Wynn Las Vegas in 2005.

Corporate and other pre-opening expenses were \$9.1 million for 2005. After Wynn Las Vegas opened on April 28, 2005, corporate expenses were charged to general and administrative expense instead of pre-opening expenses. Consequently, corporate and other pre-opening expenses decreased by \$15.2 million or 63% from 2004 to 2005. Corporate staffing did not change significantly immediately before or after the opening of Wynn Las Vegas; instead, the decrease in corporate expenses is due primarily to having a 117-day pre-opening period in 2005, compared with a 365-day pre-opening period in 2004.

#### *Depreciation and amortization*

Wynn Las Vegas' depreciation and amortization expense increased by \$90.5 million for 2005 compared to 2004, as a result of the opening of Wynn Las Vegas. During the construction of Wynn Las Vegas, costs incurred in the construction of the buildings, improvements to land and the purchases of assets for use in operations were capitalized. Once Wynn Las Vegas opened and these assets were placed into service, we began recognizing the associated depreciation expense. The depreciation expenses will continue throughout the estimated useful lives of these assets. In addition, we continually evaluate the useful life of our property and equipment, intangibles and other assets. When circumstances require a revision to those estimates of useful life, we adjust them accordingly.

Wynn Macau's depreciation and amortization expenses also increased by \$4.7 million in 2005 compared to 2004, due primarily to the amortization of the capitalized intangible assets associated with the Macau casino and land concessions. In September 2004, we purchased the 17.5% minority interest in Wynn Macau held by third parties for 1,333,333 shares of Wynn Resorts common stock. We allocated \$42.3 million of the value of the shares to the casino concession, which is charged to amortization expense over the concession's term through June 2022. We also obtained a land lease concession during 2004, which we charge to depreciation and amortization over the 25-year term of the lease. Other than these charges to depreciation and amortization, Wynn Macau's depreciation expenses will remain relatively insignificant until the resort opens and its assets are placed into service.

Certain assets, primarily a corporate aircraft and certain furniture, fixtures and equipment of Wynn Resorts and its subsidiaries included in corporate and other, are also depreciated. We purchased the corporate aircraft in 2004 and, thus, 2005 was its first full year of depreciation. In addition, when we opened Wynn Las Vegas, we began recognizing the depreciation of the furniture, fixtures and equipment in our corporate offices, which are located at Wynn Las Vegas.

#### *Property charges and other*

In response to our evaluation of the finished product and in response to the reactions of our guests, we began to make enhancements and refinements to Wynn Las Vegas in the third quarter of 2005. Included in the total \$14.3 million for Wynn Las Vegas' property charges and other for 2005 are approximately \$9.4 million of costs relating to assets retired as a result of the remodel efforts at Wynn Las Vegas, and approximately \$3.1 million of expenses relating to the abandonment of improvements made to the temporary offices utilized during part of the construction and development of the resort. Once we decided to remodel the Broadway Theater to present Spamalot, we also wrote off approximately \$1.6 million of costs incurred in 2005 in connection with the preliminary design and development of a third theater originally planned to house "Monty Python's Spamalot,"

and later abandoned. There were no comparable Wynn Las Vegas property charges incurred during 2004. Property charges in 2004 instead reflect net losses on ordinary asset sales, including an aircraft sold in 2004 at a loss of approximately \$550,000.

#### *Corporate expenses and other*

Corporate expenses reflect costs such as salaries and other general and administrative expenses that are not allocated to Wynn Las Vegas or Wynn Macau. Prior to opening Wynn Las Vegas, corporate expenses were reported as pre-opening expenses. Consequently, the corporate expenses of approximately \$22.0 million in 2005 represent such unallocated expenses incurred in the 248 days of operations in 2005.

#### *Other non-operating costs and expenses*

Interest and other income increased by \$26.4 million for 2005 compared to 2004. We seek to manage the interest rate risk associated with our variable rate borrowings, through balancing fixed-rate and variable-rate borrowings supplemented by the use of derivative financial instruments as required or considered necessary. We were required to, and did obtain through interest rate swap arrangements, interest rate protection for portions of our borrowings under our credit facilities. These interest rate swaps are accounted for in accordance with Statement of Financial Accounting Standards No. 133, Accounting for Derivative Instruments and Hedging Activities, as amended ("SFAS 133").

The financial information shown above reflects approximately \$8.1 million of income resulting from the increase in the fair value of our interest rate swaps from December 31, 2004 to December 31, 2005. The remaining increase of approximately \$18.2 million is due primarily to the significant increase in the amount of average cash balances available and invested from the remaining proceeds of our 6-5/8% First Mortgage Notes due 2014 (the "First Mortgage Notes") and borrowings under the Wynn Las Vegas, LLC credit facilities that were invested during 2005, compared to 2004.

Interest expense, net, increased by \$100.0 million for 2005 compared to 2004, due primarily to the significant decrease in the amount of interest capitalized once Wynn Las Vegas opened, plus the increase in the long-term debt principal resulting from our December 2004 refinancing and credit facility borrowings during 2005.

Also during 2004, we recorded a \$122.8 million loss on the early retirement of the majority of the original \$370.0 million of 12% Second Mortgage Notes due 2010 (the "Second Mortgage Notes"). This loss resulted from the write-off of associated deferred financing costs and original issue discount, as well as a 12% redemption premium, on the Second Mortgage Notes. We intend to repurchase the remaining principal amount of the Second Mortgage Notes totaling approximately \$10.1 million on November 1, 2006 (the first available call date), at which time an additional loss will have to be recorded to reflect the redemption premium and any write-off of remaining financing costs. The necessary amounts to call the Second Mortgage Notes, including interest, have been placed in escrow in anticipation of this event.

#### ***Financial results for the year ended December 31, 2004 compared to financial results for the year ended December 31, 2003.***

Our development operations resulted in a net loss for the 2004 fiscal year of approximately \$204.2 million, a 409% increase over the net loss of approximately \$40.1 million for the 2003 fiscal year, due to increased development activities (such as increased staffing) and financing activities (such as the loss on early retirement of debt).

#### *Revenues*

Our minimal revenues for the 2004 fiscal year decreased compared to 2003, primarily as a result of the closure of the art gallery and its related retail shop on May 6, 2004.

### *Adjusted EBITDA*

Adjusted EBITDA remained a small comparable loss between 2004 and 2003. Although the revenues from the art gallery were reduced, costs to operate the art gallery were similarly reduced, thus not significantly affecting the total net results.

### *Pre-opening expenses*

Wynn Las Vegas pre-opening expenses increased by \$22.1 million or 117% for 2004 compared to 2003. The increase in pre-opening expenses, which consist primarily of salaries and wages and consulting and legal fees, is directly attributable to the increase in pre-opening activities, including staffing increases, during 2004 as compared to 2003.

Wynn Macau pre-opening expenses increased by \$7.6 million or 91% for 2004 compared to 2003. The increase in pre-opening expenses directly correlates to the increased pre-opening activities for Wynn Macau as the project progressed during 2004 as compared to 2003.

Corporate and other pre-opening expenses increased by \$4.9 million or 25% for 2004 compared to 2003. The increase in corporate pre-opening expenses directly correlates with the increased pre-opening activities for both Wynn Las Vegas and Wynn Macau as these projects progressed during 2004 as compared to 2003.

### *Depreciation and amortization*

Wynn Las Vegas' depreciation and amortization increased by \$1.7 million or 79% from 2003 to 2004, primarily as a result of purchasing an aircraft in 2004, for which we then began recognizing depreciation.

Wynn Macau's depreciation and amortization expenses also increased by \$1.7 million from 2003 to 2004, primarily resulting from the amortization of the Macau gaming concession asset, which increased from 2003 to correspond to the increase in asset value, due to the purchase price allocation following the acquisition of the minority interest previously held by third parties in September of 2004, and the amortization of the leasehold interest in land acquired as part of the land concession agreement entered into in June 2004.

Corporate and other depreciation and amortization decreased by \$2.1 million or 59% from 2003 to 2004, primarily as a result of fully depreciating the remaining assets purchased from the Desert Inn Resort and Casino, including the parking garage, in June 2003.

### *Property charges and other*

In 2004, we sold our existing aircraft and purchased two other aircraft. The aircraft sale resulted in a loss of approximately \$550,000, which is the primary component of the increase in property charges compared to 2003. In addition, incidental operations relating to certain cellular tower rental income, plus the loss from the brief operation of an apartment complex purchased in July 2004 (for the subsequent development of a parking facility across Sands Avenue from Wynn Las Vegas), produced an additional increase in the property charges for 2004 compared to 2003.

### *Other non-operating costs and expenses*

Other income (expense), net for 2004, decreased approximately \$125.5 million to an expense of approximately \$115.4 million from income of approximately \$10.1 million for 2003, primarily as a result of losses sustained from the early retirement of debt in both the second and fourth quarters of 2004. On June 14, 2004, we recorded a loss of approximately \$25.6 million due to the early retirement of a portion of the Second Mortgage Notes. The loss was attributable to the 112% redemption premium and to write-offs of unamortized original issue discount and debt issuance costs. On December 14, 2004, as part of the refinancing of Wynn Las

Vegas, we recorded an additional loss on the early retirement of debt totaling approximately \$97.2 million. This loss reflected the tender price on approximately \$237.4 million of Second Mortgage Notes plus the write-offs of the related unamortized original issue discount and debt issuance costs.

Also during 2004, there was an approximately \$9.1 million decrease in interest income and a \$6.3 million decrease in interest expense. Lower interest income was primarily attributable to the decrease in average amount of cash from the net proceeds from equity and debt financing activity as the funds were used to construct Wynn Las Vegas offset by approximately \$1.4 million of interest rate swap fair market value increases, while the interest expense decreased due to increased capitalization of interest commensurate with the progress on the construction of Wynn Las Vegas.

## **Liquidity and Capital Resources**

### ***Cash Flow from Operations***

Our operating cash flows are primarily affected by our operating income, interest paid, and non-cash charges included in operating income. During 2003 and 2004, we were solely a development stage company without material operations. During those periods, net cash used in operations was \$21.8 million and \$114.8 million, respectively. On April 28, 2005, we opened Wynn Las Vegas and began generating cash from operations. Net cash from operations in 2005 was \$48.5 million. Because 2005 did not include a full year of operations and because significant pre-opening expenses were incurred during 2005, we believe that cash flows from operations for 2005 are not indicative of future results.

### ***Capital Resources***

At December 31, 2005, we had approximately \$434.3 million of cash and cash equivalents available for use without restriction, including for new development activities, general corporate purposes, enhancements to Wynn Las Vegas, or to support the development and construction of Wynn Macau and Encore. Of this, approximately \$308.0 million is held by Wynn Resorts, Limited, which is not a guarantor of either Wynn Las Vegas, LLC's or Wynn Macau, S.A.'s debt, and therefore is not obligated to apply any of its funds to either Encore or Wynn Macau.

We require a certain amount of cash on hand for operations. Otherwise we attempt to minimize the amount of cash held in banks. Accordingly, excess funds are swept from accounts into overnight investments or to repay borrowings under our credit facilities.

At December 31, 2005, we had approximately \$442.6 million in restricted cash and investments from the proceeds of our debt and equity financings. Of this amount, approximately \$394.8 million is restricted for the remaining costs of Wynn Las Vegas and the construction, development and pre-opening expenses of Encore, including \$80.0 million restricted for the Wynn Las Vegas liquidity reserve and completion guarantee (\$30.0 million of which must be retained for Encore for a completion guarantee if the budget, plans and specifications for Encore (the "Encore Budget, Plans and Specs") are approved); approximately \$31.8 million is restricted for the ongoing development, construction and pre-opening expenses of Wynn Macau; and approximately \$15.0 million is restricted for two semi-annual interest payments on our 6% Convertible Subordinated Debentures due 2015 (the "Convertible Debentures"), \$7.5 million of which was paid on January 15, 2006, with the remaining \$7.5 million due and payable on July 15, 2006. In addition, there is approximately \$1.0 million restricted for certain sales tax and other payments. Cash equivalents include investments in overnight money market funds. Restricted investments are kept in money market funds or relatively short-term, government-backed, marketable debt securities as required by agreements governing the Company's debt facilities.

### ***Construction and Development***

#### ***Wynn Las Vegas***

Wynn Las Vegas, except for one of its two theaters, opened on April 28, 2005. The total Wynn Las Vegas project cost (excluding Encore other than the land for Encore) was approximately \$2.74 billion. This includes

land acquisition costs, design and construction costs, financing fees, interest and other pre-opening expenses. As of December 31, 2005, approximately \$18.9 million of budgeted project costs and retention amounts remained to be paid in order to close out the project. We expect these final costs to be paid in the second quarter of 2006.

Beginning in the third quarter of 2005, we have made and continue to make certain enhancements and refinements to Wynn Las Vegas. As a result, we have incurred and will continue to incur capital expenditures relating to these enhancements and refinements. Under the terms of the Wynn Las Vegas credit facilities, we were permitted to make up to \$40.0 million of capital expenditures in 2005, of which we actually expended \$37.9 million. In 2006, we will be permitted to make up to \$80.0 million of capital expenditures at Wynn Las Vegas. These spending limits are increased to the extent funds are contributed to Wynn Las Vegas by Wynn Resorts.

#### *Encore at Wynn Las Vegas*

On March 15, 2006, we submitted the Encore Budget, Plans and Specs to our lenders for approval. We expect to commence construction of Encore in the second quarter of 2006, and open it to the public by the end of 2008.

#### *Wynn Macau*

In June 2004, we began construction of Wynn Macau. Design and construction is progressing on schedule and within budget. Superstructure works are complete for the podium and tower. Certain areas in the first phase of the project, namely retail and the information technology data center, have been handed over to operations. Final design work on the second phase has largely been completed and construction work on the second phase is rapidly moving from the foundations to the structure.

Construction milestones since groundbreaking include the following:

##### *Phase I*

- All external drainage diversion works have been completed and commissioned and the road has been delivered to local authorities;
- The foundation pile cap construction and underground drainage are complete;
- The highrise building superstructure, roof placement and signature swoosh are complete;
- The parking garage is complete;
- The lowrise podium superstructure is complete;
- Interior work continues in the lowrise podium areas such as the casino and ballrooms; and
- Installation of central plant and equipment, including generators, boilers, chillers and cooling towers, continues.

##### *Phase II (expansion)*

- All external drainage diversion works have been completed and commissioned and the road has been delivered to local authorities;
- Design is progressing; consultancy agreements have been awarded and interior design concepts are being developed;
- Piling is complete and pile cap activities are underway;
- Deep excavation for the front feature has been completed;
- Basement tunnels and corridors have been completed; and
- Plans for an expanded casino have been finalized.

The current total project budget for Wynn Macau (including the approximately \$70.0 million expansion of the second phase and suite enhancements) is approximately \$1.2 billion, including contingencies, but excluding up to \$20.5 million of post-opening land concession payments anticipated to be funded from operating cash flows. Under the amended and restated 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 one of our subsidiaries) based on an existing scope of work and design specifications for both the first phase and the expansion as provided by us, for a guaranteed maximum price of approximately \$457.2 million (including the contractors' fee and contingency). We expect that the guaranteed maximum price will be increased by approximately \$23.0 million to reflect addition of the casino expansion to the second phase of Wynn Macau.

As of December 31, 2005, the Company has incurred approximately \$427.2 million of a total \$1.2 billion project budget. Approximately \$748.4 million remains to be spent to complete Wynn Macau.

### **Financing Activities**

#### *Wynn Las Vegas and Encore*

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

Although a final accounting for Wynn Las Vegas is not expected until the second quarter of 2006, Wynn Las Vegas' estimated \$2.74 billion total project cost has been, and will be, funded from a combination of contributed capital from the original shareholders of Valvino Lamore, LLC (the predecessor of Wynn Resorts), proceeds from sales of our common stock, proceeds from the issuance of the Second Mortgage Notes (which were discharged in connection with the December 2004 refinancing), proceeds from the issuance of First Mortgage Notes, and a portion of Wynn Las Vegas, LLC's \$1.0 billion credit facilities (the "Credit Facilities"), which consist of a \$400 million term loan facility (the "Term Loan") and a \$600 million revolving facility (the "Revolver").

The Revolver is available for Wynn Las Vegas' general corporate purposes and for Encore, and any amounts repaid may be re-borrowed. In the second quarter of 2005, we borrowed \$80.0 million under the Revolver and loaned it to Wynn Macau, S.A. as subordinated debt. This borrowing was repaid by Wynn Las Vegas, LLC in the third quarter of 2005. As of December 31, 2005, \$10.0 million has been borrowed and remains outstanding under the Revolver.

Borrowings under the Credit Facilities have been and are expected to continue to be, designated by us as Eurodollar Loans. These Eurodollar Loans bear interest at the London Interbank Offered Rate ("LIBOR") plus 2.25% for the Revolver loans and LIBOR plus 2.125%, for the Term Loans. Interest on Eurodollar Loans is payable at the end of the applicable interest period in the case of interest periods of one, two or three months, and every three months in the case of interest periods of six months. After the opening of Encore, the applicable borrowing margins for Eurodollar revolving loans will range from 1.25% to 2.5% per annum depending on Wynn Las Vegas' leverage ratio. In addition to interest, we also pay quarterly in arrears, 0.75% per annum on the daily average of unborrowed availability under the Revolver. After the opening of Encore, the annual fee that we will be required to pay for unborrowed availability under the Revolver will be based on Wynn Las Vegas, LLC's leverage ratio and will range from 0.25% to 0.50% per annum.

The Credit Facilities are obligations of Wynn Las Vegas, LLC and are guaranteed by each of its subsidiaries (other than Wynn Completion Guarantor, LLC). The obligations and guarantees are secured by: (1) a first priority security interest on a \$30.0 million liquidity reserve account; (2) a \$50.0 million completion guarantee deposit account held by Wynn Completion Guarantor, LLC; (3) the remaining previously funded proceeds of the

Credit Facilities; (4) a first priority pledge of all member's interests owned by Wynn Las Vegas, LLC in its subsidiaries (other than Wynn Completion Guarantor, LLC) and Wynn Resorts Holdings, LLC's 100% member's interest in Wynn Las Vegas, LLC; (5) first mortgages on all real property constituting Wynn Las Vegas, its golf course and Encore; and (6) a first priority security interest in substantially all other existing and future assets of Wynn Las Vegas, LLC and the guarantors, excluding a corporate aircraft owned by World Travel, LLC, a subsidiary of Wynn Las Vegas, LLC.

The obligations of Wynn Las Vegas, LLC and the guarantors under the Credit Facilities rank pari passu in right of payment with their existing and future senior indebtedness, including indebtedness with respect to the First Mortgage Notes and senior in right of payment to all of their existing and future subordinated indebtedness.

The Revolver will terminate and be payable in full on December 14, 2009, and the Term Loan will mature on December 14, 2011. The amount available under Credit Facilities will be reduced by \$550.0 million if the Encore Budget, Plans and Specs are not approved by March 31, 2006. This may result in a reduction of availability under the Revolver, required prepayment of term loans, or any combination of the two.

Until the Encore Budget, Plans and Specs are approved, the availability of notes proceeds and funds under the Wynn Las Vegas, LLC credit agreement for this project is limited to \$100.0 million, of which we have spent approximately \$40.7 million through December 31, 2005. We expect to receive approval of the Encore Budget, Plans and Specs by March 31, 2006. However, if the Encore Budget, Plans and Specs are not approved, the available borrowings under our Wynn Las Vegas, LLC credit facilities will be reduced by \$550.0 million. We expect that the available remaining proceeds from the First Mortgage Notes, together with availability under the credit facilities, and cash flow from operations, will be sufficient to pay for expenditures of up to \$1.52 billion on the Encore project without incurring additional debt or receiving additional capital contributions from Wynn Resorts. Project costs exceeding \$1.52 billion will be funded by the issuance of up to \$100.0 million of additional notes and/or contributions from Wynn Resorts. We expect to open Encore by the end of 2008.

On March 15, 2006, we amended our Wynn Las Vegas credit facilities to (a) allow the Company to issue up to \$100.0 million of additional First Mortgage Notes; (b) simplify draw procedures under the Disbursement Agreement; (c) consolidate certain accounts under the Disbursement Agreement; (d) amend and clarify certain of the conditions for the Phase II Approval Date; (e) extend the outside opening date for Encore and the outside completion date for Encore to June 30, 2009 and September 30, 2009, respectively and (f) permit expenditures of up to \$150.0 million on Encore prior to the execution of a guaranteed maximum price contract.

The final costs of Wynn Las Vegas will be paid from previously funded amounts under the First Mortgage Notes and the Term Loan and the ongoing costs of Encore will be paid with funds from the following sources and in the following order of priority:

- First, by using agreed excess cash flow from the operations of Wynn Las Vegas and any equity contributions from Wynn Resorts;
- Second, by using any proceeds from the First Mortgage Notes (including any additional First Mortgage Notes that may be issued in the future), and the proceeds of borrowings under the Credit Facilities, until exhaustion of the First Mortgage Notes proceeds, with amounts funded 66.67% from notes proceeds and 33.33% from the Credit Facilities;
- Third, by using proceeds of additional borrowings under the Credit Facilities; and
- Fourth, by using the funds from the \$50.0 million completion guarantee deposit account.

In December 2004, we entered into interest rate swap agreements to hedge a portion of the underlying interest rate risk on borrowings under the Credit Facilities. See Item 7A. "Quantitative and Qualitative Disclosures About Market Risk."



## *Wynn Macau*

Financing for Wynn Macau's design, development, construction and pre-opening expenses is provided by a combination of cash on hand in the form of base equity loans totaling \$230 million, subordinated loan financing (provided from funds borrowed under the Wynn Las Vegas, LLC revolving credit facility) totaling \$80 million, and a senior secured credit facility. On September 14, 2005, we amended the Wynn Macau, S.A. senior secured credit facility to expand its availability from \$397 million to \$764 million, to currently include \$729 million of senior term loan facilities, a HK\$117 million revolving credit facility (approximately US\$15 million), and an additional term loan facility of HK\$156 million (approximately US\$20 million). As of December 31, 2005, we have borrowed approximately \$78.9 million under the Wynn Macau, S.A. senior secured credit facility.

The term loan facilities mature in September 2011, and the revolving credit facility matures in September 2007. The principal amount of the term loans is required to be repaid in quarterly installments, commencing on March 14, 2008. The term loans will bear interest at LIBOR or the Hong Kong Interbank Offered Rate ("HIBOR") plus a margin of 3.0% until the opening of Wynn Macau (expected in the third quarter of 2006), at which time the interest rate will reduce to LIBOR or HIBOR plus a margin of 2.75%. The senior bank facility also provides for further reductions in the margin on the term loans if Wynn Macau, S.A. satisfies certain prescribed leverage ratio tests. Loans under the revolving credit facility will bear interest at HIBOR plus 2.5%.

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

We began to draw under the Senior Secured Facilities in October 2005, after expenditure of the base equity and subordinated funding. Through December 31, 2005, we incurred approximately \$427.2 million of the total \$1.2 billion of budgeted project costs. Total budgeted project costs include construction and design costs (including construction contingencies) of approximately \$688.0 million, land acquisition costs of approximately \$49.0 million, the additional casino expansion of approximately \$70.0 million and capitalized interest, pre-opening expenses, financing fees and other costs totaling in the aggregate approximately \$368.6 million. These costs have been, and will continue to be, paid from the previously funded \$230.0 million base equity and loans from Wynn Resorts and \$80.0 million borrowed under Wynn Las Vegas, LLC's revolving credit agreement and loaned as subordinated debt, as well as Wynn Macau, S.A.'s \$764.0 million senior secured credit facility and cash flows from operations once Wynn Macau opens. As of December 31, 2005, project costs still to be incurred totaled approximately \$748.4 million.

In addition to the above financing sources, we have \$30.0 million (plus \$1.8 million of accumulated interest earnings) of long-term restricted cash reserved as contingent equity and a \$72.0 million contingent debt facility available for Wynn Macau. We entered into interest rate swap agreements in October 2005 to hedge a portion of the underlying interest rate risk on borrowings under the Wynn Macau, S.A. credit facilities. See Item 7A. "Quantitative and Qualitative Disclosures About Market Risk."

## *Other*

In the second quarter of 2005, we borrowed an aggregate amount of \$44.75 million secured by a corporate aircraft. The loans mature on May 24, 2010. Principal and interest is payable quarterly, and interest is calculated at LIBOR plus a margin of 2.375%. In addition to scheduled amortization payments, we are required to prepay the loans if certain events of loss with respect to the aircraft occur. Beginning December 31, 2006, we may prepay all or any portion of the loans, subject to a minimum prepayment of \$10.0 million. As of December 31, 2005, approximately \$43.5 million was outstanding under this borrowing.

## ***Expected Commercial Commitments***

The following table summarizes certain information regarding our expected long-term indebtedness and material commercial commitments based upon our best estimate at December 31, 2005 of our expected long-term

indebtedness and commercial commitments (amounts in millions):

<b>Long-Term Indebtedness</b>	<b>Payments Due By Period</b>				
	<b>Total</b>	<b>Less Than 1 Year</b>	<b>1 to 3 Years</b>	<b>4 to 5 Years</b>	<b>After 5 Years</b>
First Mortgage Notes	\$ 1,300.0	\$ —	\$ —	\$ —	\$1,300.0
Convertible Subordinated Debentures[1]	250.0	—	—	—	250.0
Wynn Las Vegas Credit Facilities[2]	410.0	—	—	10.0	400.0
Macau Senior Credit Facilities[3]	79.0	—	17.3	44.9	16.8
Second Mortgage Notes[4]	10.1	10.1	—	—	—
Other Long-Term Obligations[5]	57.7	5.8	12.6	29.3	10.0
<b>Total long-term indebtedness</b>	<b>\$ 2,106.8</b>	<b>\$ 15.9</b>	<b>\$ 29.9</b>	<b>\$ 84.2</b>	<b>\$1,976.8</b>

<b>Other Commercial Commitments</b>	<b>Amount of Commitment Expiration Per Period</b>				
	<b>Total Amounts Committed</b>	<b>Less Than 1 Year</b>	<b>1 to 3 Years</b>	<b>4 to 5 Years</b>	<b>After 5 Years</b>
Construction contracts and commitments	\$ 348.1	\$ 208.4	\$ 139.7	\$ —	\$ —
Employment agreements	103.6	31.9	41.9	10.9	18.9
Leasehold interest in land[6]	30.0	9.6	14.2	6.2	—
Operating leases	19.1	3.8	4.1	3.7	7.5
Estimated interest payments on long-term debt[7]	1,170.2	148.5	290.6	285.0	446.0
<b>Total commercial commitments</b>	<b>\$ 1,671.0</b>	<b>\$ 402.2</b>	<b>\$ 490.5</b>	<b>\$ 305.8</b>	<b>\$ 472.4</b>

- [1] Represents the full obligation under the Convertible Debentures assuming no conversion to common stock. The Convertible Debentures are convertible, at the holders' option, into a maximum of 10,869,550 shares of our common stock (subject to adjustment as provided in the indenture governing the Convertible Debentures), which is equivalent to a conversion price of \$23.00 per share. Subsequent to December 31, 2005 through the filing of this report, approximately \$3.8 million of the Convertible Debentures were converted into common stock.
- [2] As of December 31, 2005, we had \$400.0 million of Term Loans outstanding and \$10.0 million outstanding under the Revolver, which mature on December 14, 2011 and December 14, 2009, respectively. The \$590.0 million remaining available under the Revolver may be used for working capital for Wynn Las Vegas or, upon the satisfaction of certain conditions, for the construction and development of Encore.
- [3] As of December 31, 2005, we had borrowed approximately \$79.0 million under Wynn Macau, S.A.'s senior credit facilities. We anticipate that we will borrow the remaining available amounts to construct and open Wynn Macau and its expansion by the third quarter of 2007. Principal amortization begins in 2007 and the facility matures on September 14, 2011.
- [4] On December 14, 2004, we deposited in trust with the trustee under the Second Mortgage Notes Indenture, government securities having an aggregate face value of approximately \$10.1 million (the amounts necessary to pay when due all interest payments and the redemption price on November 1, 2006), and an additional \$3.0 million in cash to discharge amounts payable under the Second Mortgage Notes Indenture.
- [5] Represents the \$43.5 million outstanding of the \$44.75 million original term loan borrowing secured by a corporate aircraft bearing interest at LIBOR plus 2.375%; \$13.3 million remaining outstanding on a 5.67% note payable pursuant to a loan to finance our other corporate aircraft; and the remaining amount of an 8% annuity issued by ITT Sheraton in connection with the acquisition of a parcel of land in 1994. The \$43.5 million aircraft loan requires quarterly amortizing principal and interest payments and matures on May 24, 2010; the \$13.3 million aircraft loan notes requires monthly principal and interest payments with balloon payments of \$9.6 million in 2011; and the annuity requires payments of \$5,000 per month until February 2009.

- [6] In June 2004, we entered into a land concession contract with the government of Macau for a 25-year lease of approximately 16 acres of land. At December 31, 2005, we had 8 semi-annual installment payments remaining at 5% interest, as specified in the land concession contract.
- [7] Amounts for all periods represent our estimated future interest payments on our debt facilities based upon currently existing commitments and anticipated LIBOR rates based upon expected yield curves (including the effect of our interest rate swaps) as well as expected timing of repayments.

#### *Other Liquidity Matters*

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

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

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

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

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

Management's discussion and analysis of our results of operations and liquidity and capital resources are based on our consolidated financial statements. Our consolidated financial statements were prepared in conformity with accounting principles generally accepted in the United States of America. Certain of our accounting policies require that management apply significant judgment in defining the appropriate assumptions

integral to financial estimates. On an ongoing basis, management evaluates those estimates, including those relating to the estimated lives of depreciable assets, asset impairment, allowances for doubtful accounts, accruals for customer loyalty rewards, self insurance, contingencies, litigation and other items. Judgments are based on historical experience, terms of existing contracts, industry trends and information available from outside sources, as appropriate. However, by their nature, judgments are subject to an inherent degree of uncertainty, and therefore actual results could differ from our estimates.

#### *Development, Construction and Property and Equipment Estimates*

During the construction and development of a resort, pre-opening or start-up costs are expensed when incurred. In connection with the construction and development of Wynn Las Vegas, significant start-up costs were incurred and charged to pre-opening expenses through the second quarter of 2005, as anticipated. Once Wynn Las Vegas opened to the public, expenses associated with the opening of the resort were no longer charged as pre-opening expenses. However, start-up costs relating to the Encore and Wynn Macau projects will continue to be charged to pre-opening expenses.

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

Buildings and improvements	10 to 45 years
Land improvements	10 to 45 years
Airplanes	7 to 20 years
Furniture, fixtures and equipment	5 to 20 years

The remaining estimated useful lives of assets are periodically reviewed. A charge resulting from a change in the estimated period of benefit is accounted for in the period of change as a change in accounting estimate under Accounting Principles Board ("APB") No. 20, "Accounting Changes."

Our leasehold interest in the land leased in Macau under the land concession contract entered into in June 2004 is being amortized over 25 years, to reflect the initial term of the concession contract, which currently terminates in June 2029. Depreciation on the majority of the assets comprising Wynn Macau, however, will commence in the third quarter of 2006, when Wynn Macau opens. The maximum useful life of assets at Wynn Macau will be the remaining life of the gaming concession, which currently expires in June 2022. Consequently, depreciation related to Wynn Macau will generally be charged on an accelerated basis when compared to Wynn Las Vegas.

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

We also evaluate our property and equipment and other long-lived assets for impairment in accordance with Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." For assets to be disposed of, we recognize the asset at the lower of carrying value or fair market value less costs of disposal, as estimated based on comparable asset sales, solicited offers, or a discounted cash flow model. For assets to be held and used, we review for impairment whenever indicators of impairment exist. We then compare the estimated future cash flows of the asset, on an undiscounted basis, to the carrying value of the asset. If the undiscounted cash flows exceed the carrying value, no impairment is indicated. If the

undiscounted cash flows do not exceed the carrying value, then an impairment is recorded based on the fair value of the asset, typically measured using a discounted cash flow model. If an asset is still under development, future cash flows include remaining construction costs. All recognized impairment losses, whether for assets to be disposed of or assets to be held and used, are recorded as operating expenses.

#### *Income Taxes*

We are subject to income taxes in the United States and Macau. We account for income taxes according to Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes" ("SFAS 109"). SFAS 109 requires the recognition of deferred tax assets, net of applicable reserves, related to net operating loss carry-forwards and certain temporary differences. The standard requires recognition of a future tax benefit to the extent that realization of such benefit is more likely than not. Otherwise, a valuation allowance is applied.

During our development stage, we accumulated significant net operating losses which, among other things, generated significant deferred tax assets. At December 31, 2005, we had \$199.9 million of deferred tax assets and \$99.7 million of deferred tax liabilities. At this time, because of our limited operating history, we have fully reserved these net deferred tax assets. If these net deferred tax assets become more likely than not realizable as defined by SFAS No. 109, we intend to appropriately reduce the deferred tax asset reserves.

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

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

A substantial portion of our outstanding receivables relates to casino credit play. Credit play represents a significant portion of the table games volume at Wynn Las Vegas. We maintain strict controls over the issuance of markers and aggressively pursue collection from those customers who fail to pay their marker balances timely. These collection efforts may include the mailing of statements and delinquency notices, personal contacts, the use of outside collection agencies, and litigation. Markers are generally legally enforceable instruments in the United States. Markers are not legally enforceable instruments in some foreign countries, but the United States assets of foreign customers may be used to satisfy judgments entered in the United States. At December 31, 2005, approximately 70% of our casino accounts receivable were owed by customers from foreign countries. The collectibility of markers given by foreign customers is affected by a number of factors including changes in currency exchange rates and economic conditions in the customers' home countries.

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

#### *Derivative Financial Instruments*

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

#### *Significant Judgmental Accruals*

We estimate liabilities for certain self-insurance, customer loyalty program reward redemptions, contingencies, claims and litigation and other items, as appropriate. Management determines the adequacy of

these estimates by reviewing the expected trends and from industry experience and adjusts the assumptions utilized as necessary.

### **Recently Issued Accounting Standards**

In December 2004, the Financial Accounting Standards Board (“FASB”) issued Statement of Financial Accounting Standards (“SFAS”) No. 123(R), “Share Based Payment.” This statement is a revision of SFAS No. 123, “Accounting for Stock-Based Compensation” and supercedes APB Opinion No. 25, “Accounting for Stock Issued to Employees,” and related interpretations. SFAS No. 123(R) establishes standards for the accounting for transactions in which an entity exchanges its equity instruments for goods and services or incurs a liability in exchange for goods and services that are based on the fair value of the entity’s equity instruments or that may be settled by the issuance of those equity instruments. It requires an entity to measure the costs of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award and recognize that cost over the service period. We adopted this statement, according to SEC rule, as amended, on January 1, 2006, utilizing the modified prospective method and the Black-Scholes valuation model.

In March 2005, the SEC issued Staff Accounting Bulletin (“SAB”) No. 107, “Share-Based Payment “ to provide interpretive guidance on SFAS No. 123(R) valuation methods, assumptions used in valuation models, and the interaction of SFAS No. 123(R) with existing SEC guidance. SAB No. 107 also requires the classification of stock compensation expense in the same financial statement line items as cash compensation, and will therefore impact our departmental expenses (and related operating margins), pre-opening costs and construction in progress for our development projects, and our general and administrative expenses (including corporate expenses). We estimate that the expensing of stock options will reduce our net income for 2006 by approximately \$12.8 million (or \$0.13 per share) for the unvested options outstanding as of December 31, 2005.

See Note 2, “Significant Accounting Policies” to the consolidated financial statements, for a description of other recently issued accounting pronouncements, which are relevant to the Company but which we believe will not have a material impact on the Company.

### **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

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

#### **Interest Rate Risks**

Our primary exposure to market risk is interest rate risk associated with our debt facilities that bear interest based on floating rates. See “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Financing Activities.” 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 following table provides estimated future cash flow information derived from our best estimates of repayments at December 31, 2005 on our expected long-term indebtedness. However, we cannot predict the LIBOR or HIBOR rates that will be in effect in the future. Accordingly, the LIBOR and HIBOR rates at December 31, 2005 of 4.37875% and 4.11045%, respectively are used for all calculations in the table below.

	As of December 31,						Total
	2006	2007	2008	2009 (in millions)	2010	Thereafter	
<b>Long-term debt:</b>							
Fixed rate	\$ 10.9	0.8	\$ 0.8	\$ 0.8	\$ 0.9	\$1,560.0	\$1,574.2
Average interest rate	11.53%	5.82%	5.73%	5.67%	5.67%	6.51%	6.66%
Variable rate	\$ 5.0	\$ 5.3	\$22.9	\$37.0	\$45.6	\$ 416.8	\$ 532.6
Average interest rate	7.31%	7.37%	7.68%	7.62%	7.82%	7.20%	7.31%

### Interest Rate Swap Information

In 2003, 2004 and 2005, the Company entered into interest rate swap arrangements relating to certain of its floating-rate debt facilities, and accounts for these swaps under Statement of Financial Accounting Standards No. 133, Accounting for Derivative Instruments and Hedging Activities ("SFAS No. 133"), and its related interpretations.

#### *Wynn Las Vegas swaps*

During 2003, we entered into two interest rate swap arrangements to hedge the underlying interest rate risk on a total of \$825.0 million of borrowings under our previous Wynn Las Vegas, LLC credit facilities. On December 14, 2004, concurrent with the refinancing of Wynn Las Vegas, LLC's debt structure, we terminated these two interest rate swaps. As a result of the termination, we received a cash payment of approximately \$9.6 million in settlement of the related asset.

Concurrent with the refinancing, we entered into two new interest rate swap arrangements to hedge the underlying interest rate risk on a total of \$400.0 million of borrowings under the current Wynn Las Vegas, LLC term loan facility, which bears interest at LIBOR plus 2.125%. Under each of these two interest rate swap arrangements, we receive payments at a variable rate of LIBOR and pay a fixed rate of 3.793% on \$200 million notional amount set forth in the swap instruments from February and March 2005, respectively through December 2008. Although these interest rate swaps are highly effective economically in fixing the interest rate on these borrowings under the new term loan facility at approximately 5.9%, changes in fair value of these interest rate swaps for each reporting period are, and will continue to be, recorded as a component of interest and other income as the swaps do not qualify for hedge accounting.

#### *Wynn Macau*

On October 14, 2005, we entered into two interest rate swaps to hedge a portion of the underlying interest rate risk on future borrowings under Wynn Macau S.A.'s \$749 million senior term loan facility. Under the first swap agreement, we pay a fixed interest rate of 4.84% on borrowings estimated to be incurred under the senior term loan facility up to a maximum of approximately \$198.2 million, in exchange for receipts on the same amounts at a variable interest rate based on the applicable LIBOR at the time of payment. Under the second swap agreement, we pay a fixed interest rate of 4.77% on borrowings estimated to be incurred under the senior term loan facility up to a maximum of approximately HK\$1.1 billion (approximately US\$140.3 million), in exchange for receipts on the same amounts at a variable interest rate based on the applicable HIBOR at the time of payment. The term of both swap agreements is from November 28, 2005 through November 28, 2008.

These interest rate swaps are expected to be highly effective in fixing the interest rate on 50% of the US dollar and 50% of the Hong Kong dollar borrowings under the senior bank facility at approximately 7.84% and

7.77%, respectively. However, changes in the fair values of these interest rate swaps for each reporting period recorded are, and will continue to be, recognized as a component of interest and other income as the swaps do not qualify for hedge accounting.

#### Summary of Historical Fair Values

The following table presents the historical asset or (liability) fair values (reflected in deposits and other assets or in other long-term liabilities as appropriate) at December 31, 2005, 2004 and 2003 and as of the December 14, 2004 termination date of the previous Wynn Las Vegas interest rate swaps (amounts in thousands):

	Wynn Las Vegas Previous Interest Rate Swaps	Wynn Las Vegas Current Interest Rate Swaps	Wynn Macau Interest Rate Swaps	Total Interest Rate Swap Asset/ (Liability)
Asset / (liability) fair value:				
at December 31, 2005	\$ —	\$ 10,523	\$ (1,788)	\$ 8,735
at December 31, 2004	\$ —	\$ 583	\$ —	\$ 583
at December 14, 2004 settlement	\$ 9,625	\$ —	\$ —	\$ 9,625
at December 31, 2003	\$ 8,793	\$ —	\$ —	\$ 8,793

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

#### Other Interest Rate Swap Information

The following table provides information about our interest rate swaps as of December 31, 2005 and using estimated future LIBOR and HIBOR rates based upon implied forward rates in the yield curve:

	Expected Averages as of December 31,						Total
	2006	2007	2008	2009 (in millions)	2010	Thereafter	
Average notional amount	\$ 651.7	\$ 739.3	\$ 739.3	\$ —	\$ —	\$ —	n/a
Average pay rate	4.17%	4.26%	4.24%	—	—	—	n/a
Average receive rate	4.88%	4.93%	4.87%	—	—	—	n/a

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

#### Interest Rate Sensitivity

For the year ended December 31, 2005, we incurred approximately \$149.5 million in interest. Certain amounts of our outstanding indebtedness for the year was based upon a variable, LIBOR rate plus a premium. A 1% increase in the LIBOR would have increased our interest cost for 2005 by approximately \$700,000.

#### Foreign Currency Risks

The currency delineated in Wynn Macau's concession agreement with the government of Macau is the Macau pataca. The Macau pataca, which is not a freely convertible currency, is linked to the Hong Kong dollar, and in many cases the two are used interchangeably in Macau. The Hong Kong dollar is linked to the U.S. dollar and the exchange rate between these two currencies has remained relatively stable over the past several years.



However, the exchange linkages of the Hong Kong dollar and the Macau pataca, and the Hong Kong dollar and the U.S. dollar, are subject to potential changes due to, among other things, changes in Chinese governmental policies and international economic and political developments.

In July 2005, officials from the People's Bank of China announced the adoption of a new foreign exchange policy that will move away from a U.S. dollar peg of 8.28 Chinese renminbi to one U.S. dollar. The renminbi will instead trade based on a basket of currencies. The currency components of the basket have not been announced. The exchange rate at September 30, 2005, was 8.11 Chinese renminbi to one U.S. dollar. Management believes that the current revaluation of the renminbi will not have a material effect on our financial position or results of operations.

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

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

#### **ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The Consolidated Financial Statements included on pages F-1 through F-43 are incorporated herein by reference.

#### **ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

#### **ITEM 9A. 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 solely because of the one material weakness in internal control over financial reporting described below, as of the end of such period, the Company's disclosure controls and procedures were not effective.

Subsequent to the issuance of the Company's consolidated financial statements for the year ended December 31, 2004, the Company determined that its interest rate swap arrangements relating to certain of its floating-rate debt facilities did not qualify for hedge accounting under Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities* ("SFAS No. 133"), and its related interpretations. The Company's hedge documentation includes, among other items, the assumption that

the repricing dates for its debt and swaps match. The documentation required to assess ineffectiveness resulting from having different repricing dates was not in place at the inception of the hedge, nor during the periods for which an assessment was required, and the Company recently determined that the repricing dates on the swap instruments did not match exactly the repricing dates on the floating-rate debt. Documentation deficiencies cannot be corrected, and quarterly testing cannot be performed, retrospectively. As a result, hedge accounting should not have been used. Accordingly, the Company determined that its 2003 and 2004 financial statements and its interim financial statements for the first three quarters of 2005 should be restated to eliminate the application of hedge accounting. Eliminating the application of cash flow hedge accounting results in recording the mark to market adjustments for the interest rate swaps as interest and other income, net and not in comprehensive income, as was previously reported.

(b) *Management Report on Internal Control Over Financial Reporting.* Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rule 13a-15(f) and 15d-15(f) under the Exchange Act.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2005. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in *Internal Control-Integrated Framework*.

A material weakness is a control deficiency, or a combination of control deficiencies, that results in a more than remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected. At December 31, 2005, the Company's controls over the formal designation, documentation and the continual evaluation and assessment of its derivative instruments were not adequately designed to determine that derivative instruments were not appropriately accounted for in accordance with Statement of Financial Accounting Standards No. 133: *Accounting for Derivative Instruments and Hedging Activities*.

Based on our assessment, as a result of the material weakness described above management believes that, as of December 31, 2005, the Company's internal control over financial reporting was not effective.

The Company's independent registered public accounting firm has issued an audit report on our assessment of the Company's internal control over financial reporting. This report appears under "Report of Independent Registered Public Accounting Firm on Internal Controls Over Financial Reporting" on page F-2.

(c) *Changes in 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. Subsequent to December 31, 2005, the Company adopted additional accounting policies and internal controls to address the issues raised by this material weakness.

## **ITEM 9B. OTHER INFORMATION**

On March 15, 2006, Wynn Las Vegas, LLC entered into an amendment to its Credit Agreement dated as of December 14, 2004, as amended, that:

- permits Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. to issue up to an additional \$100.0 million aggregate principal amount of their 6-5/8% First Mortgage Notes due 2014 (the "Additional Notes"); and

- permits expenditures on Encore in an amount equal to the sum of (i) \$1.4 billion, (ii) the net proceeds from the sale of any Additional Notes, (iii) cash equity contributions made to Wynn Las Vegas, LLC, and (iv) amounts committed by Wynn Resorts to pay Encore project costs;
- increases the swing line commitment from \$10.0 million to \$25.0 million; and
- authorizes certain amendments to collateral documents.

On March 15, 2006, Wynn Las Vegas, LLC also entered into an amendment of its Master Disbursement Agreement, dated as of December 14, 2004 (as amended, the “Disbursement Agreement”) that:

- provides the terms for disbursement of the net proceeds from the sale of any Additional Notes and other funds used to pay Encore project costs;
- extends the deadlines for opening and completion of Encore to June 30, 2009 and September 30, 2009, respectively;
- permits expenditures of up to \$150.0 million on Encore before Wynn Las Vegas enters into a guaranteed maximum price construction contract for Encore; and
- provides increased flexibility in obtaining disbursements to pay Encore project costs.

**PART III**

**ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT**

The information required by this item will be contained in the Registrant’s definitive Proxy Statement for its Annual Stockholder Meeting to be held on May 3, 2006, to be filed with the Securities and Exchange Commission within 120 days after December 31, 2005 (the “2006 Proxy Statement”) under the captions “Directors and Executive Officers,” “Section 16(a) Beneficial Ownership Reporting Compliance,” and “Code of Ethics”, and is incorporated herein by reference.

**ITEM 11. EXECUTIVE COMPENSATION**

The information required by this item will be contained in the 2006 Proxy Statement under the caption “Executive Officer Compensation,” and is incorporated herein by reference.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

**Securities Authorized for Issuance Under Equity Compensation Plans**

The following table summarizes compensation plans under which our equity securities are authorized for issuance, aggregated as to: (i) all compensation plans previously approved by stockholders, and (ii) all compensation plans not previously approved by stockholders. These plans are described in Item 8. “Financial Statements” of Part II (see Notes to Financial Statements).

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights (a)	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights (b)	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by security holders	3,484,800	\$ 36.92	4,726,412
Equity compensation plans not approved by security holders	—	—	—
<b>Total</b>	<b>3,484,800</b>	<b>\$ 36.92</b>	<b>4,726,412</b>

Certain information required by this item will be contained in the 2006 Proxy Statement under the caption “Security Ownership of Certain Beneficial Owners and Management,” and is incorporated herein by reference.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**

The information required by this item will be contained in the 2006 Proxy Statement under the caption “Certain Relationships and Related Transactions,” and is incorporated herein by reference.

**ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

The information required by this item will be contained in the 2006 Proxy Statement under the caption “Ratification of Appointment of Independent Public Accountants,” and is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

- (a) 1. Financial Statements—See the Index to Consolidated Financial Statements on Page F-1
2. Financial Statement Schedules filed in Part IV of this report are listed below;
- Schedule II—Valuation and Qualifying Accounts; year ended December 31, 2005

We have omitted all other financial statement schedules because they are not required or are not applicable, or the required information is shown in the financial statements or notes to the financial statements.

3. Exhibits

EXHIBIT INDEX

Exhibit No.	Description
3.1	Second Amended and Restated Articles of Incorporation of the Registrant.(1)
3.2	Third Amended and Restated Bylaws of the Registrant, as amended.(2)
4.1	Specimen certificate for shares of Common Stock, \$0.01 par value per share of the Registrant.(1)
4.2	Indenture, dated as of October 30, 2002, governing the 12% Second Mortgage Notes due 2010 by and among Wynn Las Vegas, LLC; Wynn Las Vegas Capital Corp.; Desert Inn Water Company, LLC; Wynn Design & Development, LLC; Wynn Resorts Holdings, LLC; Las Vegas Jet, LLC; World Travel, LLC; Palo, LLC; Valvino Lamore, LLC; the Registrant and Wells Fargo Bank, National Association, Inc., as trustee (including the Form of Second Mortgage Note and the Form of Notation of Guarantee).(3)
4.3	Indenture, dated as of July 7, 2003, governing the 6% Convertible Subordinated Debentures due 2015 by and among Wynn Resorts, Limited, as obligor, Wynn Resorts Funding, LLC, as guarantor and U.S. National Bank Association, as Trustee (including the Form of 6% Convertible Subordinated Debenture due 2015 and Form of Notation of Guarantee).(4)
4.4	Indenture, dated as of December 14, 2004, among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., the Guarantors set forth therein and U.S. Bank National Association, as trustee.(5)
4.5	Supplemental Indenture, dated as of December 14, 2004, among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., the Guarantors set forth therein and Wells Fargo Bank, National Association, as trustee.(5)
4.6	First Supplemental Indenture, dated as of June 29, 2005, among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., the Guarantors set forth therein and U.S. Bank National Association, as trustee.(25)
4.7	Registration Rights Agreement, dated October 30, 2002, by and between the Registrant and Stephen A. Wynn.(3)
4.8	Registration Rights Agreement, dated as of June 12, 2003, by and between Wynn Resorts, Limited and Societe des Bains de Mer et du Cercle des Etrangers a Monaco.(6)
4.9	Registration Rights Agreement, dated as of July 7, 2003, by and among Wynn Resorts, Limited, Wynn Resorts Funding, LLC, Deutsche Bank Securities Inc. and SG Cowen Securities Corporation.(4)
4.10	Registration Rights Agreement, dated as of August 28, 2004, by and between S.H.W. & Co. Limited and Wynn Resorts, Limited.(7)

Exhibit No.	Description
4.11	Registration Rights Agreement, dated as of September 1, 2004, by and between Classic Wave Limited and Wynn Resorts, Limited.(7)
4.12	Registration Rights Agreement, dated as of September 1, 2004, by and between L'Arc de Triomphe Limited and Wynn Resorts, Limited.(7)
4.13	Registration Rights Agreement, dated as of September 1, 2004, by and between SKKG Limited and Wynn Resorts, Limited.(7)
4.14	Registration Rights Agreement, dated as of December 14, 2004, by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., the Guarantor signatories thereto and Deutsche Bank Securities Inc., Banc of America Securities LLC, Bear, Stearns & Co. Inc., J.P. Morgan Securities Inc. and SG Americas Securities, LLC.(22)
10.1	Agreement between Wynn Design & Development, LLC and Butler/Ashworth Architects, Inc.(1)
10.2	Agreement for Guaranteed Maximum Price Construction Services between Wynn Las Vegas, LLC and Marnell Corrao Associates, Inc. for Le Réve.(8)
10.3	Change Order No. 1 to Agreement for Guaranteed Maximum Price Construction Services dated as of August 12, 2002, by and between Marnell Corrao Associates, Inc. as Contractor and Wynn Las Vegas, LLC.(9)
10.4	Change Order No. 2 to Agreement for Guarantee Maximum Price Construction Services, dated as of August 31, 2003, by and between Marnell Corrao Associates, Inc. as Contractor and Wynn Las Vegas, LLC.(10)
10.5	Change Order No. 3 to Agreement for Guarantee Maximum Price Construction Services, dated as of March 31, 2004, by and between Marnell Corrao Associates, Inc. as Contractor and Wynn Las Vegas.(11)
10.6	Change Order No. 4 to Agreement for Guarantee Maximum Price Construction Services, dated as of June 30, 2004, by and between Marnell Corrao Associates, Inc. as Contractor and Wynn Las Vegas.(12)
10.7	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.(13)
10.8	Change Order No. 6 to Agreement for Guarantee Maximum Price Construction Services, dated as of November 30, 2004, by and between Marnell Corrao Associates, Inc. and Wynn Las Vegas, LLC.(22)
10.9	Change Order No. 7 to Agreement for Guarantee Maximum Price Construction Services, dated as of December 30, 2004, by and between Marnell Corrao Associates, Inc. and Wynn Las Vegas, LLC.(22)
10.10	Change Order No. 8 to Agreement for Guarantee Maximum Price Construction Services, dated as of May 31, 2005, by and between Marnell Corrao Associates, Inc. and Wynn Las Vegas, LLC.(34)
10.11	Change Order No. 9 to Agreement for Guarantee Maximum Price Construction Services, dated as of July 20, 2005, by and between Marnell Corrao Associates, Inc. and Wynn Las Vegas, LLC.(34)
10.12	Change Order No. 10 to Agreement for Guarantee Maximum Price Construction Services, dated as of July 20, 2005, by and between Marnell Corrao Associates, Inc. and Wynn Las Vegas, LLC.(34)
10.13	Amended and Restated Continuing Guaranty, dated October 22, 2002, by Austi, Inc. in favor of Wynn Las Vegas, LLC.(3)
10.14	Design/Build Agreement, dated June 6, 2002, by and between Wynn Las Vegas, LLC and Bomel Construction Company, Inc.(8)

Exhibit No.	Description
10.15	Lump Sum Agreement, by and between Wynn Las Vegas, LLC and Wadsworth Golf Construction Company, effective as of February 18, 2003. (14)
10.16	Design-Build Agreement for Guaranteed Maximum Price Architectural, Engineering and Construction Services, dated as of May 10, 2004, between Wynn Resorts (Macau) S.A. and Leighton Contractors (Asia) Limited, China State Construction Engineering (Hong Kong) Limited, and China Construction Engineering (Macau) Company Limited.(12)
10.17	Amended and Restated Design-Build Agreement for Guaranteed Maximum Price Architectural, Engineering and Construction Services, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. as Owner and Leighton Contractors (Asia)—Limited, China State Construction Engineering (Hong Kong) Limited, and China Construction Engineering (Macau) Company Limited, jointly and severally, the Contractor.(28)
10.18	Completion Guaranty, dated December 14, 2004, by Wynn Completion Guarantor, LLC in favor of Deutsche Bank Trust Company Americas, as the Bank Agent, and U.S. Bank National Association, as Indenture Trustee.(22)
*10.19	Employment Agreement, dated as of July 7, 2000, by and between Wynn Design & Development, LLC and William Todd Nisbet.(15)
*10.20	Employment Agreement, dated as of September 6, 2002, by and between Wynn Resorts, Limited and Marc H. Rubinstein.(15)
*10.21	Employment Agreement, dated as of September 26, 2002, by and between Wynn Design & Development, LLC and DeRuyter O. Butler.(1)
*10.22	Employment Agreement, dated as of October 4, 2002, by and between Wynn Resorts, Limited and Stephen A. Wynn.(1)
*10.23	First Amendment to Employment Agreement, dated as of August 6, 2004, by and between Stephen A. Wynn and Wynn Resorts, Limited.(13)
*10.24	Employment Agreement, dated as of October 4, 2002, by and between Wynn Resorts, Limited and Marc D. Schorr.(17)
*10.25	Employment Agreement, dated as of December 11, 2002, by and between Wynn Las Vegas, LLC and Arthur Nathan.(33)
*10.26	First Amendment to Employment Agreement, dated as of August 28, 2003, by and between Wynn Las Vegas, LLC and Arthur Nathan.(33)
*10.27	Employment Agreement, dated as of December 16, 2002, by and between Wynn Las Vegas, LLC and James E. Pettis.(33)
10.28	Credit Agreement, dated as of December 14, 2004, among Wynn Las Vegas, LLC, Deutsche Bank Securities Inc., Deutsche Bank Trust Company Americas, Banc of America Securities LLC, Bank of America, N.A., Bear Stearns Corporate Lending Inc., Bear, Stearns & Co. Inc., JPMorgan Chase Bank, N.A., J.P. Morgan Securities Inc., Societe Generale and SG Americas Securities, LLC. (5)
*10.29	Employment Agreement, dated as of March 2003, by and between Worldwide Wynn, LLC and Matt Maddox.(23)
*10.30	First Amendment to Employment Agreement, dated as of September 1, 2004, by and between Worldwide Wynn, LLC and Matt Maddox.(23)
*10.31	Employment Agreement, dated as of April 1, 2003, by and between Wynn Resorts, Limited and Ronald J. Kramer.(14)
*10.32	Employment Agreement, dated as of July 18, 2003, by and between Wynn Resorts (Macau), S.A. and Grant Bowie.(23)

Exhibit No.	Description
*10.33	Employment Agreement, dated as of September 16, 2003 by and between Wynn Las Vegas, LLC and David Sisk.(23)
*10.34	First Amendment to Employment Agreement, dated as of October 20, 2003 by and between Wynn Las Vegas, LLC and David Sisk.(23)
*10.35	Employment Agreement, dated as of January 1, 2005, by and between Wynn Resorts, Limited and Karen Bozich.(23)
*10.36	Employment Agreement, dated as of June 27, 2005, between Worldwide Wynn, LLC and Scott Peterson.(34)
*10.37	Addendum to Employment Agreement, dated as of June 27, 2005, between Worldwide Wynn, LLC and Scott Peterson.(34)
*10.38	Employment Agreement, dated as of August 31, 2005, between Wynn Resorts, Limited and John Strzemp.(29)
*10.39	Employment Agreement, dated as of August 31, 2005, between Worldwide Wynn, LLC and Linda Chen.(29)
*10.40	Employment Agreement, dated as of August 31, 2005, between Wynn Las Vegas, LLC and Andrew Pascal.(29)
10.41	Tax Indemnification Agreement, effective as of September 24, 2002, by and among Stephen A. Wynn, Aruze USA, Inc., Baron Asset Fun on behalf of the Baron Asset Fund Series, Baron Asset Fund on behalf of the Baron Growth Fund Series, Kenneth R. Wynn Family Trust dated February 20, 1985, Valvino Lamore, LLC and Wynn Resorts, Limited.(1)
*10.42	2002 Stock Incentive Plan.(3)
*10.43	Form of Stock Option Agreement.(18)
*10.44	Form of Stock Option Grant Notice.(17)
*10.45	Form of Restricted Stock Agreement.(17)
*10.46	Form of Indemnity Agreement.(17)
10.47	Purchase Agreement, dated as of June 12, 2003, by and between Wynn Resorts, Limited and Societe des Bains de Mer et du Cercle des Etrangers a Monaco.(6)
10.48	Asset and Land Purchase Agreement, dated as of April 28, 2000, by and among Starwood Hotels & Resorts Worldwide, Inc., Sheraton Gaming Corporation, Sheraton Desert Inn Corporation, Valvino Lamore, LLC and Stephen A. Wynn.(8)
10.49	First Amendment to Asset and Land Purchase Agreement, dated as of May 26, 2000, by and among Starwood Hotels & Resorts Worldwide, Inc., Sheraton Gaming Corporation, Sheraton Desert Inn Corporation, Valvino Lamore, LLC and Stephen A. Wynn.(8)
10.50	Second Amendment to Asset and Land Purchase Agreement, dated as of June 16, 2000, by and among Starwood Hotels & Resorts Worldwide, Inc., Sheraton Gaming Corporation, Sheraton Desert Inn Corporation, Valvino Lamore, LLC, Stephen A. Wynn, Rambas Marketing Co., LLC, and Desert Inn Water Company, LLC.(8)
10.51	Third Amendment to Asset and Land Purchase Agreement, dated as of June 22, 2000, by and among Starwood Hotels & Resorts Worldwide, Inc., Sheraton Gaming Corporation, Sheraton Desert Inn Corporation, Valvino Lamore, LLC, Stephen A. Wynn, Rambas Marketing Co., LLC, and Desert Inn Water Company, LLC.(8)



Exhibit No.	Description
10.52	Fourth Amendment to Asset and Land Purchase Agreement, dated as of October 27, 2000, by and among Starwood Hotels & Resorts Worldwide, Inc., Sheraton Gaming Corporation, Sheraton SGC Sub Corporation, Valvino Lamore, LLC, Stephen A. Wynn, Rambas Marketing Co., LLC, and Desert Inn Water Company, LLC.(8)
10.53	Fifth Amendment to Asset and Land Purchase Agreement, dated as of November 3, 2000, by and among Starwood Hotels & Resorts Worldwide, Inc., Sheraton Gaming Corporation, Sheraton SGC Sub Corporation, Valvino Lamore, LLC, Stephen A. Wynn, Rambas Marketing Co., LLC, and Desert Inn Water Company, LLC.(8)
10.54	License Agreement, dated October 31, 2002, by and between Wynn Las Vegas, LLC and Calitri Services and Licensing Limited Liability Company.(16)
10.55	Production Services Agreement, dated October 31, 2002, by and between Wynn Las Vegas, LLC and Productions Du Dragon, S.A.(16)
10.56	Stockholders Agreement, dated as of April 11, 2002, by and among Stephen A. Wynn, Baron Asset Fund and Aruze USA, Inc.(8)
10.57	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.(13)
10.58	Concession Contract for the Operation of Games of Chance or Other Games in Casinos in the Macau Special Administrative Region, dated June 24, 2002, between the Macau Special Administrative Region and Wynn Resorts (Macau), S.A. (English translation of Portuguese version of Concession Agreement).(9)
10.59	Concession Contract for Operating Casino Gaming or Other Forms of Gaming in the Macao Special Administrative Region, dated June 24, 2002, between the Macau Special Administrative Region and Wynn Resorts (Macau) S.A. (English translation of Chinese version of Concession Agreement).(15)
10.60	Pledge and Security Agreement, dated as of July 7, 2003, by and between Wynn Resorts, Limited, as pledgor, and U.S. Bank National Association, as trustee and collateral agent.(4)
10.61	Collateral Pledge and Security Agreement, dated as of July 7, 2003, by and between Wynn Resorts Funding, LLC, as the pledgor, and U.S. Bank National Association, as collateral agent and trustee.(4)
10.62	Supplement No. 1, dated as of July 30, 2003, to the Collateral Pledge and Security Agreement dated as of July 7, 2003, by and between Wynn Resorts Funding, LLC, as pledgor and U.S. Bank National Association, as collateral agent and trustee.(4)
10.63	Acknowledgement and Agreement, dated as of September 1, 2004, among Wynn Las Vegas, LLC, Wells Fargo Bank, National Association and the lenders named therein.(19)
10.64	Unofficial English translation of Land Concession Contract between the Macau Special Administrative Region and Wynn Resorts (Macau) S.A. (12)
10.65	Agreement, dated as of June 13, 2002, by and between Stephen A. Wynn and Wynn Resorts, Limited.(9)
10.66	Surname Rights Agreement, dated as of August 6, 2004, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.(13)
10.67	Rights of Publicity License, dated as of August 6, 2004, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.(13)

Exhibit No.	Description
10.68	Termination Agreement, dated as of August 6, 2004, by and between Stephen A. Wynn and Valvino Lamore, LLC.(13)
10.69	Trademark Assignment, dated as of August 6, 2004, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.(13)
10.70	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.(13)
10.71	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.(7)
10.72	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.(7)
10.73	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.(7)
10.74	Exchange Agreement, dated as of September 1, 2004, by and among Wong Chi Seng, SKKG Limited, Wynn Resorts, Limited and Wynn Resorts International, Ltd.(7)
10.75	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.(13)
10.76	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.(13)
10.77	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.(13)
10.78	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.(13)
10.79	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.(13)
10.80	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.(13)
10.81	Land Security Assignment, dated September 14, 2004, between Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as the Security Agent.(13)
10.82	Assignment of Rights, dated September 14, 2004 between Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as the Security Agent.(13)
10.83	Assignment of Insurances, dated September 14, 2004 between Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as the Security Agent.(13)
10.84	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.(13)

Exhibit No.	Description
10.85	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.(13)
10.86	Debenture, dated September 14, 2004 between Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as the Security Agent.(13)
10.87	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.(13)
10.88	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.(13)
10.89	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.(13)
10.90	Bank Guarantee Reimbursement Agreement, dated September 14, 2004, between Wynn Resorts (Macau), S.A. and Banco Nacional Ultramarino. (13)
10.91	Note Purchase Agreement, dated September 14, 2004, by and among Wynn Resorts (Macau), S.A. and Wynn Group Asia, Inc.(13)
10.92	Amended and Restated Note Purchase Agreement, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. and Wynn Group Asia, Inc.(28)
10.93	Hotel Facility Agreement Amendment Agreement, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. as Company, Societe Generale Asia Limited, as Hotel Facility Agent and Certain Financial Institutions as Hotel Facility Lenders.(28)
10.94	Project Facility Agreement Amendment Agreement, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. as Company, Societe Generale Asia Limited, as Project Facility Agent and Certain Financial Institutions as Project Facility Lenders.(28)
10.95	Revolving Credit Facility Agreement Amendment Agreement, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. as Company and Certain Financial Institutions as Revolving Credit Facility Lenders.(28)
10.96	Common Terms Agreement Amendment Agreement, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. as the Company, Certain Financial Institutions as Hotel Facility Lenders, Project Facility Lenders, Revolving Credit Facility Lenders and Hedging Counterparties, Bank of America Securities Asia Limited, Deutsche Bank AG, Hong Kong Branch and Societe Generale Asia Limited as Global Coordinating Lead Arrangers, Societe Generale Asia Limited as Hotel Facility Agent and Project Facility Agent, Societe Generale Asia Limited as Intercreditor Agent, and Societe Generale, Hong Kong Branch as Security Agent.(28)
10.97	Wynn Resorts Support Agreement Deed of Amendment, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as Security Agent.(28)
10.98	Deed of Appointment and Priority Deed of Amendment, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. as Company, Certain Financial Institutions as Original First Ranking Lenders, Certain Financial Institutions as Original Hedging Counterparties, Banco Nacional Ultramarino, S.A. as Second Ranking Finance Party, Wynn Group Asia, Inc. as Third Ranking Finance Party, Societe Generale Asia Limited as Security Agent, Societe Generale Asia Limited as Intercreditor Agent, Societe Generale Asia Limited as Hotel Facility Agent and Project Facility Agent, and Others.(28)

Exhibit No.	Description
10.99	First Amendment to Credit Agreement, dated April 26, 2005, among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., Wynn Golf, LLC, Wynn Show Performers, LLC, Wynn Sunrise, LLC, World Travel, LLC and Deutsche Bank Trust Company Americas, as administrative agent. (26)
10.100	Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of December 14, 2004, made by Wynn Las Vegas, LLC, as trustor, to Nevada Title Company, as trustee, for the benefit of Deutsche Bank Trust Company Americas, as collateral agent. (22)
10.101	Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of December 14, 2004, made by Wynn Sunrise, LLC, as trustor, to Nevada Title Company, as trustee, for the benefit of Deutsche Bank Trust Company Americas, as collateral agent. (22)
10.102	Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of December 14, 2004, made by Wynn Golf, LLC, as trustor, to Nevada Title Company, as trustee, for the benefit of Deutsche Bank Trust Company Americas, as collateral agent. (22)
10.103	Guarantee and Collateral Agreement, dated as of December 14, 2004, made by Wynn Resorts Holdings, LLC, Wynn Las Vegas, LLC, Wynn Show Performers, LLC, Wynn Las Vegas Capital Corp., Wynn Golf, LLC, World Travel, LLC, Las Vegas Jet, LLC, Wynn Sunrise, LLC and the other Grantors from time to time party thereto in favor of Deutsche Bank Trust Company Americas, as administrative agent. (22)
10.104	Master Disbursement Agreement, dated as of December 14, 2004, among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., Deutsche Bank Trust Company Americas and U.S. Bank National Association. (5)
10.105	Intercreditor Agreement, dated as of December 14, 2004, among Deutsche Bank Trust Company Americas, as bank agent, Deutsche Bank Trust Company Americas, as collateral agent, and U.S. Bank National Association, as trustee. (5)
10.106	Pledge and Security Agreement, dated as of December 14, 2004, made by Wynn Resorts Holdings, LLC, Wynn Las Vegas, LLC, Wynn Show Performers, LLC, Wynn Las Vegas Capital Corp., Wynn Golf, LLC, World Travel, LLC, Las Vegas Jet, LLC, Wynn Sunrise, LLC and the other Grantors from time to time party thereto in favor of Deutsche Bank Trust Company Americas, as administrative agent. (22)
10.107	Management Fees Subordination Agreement, dated as of December 14, 2004, by Wynn Resorts, Limited, Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., and those subsidiaries of Wynn Las Vegas, LLC listed on <u>Exhibit A</u> hereto in favor of Deutsche Bank Trust Company Americas, as administrative agent, and U.S. Bank National Association, as trustee. (22)
10.108	Management Agreement, made as of December 14, 2004, by and among Wynn Las Vegas, LLC, Wynn Show Performers, LLC, Wynn Las Vegas Capital Corp., Wynn Golf, LLC, World Travel, LLC, Las Vegas Jet, LLC, Wynn Sunrise, LLC, and Wynn Resorts, Limited. (22)
10.109	Irrevocable Trust Agreement, dated as of December 14, 2004, by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., and Wells Fargo Bank, National Association, as Trustee. (22)
10.110	Amended and Restated Project Administration Services Agreement, dated December 14, 2004, between Wynn Las Vegas, LLC and Wynn Design & Development, LLC. (22)
10.111	Intellectual Property License Agreement, dated as of December 14, 2004, by and among Wynn Resorts Holdings, Wynn Resorts, Limited and Wynn Las Vegas, LLC. (22)
10.112	Agreement of Lease, dated January 10, 2005, by and between Stephen A. Wynn and Wynn Las Vegas, LLC. (23)

Exhibit No.	Description
10.113	Amendment No. 1 to Agreement of Lease, dated April 21, 2005, by and between Stephen A. Wynn and Wynn Las Vegas, LLC.(23)
10.114	Second Amendment to Credit Agreement, dated as of June 29, 2005, among Wynn Las Vegas, LLC, the Wynn Amendment Parties (as defined therein) and Deutsche Bank Trust Company Americas, as administrative agent on behalf of the Lenders (as defined therein). (30)
10.115	Third Amendment to Credit Agreement, dated as of March 15, 2006, among Wynn Las Vegas, LLC, the Wynn Amendment Parties (as defined therein) and Deutsche Bank Trust Company Americas, as administrative agent on behalf of the Lenders (as defined therein). (34)
10.116	First Amendment to Master Disbursement Agreement, dated April 26, 2005, among Wynn Las Vegas, LLC, Deutsche Bank Trust Company Americas, as bank agent and Deutsche Bank Trust Company Americas, as disbursement agent.(26)
10.117	Second Amendment to Master Disbursement Agreement, dated as of June 29, 2005, between Wynn Las Vegas, LLC and Deutsche Bank Trust Company Americas.(25)
10.118	Promissory Note and Agreement, dated May 24, 2005, by Wells Fargo Northwest, National Association, not in its individual capacity but solely as owner trustee, and World Travel, LLC; and accepted and agreed to by Bank of America, N.A., as lender and Wells Fargo Bank, National Association, not in its individual capacity but solely as collateral agent.(27)
10.119	Promissory Note and Agreement, dated May 24, 2005, by Wells Fargo Northwest, National Association, not in its individual capacity but solely as owner trustee, and World Travel, LLC; and accepted and agreed to by The CIT Group / Equipment Financing, Inc., as lender and Wells Fargo Bank, National Association, not in its individual capacity but solely as collateral agent.(27)
10.120	Aircraft Security Agreement, dated May 24, 2005, between Wells Fargo Northwest, National Association, not in its individual capacity but solely as owner trustee, World Travel, LLC and Wells Fargo Bank, National Association, not in its individual capacity but solely as collateral agent.(27)
10.121	Guaranty, dated May 24, 2005, by Wynn Las Vegas, LLC in favor of The CIT Group / Equipment Financing, Inc., Bank of America, N.A. and Wells Fargo Bank, National Association, not in its individual capacity but solely as collateral agent.(27)
10.122	Agreement of Termination, dated June 30, 2005, by and between Stephen A. Wynn and Wynn Las Vegas, LLC.(24)
10.123	Fourth Amended and Restated Art Rental and Licensing Agreement, dated as of June 30, 2005, between Stephen A. Wynn, as lessor, Wynn Gallery, LLC, as lessee.(24)
10.124	Art Gallery Lease, dated June 30, 2005, between Wynn Las Vegas, LLC, as landlord and Wynn Gallery, LLC, as tenant.(24)
10.125	Description of discretionary bonuses for Fiscal Year 2004 for certain executive officers.(31)
10.126	Description of Performance Based Incentive Plan Bonus Criteria for Fiscal Year 2005.(32)
10.127	Third Amendment to Master Disbursement Agreement, dated as of March 13, 2006, between Wynn Las Vegas, LLC and Deutsche Bank Trust Company Americas. (34)
10.128	Subconcession Sale Agreement, dated as of March 4, 2006, between Wynn Resorts, Limited, Wynn Resorts (Macau), S.A. and Publishing and Broadcasting, Ltd. (34)
14.1	Code of Ethics for the Chief Executive Officer, President and Senior Financial Officers (adopted November 12, 2003)(20)
16.1	Letter from Arthur Andersen, LLP(21)
21.1	Subsidiaries of the Registrant(34)
23.1	Consent of Deloitte & Touche LLP(34)

Exhibit No.	Description
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.(34)
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.(34)
32.1	Certification of CEO and CFO Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.(34)

\* Denotes management contract or compensatory plan or arrangement.

- (1) Incorporated by reference from Amendment No. 4 to the Form S-1 filed by the Registrant on October 7, 2002 (File No. 333-90600).
- (2) Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on December 9, 2002.
- (3) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on November 18, 2002.
- (4) Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on August 14, 2003.
- (5) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on December 17, 2004.
- (6) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on June 13, 2003.
- (7) Incorporated by reference from the Registration Statement on Form S-3 filed by the Registrant on September 1, 2004 (File No. 333-118741).
- (8) Incorporated by reference from the Form S-1 filed by the Registrant on June 17, 2002.
- (9) Incorporated by reference from Amendment No. 1 to the Form S-1 filed by the Registrant on August 20, 2002 (File No. 333-90600).
- (10) Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on November 13, 2003.
- (11) Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on May 5, 2004.
- (12) Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on August 3, 2004.
- (13) Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on November 4, 2004.
- (14) Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on May 15, 2003.
- (15) Incorporated by reference from Amendment No. 3 to the Form S-1 filed by the Registrant on September 18, 2002 (File No. 333-90600).
- (16) Incorporated by reference from the Annual Report on Form 10-K filed by the Registrant on March 28, 2003.
- (17) Incorporated by reference from Amendment No. 5 to the Form S-1 filed by the Registrant on October 21, 2002 (File No. 333-90600).
- (18) Incorporated by reference from the Form S-8 filed by the Registrant on October 31, 2002.
- (19) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on September 8, 2004.
- (20) Incorporated by reference from the Annual report on form 10-K filed by the Registrant on March 15, 2004.
- (21) Incorporated by reference from Amendment No. 2 to the Form S-1 filed by the Registrant on August 26, 2002 (File No. 333-90600).
- (22) Incorporated by reference from the Annual Report on Form 10-K filed by the Registrant on March 15, 2005.
- (23) Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on May 8, 2005.
- (24) Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on August 3, 2005.

- (25) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on June 29, 2005.
- (26) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on April 27, 2005.
- (27) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on May 25, 2005.
- (28) Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on November 8, 2005.
- (29) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on September 1, 2005.
- (30) Incorporated by reference from Amendment No. 1 to the Current Report on Form 8-K filed by the Registrant on September 29, 2005.
- (31) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on February 3, 2005.
- (32) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on March 24, 2005.
- (33) Incorporated by reference from the Form S-4 filed by Wynn Las Vegas, LLC on April 13, 2005.
- (34) Filed herewith.

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM  
ON INTERNAL CONTROLS OVER FINANCIAL REPORTING**

To the Board of Directors and Stockholders of  
Wynn Resorts, Limited  
Las Vegas, Nevada

We have audited management's assessment, included in the accompanying Management's Report on Internal Controls over Financial Reporting, that Wynn Resorts, Limited and its subsidiaries (the "Company") did not maintain effective internal control over financial reporting as of December 31, 2005, because of the effect of the material weakness identified in management's assessment based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed by, or under the supervision of, the company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected. The following material weakness has been identified and included in management's assessment:

The Company's controls over the formal designation, documentation and the continual evaluation and assessment of its derivative instruments were not adequately designed to determine that derivative instruments

were not properly accounted for in accordance with Statement of Financial Accounting Standards No. 133 *Accounting for Derivative Instruments and Hedging Activities*.

This material weakness resulted in the restatement of the Company's previously issued consolidated financial statements as more fully described in Note 17 to the consolidated financial statements. This material weakness was considered in determining the nature, timing, and extent of audit tests applied in our audit of the consolidated financial statements as of and for the year ended December 31, 2005, of the Company and this report does not affect our report on such consolidated financial statements.

In our opinion, management's assessment that the Company did not maintain effective internal control over financial reporting as of December 31, 2005, is fairly stated, in all material respects, based on the criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Also in our opinion, because of the effect of the material weakness described above, the Company has not maintained effective internal control over financial reporting as of December 31, 2005, based on the criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheet as of December 31, 2005, and the related consolidated statements of operations, stockholders' equity, and cash flows for the year ended December 31, 2005, of the Company and the financial statement schedule of Valuation and Qualifying Accounts included in Item 15(a)(2), and our report dated March 15, 2006, expressed an unqualified opinion on those financial statements and financial statement schedule and included an explanatory paragraph related to the restatement described in Note 17 to the consolidated financial statements.

DELOITTE & TOUCHE LLP

Las Vegas, Nevada  
March 15, 2006

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM  
ON THE CONSOLIDATED FINANCIAL STATEMENTS**

To the Board of Directors and Stockholders of  
Wynn Resorts, Limited  
Las Vegas, Nevada

We have audited the accompanying consolidated balance sheets of Wynn Resorts, Limited and subsidiaries (the "Company") as of December 31, 2005 and 2004, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2005. Our audits also included the financial statement schedule of Valuation and Qualifying Accounts included in Item 15(a)(2). These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedules based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Wynn Resorts, Limited and subsidiaries as of December 31, 2005 and 2004, and the results of their operations and their cash flows for each of the three years in the period then ended in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, present fairly, in all material respects, the information set forth therein.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of the Company's internal control over financial reporting as of December 31, 2005, based on the criteria established in Internal Control Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 15, 2006 expressed an unqualified opinion on management's assessment of the effectiveness of the Company's internal control over financial reporting and an adverse opinion on the effectiveness of the Company's internal control over financial reporting because of a material weakness.

As discussed in Note 17, the accompanying 2003 and 2004 consolidated financial statements have been restated.

DELOITTE & TOUCHE LLP

Las Vegas, Nevada  
March 15, 2006

WYNN RESORTS, LIMITED AND SUBSIDIARIES

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

	December 31,	
	2005	2004 (as Restated— see Note 17)
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 434,289	\$ 330,261
Restricted cash and investments	98,271	115,301
Receivables, net	88,468	227
Inventories	39,884	757
Prepaid expenses	23,630	4,683
Total current assets	684,542	451,229
Restricted cash and investments	344,331	827,066
Property and equipment, net	2,663,870	1,987,233
Intangibles, net	60,480	54,100
Deferred financing costs	95,619	88,565
Deposits and other assets	91,371	56,220
Investment in unconsolidated affiliates	5,070	—
Total assets	<u>\$ 3,945,283</u>	<u>\$ 3,464,413</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Current portion of long-term debt	\$ 15,489	\$ 718
Current portion of land concession obligation	8,984	9,483
Accounts and construction payable	79,768	86,520
Accrued interest	15,733	12,081
Accrued compensation and benefits	36,772	11,110
Other accrued expenses	28,374	9,918
Customer deposits and other related liabilities	66,120	1,006
Construction retention	18,539	39,117
Total current liabilities	269,779	169,953
Construction retention	757	21,140
Long-term debt	2,090,846	1,600,328
Long-term land concession obligation	19,218	27,640
Other long-term liabilities	1,788	860
Total liabilities	<u>2,382,388</u>	<u>1,819,921</u>
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, par value \$0.01; authorized 40,000,000 shares; zero shares issued and outstanding	—	—
Common stock, par value \$0.01; authorized 400,000,000 shares; 99,331,294 and 98,983,344 shares issued and outstanding	993	990
Additional paid-in capital	1,972,847	1,951,906
Deferred compensation—restricted stock	(15,784)	(4,079)
Accumulated deficit	(395,161)	(304,325)
Total stockholders' equity	<u>1,562,895</u>	<u>1,644,492</u>
Total liabilities and stockholders' equity	<u>\$ 3,945,283</u>	<u>\$ 3,464,413</u>

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

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

	Year Ended December 31,		
	2005	2004 (as Restated— see Note 17)	2003 (as Restated— see Note 17)
<b>Operating revenues:</b>			
Casino	\$ 353,663	\$ —	\$ —
Rooms	170,315	—	—
Food and beverage	173,700	—	—
Entertainment, retail and other	125,230	195	643
Gross revenues	822,908	195	643
Less promotional allowances	(100,927)	—	—
Net revenues	721,981	195	643
<b>Operating costs and expenses:</b>			
Casino	155,075	—	—
Rooms	44,171	—	—
Food and beverage	118,670	—	—
Entertainment, retail and other	80,185	68	213
General and administrative	118,980	335	631
Provision for doubtful accounts	16,206	—	—
Pre-opening costs	96,940	81,321	46,744
Depreciation and amortization	103,344	6,979	5,743
Property charges and other	14,297	1,290	647
Total operating costs and expenses	747,868	89,993	53,978
Equity in income from unconsolidated affiliates	1,331	—	—
Operating loss	(24,556)	(89,798)	(53,335)
<b>Other income (expense):</b>			
Interest and other income	36,419	10,048	19,138
Interest expense, net	(102,699)	(2,687)	(9,031)
Loss from extinguishment of debt	—	(122,788)	—
Other income (expense), net	(66,280)	(115,427)	10,107
Minority interest	—	1,054	3,129
Net loss	\$ (90,836)	\$ (204,171)	\$ (40,099)
<b>Basic and diluted loss per common share:</b>			
Net loss:			
Basic	\$ (0.92)	\$ (2.35)	\$ (0.50)
Diluted	\$ (0.92)	\$ (2.35)	\$ (0.50)
<b>Weighted average common shares outstanding:</b>			
Basic	98,308	86,778	79,429
Diluted	98,308	86,778	79,429

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

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(amounts in thousands, except share data)

	Common stock		Additional paid-in capital	Deferred compensation— restricted stock	Accumulated Deficit	Total stockholders' equity
	Shares outstanding	Par value				
Balances, December 31, 2002	78,972,511	\$ 790	\$ 1,065,649	\$ (14,771)	\$ (60,055)	\$ 991,613
Issuance of restricted stock	189,723	2	2,827	(2,829)	—	—
Forfeiture of restricted stock	(189,723)	(2)	(2,512)	1,440	—	(1,074)
Issuance of common stock	3,000,000	30	44,766	—	—	44,796
Exercise of stock options	6,250	—	83	—	—	83
Amortization of deferred compensation—restricted stock	—	—	—	6,496	—	6,496
Net loss accumulated during the development stage*	—	—	—	—	(40,099)	(40,099)
Balances, December 31, 2003*	81,978,761	820	1,110,813	(9,664)	(100,154)	1,001,815
Issuance of common stock	16,958,333	170	840,391	—	—	840,561
Exercise of stock options	46,250	—	702	—	—	702
Amortization of deferred compensation—restricted stock	—	—	—	5,585	—	5,585
Net loss accumulated during the development stage*	—	—	—	—	(204,171)	(204,171)
Balances, December 31, 2004*	98,983,344	990	1,951,906	(4,079)	(304,325)	1,644,492
Issuance of restricted stock	275,000	3	18,532	(18,535)	—	—
Exercise of stock options	72,950	—	1,404	—	—	1,404
Acceleration of stock options	—	—	497	—	—	497
Stock options issued to consultant	—	—	508	—	—	508
Amortization of deferred compensation—restricted stock	—	—	—	6,830	—	6,830
Net loss	—	—	—	—	(90,836)	(90,836)
Balances, December 31, 2005	<u>99,331,294</u>	<u>\$ 993</u>	<u>\$ 1,972,847</u>	<u>\$ (15,784)</u>	<u>\$ (395,161)</u>	<u>\$ 1,562,895</u>

\* As restated, see Note 17.

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

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

	Year Ended December 31,		
	2005	2004 (as Restated— see Note 17)	2003 (as Restated— see Note 17)
<b>Cash flows from operating activities:</b>			
Net loss	\$ (90,836)	\$ (204,171)	\$ (40,099)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	103,344	6,979	5,743
Amortization of deferred compensation	4,676	3,429	3,327
Amortization and writeoffs of deferred financing costs	14,045	60,572	12,871
Provision for doubtful accounts	16,206	—	—
Property charges and other	14,297	1,290	(4)
Equity in income of unconsolidated affiliates	(1,331)	—	—
Increase in the fair value of interest rate swaps	(8,152)	(1,415)	(8,793)
Minority interest	—	(1,054)	(3,129)
Incidental operations	—	3,512	—
Increase (decrease) in cash from changes in:			
Receivables, net	(104,418)	(149)	106
Inventories and prepaid expenses	(58,934)	(2,175)	(183)
Accounts payable and accrued expenses	159,578	18,417	8,387
Net cash provided by (used in) operating activities	<u>48,475</u>	<u>(114,765)</u>	<u>(21,774)</u>
<b>Cash flows from investing activities:</b>			
Capital expenditures, net of construction payables	(877,074)	(1,007,993)	(414,989)
Restricted cash and investments	499,765	(541,935)	392,445
Investment in unconsolidated affiliates	(3,739)	—	—
Intangibles and other assets, net	(40,181)	(30,430)	(9,964)
Proceeds from sale of equipment	109	33,268	6
Net cash used in investing activities	<u>(421,120)</u>	<u>(1,547,090)</u>	<u>(32,502)</u>
<b>Cash flows from financing activities:</b>			
Exercise of stock options	1,404	702	83
Proceeds from issuance of common stock	—	794,295	45,000
Third party fees	—	(5,134)	(204)
Proceeds from issuance of long-term debt	627,131	1,960,858	250,000
Principal payments of long-term debt and land concession obligation	(130,854)	(1,032,534)	(38)
Payments for deferred financing costs	(21,008)	(67,623)	(8,657)
Net cash provided by financing activities	<u>476,673</u>	<u>1,650,564</u>	<u>286,184</u>
<b>Cash and cash equivalents:</b>			
Increase (decrease) in cash and cash equivalents	104,028	(11,291)	231,908
Balance, beginning of period	330,261	341,552	109,644
Balance, end of period	<u>\$ 434,289</u>	<u>\$ 330,261</u>	<u>\$ 341,552</u>
<b>Supplemental cash flow disclosures:</b>			
Cash paid for interest, net of amounts capitalized	\$ 95,839	\$ 7,419	\$ —
Equipment purchases financed by debt and accrued assets	\$ 860	\$ 84,066	\$ —
Stock issued to purchase minority interest	\$ —	\$ 51,400	\$ —
Stock-based compensation capitalized into construction	\$ 2,651	\$ 2,156	\$ 3,171
Forfeiture of restricted stock reducing construction	\$ —	\$ —	\$ 1,074

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

**WYNN RESORTS LIMITED AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1. Organization**

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

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

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

**2. Summary of Significant Accounting Policies**

*Principles of Consolidation*

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

*Use of Estimates*

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

*Reclassifications*

Certain amounts in the 2004 and 2003 consolidated financial statements have been reclassified to conform to the 2005 presentation as follows:

- The water rights, trademark and the Macau gaming concession, net listed separately in the 2004 presentation are classified together as Intangibles, net for 2005;
- Show production rights were included in deposits and other assets in the 2004 presentation. These are recorded as Intangibles, net for 2005;
- Certain advanced customer deposits were classified as Accrued expenses and other in the 2004 presentation. They are classified as customer deposits and other current liabilities for 2005;
- Art gallery, retail and water revenues for 2004 and 2003, are classified as entertainment, retail and other revenues for 2005;



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

- The cost of water and the cost of retail sales for 2004 and 2003, are classified as entertainment, retail and other expenses for 2005; and
- The gain/(loss) on sales of assets and the losses from incidental operations for 2004 and 2003 are classified as property charges and other for 2005.

These reclassifications had no effect on the previously reported net loss.

*Cash and Cash Equivalents*

Cash and cash equivalents are comprised of highly liquid investments with purchase maturities of three months or less. Cash equivalents are carried at cost, which approximates fair value.

*Restricted Cash and Investments*

Restricted cash and investments consist of certificates of deposits to collateralize certain construction insurance claims, cash deposits for certain sales taxes, and certain of the proceeds of the Company's financing activities invested in approved money market funds or government-backed treasury notes and interest-only strips. Portions of these funds are restricted by the agreements governing the Company's debt instruments for the payment of certain construction and development costs relating to Wynn Las Vegas, Encore or Wynn Macau or for interest payments on certain of the Company's debt. Amounts classified as current are equal to current construction payables and other accruals also classified as current.

The Company classifies its marketable securities in one of three categories: held-to-maturity, trading or available-for-sale, in accordance with SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities." In accordance with SFAS No. 115, held-to-maturity securities are those securities for which a company has the ability and intent to hold until maturity. Trading securities are those bought and held principally for the purpose of selling them in the near term. All other securities are classified as available-for-sale. The Company's marketable debt securities are classified as held-to-maturity. Accordingly, these securities are recorded at cost, adjusted for the amortization of premiums or accretion of discounts. The carrying value of these marketable securities approximates fair value due to their relatively short-term maturities and market rates of interest.

Restricted cash and investments at December 31, 2005 and 2004 also include approximately \$1.4 million and \$1.2 million, respectively, of accrued interest receivable on the marketable securities.

*Accounts Receivable and Credit Risk*

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of casino accounts receivable. The Company issues credit in the form of "markers" to approved casino customers following investigations of creditworthiness. At December 31, 2005, approximately 70% of the Company's receivables were due from customers residing in foreign countries. Business or economic conditions or other significant events in these countries could affect the collectibility of such receivables.

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

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

*Inventories*

Retail, food and beverage inventories are stated at the lower of cost or market value. Cost is determined by the first-in, first-out and specific identification methods.

*Property and Equipment*

Purchases of property and equipment are stated at cost. Depreciation is provided over the estimated useful lives of the assets using the straight-line method as follows:

Buildings and improvements	10 to 45 years
Land improvements	10 to 45 years
Leasehold interest in land	25 years
Airplanes	7 to 20 years
Furniture, fixtures and equipment	5 to 20 years

Costs related to improvements are capitalized, while costs of building repairs and maintenance are charged to expense as incurred. The cost and accumulated depreciation of property and equipment retired or otherwise disposed of are eliminated from the respective accounts and any resulting gain or loss is included in operating income or loss. The design, development and construction costs for Wynn Macau and Encore are capitalized and depreciation has not yet commenced.

*Capitalized Interest*

The interest cost associated with major development and construction projects is capitalized. Interest capitalization ceases once a project is substantially complete or no longer undergoing construction activities to prepare it for its intended use. When no debt is specifically identified as being incurred in connection with a construction project, the Company capitalizes interest on amounts expended on the project at the Company's weighted average cost of borrowed money. Interest of \$50.0 million, \$115.0 million, \$87.3 million was capitalized for the years ended December 31, 2005, 2004 and 2003, respectively.

*Intangibles*

The Company's indefinite-lived intangible assets consist primarily of water rights acquired as part of the overall purchase price of the Desert Inn, and trademarks. Indefinite-lived intangible assets are not amortized, but are periodically reviewed for impairment. The Company's finite-lived intangible assets consist of a Macau gaming concession and show production rights. Finite-lived intangible assets are amortized over the shorter of their contractual terms or estimated useful lives.

*Deferred Financing Costs*

Direct and incremental costs incurred in obtaining loans or in connection with the issuance of long-term debt are capitalized and amortized to interest over the terms of the related debt agreements. Approximately \$14.0 million, \$14.2 million, and \$9.6 million was amortized to interest during the years ended December 31, 2005, 2004 and 2003, respectively. For deferred financing costs recognized at December 31, 2005, the Company expects approximately \$14.2 million will be amortized to interest for 2006; that approximately \$13.8 million will be amortized to each of the fiscal years 2007 through 2010; approximately \$12.8 million is expected to be amortized in 2011; \$4.4 million amortized for the years 2012 and 2013; \$4.0 million for 2014; and the remaining amount of approximately \$400,000 is expected to be amortized in 2015. Accumulated amortization amounted to \$16.1 million and \$21.5 million as of December 31, 2005 and 2004, respectively.

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

*Long-Lived Assets*

Long-lived assets, which are not to be disposed of, including intangibles and property and equipment, are periodically reviewed by management for impairment whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. For assets to be held and used, the Company reviews fixed assets for impairment whenever indicators of impairment exist. If an indicator of impairment exists, the Company compares the estimated future cash flows of the asset, on an undiscounted basis, to the carrying value of the asset. If the undiscounted cash flows exceed the carrying value, no impairment is indicated. If the undiscounted cash flows do not exceed the carrying value, then an impairment is measured based on fair value compared to carrying value, with fair value typically based on a discounted cash flow model. If an asset is still under development, future cash flows include remaining construction costs.

*Derivative Financial Instruments*

The Company seeks to manage its market risk, including interest rate risk associated with variable rate borrowings, through balancing fixed-rate and variable-rate borrowings and the use of derivative financial instruments. The Company accounts for derivative financial instruments in accordance with SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended. Derivative financial instruments are recognized as assets or liabilities, with changes in fair value affecting net income (loss) or comprehensive income (loss) as applicable. During the years ended December 31, 2005, 2004 and 2003, the Company recorded approximately \$8.2 million, \$1.4 million and \$8.8 million, respectively, as interest and other income as a result of increases in the fair values of its interest rate swaps during those periods.

*Revenue Recognition and Promotional Allowances*

The Company recognizes revenues at the time persuasive evidence of an arrangement exists, the service is provided or the retail goods are sold, prices are fixed or determinable and collection is reasonably assured.

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

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

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

The retail value of accommodations, food and beverage, and other services furnished to guests without charge is included in gross revenue and then deducted as promotional allowances. The estimated cost of providing such promotional allowances for the years ended December 31, 2005, 2004 and 2003, respectively, is primarily included in casino expenses as follows (amounts in thousands):

	Year Ended December 31,		
	2005	2004	2003
Rooms	\$17,470	\$—	\$—
Food & Beverage	38,629	—	—
Entertainment, retail and other	8,936	—	—
	<u>\$65,035</u>	<u>\$—</u>	<u>\$—</u>

*Advertising Costs*

The Company expenses advertising costs the first time the advertising runs. Advertising expenses incurred in development periods are included in preopening expenses. Since the opening of Wynn Las Vegas on April 28, 2005, advertising costs relating to Wynn Las Vegas have been included in general and administrative expenses, while any advertising expenses relating to Wynn Macau or Encore continue to be included in preopening expenses. Total advertising expenses were \$18.3 million, \$2.8 million and \$1.4 million, respectively, for the years ended December 31, 2005, 2004 and 2003.

*Pre-Opening Costs*

Pre-opening costs, consisting primarily of salaries and wages, legal and consulting fees, insurance, and utilities and travel, are expensed as incurred.

*Incidental Operations*

Upon completion of the acquisition of the Desert Inn on June 22, 2000, the Company announced its intention to close the property and to plan the development of Wynn Las Vegas on the existing site. The Company operated the Desert Inn for about ten weeks and the golf course through June 2002. In July 2004, the Company purchased an apartment complex and associated land, ceased operating the apartments and demolished the complex for the development of an employee parking lot. In accordance with SFAS No. 67, "Accounting for Costs and Initial Rental Operations of Real Estate Projects," collection efforts associated with the former operations of the Desert Inn and the brief operation of the apartments are accounted for as separate incidental operations. Under this method, incidental operations with a net income are excluded from the Company's consolidated operating results and the net income from each is recorded as a reduction in the carrying value of land. Incidental operations with a net loss are included in property charges and other in the consolidated statements of operations. The amount of net income from incidental operations recorded as a reduction in the carrying value of land was approximately \$0, \$4.2 million, and \$0 million for the years ended December 31, 2005, 2004, and 2003, respectively.

*Income Taxes*

The Company accounts for income taxes in accordance with SFAS No. 109, "Accounting for Income Taxes." SFAS No. 109 requires the recognition of deferred tax assets, net of applicable reserves, and liabilities for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit

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

carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. The effect of a change in tax rates on the income tax provision and deferred tax assets and liabilities is recognized in the results of operations in the period that includes the enactment date.

SFAS No. 109 also requires recognition of a future tax benefit to the extent that realization of such benefit is more likely than not. Otherwise, a valuation allowance is applied. During its development stage the Company accumulated significant net operating losses. Accordingly, at December 31, 2005, the Company has an estimated available U.S. tax loss carryforward of approximately \$298.4 million, which expires between 2022 and 2025. The Company's foreign tax loss carryforwards as of December 31, 2005, resulting from the loss in Macau, are approximately \$98.2 million. These foreign tax loss carryforwards expire between 2006 and 2008. Because of the uncertainty of near-term future taxable income, the Company's potential net future domestic and foreign tax benefits of approximately \$100.2 million and \$11.8 million, respectively as of December 31, 2005 and \$82.8 million and \$7.6 million, respectively as of December 31, 2004, are fully reserved. These valuation allowances will be removed when the Company determines that it is more likely than not that the deferred tax assets will be realized.

*Currency Translation*

The Company accounts for currency translation in accordance with SFAS No. 52, "Foreign Currency Translation." The results of operations and the balance sheet of Wynn Macau, S.A. are translated from Macau Patacas to U.S. dollars. Balance sheet accounts are translated at the exchange rate in effect at each year-end. Income statement accounts are translated at the average rate of exchange prevailing during the year. Translation adjustments resulting from this process are charged or credited to other comprehensive income (loss). During the years ended December 31, 2005, 2004 and 2003, the effect of foreign currency translation was immaterial.

*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 each of the three years ended December 31, 2005, the Company has recorded net losses. Accordingly, the assumed exercise of stock options and the potential conversion of the Company's \$250 million of 6% Convertible Subordinated Debentures due 2015 (the "Debentures") was anti-dilutive. As a result, basic EPS is equal to diluted EPS for all periods presented. Potentially dilutive securities that were excluded from the calculation of diluted EPS at December 31, 2005 because including them would have been anti-dilutive, included 3,459,800 shares under stock options, 789,169 shares under non-vested stock grants and 10,869,550 shares under the assumed conversion of the Debentures. At December 31, 2004, potentially dilutive but excluded securities included 2,271,750 shares under stock options, 1,138,338 shares under non-vested stock grants and 10,869,550 shares under the assumed conversion of the Debentures.

*Employee Stock-Based Compensation*

The Company has a stock-based employee compensation plan as more fully described in Note 12. Benefit Plans. As permitted by SFAS No. 148, "Accounting for Stock-Based Compensation—Transition and Disclosure, an amendment of FASB Statement No. 123," the Company continues to apply the provisions of Accounting Principles Board ("APB") Opinion No. 25 and related interpretations in accounting for its employee stock-based compensation. Accordingly, compensation expense is recognized only to the extent that the market value at the

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

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).

	Years Ended December 31,		
	2005	(as Restated) 2004	(as Restated) 2003
Net loss as reported	\$(90,836)	\$ (204,171)	\$ (40,099)
Add: stock-based compensation recorded for acceleration of employee options	497	—	—
Less: total stock-based employee compensation expenses determined under the fair-value based method for all awards	(8,359)	(4,729)	(1,993)
Proforma net loss	<u>\$(98,698)</u>	<u>\$ (208,900)</u>	<u>\$ (42,092)</u>
Basic and diluted loss per share:			
As reported	\$ (0.92)	\$ (2.35)	\$ (0.50)
Proforma	<u>\$ (1.00)</u>	<u>\$ (2.41)</u>	<u>\$ (0.53)</u>

*Equity Instruments Issued to Consultants and Vendors*

The Company's accounting policy for equity instruments issued to consultants and vendors in exchange for goods and services follows the provisions of Emerging Issues Task Force ("EITF") 96-18, "Accounting for Equity Instruments That are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services" and EITF 00-18, "Accounting Recognition for Certain Transactions Involving Equity Instruments Granted to Other Than Employees." The measurement date for the fair value of the equity instruments issued is determined at the earlier of (i) the date at which a commitment for performance by the consultant or vendor is reached or (ii) the date at which the consultant or vendor's performance is complete. In the case of equity instruments issued to consultants, the fair value of the equity instrument is recognized over the term of the consulting agreement.

On October 21, 2002, the Company entered into an amended production services agreement with the executive producer of the water-based live theatrical attraction named "Le Reve," which commenced upon opening Wynn Las Vegas. As additional compensation for the production services, the Company granted 189,723 restricted shares of Wynn Resorts' common stock to the executive producer, which will vest on June 30, 2006.

On May 4, 2004, the Company granted 25,000 nonqualified stock options to a consultant to assist in the development and initial operation of the Wynn Las Vegas lake-mountain feature. These options vest 25% per year. The first 25% vested in May 2005. In accordance with the above policy, the measurement date is the date performance is complete and the mark-to-market fair value of the options is recognized as compensation cost amortized over the service period. When the service period ended in May 2005, the Company capitalized approximately \$508,000 into the Wynn Las Vegas project to reflect the value of this stock option grant.

*Recent Accounting Pronouncements*

In December 2004, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 123(R), "Share Based Payment." This statement is a revision of SFAS No. 123, "Accounting for Stock-Based Compensation" and supercedes APB Opinion No. 25, "Accounting for

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

Stock Issued to Employees,” and related interpretations. SFAS No. 123(R) establishes standards for the accounting for transactions in which an entity exchanges its equity instruments for goods and services or incurs a liability in exchange for goods and services that are based on the fair value of the entity’s equity instruments or that may be settled by the issuance of those equity instruments. It requires an entity to measure the costs of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award and recognize that cost over the service period. The Company will adopt this statement, according to SEC rule, as amended, on January 1, 2006, utilizing the modified prospective method and the Black-Scholes valuation model.

In March 2005, the SEC issued Staff Accounting Bulletin (“SAB”) No. 107, “Share-Based Payment “ to provide interpretive guidance on SFAS No. 123(R) valuation methods, assumptions used in valuation models, and the interaction of SFAS No. 123(R) with existing SEC guidance. SAB No. 107 also requires the classification of stock compensation expense in the same financial statement line items as cash compensation, and will therefore impact the Company’s departmental expenses (and related operating margins), pre-opening costs and construction in progress for development projects, and general and administrative expenses (including corporate expenses). Expensing stock options is estimated to reduce the Company’s net income for 2006 by approximately \$12.8 million (or \$0.13 per share) for the unvested options outstanding as of December 31, 2005.

In December 2004, the FASB issued SFAS No. 151, “Inventory Costs, an amendment of ARB No. 43, Chapter 4.” This statement amends the guidance in ARB No. 43, Chapter 4, “Inventory Pricing” to clarify the accounting for abnormal amounts of idle facility expense, freight, handling costs, and wasted material (spoilage). Paragraph 5 of ARB 43, Chapter 4, previously stated, that “...under some circumstances, items such as idle facility expense, excessive spoilage, double freight, and rehandling costs may be so abnormal as to require treatment as current period charges...” This statement requires that those items be recognized as current-period charges regardless of whether they meet the criterion of “so abnormal.” In addition, this statement requires that allocation of the fixed production overheads to the costs of conversion be based on the normal capacity of the production facilities. This statement is effective for fiscal years beginning after June 15, 2005. Accordingly, the Company will adopt its provisions effective January 1, 2006. The Company does not anticipate that adoption of this statement will have a material impact on its consolidated financial position or results of operations.

In December 2004, the FASB issued SFAS No. 153, “Exchanges of Nonmonetary Assets, an amendment of APB Opinion No. 29.” The guidance in APB Opinion No. 29, “Accounting for Nonmonetary Transactions,” is based on the principle that exchanges of nonmonetary assets should be measured based on the fair value of the assets exchanged. The guidance in that Opinion, however, included certain exceptions to that principle. This Statement amends Opinion 29 to eliminate the exception for nonmonetary exchanges of similar productive assets and replaces it with a general exception for exchanges of nonmonetary assets that do not have commercial substance. A nonmonetary exchange has commercial substance if the future cash flows of the entity are expected to change significantly as a result of the exchange. Adoption of this statement on July 1, 2005, did not have a material impact on the Company’s consolidated financial position or results of operations.

In March 2005, FASB issued FIN No. 47, “Accounting for Conditional Asset Retirement Obligations”. FIN No. 47 clarifies that the term conditional asset retirement obligation as used in SFAS No. 143, “Accounting for Asset Retirement Obligations,” refers to a legal obligation to perform an asset retirement activity in which the timing and (or) method of settlement are conditional on a future event that may or may not be within the control of the entity. FIN 47 also clarifies when an entity would have sufficient information to reasonably estimate the fair value of an asset retirement obligation. FIN 47 is effective December 31, 2005. The adoption of FIN 47 did not have a material effect on the Company’s consolidated financial position or results of operations.

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

**3. Receivables, net**

Components of receivables, net are as follows (in thousands):

	As of December 31,	
	2005	2004
Casino	\$ 83,936	\$—
Hotel	12,660	—
Other	7,684	227
	<u>104,280</u>	<u>227</u>
Less: allowance for doubtful accounts	(15,812)	—
	<u>\$ 88,468</u>	<u>\$227</u>

**4. Property and Equipment**

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

	As of December 31,	
	2005	2004
Land and improvements	\$ 599,278	\$ 353,544
Buildings and improvements	1,159,364	1,041
Airplanes	57,582	57,336
Furniture, fixtures and equipment	594,474	14,830
Leasehold interest in land	67,118	67,616
Construction in progress	286,570	1,499,284
	<u>2,764,386</u>	<u>1,993,651</u>
Less: accumulated depreciation	(100,516)	(6,418)
	<u>\$2,663,870</u>	<u>\$1,987,233</u>

As of December 31, 2005, construction in progress includes interest and other costs capitalized in conjunction with the Wynn Macau and Encore projects. As of December 31, 2004, construction in progress also included construction, interest and other costs capitalized in connection with Wynn Las Vegas. Wynn Las Vegas, with the exception of the second showroom, opened and was placed into service on April 28, 2005. The second showroom opened and was placed into service at the end of August 2005.



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

**5. Intangibles, net**

Intangibles, net consist of the following:

	<u>Macau Gaming Concession</u>	<u>Show Production Rights</u>	<u>Water Rights</u>	<u>Trademarks</u>	<u>Total Intangibles, net</u>
	(\$ amounts in thousands)				
December 31, 2003	\$ —	\$ —	\$ 6,400	\$ 1,000	\$ 7,400
Additions	42,300	5,000	—	—	47,300
Amortization	(600)	—	—	—	(600)
December 31, 2004	41,700	5,000	6,400	1,000	54,100
Additions	—	10,000	—	13	10,013
Amortization	(2,383)	(1,250)	—	—	(3,633)
December 31, 2005	<u>\$ 39,317</u>	<u>\$ 13,750</u>	<u>\$ 6,400</u>	<u>\$ 1,013</u>	<u>\$ 60,480</u>

Water rights reflect the fair value allocation determined in the purchase of the Desert Inn in April 2000. The value of the trademarks primarily represents the costs to acquire the “Le Reve” name. The water rights and trademarks are indefinite-lived assets and, accordingly, not amortized. Show production rights represents the amounts paid to purchase the rights to “Avenue Q” and to “Monty Python’s Spamalot.” The Company expects that amortization of show production rights will be approximately \$4.8 million in 2006, approximately \$2.0 million for the years 2007 through 2010, and approximately \$1.0 million in 2011.

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 Wynn Resorts’ 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. Upon obtaining third party appraisals of the land and gaming concessions, the purchase price was allocated to the assets acquired: \$42.3 million was allocated to the gaming concession; and the remaining \$9.1 million was allocated to increase the book value of the leasehold interest in land. The gaming concession intangible is being amortized over the 20-year life of the concession. The Company expects that amortization of the gaming concession will be approximately \$2.4 million each year from 2006 through 2021, and approximately \$1.2 million in 2022.

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

**6. Deposits and other assets**

Deposits and other assets consist of the following (amounts in thousands):

	As of December 31,	
	2005	2004
Entertainment production costs	\$33,697	\$27,908
Operating supplies	23,335	2,397
Deposits	20,066	21,582
Interest rate swaps	10,523	583
Golf memberships	3,750	3,750
	<u>\$91,371</u>	<u>\$56,220</u>

**7. Long-Term Debt**

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

	As of December 31,	
	2005	2004
6.625% First Mortgage Notes, due December 1, 2014	\$1,300,000	\$1,300,000
6% Convertible Subordinated Debentures, due July 15, 2015	250,000	250,000
\$600.0 million Revolving Credit Facility; due December 14, 2009; interest at LIBOR plus 2.225% (approximately 6.67%)	10,000	—
\$400.0 million Delay Draw Term Loan Facility; due December 14, 2011 interest at LIBOR plus 2.125% (approximately 6.525%)	400,000	26,564
Senior Term Loan Facilities; due September 14, 2011; interest at LIBOR or HIBOR plus 3.0%, decreasing to LIBOR or HIBOR plus 2.75% upon opening of Wynn Macau (approximately 7.345%)	78,944	—
\$44.75 million note payable; due March 31, 2010; interest at LIBOR plus 2.375% (approximately 6.90188%)	43,536	—
Note payable—Aircraft; interest at 5.67%	13,986	14,659
12% Second Mortgage Notes, net of original issue discount of approximately \$440,000 and \$531,000, respectively due November 1, 2010; effective interest at approximately 12.9%	9,702	9,611
Other	167	212
	<u>2,106,335</u>	<u>1,601,046</u>
Current portion of long-term debt	<u>(15,489)</u>	<u>(718)</u>
	<u>\$2,090,846</u>	<u>\$1,600,328</u>

*First Mortgage Notes*

On December 14, 2004, Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. (together, the “Issuers”) issued \$1.3 billion aggregate principal amount of 6.625% First Mortgage Notes due 2014 (the “First Mortgage Notes”). The First Mortgage Notes mature on December 1, 2014 and bear interest at the rate of 6.625% per year.

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The Company may redeem up to 35% of the aggregate principal amount of the First Mortgage Notes at any time prior to December 1, 2007 at a redemption price equal to 106.625% of the principal amount redeemed (plus accrued and unpaid interest to the date of redemption) with the proceeds of one or more of the Company's qualified equity offerings that are contributed to Wynn Las Vegas, LLC. Commencing December 1, 2009, the First Mortgage Notes are redeemable at the Company's option at a premium equal to 103.313% of the principal amount redeemed and declining ratably on December first of each year thereafter to zero on or after December 1, 2012.

The indenture governing the First Mortgage Notes contains covenants limiting the ability of the Issuers to incur additional debt, make distributions, investments and restricted payments, create liens, enter into transactions with affiliates, sell assets, enter into sale leaseback transactions, permit restrictions on dividends and other payments by subsidiaries, or engage in mergers, consolidations, sales of substantially all assets, sales of subsidiary stock and other specified types of transactions. Management believes the Company is in compliance with all such covenants as of December 31, 2005.

The First Mortgage Notes are obligations of the Issuers, guaranteed by each of the subsidiaries of Wynn Las Vegas, LLC, other than Wynn Completion Guarantor, LLC. Wynn Resorts, Limited does not guarantee the obligations of the Issuers. Subject to an intercreditor agreement and certain exceptions, the First Mortgage Notes and the guarantees thereof are secured by: (1) a first priority security interest in a liquidity reserve account (currently \$30.0 million), which may be used to meet Wynn Las Vegas, LLC's debt service needs in connection with the operation of Wynn Las Vegas; (2) all amounts on deposit from time to time (currently \$50.0 million) in a completion guarantee deposit account maintained by Wynn Completion Guarantor, LLC; (3) a first priority pledge of all of the member's interests owned by Wynn Las Vegas, LLC in its subsidiaries (other than Wynn Completion Guarantor, LLC) and of Wynn Resorts Holdings, LLC's 100% member's interest in Wynn Las Vegas, LLC; (4) first mortgages on all real property constituting Wynn Las Vegas, its golf course and Encore; and (5) a first priority security interest in substantially all other existing and future assets of Wynn Las Vegas, LLC and the guarantors, excluding, among other things, an aircraft beneficially owned by World Travel, LLC. The First Mortgage Notes are also secured by certain of the net proceeds from the sale of the First Mortgage Notes.

The obligations of the Issuers and the guarantors under the First Mortgage Notes rank equal to the right of payment with their existing and future senior secured indebtedness, including indebtedness with respect to the Wynn Las Vegas, LLC credit facilities described below, and rank senior in right of payment to all of their existing and future subordinated indebtedness.

*Convertible Subordinated Debentures*

In July 2003, the Company sold \$250.0 million aggregate principal amount of the Debentures. The Company pays interest on the Debentures on January 15 and July 15 of each year, beginning January 15, 2004. The Company contributed a total of approximately \$44.0 million to a subsidiary, Wynn Resorts Funding, LLC, which purchased U.S. government securities to secure the payment of scheduled interest payments occurring in 2004, 2005 and 2006 as required by the indenture governing the Debentures.

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

**WYNN RESORTS LIMITED AND SUBSIDIARIES**  
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Wynn Resorts Funding, LLC, has guaranteed the Debentures and Wynn Resorts, Limited has guaranteed the obligations of Wynn Resorts Funding, LLC. As of December 31, 2005, Wynn Resorts Funding, LLC does not have any assets other than the approximately \$15.0 million remaining of the \$44.0 million contributed by Wynn Resorts from the net proceeds of the sale of the Debentures. Other than with respect to the scheduled interest payments occurring in 2004, 2005 and 2006, the Debentures are subordinated unsecured obligations and rank junior in right of payment to all existing and future senior indebtedness of the Company, and equally with any existing and future subordinated indebtedness.

*Wynn Las Vegas Credit Facilities*

Previous Credit Facilities and FF&E Facility. Effective October 30, 2002, Wynn Las Vegas, LLC entered into a \$750.0 million senior secured revolving credit facility (the "Previous Revolver") and a \$250.0 million delay draw senior secured term loan facility (the "Previous Term Loan", and together with the Previous Revolver, the "Previous Credit Facilities") as part of the financing for Wynn Las Vegas. The Previous Revolver was later increased to \$800.0 million.

On December 14, 2004, the Company refinanced its debt structure. As part of this refinancing, the Company terminated the Previous Credit Facilities and repaid the approximately \$458.6 million principal amount outstanding. The Company recorded a loss on the extinguishment of the debt of approximately \$1.1 million from the write-off of a portion of the unamortized deferred financing costs. The Previous Credit Facilities were replaced with the credit facilities described below.

Effective October 30, 2002, Wynn Las Vegas, LLC also entered into a \$188.5 million FF&E facility (the "FF&E Facility") to provide financing for furniture, fixtures and equipment to be used at Wynn Las Vegas.

On December 14, 2004, as part of the refinancing of the Wynn Las Vegas, LLC indebtedness, the Company terminated the FF&E Facility and repaid the approximately \$70.3 million principal amount outstanding. The Company recorded a loss on the extinguishment of the debt of approximately \$9.6 million, comprised of a \$1.6 million prepayment penalty and the write-off of unamortized deferred financing costs of approximately \$8.0 million.

Credit Facilities. On December 14, 2004, Wynn Las Vegas, LLC entered into a credit agreement (the "Credit Agreement") and related ancillary agreements for secured revolving credit and term loan facilities in the aggregate amount of \$1.0 billion. The credit facilities (the "Credit Facilities") consist of a revolving credit facility (the "Revolver") in the amount of \$600.0 million and a term loan facility (the "Term Loans") in the amount of \$400.0 million.

The Revolver will terminate and be payable in full on December 14, 2009, and the Term Loans will mature on December 14, 2011.

The amount available under the Credit Facilities will be reduced by \$550.0 million if the budget, plans and specifications for Encore (the "Encore Budget, Plans and Specs") have not been approved by a majority of the arrangers or a majority of the lenders under the Credit Agreement by March 31, 2006. This may result in a reduction of availability under the Revolver, prepayment of loans under the Term Loans or any combination of the two.

For purposes of calculating interest, loans under the Credit Facilities will be designated, at the election of Wynn Las Vegas, LLC, as Eurodollar Loans or, in certain circumstances, Base Rate Loans. Eurodollar Loans under the Revolver and Term Loans bear interest at the London Interbank Offered Rate ("LIBOR") plus 2.25%

**WYNN RESORTS LIMITED AND SUBSIDIARIES**  
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and LIBOR plus 2.125%, respectively. Interest on Eurodollar Loans is payable at the end of the applicable interest period in the case of interest periods of one, two or three months, and every three months in the case of interest periods of six months. Base Rate Loans are expected to bear interest at (a) the greater of (i) the rate most recently announced by Deutsche Bank as its “prime rate,” or (ii) the Federal Funds Rate plus 1/2 of 1% per annum; plus (b) a borrowing margin 1.25% or 1.125% under the Revolver and Term Loans, respectively. Interest on Base Rate Loans will be payable quarterly in arrears.

Provided that Encore qualifies for financing under the Disbursement Agreement (as defined below), after the opening of Encore, the applicable borrowing margins for revolving loans will be based on Wynn Las Vegas, LLC’s leverage ratio, ranging from 1.25% to 2.5% per annum for Eurodollar Loans and 0.25% to 1.5% per annum for Base Rate Loans. Until then, Wynn Las Vegas, LLC will pay, quarterly in arrears, 0.75% per annum on the daily average of unborrowed availability under the revolving credit facility. After opening Encore, the annual fee Wynn Las Vegas, LLC will be required to pay for unborrowed availability under the revolving credit facility will be based on Wynn Las Vegas, LLC’s leverage ratio, ranging from 0.25% to 0.50% per annum.

The Credit Facilities are obligations of Wynn Las Vegas, LLC, guaranteed by each of the subsidiaries of Wynn Las Vegas, LLC, other than Wynn Completion Guarantor, LLC. Subject to an intercreditor agreement, and certain exceptions, the obligations of Wynn Las Vegas, LLC and each of the guarantors under the Credit Facilities are secured by: (1) a first priority security interest in a liquidity reserve account (currently \$30.0 million), which may be used to meet Wynn Las Vegas, LLC’s debt service needs in connection with the operation of Wynn Las Vegas; (2) all amounts on deposit from time to time (currently \$50.0 million) in a completion guarantee deposit account maintained by Wynn Completion Guarantor, LLC; (3) all amounts on deposit from time to time in a secured account holding the proceeds of the Credit Facilities; (4) a first priority pledge of all member’s interests owned by Wynn Las Vegas, LLC in its subsidiaries (other than Wynn Completion Guarantor, LLC) and Wynn Resorts Holdings, LLC’s 100% member’s interest in Wynn Las Vegas, LLC; (5) first mortgages on all real property constituting Wynn Las Vegas, its golf course and Encore; and (6) a first priority security interest in substantially all other existing and future assets of Wynn Las Vegas, LLC and the guarantors, excluding an aircraft beneficially owned by World Travel, LLC.

The obligations of Wynn Las Vegas, LLC and the guarantors under the Credit Facilities rank equal in right of payment with their existing and future senior indebtedness, including indebtedness with respect to the First Mortgage Notes and ranks senior in right of payment to all of their existing and future subordinated indebtedness.

In addition to scheduled amortization payments, Wynn Las Vegas, LLC is required to make mandatory prepayments of indebtedness under the Credit Facilities from the net proceeds of all debt offerings (other than those constituting certain permitted debt). After opening Encore (assuming the Encore Budget, Plans and Specs are approved prior to March 31, 2006), Wynn Las Vegas, LLC will also be required to make mandatory repayments of indebtedness under the Credit Facilities from specified percentages of excess cash flow, which percentages may decrease and/or be eliminated based on Wynn Las Vegas, LLC’s leverage ratio. Wynn Las Vegas, LLC has the option to prepay all or any portion of the indebtedness under the Credit Facilities at any time without premium or penalty.

The Credit Agreement contains customary negative covenants and financial covenants, including negative covenants that restrict Wynn Las Vegas, LLC’s ability to: incur additional indebtedness, including guarantees; create, incur, assume or permit to exist liens on property and assets; declare or pay dividends and make distributions or restrict the ability of Wynn Las Vegas, LLC’s subsidiaries to pay dividends and make distributions; engage in mergers, investments and acquisitions; enter into transactions with affiliates; enter into sale-leaseback transactions; execute modifications to material contracts; engage in sales of assets; make capital expenditures; and make optional prepayments of certain indebtedness. The financial covenants include

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

(i) maintaining a ratio of earnings before interest, taxes, depreciation and amortization to total interest expense, and (ii) maintaining a ratio of total debt to earnings before interest, taxes, depreciation and amortization.

As of December 31, 2005, the Company was in compliance with all covenants.

*Wynn Macau Credit Facilities*

On September 14, 2004, Wynn Macau, S.A. executed a definitive credit agreement and related ancillary agreements for a senior secured bank facility of \$397.0 million. The senior secured bank facility consisted of term loan facilities in the amount of \$382.0 million (in a combination of Hong Kong and US dollars) and a revolving working capital facility of HK\$117.0 million (approximately US\$15.0 million).

In September 2005, to accommodate Wynn Macau's second phase, Wynn Macau, S.A., amended its senior bank facility to expand availability under the facility from \$397 million to \$764 million, including \$729 million of senior term loan facilities, a HK\$117 million revolving credit facility (approximately US\$15 million), and an additional term loan facility of HK\$156 million (approximately US\$20 million). Wynn Macau, S.A. began borrowing under the senior secured credit facilities in the fourth quarter of 2005 after the proceeds from \$230.0 million in base equity loans and an \$80.0 million subordinated loan provided by Wynn Resorts were expended on the Wynn Macau project, and certain other conditions precedent customary to limited recourse project finance construction were satisfied.

The term loan facilities mature in September 2011, and the revolving credit facility matures in September 2007. The principal amount of the term loans is required to be repaid in quarterly installments, commencing on March 14, 2008. The term loans bear interest at LIBOR or the Hong Kong Interbank Offer Rate ("HIBOR") plus a margin of 3.0% until the opening of Wynn Macau (expected in the third quarter of 2006), at which time the interest rate will reduce to LIBOR or HIBOR plus a margin of 2.75%. The senior bank facility also provides for further reductions in the margin on the term loans if Wynn Macau, S.A. satisfies certain prescribed leverage ratio tests. Loans under the revolving credit facility will bear interest at HIBOR plus 2.5%.

Collateral for the senior bank facility consists of substantially all of the assets of Wynn Macau, S.A. Certain affiliates of the Company that own interests in Wynn Macau, S.A., either directly or indirectly through other subsidiaries, have executed guarantees of the loans and pledged their interests in Wynn Macau, S.A. as additional security for repayment of the loans. In addition, the senior bank facility's governing documents contain capital spending limits and other affirmative and negative covenants. As of December 31, 2005, the Company was in compliance with all covenants.

In September 2004, in connection with the initial financing of the Wynn Macau project, Wynn Macau, S.A. entered into a Bank Guarantee Reimbursement Agreement with Banco Nacional Ultramarino ("BNU") for a guarantee in the amount of 700.0 million patacas (approximately US\$87.0 million). This guarantee, which is for the benefit of the Macau government, assures Wynn Macau, S.A.'s performance under the casino concession agreement, including the payment of premiums, fines and indemnity for any material failure to perform the concession agreement. To secure the guarantee, Wynn Macau, S.A. originally deposited \$50.0 million of the \$230.0 million base equity loans with BNU. As of December 31, 2005, however, Wynn Macau, S.A. had funded \$50.0 million of its project costs with these funds. The guarantee is currently secured by a second priority security interest in the senior lender collateral package. From and after repayment of all indebtedness under the senior bank facilities, Wynn Macau, S.A. is obligated to promptly, upon demand by BNU, repay any claim made on the guarantee by the Macau government. BNU will be paid an annual fee for the guarantee not to exceed approximately 12.3 million Macau patacas (approximately US\$1.5 million).

In addition, the Company has a \$72.0 million contingent debt facility from Wynn Macau, S.A.'s lenders.

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*\$44.75 million Note Payable*

On May 24, 2005, World Travel, LLC, a subsidiary of Wynn Las Vegas, LLC, borrowed an aggregate amount of \$44.75 million under term loans, which terminate and are payable in full on May 24, 2010. The term loans are guaranteed by Wynn Las Vegas, LLC and secured by a first priority security interest in one of the Company's two aircraft. Principal and interest is payable quarterly, and interest is calculated at LIBOR plus a margin of 2.375%. In addition to scheduled amortization payments, the Company is required to prepay the loans if certain events of loss with respect to the aircraft occur. Beginning on December 31, 2006, the Company may prepay all or any portion of the loans subject to a minimum prepayment of \$10.0 million.

*Notes Payable—Aircraft*

The notes require 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 million and \$2.1 million, respectively. The notes are secured by liens on one of the Company's two aircraft.

*Second Mortgage Notes*

On October 30, 2002, the Issuers issued \$370.0 million aggregate principal amount of 12% second mortgage notes (the "Second Mortgage Notes") maturing November 1, 2010 with semi-annual interest payments beginning in May 2003.

The Second Mortgage Notes were issued for approximately \$343.3 million, net of an original issue discount of approximately \$26.7 million and issuance costs of approximately \$14.4 million. The net proceeds were used to finance the development and construction of Wynn Las Vegas, to pay pre-opening expenses and meet debt service obligations.

On June 14, 2004, the Issuers redeemed approximately \$122.4 million of the Second Mortgage Notes. The total price of the redemption was approximately \$138.9 million, equal to 112.0% of the aggregate principal amount of the Notes redeemed, plus accrued and unpaid interest thereon. In connection with the redemption, the Company wrote off approximately \$7.0 million of the unamortized original issue discount and approximately \$3.9 million of unamortized deferred financing costs associated with the notes. Accordingly, the Company recognized a loss on the early retirement of debt of approximately \$25.6 million to reflect these write-offs and the \$14.7 million redemption premium.

On December 14, 2004, the Issuers purchased approximately \$237.4 million in aggregate principal amount of the Second Mortgage Notes and effected a discharge of the Second Mortgage Notes indenture and related collateral documents. The approximately \$10.1 million principal amount of Second Mortgage Notes remaining outstanding has been called for redemption in accordance with the indenture on November 1, 2006, at a price of 112% of the principal amount, plus accrued and unpaid interest to the redemption date.

In order to effect the satisfaction and discharge, the Issuers deposited in trust with the trustee of the Second Mortgage Notes government securities with an aggregate face value of approximately \$10.1 million and approximately \$3.0 million of additional funds (the amounts necessary to pay when due all interest payments and the redemption price on the redemption date), to satisfy and discharge the remaining amounts payable under the Second Mortgage Notes indenture. As a result of the satisfaction and discharge, the Issuers are not subject to any restrictive covenants under the Second Mortgage Notes indenture, and the guarantees and collateral securing the Second Mortgage Notes were released. However, the Company will continue to report the outstanding liability

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and the associated cash restricted for the repayment on its balance sheet until the Second Mortgage Notes are redeemed on November 1, 2006, from the funds deposited in trust.

*Fair Value of Long-term Debt*

The net book value of the First Mortgage Notes and the Debentures at December 31, 2005 was approximately \$1.3 billion and \$250.0 million, respectively. The estimated fair value of the First Mortgage Notes and the Debentures based upon most recent trades at December 31, 2005 was approximately \$1.3 billion and \$596.2 million, respectively. The Company discharged its Second Mortgage Notes as previously noted, however, the net book value and the fair value of the Second Mortgage Notes (based upon the November 1, 2006 call premium of 12%), was approximately \$11.8 million and \$9.7 million as of December 31, 2005 and 2004, respectively. The net book value of the Company's other debt instruments approximates fair value.

*Scheduled Maturities of Long-Term Debt*

Scheduled maturities of long-term debt are as follows (amounts in thousands):

Years Ending December 31,	
2006	\$ 15,929
2007	6,115
2008	23,731
2009	37,796
2010	46,444
Thereafter	1,976,760
	<u>2,106,775</u>
Less: original issue discount	(440)
	<u><u>\$2,106,335</u></u>

**8. Interest rate swaps**

*Summary of Historical Fair Values*

The following table presents the historical asset or (liability) fair values (reflected in deposits and other assets or in other long-term liabilities as appropriate) at December 31, 2005, 2004 and 2003 and as of the December 14, 2004 termination date of the previous interest rate swaps (amounts in thousands):

	Wynn Las Vegas Previous Interest Rate Swaps	Wynn Las Vegas Current Interest Rate Swaps	Wynn Macau Interest Rate Swaps	Total Interest Rate Swap Asset/ (Liability)
Asset / (liability) fair value:				
at December 31, 2005	\$ —	\$ 10,523	\$ (1,788)	\$ 8,735
at December 31, 2004	\$ —	\$ 583	\$ —	\$ 583
at December 14, 2004 settlement	\$ 9,625	\$ —	\$ —	\$ 9,625
at December 31, 2003	\$ 8,793	\$ —	\$ —	\$ 8,793

The fair value approximates the amount the Company would receive if these contracts were settled at the respective valuation dates. Fair value is estimated based upon current, and predictions of future, interest rate



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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 Las Vegas*

During 2003, the Company entered into two interest rate swap arrangements to hedge the underlying interest rate risk on a total of \$825.0 million of borrowings under the Previous Credit Facilities. Although these interest rate swaps were highly effective in fixing the interest on the applicable portion of underlying debt, the changes in the fair values of these instruments have been recorded as a component of interest and other income in accordance with the provisions of SFAS No. 133. On December 14, 2004, concurrent with the refinancing of Wynn Las Vegas, LLC's debt structure, the Company terminated these two interest rate swaps. As a result of the termination, the Company received a cash payment of approximately \$9.6 million in settlement of the related asset.

Concurrent with the refinancing, The Company entered into two new interest rate swap arrangements to hedge the underlying interest rate risk on a total of \$400.0 million of borrowings under the current Wynn Las Vegas, LLC term loan facility, which bears interest at LIBOR plus 2.125%. Under each of these two interest rate swap arrangements, the Company receives payments at a variable rate of LIBOR and pays a fixed rate of 3.793% on \$200 million notional amount set forth in the swap instruments from February and March 2005, respectively through December 2008. These interest rate swaps are economically effective in fixing the interest rate on these borrowings under the new term loan facility at approximately 5.9%. Changes in fair value of these interest rate swaps for each reporting period are recognized as a component of interest and other income in accordance with the provisions of SFAS No. 133.

*Wynn Macau*

On October 14, 2005, the Company entered into two interest rate swaps to hedge a portion of the underlying interest rate risk on future borrowings under Wynn Macau S.A.'s \$749 million senior term loan facility. Under the first swap agreement, the Company pays a fixed interest rate of 4.84% on borrowings estimated to be incurred under the senior term loan facility up to a maximum of approximately \$198.2 million, in exchange for receipts on the same amounts at a variable interest rate based on the applicable LIBOR at the time of payment. Under the second swap agreement, the Company pays a fixed interest rate of 4.77% on borrowings estimated to be incurred under the senior term loan facility up to a maximum of approximately HK\$1.1 billion (approximately US\$140.3 million), in exchange for receipts on the same amounts at a variable interest rate based on the applicable HIBOR at the time of payment. The term of both swap agreements is from November 28, 2005 through November 28, 2008.

These interest rate swaps are expected to be highly effective in fixing the interest rate on 50% of the US dollar and 50% of the Hong Kong dollar borrowings under the senior bank facility at approximately 7.84% and 7.77%, respectively. Changes in fair value of these interest rate swaps for each reporting period are recognized as a component of interest and other income in accordance with the provisions of SFAS No. 133.

**9. Related Party Transactions**

*Amounts Due to Officers*

The Company periodically provides services to Stephen A. Wynn, Chairman of the Board of Directors and Chief Executive Officer ("Mr. Wynn"), and certain other officers of the Company, including the personal use of corporate aircraft and household employees, construction work and other personal services. Mr. Wynn and other

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officers have deposits with the Company to prepay any such items, which are replenished on an ongoing basis as needed. At December 31, 2005 and 2004, Mr. Wynn and the other officers had a credit balance with the Company of \$412,000 and \$71,000, respectively.

*The Wynn Collection*

Through May 6, 2004, the Company operated an art gallery at the former Desert Inn displaying The Wynn Collection, a collection of fine art owned by Mr. Wynn and his wife, Elaine P. Wynn (“Mrs. Wynn”), who is also a director of Wynn Resorts. The art gallery in the Desert Inn was closed on May 6, 2004, and a new art gallery featuring The Wynn Collection opened in Wynn Las Vegas on April 28, 2005. Through closure of the Desert Inn gallery in May 2004, and again since opening in Wynn Las Vegas on April 2005, Mr. and Mrs. Wynn leased The Wynn Collection to the Company for an annual fee of one dollar (\$1). The Company retained all revenues from the public display of The Wynn Collection and the related merchandising revenues, and was responsible for all the expenses incurred in exhibiting and safeguarding the collection. The current lease for The Wynn Collection extends through June 30, 2015. After specified notice periods, the Company or Mr. Wynn may terminate the lease. Subject to certain notice requirements, Mr. Wynn has the right to remove or replace any or all of the works of art displayed in the gallery.

*The “Wynn” Surname Rights Agreement*

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

*Villa Suite Lease*

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

*Other*

Wynn Macau, S.A. rents two apartments from a Wynn Macau, S.A. shareholder for an aggregate of approximately \$3,600 per month.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**10. Property Charges and Other**

Property charges and other for the years ended December 31, 2005, 2004 and 2003, respectively, consist of the following (amounts in thousands):

	Year Ended December 31,		
	2005	2004	2003
Loss on assets retired for remodels	\$ 9,435	\$ —	\$ —
Temporary office abandonment charge	3,070	—	—
Grail theater abandonment charge	1,595		
Loss (gain) on sale of assets	92	639	(4)
Loss from incidental operations	105	651	651
Total property charges	<u>\$14,297</u>	<u>\$1,290</u>	<u>\$647</u>

Included in property charges and other for 2005 are approximately \$9.4 million of costs relating to assets retired, and approximately \$3.1 million of expenses relating to the abandonment of improvements made to the temporary offices utilized during part of the construction and development of Wynn Las Vegas. The Company also wrote off approximately \$1.6 million of costs incurred in 2005 in connection with the preliminary design and development of a third theater originally planned for a new show production planned for Wynn Las Vegas named “Monty Python’s Spamalot,” and later abandoned. There were no comparable Wynn Las Vegas property charges incurred during 2004 or 2003.

**11. Stockholders’ Equity**

*Common Stock*

The Company is authorized to issue up to 400,000,000 shares of its common stock, \$0.01 par value per share (the “Common Stock”). As of December 31, 2005 and 2004, 99,331,294 shares and 98,983,344 shares, respectively, of the Company’s Common Stock were outstanding. Except as otherwise provided by the Company’s articles of incorporation or Nevada law, each holder of the Common Stock is entitled to one vote for each share held of record on each matter submitted to a vote of stockholders. Holders of the Common Stock have no cumulative voting, conversion, redemption or preemptive rights or other rights to subscribe for additional shares. Subject to any preferences that may be granted to the holders of the Company’s preferred stock, each holder of Common Stock is entitled to receive ratably such dividends as may be declared by the Board of Directors out of funds legally available therefore, as well as any distributions to the stockholders and, in the event of liquidation, dissolution or winding up of the Company, is entitled to share ratably in all assets of the Company remaining after payment of liabilities.

*Preferred Stock*

The Company is authorized to issue up to 40,000,000 shares of undesignated preferred stock, \$0.01 par value per share (the “Preferred Stock”). As of, December 31, 2005, the Company had not issued any Preferred Stock. The Board of Directors, without further action by the holders of Common Stock, may designate and issue shares of Preferred Stock in one or more series and may fix or alter the rights, preferences, privileges and restrictions, including the voting rights, redemption provisions (including sinking fund provisions), dividend rights, dividend rates, liquidation rates, liquidation preferences, conversion rights and the description and number of shares constituting any wholly unissued series of Preferred Stock. The issuance of such shares of Preferred Stock could adversely affect the rights of the holders of Common Stock. The issuance of shares of Preferred

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

Stock under certain circumstances could also have the effect of delaying or preventing a change of control of the Company or other corporate action.

**12. Benefit Plans**

*Employee Savings Plan*

The Company established a retirement savings plan under Section 401(k) of the Internal Revenue Code covering its non-union employees on July 27, 2000. The plan allows employees to defer, within prescribed limits, up to 18% of their income on a pre-tax basis through contributions to this plan. The Company matches the contributions, within prescribed limits, with an amount equal to 100% of the participant's initial 2% tax deferred contribution and 50% of the tax deferred contribution between 2% and 4% of the participant's compensation. The Company recorded charges for matching contributions of approximately \$804,000, \$366,000, and \$263,000 for the years ended December 31, 2005, 2004 and 2003, respectively.

Union employees were covered by various multi-employer pension plans. The Company recorded expenses of approximately \$1.3 million, \$4,000, and \$38,000 under such plans for the years ended December 31, 2005, 2004 and 2003, respectively. Information from the plans' sponsors is not available to permit the Company to determine its share of unfunded vested benefits, if any.

*Stock Based Compensation Plan*

The Company has adopted the 2002 Stock Incentive Plan (the "Stock Plan") to provide stock compensation arrangements for directors, officers and key employees, and others. The Stock Plan includes provisions for the grant of (i) Incentive Stock Options ("ISO"), (ii) compensatory (i.e. nonqualified) stock options ("NQSO") and (iii) restricted shares of Common Stock. Officers, key employees, directors (whether employee or nonemployee) and independent contractors or consultants of the Company and its subsidiaries are eligible to participate in the Stock Plan. However, only employees of the Company and its subsidiaries are eligible to receive incentive stock options.

A maximum of 9,750,000 shares of Common Stock were reserved for issuance under the Stock Plan. Options are generally granted at the current market price at the date of grant. The Stock Plan provides for a variety of vesting schedules, including: immediate; 25% each year over four years; 33.33% for each of the third, fourth and fifth years; cliff vesting at a determined date; and others to be determined at the time of grant. All options expire ten years from the date of grant.

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

The Stock Plan will terminate ten years from the date of adoption, unless terminated earlier by the Board of Directors, and no options or restricted shares may be granted under the Stock Plan after such date. Summarized information for the Stock Plan is as follows:

	Year Ended December 31, 2005		Year Ended December 31, 2004		Year Ended December 31, 2003	
	Options	Weighted Average Exercise Price	Options	Weighted Average Exercise Price	Options	Weighted Average Exercise Price
Outstanding at beginning of period.	2,296,750	\$ 24.38	1,732,500	\$ 16.13	375,000	\$ 13.32
Granted	1,326,000	\$ 57.40	758,000	\$ 42.35	1,442,500	\$ 16.79
Exercised	(72,950)	\$ 19.26	(46,250)	\$ 15.19	(6,250)	\$ 13.25
Canceled	(65,000)	\$ 54.05	(147,500)	\$ 19.68	(78,750)	\$ 14.92
Outstanding at ending of period	<u>3,484,800</u>	<u>\$ 36.92</u>	<u>2,296,750</u>	<u>\$ 24.38</u>	<u>1,732,500</u>	<u>\$ 16.13</u>
Exercisable at ending of period	989,050	\$ 20.80	490,625	\$ 16.10	135,000	\$ 13.61
Options available for Grant	<u>4,726,412</u>		<u>6,262,412</u>		<u>6,683,189</u>	

The following table summarizes information about the options outstanding at December 31, 2005:

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Number Outstanding at December 31, 2005	Weighted Average Remaining Contractual Life (Years)	Weighted Average Exercise Price	Number Exercisable at December 31, 2005	Weighted Average Exercise Price
\$13.25 - \$13.74	279,500	7.0	\$ 13.34	217,000	\$ 13.36
\$13.75 - \$19.99	1,173,750	7.6	\$ 16.58	582,500	\$ 16.57
\$20.00 - \$28.70	136,250	8.0	\$ 26.93	33,750	\$ 25.43
\$28.71 - \$39.96	324,300	8.3	\$ 37.89	80,175	\$ 37.85
\$39.96 - \$42.06	117,500	8.4	\$ 40.21	36,875	\$ 40.17
\$42.06 - \$59.44	1,188,500	9.5	\$ 54.87	32,500	\$ 59.06
\$59.45 - \$68.83	130,000	9.1	\$ 66.03	6,250	\$ 65.77
\$68.84 - \$74.25	135,000	9.2	\$ 73.64	—	\$ —
	<u>3,484,800</u>			<u>989,050</u>	

The average fair value of options granted of \$24.13, \$16.72 and \$7.35 for the years ended December 31, 2005, 2004 and 2003, respectively was estimated on the date of grant using the Black-Scholes option-pricing method with the following weighted-average assumptions:

	Years Ended December 31,		
	2005	2004	2003
Expected dividend yield	—	—	—
Expected stock price volatility	35%	35%	40%
Risk-free interest rate	4.1%	3.9%	3.0%
Expected average life of options (years)	6.0	5.5	6.0

In addition to options, restricted stock grants of 275,000 shares, 189,723 shares, and 1,138,338 shares were issued to employees during the years ended December 31, 2005, 2003 and 2002. 189,723 shares under these

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

grants were forfeited as of December 31, 2003 and another 189,723 shares under these grants vested on November 1, 2004. On May 31, 2005, 379,446 shares vested and on December 15, 2005, 55,000 shares vested. The remaining 789,169 employee restricted stock grants outstanding at December 31, 2005 vest on various dates between May 2006 and December 2009. No restricted stock grants took place during the year ended December 31, 2004 or prior to 2002. The effect of these grants is to increase the issued and outstanding shares of the Company's Common Stock and decrease the number of shares available for grant in the plan. Deferred compensation is recorded for the restricted stock grants equal to the market value of the Common Stock on the date of grant. The deferred compensation is amortized over the period the restricted stock vests and is recorded as compensation expense or capitalized into construction in progress, as appropriate.

*Performance Based Incentive Plan*

The Company established the Annual Performance Based Incentive Plan for Executive Officers (the "Performance Plan") on March 8, 2004. Only those executive officers of the Company who are "covered employees," as defined under Section 162(m) of the Internal Revenue Code, are eligible to participate in the Performance Plan. The Performance Plan qualifies for the performance-based exclusion from the deduction limitations under Section 162(m) of the Internal Revenue Code which disallows deductions for publicly-held corporations with respect to compensation in excess of \$1.0 million per year paid to the Chief Executive Officer and the Company's other four most highly compensated executive officers unless certain objectivity and other criteria are met.

The minimum performance goals set by the Compensation Committee of the Board of Directors of Wynn Resorts, Limited for 2004 were satisfied. Consequently, in 2005, three of the Company's executives were paid an aggregate of approximately \$4.4 million under the Performance Plan for services rendered during 2004. The Company also has accrued approximately \$7.4 million for amounts expected to be awarded under the Performance Plan for services rendered for 2005.

**13. Income Taxes**

The Company files a consolidated federal income tax return. The income tax benefit differs from that computed at the federal statutory corporate tax rate as follows:

	Years Ended December 31,		
	2005	2004	2003
Federal statutory rate	-35.0%	-35.0%	-35.0%
Foreign tax rate differential	13.2%	1.6%	7.3%
Permanent items, net			
Deferred tax asset reconciliation	2.6%	0.0%	0.0%
Other, net	4.0%	0.0%	0.0%
Valuation allowance	15.2%	33.4%	27.7%
Effective tax rate	<u>0.0%</u>	<u>0.0%</u>	<u>0.0%</u>

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

The tax effects of significant temporary differences representing net deferred tax assets and liabilities are as follows (amounts in thousands):

	As of December 31,	
	2005	2004
Deferred tax assets—US:		
Current:		
Receivables, inventories, accrued liabilities and other	\$ 8,707	\$ 397
Long-term:		
Net operating loss carryforwards	104,578	45,271
Pre-opening costs	58,992	41,844
Intangibles and related other	21,133	29,102
Syndication costs	3,780	3,780
Other	2,721	—
	<u>199,911</u>	<u>120,394</u>
Less: valuation allowance	<u>(100,165)</u>	<u>(82,844)</u>
	<u>99,746</u>	<u>37,550</u>
Deferred tax liabilities—US:		
Current:		
Prepaid insurance, maintenance and taxes	(6,799)	—
Long-term:		
Property and equipment	(89,264)	(37,550)
Interest rate swap valuation adjustment	(3,683)	—
	<u>(99,746)</u>	<u>(37,550)</u>
Deferred tax assets—Foreign:		
Net operating loss carryforwards	11,782	7,606
Less: valuation allowance	<u>(11,782)</u>	<u>(7,606)</u>
	<u>—</u>	<u>—</u>
Net deferred tax asset	<u>\$ —</u>	<u>\$ —</u>

Of the 2005 U.S. valuation allowance of \$100.2 million, approximately \$11.5 million is attributable to tax benefits resulting from the exercise of nonqualified stock options, the value of vested restricted stock in excess of amounts deducted for financial reporting and syndication costs. Subsequent recognition of income tax benefits associated with these items will be allocated to additional paid-in capital.

**14. Commitments and Contingencies**

*Wynn Las Vegas*

Construction and Remodeling. Wynn Las Vegas, except for one of its two theaters, opened on April 28, 2005. The total Wynn Las Vegas project cost was approximately \$2.74 billion. This includes the purchase of the Desert Inn land (including the land for Encore) and additional land for employee parking, design and construction costs, financing fees, interest and other pre-opening expenses. As of December 31, 2005, approximately \$18.9 million of budgeted project costs and retention amounts remained to be paid in order to close out the project. The Company expects these final costs to be paid in the second quarter of 2006.

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

Beginning in the third quarter of 2005, the Company has made and continues to make certain enhancements and refinements to Wynn Las Vegas. As a result, the Company has incurred and will continue to incur capital expenditures relating to these enhancements and refinements. Under the terms of the Wynn Las Vegas, LLC credit facilities, the Company is permitted up to \$40.0 million of capital expenditures in 2005, of which \$37.9 million was spent. In 2006, the Company will be permitted \$80.0 million of capital expenditures at Wynn Las Vegas. These spending limits do not apply to any funds that may be contributed to Wynn Las Vegas, LLC by Wynn Resorts.

Encore Development. The Company intends to develop Encore on approximately 20 acres facing the Strip, immediately adjacent to Wynn Las Vegas. The Company has refined the design of Encore to include a 2,054-room hotel tower fully integrated with Wynn Las Vegas, containing 144 suites and 1,910 guest rooms, as well as an approximately 44,000 square foot casino, additional convention and meeting space, as well as restaurants, nightclubs, swimming pools, a spa and salon and retail outlets. We expect to commence construction of Encore in the second quarter of 2006 and to open Encore to the public by the end of 2008. The Encore Budget, Plans and Specs are expected to be finalized and submitted to the Company's lenders for approval on or before March 15, 2006. The project budget for Encore is approximately \$1.74 billion, including approximately \$70.0 million to be incurred for construction of a new employee parking garage on our Koval property, a related pedestrian bridge and costs to be incurred in connection with preparing the Broadway Theater to host "Monty Python's Spamalot".

Until the Encore Budget, Plans and Specs are approved, the availability of notes proceeds and funds under the Wynn Las Vegas, LLC credit facilities for this project is limited to \$100.0 million, of which approximately \$40.7 million has been spent through December 31, 2005. If the Encore Budget, Plans and Specs are not approved, the available borrowings under the Wynn Las Vegas, LLC credit facilities would be reduced by \$550.0 million. The Company expects that the available remaining proceeds from the First Mortgage Notes, together with availability under the credit facilities, and cash flow from operations, will be sufficient for Wynn Las Vegas, LLC to pay for expenditures of up to \$1.52 billion on the Encore project without incurring additional debt or receiving additional capital contributions from Wynn Resorts. Project costs exceeding \$1.52 billion will be financed by the issuance of up to \$100.0 million of additional notes and/or contributions from Wynn Resorts.

Entertainment Productions. The Company entered into long-term agreements for the licensing, creation, development and production of "Le Rêve, A Small Collection of Imperfect Dreams," the water-based production show, which opened concurrently with Wynn Las Vegas on April 28, 2005.

The Company also purchased the rights to stage "Avenue Q," the Tony Award-winning musical production and entered into a production services agreement for all production services related to the show. In August 2005, "Avenue Q" opened to the public in Wynn Las Vegas' second showroom, the Broadway Theater.

Under the agreements relating to "Le Rêve" and "Avenue Q," the Company is required to make payments to the creators and producers of each show based upon certain criteria including net ticket sales or profits.

On July 20, 2005, the Company also entered into an agreement with Spamalot, LLC to produce and present "Monty Python's Spamalot" at Wynn Las Vegas. The production is expected to be accompanied by a retail store, food and beverage facilities and a themed "Spamalot Environment." The production costs, showroom renovation costs, the production completion date, and the opening date have not yet been determined.

Completion Guarantee and Liquidity Reserve. As part of the original Wynn Las Vegas financing, the Company contributed \$50.0 million of the net proceeds of the initial public offering of Wynn Resorts' common stock to Wynn Completion Guarantor, LLC, a special purpose subsidiary of Wynn Las Vegas, LLC formed in October 2002 to provide a completion guarantee in favor of the lenders under the Previous Credit Facilities and the Second Mortgage Notes to secure completion of Wynn Las Vegas.



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

In addition, the Company deposited \$30.0 million from the net proceeds of the initial public offering of Wynn Resorts' common stock into a required escrow Liquidity Reserve Account to secure the completion and opening of Wynn Las Vegas.

The refinanced indebtedness of Wynn Las Vegas, LLC retained both the completion guarantee deposit and the liquidity reserve. The liquidity reserve is solely for use of the Wynn Las Vegas project, which will be finally closed out in March or April 2006. If the Encore Budget, Plans and Specs are approved, at least \$30.0 million of the \$50.0 million completion guarantee is required to remain on deposit in the completion guarantee collateral account to complete Encore.

*Wynn Macau*

Construction and Development. Under its casino concession agreement with the government of Macau, Wynn Macau, S.A. is constructing and will own and operate Wynn Macau, a casino resort facility in Macau's inner harbor area. Wynn Macau is being constructed, and will open, in two phases. The first phase of Wynn Macau is expected to open in the third quarter of 2006. The second phase is expected to open by the third quarter of 2007.

Construction of Wynn Macau's first phase 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. In September 2005, the construction contract was amended and restated to include the second phase of Wynn Macau. Under the amended and restated 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., for a guaranteed maximum price of approximately \$457.2 million (including the contractors' fee and contingency). 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.

Through December 31, 2005, the Company incurred approximately \$427.2 million of the total \$1.1 billion of budgeted project costs. Total budgeted project costs include construction and design costs (including construction contingencies) of approximately \$688.0 million, land acquisition costs of approximately \$49.0 million, and capitalized interest, pre-opening expenses, financing fees and other costs totaling in the aggregate approximately \$368.6 million. These costs have been, and will continue to be, paid from the previously funded \$230.0 million base equity and loans from Wynn Resorts and \$80.0 million borrowed under Wynn Las Vegas, LLC's revolving credit agreement and loaned as subordinated debt, as well as Wynn Macau, S.A.'s \$764.0 million senior secured credit facility and cash flows from operations once Wynn Macau opens. As of December 31, 2005, project costs still to be incurred totaled approximately \$678.4 million.

Land Concession Contract. Wynn Macau, S.A. has entered into a land concession contract for the Wynn Macau project site. Under the land concession contract, Wynn Macau, S.A. leases a parcel of approximately 16 acres from the government for an initial term of 25 years, with a right to renew for additional periods. Wynn Macau, S.A. has made three payments to the Macau government under the land concession contract totaling approximately \$12.7 million and is required to make eight additional semi-annual payments (including interest) totaling approximately \$30.0 million for total payments of approximately \$42.7 million. Wynn Macau, S.A. also paid approximately \$17.9 million to an unrelated third party for its relinquishment of rights to a portion of the land. During the term of the land concession contract, Wynn Macau, S.A. is also required to make annual lease payments of up to \$400,000.

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

*Leases and other arrangements*

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

The following represents the future minimum rentals to be received under the operating leases:

<u>Years Ending December 31,</u>	
2006	\$1,236
2007	1,236
2008	1,236
2009	1,170
2010	972
Thereafter	3,645
	<u>\$9,495</u>

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

At December 31, 2005, the Company was obligated under non-cancelable operating leases and the leasehold interest in land to make future minimum lease payments as follows (\$ amounts in thousands):

<u>Years Ending December 31,</u>	<u>Operating Leases</u>	<u>Land Concession Contract</u>
2006	\$ 3,777	\$ 9,558
2007	2,234	7,920
2008	1,850	6,282
2009	1,848	6,282
2010	1,826	—
Thereafter	7,515	—
	<u>\$ 19,050</u>	<u>30,042</u>
Less: amounts representing interest		(1,840)
Total obligations under the land concession contract		28,202
Less: amounts due within one year		(8,984)
Amounts due after one year		<u>\$ 19,218</u>

*Self-insurance*

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

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

*Employment Agreements*

The Company has entered into employment agreements with several executive officers, other members of management and certain key employees. These agreements, 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 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 does not have any material litigation as of December 31, 2005.

**15. Segment Information**

The Company monitors its operations and evaluates earnings by reviewing the assets and operations of Wynn Las Vegas and Wynn Macau. Wynn Las Vegas opened on April 28, 2005. Wynn Macau is currently in the development and construction phase and is expected to open in the third quarter of 2006.

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

	<b>December 31,</b>	
	<b>2005</b>	<b>2004</b>
<b>Total assets</b>		
Wynn Las Vegas (including Encore)	\$ 3,115,814	\$ 2,788,302
Wynn Macau	471,571	321,975
Corporate and other assets	357,898	354,136
Total consolidated assets	<u>\$ 3,945,283</u>	<u>\$ 3,464,413</u>

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

The Company's segment information on its results of operations for each of the years in the period ended December 31, 2005, is as follows (in thousands):

	<b>For the Year Ended December 31,</b>		
	<b>2005</b>	<b>2004</b>	<b>2003</b>
<b>Revenues(1)</b>			
Casino	\$ 353,663	\$ —	\$ —
Rooms	170,315	—	—
Food and beverage	173,700	—	—
Entertainment, retail and other	125,230	195	643
Gross revenues	822,908	195	643
Less promotional allowances	(100,927)	—	—
Net revenues	<u>\$ 721,981</u>	<u>\$ 195</u>	<u>\$ 643</u>
Adjusted EBITDA(1, 2)	<u>\$ 212,007</u>	<u>\$ (208)</u>	<u>\$ (201)</u>
<b>Other operating costs and expenses</b>			
Preopening expenses:			
Wynn Las Vegas (including Encore)	(67,454)	(41,073)	(18,936)
Wynn Macau	(20,402)	(15,970)	(8,382)
Corporate and other	(9,084)	(24,278)	(19,426)
Depreciation and amortization:			
Wynn Las Vegas (including Encore)	(94,297)	(3,793)	(2,119)
Wynn Macau	(6,429)	(1,704)	—
Corporate and other	(2,618)	(1,482)	(3,624)
Property charges and other:			
Wynn Las Vegas (including Encore)	(14,183)	(1,290)	(425)
Wynn Macau	—	—	—
Corporate and other	(114)	—	(222)
Corporate expenses and other	(21,982)	—	—
Total	<u>(236,563)</u>	<u>(89,590)</u>	<u>(53,134)</u>
Operating loss	<u>(24,556)</u>	<u>(89,798)</u>	<u>(53,335)</u>
<b>Other non-operating costs and expenses</b>			
Interest and other income	36,419	10,048	19,138
Interest expense, net	(102,699)	(2,687)	(9,031)
Loss on early extinguishment of debt	—	(122,788)	—
Total	<u>(66,280)</u>	<u>(115,427)</u>	<u>10,107</u>
Minority interest	—	1,054	3,129
Net loss	<u>\$ (90,836)</u>	<u>\$ (204,171)</u>	<u>\$ (40,099)</u>

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

(2) "Adjusted EBITDA" is earnings before interest, taxes, depreciation, amortization, pre-opening expenses, property charges, corporate expenses, earnings or losses from unconsolidated affiliates and other non operating income and expenses. Adjusted EBITDA is presented exclusively as a supplemental disclosure because management believes that it is widely used to measure the performance, and as a principal basis for valuation, of gaming companies. Management uses Adjusted EBITDA as the primary measure of the

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

operating performance of its segments—Wynn Las Vegas and Wynn Macau—and to compare the operating performance of its properties with those of its competitors. The Company also presents Adjusted EBITDA because it is used by some investors as a way to measure a company's ability to incur and service debt, make capital expenditures and meet working capital requirements. Gaming companies have historically reported EBITDA as a supplemental performance measure to generally accepted accounting principles in the United States ("GAAP") financial measures. In order to view the operations of their casinos on a more stand-alone basis, gaming companies, including Wynn Resorts, Limited, have historically excluded preopening expenses, property charges and corporate expenses, which do not relate to the management of specific casino properties from their EBITDA calculations. However, Adjusted EBITDA should not be considered as an alternative to operating income as an indicator of the Company's performance, as an alternative to cash flows from operating activities as a measure of liquidity, or as an alternative to any other measure determined in accordance with GAAP. Unlike net income, Adjusted EBITDA does not include depreciation or interest expense and therefore does not reflect current or future capital expenditures or the cost of capital. We compensate for these limitations by using Adjusted EBITDA as only one of several comparative tools, together with the common GAAP measurements, to assist in the evaluation of operating performance. Such GAAP measurements include operating income (loss), net income (loss), cash flows from operations and cash flow data. The Company has significant uses of cash flows, including capital expenditures, interest payments, debt principal repayments and taxes, which are not reflected in Adjusted EBITDA. Also, the Company's calculation of Adjusted EBITDA may be different from the calculation methods used by other companies and, therefore, comparability may be limited.

**16. Subsequent Events**

*Avenue Q*

In February 2006, the Company entered into an agreement to end the exclusive run of "Avenue Q," the stage production currently presented in the Broadway Theater at Wynn Las Vegas. The final performance is expected to be May 28, 2006. In connection with the agreement to end exclusivity, the Company is required to pay to the producers of "Avenue Q" \$5.0 million in three installments. After the run of "Avenue Q" ends, the Company will renovate the Broadway Theater to accommodate the Las Vegas run of "Monty Python's Spamalot."

*Art Gallery Closure*

On February 19, 2006, the Company closed the art gallery at Wynn Las Vegas.

*Amendment to Wynn Las Vegas Credit Facilities*

On March 10, 2006, we amended our Wynn Las Vegas, LLC credit facilities to (a) allow the Company to issue up to \$100.0 million of senior secured additional notes under the indenture for the First Mortgage Notes; (b) simplify draw procedures under the Disbursement Agreement; (c) consolidate certain accounts under the Disbursement Agreement; (d) amend and clarify certain of the conditions for the Phase II Approval Date; (e) extend the outside opening date for Encore and the outside completion date for Encore to June 30, 2009 and September 30, 2009, respectively; and (f) permit expenditures of up to \$150.0 million on Encore prior to execution of a guaranteed maximum price contract.

*Further Expansion of Wynn Macau*

On February 23, 2006, the Company announced its intention to increase the capacity of the second phase of Wynn Macau by an additional 150 table games, increasing the total table game count in the expansion to 300 tables. The additional cost for further expansion is expected to be approximately \$70.0 million, bringing the total project budget to approximately \$1.2 billion. It is expected to open concurrently with the last portion of the second phase in the third quarter of 2007. Subject to approval by its secured lenders, the cost of the further expansion can be wholly financed within the existing financing structure by the application of amounts currently designated as contingent debt. The Company is currently pursuing all necessary approvals from its lenders.

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

*Macau Subconcession Sale*

On March 4, 2006, the Company entered into an agreement with Publishing & Broadcasting, Ltd. (“PBL”) pursuant to which the Company agreed to sell to PBL a subconcession to operate casino games in Macau for a purchase price of \$900.0 million. The transaction is subject to the approval of the Macau government.

**17. Financial Statement Restatement**

Subsequent to the issuance of the Company’s consolidated financial statements for the year ended December 31, 2004, the Company determined that its interest rate swap arrangements relating to certain of its floating-rate debt facilities did not qualify for hedge accounting under Statement of Financial Accounting Standards No. 133, and its related interpretations. The Company’s hedge documentation includes, among other items, the assumption that the repricing dates for its debt and swaps match. The documentation required to assess ineffectiveness resulting from having different repricing dates was not in place at the inception of the hedge, nor during the periods for which an assessment was required, and the Company recently determined that the repricing dates on the swap instruments did not match exactly the repricing dates on the floating-rate debt. Documentation deficiencies cannot be corrected, and quarterly testing cannot be performed, retrospectively. As a result of the documentation deficiencies, hedge accounting should not have been used. Accordingly, the Company determined that its 2003 and 2004 interim and annual financial statements and its interim financial statements for the first three quarters of 2005, should be restated to eliminate the application of hedge accounting. Eliminating the application of cash flow hedge accounting results in recording the mark to market adjustments for the interest rate swaps as interest and other income, net and not in comprehensive income, as was previously reported.

A summary of the significant effects of the restatement is as follows (amounts in thousands except per share data):

	2004		2003	
	As Previously Reported	As Restated	As Previously Reported	As Restated
<b>As of December 31,</b>				
Property and equipment	\$1,987,032	\$1,987,233	897,815	897,815
Accumulated other comprehensive income	10,007	—	8,793	—
Accumulated (Deficit) beginning of year	(108,947)	(100,154)	(60,055)	(60,055)
Accumulated (Deficit)	(314,533)	(304,325)	(108,947)	(100,154)
<b>For the year ended December 31,</b>				
Interest and other income	8,633	10,048	10,345	19,138
Interest (expense), net	(2,687)	(2,687)	(9,031)	(9,031)
Net (loss)	(205,586)	(204,171)	(48,892)	(40,099)
Basic and diluted (loss) per share	\$ (2.37)	\$ (2.35)	\$ (0.62)	\$ (0.50)

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

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

The following consolidating financial statements present information related to Wynn Resorts (the “Parent”), which is the issuer of the Debentures, Wynn Resorts Funding, LLC (the “Convertible Debentures Guarantor”) and non-guarantor subsidiaries as of December 31, 2005 and 2004, and for the years ended December 31, 2005, 2004 and 2003.

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

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONSOLIDATING BALANCE SHEET INFORMATION**  
**AS OF DECEMBER 31, 2005**  
**(amounts in thousands)**

	Parent	Convertible Debentures Guarantor	Non- guarantor Subsidiaries	Eliminating Entries	Total
<b>ASSETS</b>					
Current assets:					
Cash and cash equivalents	\$ 308,013	\$ —	\$ 126,276	\$ —	\$ 434,289
Restricted cash and investments	1,064	15,001	82,206	—	98,271
Receivables, net	31	—	88,437	—	88,468
Inventories	—	—	39,884	—	39,884
Prepaid expenses	324	—	23,306	—	23,630
Total current assets	<u>309,432</u>	<u>15,001</u>	<u>360,109</u>	<u>—</u>	<u>684,542</u>
Restricted cash and investments	23	—	344,308	—	344,331
Property and equipment, net	530	—	2,663,340	—	2,663,870
Intangibles, net	—	—	60,480	—	60,480
Deferred financing costs	6,934	—	88,685	—	95,619
Investment in unconsolidated affiliates	1,295,256	—	5,070	(1,295,256)	5,070
Deposits and other assets	3,454	—	87,917	—	91,371
Intercompany balances	216,454	30,000	(246,454)	—	—
Total assets	<u>\$1,832,083</u>	<u>\$ 45,001</u>	<u>\$ 3,363,455</u>	<u>\$ (1,295,256)</u>	<u>\$3,945,283</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>					
Current liabilities:					
Current portion of long-term debt	\$ —	\$ —	\$ 15,489	\$ —	\$ 15,489
Current portion of land concession obligation	—	—	8,984	—	8,984
Accounts and construction payable	41	—	79,727	—	79,768
Accrued interest	9,142	—	6,591	—	15,733
Accrued compensation and benefits	9,050	—	27,722	—	36,772
Other accrued expenses	955	—	27,419	—	28,374
Customer deposits and other related liabilities	—	—	66,120	—	66,120
Construction retention	—	—	18,539	—	18,539
Total current liabilities	<u>19,188</u>	<u>—</u>	<u>250,591</u>	<u>—</u>	<u>269,779</u>
Construction retention	—	—	757	—	757
Long-term debt	250,000	—	1,840,846	—	2,090,846
Long-term land concession obligation	—	—	19,218	—	19,218
Other long-term liabilities	—	—	1,788	—	1,788
Total liabilities	<u>269,188</u>	<u>—</u>	<u>2,113,200</u>	<u>—</u>	<u>2,382,388</u>
Commitments and contingencies					
Stockholders' equity:					
Common stock	993	—	—	—	993
Additional paid-in capital	1,972,847	44,028	1,623,218	(1,667,246)	1,972,847
Deferred compensation—restricted stock	(15,784)	—	(957)	957	(15,784)
Accumulated deficit	(395,161)	973	(372,006)	371,033	(395,161)
Total stockholders' equity	<u>1,562,895</u>	<u>45,001</u>	<u>1,250,255</u>	<u>(1,295,256)</u>	<u>1,562,895</u>
Total liabilities and stockholders' equity	<u>\$1,832,083</u>	<u>\$ 45,001</u>	<u>\$ 3,363,455</u>	<u>\$ (1,295,256)</u>	<u>\$3,945,283</u>



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

	Parent	Convertible Debentures Guarantor	Non- guarantor Subsidiaries	Eliminating Entries	Total
<b>ASSETS</b>					
Current assets:					
Cash and cash equivalents	\$ 302,262	\$ —	\$ 27,999	\$ —	\$ 330,261
Restricted cash and investments	—	—	115,301	—	115,301
Receivables, net	19	—	208	—	227
Inventories	—	—	757	—	757
Prepaid expenses	290	—	4,393	—	4,683
Total current assets	<u>302,571</u>	<u>—</u>	<u>148,658</u>	<u>—</u>	<u>451,229</u>
Restricted cash and investments	769	29,691	796,606	—	827,066
Property and equipment, net	809	—	1,986,424	—	1,987,233
Intangibles, net	—	—	54,100	—	54,100
Deferred financing costs	7,652	—	80,913	—	88,565
Investment in subsidiaries	1,395,223	—	—	(1,395,223)	—
Deposits and other assets	5,674	—	50,546	—	56,220
Intercompany balances	196,476	15,004	(211,480)	—	—
Total assets	<u>\$1,909,174</u>	<u>\$ 44,695</u>	<u>\$ 2,905,767</u>	<u>\$(1,395,223)</u>	<u>\$3,464,413</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>					
Current liabilities:					
Current portion of long-term debt	\$ —	\$ —	\$ 718	\$ —	\$ 718
Current portion of land concession obligation	—	—	9,483	—	9,483
Accounts and construction payable	648	—	85,872	—	86,520
Accrued interest	6,875	—	5,206	—	12,081
Accrued compensation and benefits	6,464	—	4,646	—	11,110
Other accrued expenses	695	—	9,223	—	9,918
Customer deposits and other related liabilities	—	—	1,006	—	1,006
Construction retention	—	—	39,117	—	39,117
Total current liabilities	<u>14,682</u>	<u>—</u>	<u>155,271</u>	<u>—</u>	<u>169,953</u>
Construction retention	—	—	21,140	—	21,140
Long-term debt	250,000	—	1,350,328	—	1,600,328
Long-term land concession obligation	—	—	27,640	—	27,640
Other long-term liabilities	—	—	860	—	860
Total liabilities	<u>264,682</u>	<u>—</u>	<u>1,555,239</u>	<u>—</u>	<u>1,819,921</u>
Commitments and contingencies					
Stockholders' equity:					
Common stock	990	—	—	—	990
Additional paid-in capital	1,951,906	44,028	1,628,149	(1,672,177)	1,951,906
Deferred compensation—restricted stock	(4,079)	—	(3,111)	3,111	(4,079)
Accumulated deficit	(304,325)	667	(274,510)	273,843	(304,325)
Total stockholders' equity	<u>1,644,492</u>	<u>44,695</u>	<u>1,350,528</u>	<u>(1,395,223)</u>	<u>1,644,492</u>
Total liabilities and stockholders' equity	<u>\$1,909,174</u>	<u>\$ 44,695</u>	<u>\$ 2,905,767</u>	<u>\$(1,395,223)</u>	<u>\$3,464,413</u>

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION**  
**YEAR ENDED DECEMBER 31, 2005**  
(amounts in thousands)

	Parent	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
<b>Operating revenues:</b>					
Casino	\$ —	\$ —	\$ 353,663	\$ —	\$ 353,663
Rooms	—	—	170,315	—	170,315
Food and beverage	—	—	173,700	—	173,700
Entertainment, retail and other	—	—	125,230	—	125,230
Gross revenues	—	—	822,908	—	822,908
Less promotional allowances	—	—	(100,927)	—	(100,927)
Net revenues	—	—	721,981	—	721,981
<b>Operating costs and expenses:</b>					
Casino	—	—	155,075	—	155,075
Rooms	—	—	44,171	—	44,171
Food and beverage	—	—	118,670	—	118,670
Entertainment, retail and other	—	—	80,185	—	80,185
General and administrative	(5,294)	4	124,270	—	118,980
Provision for doubtful accounts	(98)	—	16,304	—	16,206
Pre-opening costs	9,388	—	87,552	—	96,940
Depreciation and amortization	79	—	103,265	—	103,344
Property charges and other	114	—	14,183	—	14,297
Total operating costs and expenses	4,189	4	743,675	—	747,868
Equity in income (loss) from unconsolidated affiliates	(97,190)	—	1,331	97,190	1,331
Operating loss	(101,379)	(4)	(20,363)	97,190	(24,556)
<b>Other income (expense):</b>					
Interest and other income	23,344	310	28,945	(16,180)	36,419
Interest expense, net	(12,801)	—	(106,078)	16,180	(102,699)
Other income (expense), net	10,543	310	(77,133)	—	(66,280)
Net loss	<u>\$ (90,836)</u>	<u>\$ 306</u>	<u>\$ (97,496)</u>	<u>\$ 97,190</u>	<u>\$ (90,836)</u>

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION**  
**YEAR ENDED DECEMBER 31, 2004 (as Restated)**  
**(amounts in thousands)**

	Parent	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
<b>Operating revenues:</b>					
Casino	\$ —	\$ —	\$ —	\$ —	\$ —
Rooms	—	—	—	—	—
Food and beverage	—	—	—	—	—
Entertainment, retail and other	6,000	—	217	(6,022)	195
Gross revenues	6,000	—	217	(6,022)	195
Less promotional allowances	—	—	—	—	—
Net revenues	6,000	—	217	(6,022)	195
<b>Operating costs and expenses:</b>					
Casino	—	—	—	—	—
Rooms	—	—	—	—	—
Food and beverage	—	—	—	—	—
Entertainment, retail and other	—	—	83	(15)	68
General and administrative	3	—	332	—	335
Provision for doubtful accounts	—	—	—	—	—
Pre-opening costs	28,056	4	59,268	(6,007)	81,321
Depreciation and amortization	77	—	6,902	—	6,979
Property charges and other	—	—	1,290	—	1,290
Total operating costs and expenses	28,136	4	67,875	(6,022)	89,993
Equity in income (loss) from unconsolidated affiliates	(189,067)	—	—	189,067	—
Operating loss	(211,203)	(4)	(67,658)	189,067	(89,798)
<b>Other income (expense):</b>					
Interest and other income	7,032	427	5,364	(2,775)	10,048
Interest expense, net	—	—	(5,462)	2,775	(2,687)
Loss from extinguishment of debt	—	—	(122,788)	—	(122,788)
Other income (expense), net	7,032	427	(122,886)	—	(115,427)
Minority interest	—	—	1,054	—	1,054
Net loss	<u>\$(204,171)</u>	<u>\$ 423</u>	<u>\$ (189,490)</u>	<u>\$ 189,067</u>	<u>\$(204,171)</u>

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION**  
**YEAR ENDED DECEMBER 31, 2003 (As Restated)**  
**(amounts in thousands)**

	Parent	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
<b>Operating revenues:</b>					
Casino	\$ —	\$ —	\$ —	\$ —	\$ —
Rooms	—	—	—	—	—
Food and beverage	—	—	—	—	—
Entertainment, retail and other	9,067	—	687	(9,111)	643
Gross revenues	9,067	—	687	(9,111)	643
Less promotional allowances	—	—	—	—	—
Net revenues	9,067	—	687	(9,111)	643
<b>Operating costs and expenses:</b>					
Casino	—	—	—	—	—
Rooms	—	—	—	—	—
Food and beverage	—	—	—	—	—
Entertainment, retail and other	—	—	250	(37)	213
General and administrative	—	—	9,818	(9,187)	631
Provision for doubtful accounts	—	—	—	—	—
Pre-opening costs	17,808	—	28,823	113	46,744
Depreciation and amortization	20	—	5,723	—	5,743
Property charges and other	—	—	647	—	647
Total operating costs and expenses	17,828	—	45,261	(9,111)	53,978
Equity in income (loss) from unconsolidated affiliates	(29,830)	—	—	29,830	—
Operating loss	(38,591)	—	(44,574)	29,830	(53,335)
<b>Other income (expense):</b>					
Interest and other income	2,024	244	16,870	—	19,138
Interest expense, net	(3,532)	—	(5,499)	—	(9,031)
Other income (expense), net	(1,508)	244	11,371	—	10,107
Minority interest	—	—	3,129	—	3,129
Net loss	\$ (40,099)	\$ 244	\$ (30,074)	\$ 29,830	\$ (40,099)

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONSOLIDATING STATEMENTS OF CASH FLOWS INFORMATION**  
**YEAR ENDED DECEMBER 31, 2005**  
(amounts in thousands)

	Parent	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
<b>Cash flows from operating activities:</b>					
Net loss	\$ (90,836)	\$ 306	\$ (97,496)	\$ 97,190	\$ (90,836)
Adjustments to reconcile net loss accumulated to net cash provided by (used in) operating activities:					
Depreciation and amortization	79	—	103,265	—	103,344
Amortization of deferred compensation	4,676	—	—	—	4,676
Amortization and writeoff of deferred financing costs	718	—	13,327	—	14,045
Provision for doubtful accounts	(98)	—	16,304	—	16,206
Property charges and other	114	—	14,183	—	14,297
Equity in (income) loss from unconsolidated affiliates	97,190	—	(1,331)	(97,190)	(1,331)
Increase in fair value of interest rate swaps	—	—	(8,152)	—	(8,152)
Increase (decrease) in cash from changes in:					
Receivables, net	115	—	(104,533)	—	(104,418)
Inventories and prepaid expenses	(34)	—	(58,900)	—	(58,934)
Accounts payable and accrued expenses	4,477	—	155,101	—	159,578
Net cash provided by (used in) operating activities	<u>16,401</u>	<u>306</u>	<u>31,768</u>	<u>—</u>	<u>48,475</u>
<b>Cash flows from investing activities:</b>					
Capital expenditures, net of construction payables	—	—	(877,074)	—	(877,074)
Restricted cash and investments	(318)	14,690	485,393	—	499,765
Investment in unconsolidated affiliates	—	—	(3,739)	—	(3,739)
Intangibles and other, net	(2,530)	—	(37,651)	—	(40,181)
Intercompany balances	(9,292)	(14,996)	24,288	—	—
Proceeds from sale of equipment	86	—	23	—	109
Net cash used in investing activities	<u>(12,054)</u>	<u>(306)</u>	<u>(408,760)</u>	<u>—</u>	<u>(421,120)</u>
<b>Cash flows from financing activities:</b>					
Equity contributions	—	—	—	—	—
Exercise of stock options	1,404	—	—	—	1,404
Proceeds from issuance of common stock	—	—	—	—	—
Third party fees	—	—	—	—	—
Proceeds from issuance of long-term debt	—	—	627,131	—	627,131
Principal payments of long-term debt and leases	—	—	(130,854)	—	(130,854)
Deferred financing costs	—	—	(21,008)	—	(21,008)
Net cash provided by financing activities	<u>1,404</u>	<u>—</u>	<u>475,269</u>	<u>—</u>	<u>476,673</u>
<b>Cash and cash equivalents:</b>					
Increase (decrease) in cash and cash equivalents	5,751	—	98,277	—	104,028
Balance, beginning of period	302,262	—	27,999	—	330,261
Balance, end of period	<u>\$ 308,013</u>	<u>\$ —</u>	<u>\$ 126,276</u>	<u>\$ —</u>	<u>\$ 434,289</u>

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONSOLIDATING STATEMENTS OF CASH FLOWS INFORMATION**  
**YEAR ENDED DECEMBER 31, 2004 (as Restated)**  
**(amounts in thousands)**

	Parent	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
<b>Cash flows from operating activities:</b>					
Net loss	\$(204,171)	\$ 423	\$ (189,490)	\$ 189,067	\$ (204,171)
Adjustments to reconcile net loss accumulated to net cash provided by (used in) operating activities:					
Depreciation and amortization	77	—	6,902	—	6,979
Amortization of deferred compensation	3,429	—	—	—	3,429
Amortization and writeoff of deferred financing costs	723	—	59,849	—	60,572
Provision for doubtful accounts	—	—	—	—	—
Property charges and other	—	—	1,290	—	1,290
Equity in (income) loss from unconsolidated affiliates	189,067	—	—	(189,067)	—
Increase in fair value of interest rate swaps	—	—	(1,415)	—	(1,415)
Minority interest	—	—	(1,054)	—	(1,054)
Incidental operations	—	—	3,512	—	3,512
Increase (decrease) in cash from changes in:					
Receivables, net	17	—	(166)	—	(149)
Inventories and prepaid expenses	(86)	—	(2,089)	—	(2,175)
Accounts payable and accrued expenses	6,376	—	12,041	—	18,417
Net cash provided by (used in) operating activities	<u>(4,568)</u>	<u>423</u>	<u>(110,620)</u>	<u>—</u>	<u>(114,765)</u>
<b>Cash flows from investing activities:</b>					
Capital expenditures, net of construction payables	(16)	—	(1,007,977)	—	(1,007,993)
Restricted cash and investments	(769)	14,577	(555,743)	—	(541,935)
Investment in unconsolidated affiliates	(592,110)	—	—	592,110	—
Intangibles and other, net	(5,674)	—	(24,756)	—	(30,430)
Intercompany balances	(213,128)	(15,000)	228,128	—	—
Proceeds from sale of equipment	—	—	33,268	—	33,268
Net cash used in investing activities	<u>(811,697)</u>	<u>(423)</u>	<u>(1,327,080)</u>	<u>592,110</u>	<u>(1,547,090)</u>
<b>Cash flows from financing activities:</b>					
Equity contributions	—	—	592,110	(592,110)	—
Exercise of stock options	702	—	—	—	702
Proceeds from issuance of common stock	794,295	—	—	—	794,295
Third party fees	(5,134)	—	—	—	(5,134)
Proceeds from issuance of long-term debt	—	—	1,960,858	—	1,960,858
Principal payments of long-term debt and leases	—	—	(1,032,534)	—	(1,032,534)
Deferred financing costs	(81)	—	(67,542)	—	(67,623)
Net cash provided by financing activities	<u>789,782</u>	<u>—</u>	<u>1,452,892</u>	<u>(592,110)</u>	<u>1,650,564</u>
<b>Cash and cash equivalents:</b>					
Increase (decrease) in cash and cash equivalents	(26,483)	—	15,192	—	(11,291)
Balance, beginning of period	328,745	—	12,807	—	341,552
Balance, end of period	<u>\$ 302,262</u>	<u>\$ —</u>	<u>\$ 27,999</u>	<u>\$ —</u>	<u>\$ 330,261</u>

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONSOLIDATING STATEMENTS OF CASH FLOWS INFORMATION**  
**YEAR ENDED DECEMBER 31, 2003 (As Restated)**  
**(amounts in thousands)**

	Parent	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
<b>Cash flows from operating activities:</b>					
Net loss	\$ (40,099)	\$ 244	\$ (30,074)	\$ 29,830	\$ (40,099)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:					
Depreciation and amortization	20	—	5,723	—	5,743
Amortization of deferred compensation	3,327	—	—	—	3,327
Amortization of deferred financing costs	363	—	12,508	—	12,871
Property charges and other	—	—	(4)	—	(4)
Equity in (income) loss from unconsolidated affiliates	29,830	—	—	(29,830)	—
Increase in fair value of interest rate swaps	—	—	(8,793)	—	(8,793)
Minority interest	—	—	(3,129)	—	(3,129)
Increase (decrease) in cash from changes in:					
Receivables, net	(36)	—	142	—	106
Inventories and prepaid expenses	140	—	(323)	—	(183)
Accounts payable and accrued expenses	8,111	—	276	—	8,387
Net cash provided by (used in) operating activities	<u>1,656</u>	<u>244</u>	<u>(23,674)</u>	<u>—</u>	<u>(21,774)</u>
<b>Cash flows from investing activities:</b>					
Capital expenditures, net of construction payables	(432)	—	(414,557)	—	(414,989)
Restricted cash and investments	—	(44,268)	436,713	—	392,445
Investment in unconsolidated affiliates	(44,024)	—	—	44,024	—
Intangibles and other, net	—	—	(9,964)	—	(9,964)
Intercompany balances	6,089	—	(6,089)	—	—
Proceeds from sale of equipment	—	—	6	—	6
Net cash used in investing activities	<u>(38,367)</u>	<u>(44,268)</u>	<u>(6,109)</u>	<u>44,024</u>	<u>(32,502)</u>
<b>Cash flows from financing activities:</b>					
Equity contributions	—	44,024	—	(44,024)	—
Proceeds from issuance of common stock	45,000	—	—	—	45,000
Exercise of stock options	83	—	—	—	83
Third party fees	(204)	—	—	—	(204)
Proceeds from issuance of long-term debt	250,000	—	—	—	250,000
Principal payments:					
of long-term debt	—	—	(38)	—	(38)
of related party loan	(8,657)	—	—	—	(8,657)
Net cash provided by financing activities	<u>286,222</u>	<u>44,024</u>	<u>(38)</u>	<u>(44,024)</u>	<u>286,184</u>
<b>Cash and cash equivalents:</b>					
Increase (decrease) in cash and cash equivalents	249,511	—	(17,603)	—	231,908
Balance, beginning of period	79,234	—	30,410	—	109,644
Balance, end of period	<u>\$ 328,745</u>	<u>\$ —</u>	<u>\$ 12,807</u>	<u>\$ —</u>	<u>\$ 341,552</u>

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

**19. Quarterly Financial Information (Unaudited)**

The following (amounts in thousands, except per share data) presents selected interim financial information for 2005, 2004 and 2003, as previously reported and after giving effect to the restatement (see Note 17). Because loss per share amounts are calculated using the weighted average number of common and dilutive common equivalent shares outstanding during each quarter, the sum of the per share amounts for the four quarters may not equal the total income per share amounts for the year:

	<b>Year Ended December 31, 2005 (* as Restated)</b>				
	<b>First*</b>	<b>Second*</b>	<b>Third*</b>	<b>Fourth</b>	<b>Year</b>
Net revenues	\$ —	\$ 201,120	\$ 251,441	\$ 269,420	\$ 721,981
Operating income (loss)	(41,660)	(15,804)	13,278	19,630	(24,556)
Net loss	(29,927)	(41,778)	(9,247)	(9,884)	(90,836)
Basic and diluted loss per share	\$ (0.30)	\$ (0.43)	\$ (0.09)	\$ (0.10)	\$ (0.92)

	<b>(As Previously Reported)</b>		
	<b>Year Ended December 31, 2005</b>		
	<b>First</b>	<b>Second</b>	<b>Third</b>
Net revenues	\$ —	\$ 201,120	\$ 251,441
Operating income (loss)	(41,660)	(15,804)	13,278
Net loss	(37,627)	(35,162)	(14,190)
Basic and diluted loss per share	\$ (0.38)	\$ (0.36)	\$ (0.14)

	<b>Year Ended December 31, 2004 (* as Restated)</b>				
	<b>First</b>	<b>Second</b>	<b>Third</b>	<b>Fourth</b>	<b>Year</b>
Net revenues	\$ 135	\$ 59	\$ 1	\$ —	\$ 195
Operating loss	(15,415)	(18,112)	(24,214)	(32,057)	(89,798)
Net loss	(25,152)	(23,729)	(31,931)	(123,359)	(204,171)
Basic and diluted loss per share	\$ (0.31)	\$ (0.28)	\$ (0.36)	\$ (1.32)	\$ (2.35)

	<b>Year Ended December 31, 2004 (as Previously Reported)</b>				
	<b>First</b>	<b>Second</b>	<b>Third</b>	<b>Fourth</b>	<b>Year</b>
Net revenues	\$ 135	\$ 59	\$ 1	\$ —	\$ 195
Operating loss	(15,415)	(18,112)	(24,214)	(32,057)	(89,798)
Net loss	(13,248)	(41,919)	(22,706)	(127,713)	(205,586)
Basic and diluted loss per share	\$ (0.16)	\$ (0.49)	\$ (0.26)	\$ (1.31)	\$ (2.37)

\* See Note 17



**WYNN RESORTS, LIMITED**  
**SCHEDULE II—VALUATION AND QUALIFYING ACCOUNTS**  
(In Thousands)

<u>Description</u>	<u>Balance at January 1, 2005</u>	<u>Provision for Doubtful Accounts</u>	<u>Write-offs, net of Recoveries</u>	<u>Balance at December 31, 2005</u>
Allowance for doubtful accounts	—	16,206	(394)	15,812

<u>Description</u>	<u>Balance at January 1, 2004</u>	<u>Provision for Doubtful Accounts</u>	<u>Write-offs, net of Recoveries</u>	<u>Balance at December 31, 2004</u>
Allowance for doubtful accounts	564	—	(564)	—

<u>Description</u>	<u>Balance at January 1, 2003</u>	<u>Provision for Doubtful Accounts</u>	<u>Write-offs, net of Recoveries</u>	<u>Balance at December 31, 2003</u>
Allowance for doubtful accounts	662	—	(98)	564



<b>Signature</b>	<b>Title</b>	<b>Date</b>
<hr/> <i>/s/</i> ALLAN ZEMAN <hr/> Allan Zeman	Director	March 16, 2006
<hr/> <i>/s/</i> JOHN STRZEMP <hr/> John Strzemp	Executive Vice President, Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer)	March 16, 2006

AGREEMENT FOR GUARANTEED MAXIMUM PRICE  
CONSTRUCTION SERVICES

CHANGE ORDER

31 May 2005

**Project: Wynn Las Vegas**

**Change Order No.: 8**

**“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 (“Project”)** dated as of June 4, 2002 (“**Contract**”) is hereby modified as follows:

**1. SCOPE OF WORK**

The Scope of Work associated with Change Order No. 8 is detailed in the following Change Order narrative by project area. It should be noted that the Owner generally agrees with the Scope of the Work but reserves the right to perform a detailed audit of the Change Order documentation pursuant to the terms of this Agreement. Subsequent adjustments, if any, will be credited to the Cost of the Work:

**A. Highrise**

**1. Added Roof Pavers and Walk Pads**

Provide approximately 1175 additional roof pavers over the existing roof membrane and 94 l.f. of APOC walk pads. All work shall be completed in accordance with Highrise Roof Plan HR/A4.01 revised 2/8/05 and Notice of Clarification HR 044 issued by Butler-Ashworth Architects dated 2/18/05.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70102-59 dated 01 March, 2005, **\$74,788**.

B. **Lowrise – Area 1**

1. **Boardroom Microphones**

Provide alternate boardroom microphones. All work shall be completed in accordance with the WDD revised specifications and direction to supply the Beyerdynamics MPC22sw dated 15 February 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No CP-711-17 (revised) dated 16 May 2005, **\$6,814.**

2. **Canine Facility**

Provide an exhaust fan and new 50' hose reels at the Canine Facility. All work shall be completed in accordance with the WDD drawings dated 25 February 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No.CP-711-18 dated 7 March 2005, **\$10, 419.**

3. **Meeting Rooms & Promenade Area Paint Changes**

Provide mock-up painting in the Meeting Rooms & Convention Promenade areas. All work shall be completed in accordance with the WDD request letter dated 5 January 2005 and reference Raymond Co. COR #256, dated 4 February 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-711-19 dated 7 March 2005, **\$43,091.**

4. **Electrical revisions to the Retail warehouse and additional outlets**

Provide electrical revisions to the Retail warehouse and the additional outlets in B074 for the Lowrise Area 1. All work shall be completed in accordance with the WDD revised drawings dated 17 December 2004.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-711-20 dated 7 March 2005, **\$33,549.**

5. UPS Outlets in TR Rooms  
Provide the electrical revisions to add UPS outlets in the TR Rooms in Lowrise Area 1. All work shall be completed in accordance with WDD revised drawings dated 17 December 2004.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No CP-711-21 dated 7 March 2005, **\$36,487**.
6. Smoke Guard Doors  
Work associated with the addition of smoke guard doors in front of pantry elevators PS-3, PS-4, PS-5 and PS-6 in Lowrise Area 1. All work shall be completed in accordance with WDD correction notice dated 14 February 2005 and CCBD Correction Notice #024629.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. PCP-711-23 dated 4 April 2005, **\$53,117**
7. Fire Command Center Millwork  
Work associated with the modifications to the Fire Command Center millwork console in Lowrise Area 1 – B.O.H. All work shall be completed in accordance with CCFD recommendations and WDD revisions dated 12 January 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. PCP-711-24 dated 8 April 2005, **\$18,593**
8. Convention Promenade Exit Door  
Work associated with the modification to the location of the exit doors in the Convention Promenade from the Grand Ballroom Promenade. All work shall be completed in accordance with WDD directive dated 19 January 2005 as well as drawings provided by Glen Ashworth dated 17 February 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. PCP-711-25 dated 16 May 2005, **\$27,716**
9. Elevator Machine Room Fan Coil Unit  
Work associated with the addition of a fan coil unit in the (FS-1) elevator machine room with the required piping and electrical to support the unit. All work shall be completed in accordance with WDD's Change Directive dated 8 April 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No CP-711-26 dated 16 May 2005, **\$16,929**.

10. McKeon doors @ elevator opening PF-2  
Work associated with the provision of McKeon Doors at Elevator Openings PF-2 and all related equipment in the Lowrise area #1. All work shall be completed in accordance with information provided in documentation submitted by CCBD and Modernfold proposal for McKeon Doors dated 13 April 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. CP-711-27 dated 16 May 2005, **\$55,294**
  
11. Nuclear Exit Signs  
Work associated with the provision of additional nuclear exit fixtures for the Lowrise Area 1. All work shall be completed in accordance with CCBD requirements and WDD direction based on Bombard Electric COR#LR1-160 dated 3 February 2005 and COR#LR1-195 dated 24 March 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. CP-711-28., **\$22,335**
  
12. Vestibule @ elevator  
Work associated with the provision of a vestibule @ PF-1 elevator in the Lowrise Area 1. All work shall be completed in accordance with WDD revision drawings dated 28 February 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. CP-711-29, **\$37,128**
  
13. Electrical Revisions at the Entertainment Marquee  
Work associated with additional electrical revisions at the entertainment marquee for the Lowrise Area 1 Site Distribution. All work shall be completed in accordance with WDD entertainment sign Delta 3 revisions and provided Bombard Electric COR.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal CP-711-31, dated 18 May 2005, **\$29,307**

14. Additional electrical revisions

Work associated with additional electrical revisions to the Lowrise Area 1 Site Distribution. All work shall be completed in accordance with WDD revision dated 8 December 2004 and miscellaneous revisions are referenced in Bombard Electric COR.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. CP-711-32, dated 18 May 2005 **\$17,493**

15. Docutech Millwork Modification

Work associated with the provision of additional Docutech paper bin and shelving work for area I located in the Back of House. All work shall be completed in accordance with information provided in WDD sketches and cabinetry revision #4 and referenced Complete Millwork CORs.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. CP-711-33 dated 24 May 2005, **\$10,108**

C. Lowrise – Area 2

1. Spa and Salon Steam and Sauna Doors

Work associated with changing the Spa and Salon's steam and sauna doors from framed to frameless. All work shall be completed in accordance with email message from Charles Gonzales dated 4 March 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-27 dated 15 March 2005, **\$1,998.**

2. Entry Door Pull @ Ultra Lounge

Work associated with the addition of an HD-516 door pull with OFCI HD-515 glass chips hardware at the entrance door at the Ultra Lounge. All work shall be completed in accordance with the e-mail from T. Nisbet, dated 16 April 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-29 dated 19 May 2005, **\$4,822.**

3. Modification of Framing & Trim at Host Lounge

Work associated with the alteration of the moulding trim at the Host Lounge. All work shall be completed in accordance with written documentation and drawings provided by Charles Gonzales, dated 17 February 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-30 dated 19 May 2005, **\$13,126**



4. Millwork trim at Fire Extinguisher Cabinets  
Work associated with the addition and installation of trim around two (2) Fire Extinguisher cabinets. All work shall be completed in accordance with the written documentation from George M. Raymond Co, dated 12 April 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-32 dated 19 May 2005 **\$2,460**
  
5. Millwork trim at Pit Canopies #1 and 2  
Work associated with the addition of trim between the pit canopies 1 and 2 for added tile. All work shall be completed in accordance with the written documentation from George M. Raymond Co, dated 12 April 2005 and provided drawings.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-33 dated 19 May 2005, **\$1,166**
  
6. Ultra Lounge Low Wall Revision  
Work associated with the rework of the Ultra Lounge Low Walls including filling in the screw holes and joints and repainting. All work shall be completed at the request of Roger Thomas and in accordance with written documentation dated 7 May 2005 and drawings provided.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-34 dated 19 May 2005, **\$8,458**
  
7. Revise openings for ATMs  
Work associated with modification of the openings for ATM equipment located in Garage Promenade foyer and separation using a center partition in the Host Lounge. All work shall be completed in accordance with the NOC (Notice of Clarification) LR-201-222 dated 29 February 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-35 dated 13 May 2005, **\$14,385**

8. Mezzanine Level Additional HVAC Units  
Work associated with furnishing and installation of two (2) Fan Coil Units in Mechanical Room 2-M031. All work shall be completed in accordance with WDD's Change Directive dated 29 March 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-39 dated 16 May 2005, **\$49,832**.
  
9. Arcade  
Work associated with furnishing and installing an additional tele-data outlet and revision of room finishes for the office located in the Arcade. All work shall be completed in accordance with WDD's Change Directive dated 3 March 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-41 dated 18 May 2005, **\$2,534**
  
10. Gaming Table Revision  
Revise gaming table layout at Pit No. 8 in response to security concerns and sight lines into the pit area from the adjacent high limit area. Work associated with revision requires modification of lighting, security, power and data to gaming table. Black Jack tables numbered 3 and 4 at pit No. 8 to toe in, similar to like conditions in the casino area. All work shall be completed in accordance with WDD Change Directive dated 10 March 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-43 dated 18 May 2005, **\$15,366**
  
11. Added door to Spa Level Men's Manicure  
Work associated with the addition and installation of a glass door and sidelights between the Beauty Salon and Men's Manicure. All work shall be completed in accordance with the WDD Directive dated 29 March 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-44 dated 18 May 2005, **\$8,045**
  
12. Race & Sports Book TV Addition  
Work associated with installation of two (2) additional Owner-furnished TV's in the Race & Sports Book. All work shall be completed in accordance with WDD's Change Directive dated 1 April 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-45 dated 18 May 2005, **\$5,768**.

13. Casino Host Lounge Electrical Revision  
Work associated with relocation of two (2) electrical floor outlets in the Casino Host Lounge. All work shall be completed in accordance with WDD's Change Directive dated 2 April 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-46 dated 18 May 2005, **\$3,973**.
14. Added Electrical Requirements for Spa Level Hydro Tubs  
Work associated with the revision of existing electrical work to the Spa Level Hydro Tubs. All work shall be completed in accordance with WDD's Change Directive dated 19 April 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-47 dated 18 May 2005, **\$12,407**.
15. Casino Service Bar Vestibule Finish Revisions per CCHD  
Work associated with revision to floor and wall finishes in vestibules in Service Bar Nos. 3 and 4. All work shall be completed in accordance with WDD Change Directive dated 7 April 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-48 dated 18 May 2005, **\$8,422**
16. Smoke Guard Doors  
Work associated with furnishing and installing three (3) smoke guard doors for elevators PS-1, PS-2 and KS-8. All work shall be completed per the direction of WDD and utilizing documentation provided.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-50 dated 23 May 2005, **\$41,900**
17. Added Handrails @ Asian Bistro Entry  
Work associated with installation of two handrails at the entry to the Asian Bistro Restaurant as required by CCBD for opening. All work shall be completed in accordance with documentation provided by George Raymond Co dated 17 May 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-51 dated 20 May 2005, **\$5,111**

18. South Promenade Rosettes  
Work associated with patching the rosettes at the South Promenade in area where chandeliers were removed. All work shall be completed at the request of Nita Green and in accordance with the attached documentation provided by George M. Raymond Co, dated 13 May 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-52 dated 20 May 2005 **\$643**
  
19. Crown Moulding @ Asian Bistro Façade  
Work associated with the rework of the crown moulding located at the Asian Bistro Façade at the request of Nita Green. All work shall be completed in compliance with written documentation dated 17 March 2005 as well as provided drawings.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-54 dated 20 May 2005, **\$4,966**
  
20. STS Valet Cabinet Locks  
Work associated with provision of four (4) locks at the STS Valet Cabinet and six (6) locks at the Car Rental Counter. All work shall be completed in accordance with drawings 11/2 – ID201.60, which stipulates that locks will be provided and installed by owner.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-55 dated 20 May 2005, **\$601**
  
21. Add Ceiling trim at Door to STS Garden  
Work associated with the addition of ceiling trim at the Casino entry to the STS Garden. All work shall be completed at the request of Charles Gonzales and the written documentation and drawings provided.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-57 dated 20 May 2005, **\$5,264**
  
22. Moulding @ Doorway near Chinese Restaurant  
Work associated with the addition of moulding trim around the exterior doorway near the Chinese Restaurant... All work shall be completed in compliance with WDD directive issued by Nita Green.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-58 dated 20 May 2005, **\$1,355**

23. Exit Sign Modifications  
Work associated with the modification of Decorative Beams in the Casino to ensure visibility of exit signs. All work shall be completed in accordance with written documentation from George Raymond Co dated 3 November 2004 along with documentation from Nita Green of WDD.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-59 dated 20 May 2005, **\$5,741**
24. Race and Sports Book Shrouds  
Work associated with the addition of shrouds at the Race and Sports Book wagering counter. All work shall be completed per approved mock-up and written documentation dated 15 February 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-66 dated 23 May 2005. **\$16,374**
25. Added Wall Panels @ Chinese Restaurant Restroom Foyer  
Work associated with installation of new wall panels at the Chinese Restaurant Foyer. All work shall be completed in accordance with documentation provided by Alexander Manufacturing, dated 18 January 2005 and written documentation from Kara Siffermann of WDD dated 13 January 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-68 dated 23 May 2005, **\$617**
26. MDF Panels @ Main Cage  
Work associated with addition of four substitute panels at the Main Cage to utilize faux onyx by Arfa (for Wynn Design) in lieu of book matched onyx due to inability of existing wall framing to support the weight of originally specified book match onyx panels. All work shall be completed in accordance with specifications outlined in correspondence and drawings provided by George Raymond Co dated 17 May 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-70 dated 23 May 2005, **\$3,429**

27. Race & Sports Book Projector Confidence Monitors

Work associated with the provision of three (3) projector confidence monitors for the Race & Sports Book that are specified to be Owner-furnished.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No CP-78 dated 26 May 2005, **\$11,004**

D. Lowrise – Area 3

1. Masonry Walls at Marquee Sign

Work associated with the addition of CMU screen walls at the owner constructed Marquee Sign. All work shall be completed in accordance with written documentation issued by butler-Ashworth dated 13 January 2005 as well as provided drawings.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No 707-16 dated 19 May 2005, **\$5,823**

2. Smoke Door at Chanel – Retail Space #17

Work associated with installation of smoke door at Chanel – Retail Space #17. All work shall be completed in accordance with NOC#LR-369 dated 23 February 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-20 dated 19 May 2005, **\$17,802**

3. Added FRP in Rooms 3B155, 3B039 & 3B040

Work associated with added FRP in rooms 3B155, 3B039 and 3B040. All work shall be completed in accordance with revisions to the room finish schedule as confirmed by Butler Ashworth 31 May 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-21 dated 19 May 2005, **\$6,726**

4. Chocolate Shop Pantry Finishes

Work associated with the modification of ceiling and wall finishes in the chocolate shop pantry as required by the Clark County Health Department. All work shall be completed in accordance with WDD's Change Directive dated 29 March 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-23 (revised) dated 19 May 2005, **\$1,353.**

5. Kitchen Lighting Levels  
Work associated with the increase of lighting levels in the kitchens as required by the Clark County Health Department. All work shall be completed in accordance with WDD's Change Directives dated 9 March 2005 and 29 March 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-26 (revised) dated 19 May 2005, **\$39,127.**
  
6. Italian Restroom Partition Support  
Work associated with the modification of the Italian restrooms for ADA compliance and support. All work shall be completed in accordance with WDD's Change Directive dated 19 April 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-27 (revised) dated 19 May 2005, **\$3,156.**
  
7. Japanese Restaurant Sake Barrel Splash  
Work associated with the addition of a stainless steel splash and the Sushi Bar Sake Barrels as required by the Clark County Health Department. All work shall be completed in accordance with WDD's Change Directive dated 15 April 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-28 (revised) dated 19 May 2005, **\$1,547.**
  
8. LeBete Toilet Partitions  
Work associated with the modifications to the marble toilet partitions in LeBete. All work shall be completed in accordance with WDD's Change Directive dated 2 April 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-29 (revised) dated 19 May 2005, **\$26,122.**
  
9. Exit / Egress Items  
Work associated with the modification to the exit / egress items in the Lake Mountain Feature as required by the Clark County Department of Building Inspections. All work shall be completed in accordance with WDD's Change Directive dated 15 April 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-30 dated 12 May 2005, **\$11,236.**

10. Executive Office Corridor & Pantry HVAC Modifications  
Work associated with revisions to Executive Office Corridor and Pantry changes. All work shall be completed in accordance with revised equipment schedule.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-31 dated 20 May 2005, **\$43,533**
11. Chanel Balcony – Service Bar Air Curtain.  
Work associated with addition of Chanel Balcony Service Bar Air Curtain. All work shall be completed in accordance with WDD Change Directive dated 1 April 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-32 dated 19 May 2005, **\$1,755**
12. SAW's Bathroom Door and Front Door Change  
Work associated with modifications to SAW's bathroom door and front door. All work shall be completed in accordance with WDD Change Directive dated 6 May 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-33 dated 19 May 2005, **\$32,398**
13. Brass Rings @ Lobby Bar Railing  
Work associated with the supply and installation of brass rings at the Lobby Bar Railing in lieu of owner furnished marble spheres. All work shall be completed in accordance with WDD's response to RFI #528 dated 8 December 2004.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-34 dated 19 May 2005, **\$4,989**
14. Additional Front of House Exit Signs  
Work associated with installation and/or relocation of Front of House exit sign for Lowrise Area 3. All work shall be completed in accordance with WDD memorandum dated 8 April 2005 regarding CCBD requirements.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-35 dated 19 May 2005, **\$34,934**



15. Lighting Deletions and Relocations  
Work associated with lighting deletions and relocations. All work shall be completed in accordance with change directive dated 19 April 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-36 dated 19 May 2005, **\$19,201**
  
16. Retail Promenade Oculus Moulding  
Work associated with revisions to Retail Promenade Oculus Moulding. All work shall be completed in accordance with WDD Change Directive dated 19 March 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-38 dated 19 May 2005, **\$8,919**
  
17. Art Gallery Lighting/Security Revisions  
Work associated with revisions to Art Gallery Lighting/Security. All work shall be completed in accordance with NOC #LR-308-204 dated 21 January 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-39 dated 19 May 2005, **\$2,195**
  
18. North & South Porte Cochere Canopy Downlights  
Work associated with north and south Porte Cochere Canopy Downlights. All work shall be completed in accordance with Change Directive dated 17 April 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-40 dated 19 May 2005, **\$38,083**
  
19. Miscellaneous Extra Work – T. Nickolas  
Work associated with various design changes involving stone counters, column revisions, miter slopes @ base and relief cuts @ stone claddings at the Auberge Boulud by T. Nickolas. All work shall be completed in accordance with provided design documents and field directives.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-45 dated 26 May 2005, **\$38,526**

E. **Lowrise – Area 4**

1. **Pro Sound Extra Work**

Work associated with addition of drape control @ High Limit Area, lowrise area 4. All work shall be completed in accordance with documentation to be provided by WDD.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. CP-01 (Partial Approval) dated 25 May 2005, **\$6,688**

2. **Baccarat Ceiling Revisions**

Change Proposal No. 71402-16 for Drawing Revisions (mechanical, plumbing and electrical) dated 8 October 2004, which changed Baccarat ceiling linear diffuser layout and associated ductwork and added Baccarat exit fixtures. All work shall be completed in accordance with WDD Letters of Transmittal dated 2 November 2004 and 12 November 2004 and Butler-Ashworth's Overview/Drawing List dated 8 October 2004.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 71402-16 dated 17 February 2005, **\$77,951**.

3. **Baccarat Office Deletion and Conversion to Gaming Area**

Work associated with redesign to delete baccarat office and conversion to gaming area. All work shall be completed in accordance with WDD's Letters of Transmittal dated 10 December 2004 and 3 January 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 71402-19 dated 25 May 2005, **\$163,224**.

4. **Electrical Revision Issue Drawings dated 12/29/04**

Work associated with electrical revision issue drawings dated 29 December 2004 which were required to complete circuiting at telecommunications rooms. All work shall be completed in accordance with WDD's Letter of Transmittal dated 19 January 2005 and Butler-Ashworth's Overview/Drawing List dated 29 December 2004.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 71402-20 dated 16 February 2005, **\$23,671**

5. Ferrari Turntable Ramp Modifications  
Work associated with required modification to turntable ramps located in the Ferrari dealership. All work shall be completed in accordance with WDD Change Directive dated 2 February 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71402-23 (Revised) dated 18 May 2005, **\$5,335**
  
6. Ferrari Shop Revisions  
Work associated with revisions to the Ferrari Shop, including demolition of existing CMU wall and concrete floor slab to allow for new alignment pit, provision of stainless steel diamond plate trench covers along North wall, addition of walls and door at Parts Counter and Office, addition of gypsum board soffits and grid ceiling at stairwell, addition of floor and wall tile at Engine Room, wash bays and alignment pit and addition of electrical outlets, telephone receptacles and lighting fixtures. All work shall be completed in accordance with WDD Change Directive dated 28 February 2005 as well as Architectural and Electrical drawing revisions issued on 7 March 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71402-25 dated 25 May 2005 **\$170,271**
  
7. Casino Employee Corridor (4-B220)  
Work associated with the upgraded finishes at the Casino Employee Corridor (4-B220). All work shall be completed in accordance with WDD Change Directive dated 10 March 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No 71402-28 dated 18 May 2005, **\$12,085**.
  
8. Added Supply and Return for Refrigeration Rack Room  
Work associated with the addition of a return air diffuser and supply air diffuser with approximately 6' of supply duct to the Refrigeration Rack Room in the Basement Level Main Kitchen per provided drawing. All work shall be completed in accordance with WDD Change Directive dated 29 March 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71402-29 dated 19 May 2005, **\$1,726**

9. Pool Stairwell Electrical Panel Finishes

Work associated with the addition of paint and trim moulding finishes added to electrical panel located at the Pool stairwell. All work shall be completed in accordance with WDD Change Directive dated 2 April 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71402-31 dated 19 May 2005, **\$357**

10. Ferrari Café Sneeze Guard

Work associated with the addition of a 3/8" tempered glass sneeze guard shown on food service drawings and as required by Clark County Health District. A 6" high sneeze guard, set 2" in from employee side of counter, will be installed per provided drawings. All work shall be completed in accordance with WDD Change Directive dated 2 April 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71402-32 dated 19 May 2005, **\$3,572**

11. Remove mouldings in High Limit Slots

Work associated with the removal of mouldings as required to install games in the High Limit Slot area. All work shall be completed in accordance with WDD Change Directive dated 15 April 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71402-37 dated 19 May 2005, **\$898**

12. Misting Equipment Room Electrical

Work associated with the addition of electrical service to support equipment that has been installed by Mist Systems International that was not shown on original shop drawings. All work shall be completed in accordance with WDD Change Directive dated 16 April 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71402-38 dated 19 May 2005, **\$11,591**

F. Lowrise – Area 6

Additional Nuclear Exit Fixtures (Revised)

Work associated with the addition of nuclear exit fixtures for the pools. All work shall be completed in accordance with Clark County Building Department requirements and WDD direction.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. CP-715-07 (revised) dated 13 May 2005, \$30,949.*

Pool Bar Ceiling Revision

Work associated with the revision to Pool Bar ceiling to address the CCHD concerns over bird control for Area 6 pools. All work shall be completed in accordance with WDD directive dated 2 April 2005 as well as provided sketches.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. CP-715-08 dated 16 May 2005, \$8,352*

G. Site Improvements

1. Pedestrian Bridge Work

Provide following work related to pedestrian bridge:

- a) Complete retaining walls and footings as required to support concrete sidewalks as shown on the Louis Berger civil drawings dated 25 January 2005;
- b) Complete additional concrete sidewalks as shown on WDD plans.
- c) Complete approximately 524.1 l.f. of additional wave railing as shown on WDD plans.
- d) Complete additional CMU pilasters with EIFS finish, pre-cast trim and caps as shown on plans.
- e) One section of wave railing at corner will be removable for use as temporary crosswalk access.
- f) One handicap ramp at the corner is included for access for the temporary pedestrian crossing.
- g) Additional off site work is not included. All work occurs behind the back of curb. Specifically we do not include any temporary or permanent signal modifications, striping or signage as may be required for the pedestrian crossing(s).

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No.70602-15 dated 02 March 2005, \$700,254.*

2. Convention & Receiving Retaining Wall Finish  
Painting of the exposed convention and receiving yard concrete retaining walls. All work shall be completed in accordance with Butler Ashworth Retaining Walls elevation revisions dated 31 January 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70602-16 dated 7 March 2005 **\$12,397**
  
3. Electrical Yard Site Walls - Painting  
Provide two coats of paint to the Electrical Yard CMU walls. Work to be in accordance with WDD's Change Directive dated 10 February 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No.70602-17 dated 7 March 2005, **\$19,423**.
  
4. Temporary and Future Gas Service  
Work associated with provision of gas service through the installation of natural gas lines. All work shall be completed in accordance with LOCHSA Engineering's drawing XBT-GAS dated 30 March 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 706-18 dated 10 May 2005, **\$123,713**
  
5. Shuttle Stop & Canopy  
Work associated with the addition of a shuttle stop and canopy. All work shall be completed in accordance with WDD's drawings GcfA1.02, A1.03, E1.00, E2.01 & SE1.02 dated 3/7/05, and S1.02 & E1.01 dated 2/24/05.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No.706-19 dated 12 May 2005, **\$265,099**.
  
6. Self-Park Garage Signage Power  
Work associated with the addition of electrical power for the illuminated self-park garage signage. All work shall be completed in accordance with WDD's Change Directive dated 29 March 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No.706-20 (revised) dated 19 May 2005, **\$1,656**.

7. North & South Porte Cochère Sculpture Foundations & Lighting  
Work associated with the addition of sculpture foundations and lighting located at the North & South Porte Cochère. All work shall be completed in accordance with WDD's change Directive dated 29 March 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 706-21 (revised) dated 19 May 2005, **\$33,377**.
  
8. Added Pavers per NOC #LR3 368  
Work associated with addition of pavers to finish floor pattern. All work shall be completed in accordance with Valley Crest Estimate #2 and Stone Connection's Invoice #2540.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 706-22 dated 19 May 2005, **\$11,931**
  
9. Add Instant on capability to Metal Halide Fixtures  
Work associated with installation of temporary and permanent quartz fixtures to the Metal Halide area lights at an emergency exit for Area 4 to add instant on capability as required by CCBD Inspector and required for the Certificate of Occupancy. All work shall be completed in accordance with the documentation and drawings provided by Fast Trac Electric dated 10 May 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 706-24 dated 26 May 2005, **\$11,325**
  
10. Fast Trac Electric – Miscellaneous Extra Work  
Work associated with miscellaneous extra work performed by Fast Trac Electric. All work shall be completed in accordance with revised civil plans on Shuttle Road and field conditions.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 706-27 dated 26 May 2005, **\$12,682**
  
11. Bill Shoning – Miscellaneous Extra Work  
Work associated with repainting and cleanup of the Bomel Garage prior to use by the public.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 706-29 dated 26 May 2005, **\$93,332**

12. Exterior Guardrail/Handrails

Work associated with conversion of selected exterior handrails to guardrails. All work shall be completed in accordance with documentation dated 3 April 2005 along with drawings provided. Changes were made during shop drawing review as required by field conditions that made guardrails necessary.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 706-30 dated 26 May 2005 **\$7,199**

12. Ferrari Gate Power

Work associated with providing power, gate control wiring, loop wiring and repair of underground utilities to facilitate the addition of a motorized gate at the Ferrari service ramp. All work shall be completed in accordance with WDD change directive dated 19 March 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 707-17 dated 19 May 2005 **\$8,868**

H. Lake Mountain Feature

1. Spare Lamps for each Fixture in Area 3A

Work associated the provision of ten (10) spare lamps for each Fixture in Area 3A. All work shall be completed in accordance with Todd Nisbet's request on 14 April 2005 to Ken Kefelas at Bombard Electric.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 707-07 dated 19 May 2005, **\$16,699**

2. Aeration Added on Tunnel Lid

Work associated with the addition of aeration assemblies on the lighting tunnel lid. All work shall be completed in accordance with WDD's e-mail directive dated 9 February 2005 and sketches provided by STO.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 707-08 dated 19 May 2005, **\$72,554**

3. Exit/Egress Items

Work associated with exit/egress items. All work shall be completed in accordance with WDD's change directive dated 15 April 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 707-09 dated 19 May 2005, **\$12,549**



4. Soft Start Starters for Lake Agitation Pumps

Work associated with replacement of the 40HP VFD's on the Lake agitation pumps with 50 HP soft start starters. All work shall be completed in accordance with WDD's e-mail directive dated 21 March 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No 707-10 dated 19 May 2005 **\$23,955**

5. Gear Change per JBA

Work associated with electrical gear changes made to protect the secondary side of transformer T-L3CL. All work shall be completed in accordance with JBA's memo and sketch dated 28 January 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 707-11 dated 19 May 2005, **\$8,119**

6. Relocate Tempest Dome Light Fixtures

Work associated with relocating five (5) tempest dome light fixtures. All work shall be completed in accordance with WDD's e-mail directive dated 4 February 2005 and PWLD's sketch dated 24 January 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 707-12 dated 19 May 2005 **\$16,835**

7. Chilled Water to Marquee Sign

Work associated with installation of underground chilled water supply and return lines to the Marquee Sign. All work shall be completed in accordance with NOC (Notice of Clarification) LR3A108 dated 10 December 2004.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 707-13 dated 19 May 2005, **\$52,747**

8. Revised Lake Agitation

Work associated with the revision of lake agitation termination. All work shall be completed in accordance with WDD's e-mail directive and STO's e-mail design change dated 10 March 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 707-14 dated 19 May 2005, **\$16,027**

9. Revised Waterfall Intake Piping

Work associated with the revision of waterfall pump intake piping. All work shall be completed in accordance with WDD's e-mail dated 4 February 2005 and sketches from STO.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 707-15 dated 19 May 2005, **\$7,887**.

I. Villas

1. Mural Installation

Install ceiling murals (AF-3002) in all six Villas. Work to be in accordance with WDD's Change Directive dated 19 January 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No.CP-06 dated 18 January 2005, **\$50,655**.

J. Fairway Villas & Fairway Villas Expansion

1. Plaster Material Upgrade for Pools

Upgrade plaster material to Armorcoat with blue quartz for pools located in the Fairway Villas and the Fairway Villas Expansion. Work to be in accordance with WDD's Change Directive dated 4 April 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No.CP-709-11 and CP-710-07 dated 30 March 2005, **\$12,699**.

2. Nuclear Exit Fixtures

Work associated with addition of nuclear exit fixture for the Fairway Villas. Work shall be in accordance with CCBD requirements and WDD direction per Bombard Electric COR#FV-42 dated 20 April 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. CP-709-12 dated 12 May 2005 **\$10,224**

3. Door Lock Wiring

Work associated with provision of additional door lock wiring for the Fairway Villas. All work shall be in accordance with information provided in NOC (Notice of Clarification) #20 dated 16 February 2005 and Bombard Electric COR#FV-40 dated 28 February 2005.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No CP-709-13 dated 13 May 2005, \$33,733.*

4. Exit Doors Between Area 4 and Area 7

Work associated with the addition of exterior exit doors between Area 4 and Area 7 as well as the door hardware. All work shall be completed in accordance with WDD's Change Directive dated 8 April 2005.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. CP-710-08 dated 17 May 2005, \$35,406.*

K. Expansion – Showroom

Nevada Power Company Revisions

Work associated with the underground conduit, switch manholes and capacitor bank pad necessary to provide service to the Showroom. All work shall be completed in accordance with Nevada Power Company Drawing (ID # 176329) dated 12 July 2004.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request dated 23 June 2004, \$149,860.*

L. Encore

Provide new HVSST Switchgear to support future Encore interconnect to Wynn Las Vegas substation. Work to be completed on an accelerated basis to complete prior to April 12, 2005 in order to avoid any impact to the operational pre-opening activities.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal No. 71402-22 dated 26 May 2005, \$553,690*

M. Pending Scope Revisions

1. Hansen Mechanical Extra Work

Work associated with extra work completed by Hansen Mechanical contractors for work relating to various design issues. All work shall be completed in accordance with field directives and Clark County Building Department Notifications provided.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. CP-64 dated 23 May 2005, \$104,627*

2. Miscellaneous Extra Work – Hansen Mechanical

Work associated with performance of miscellaneous extra work including Projection Room Pressurization, additional plumbing requirements, revisions to grease duct work and installation of backflow preventor and water valves for landscaping. All work shall be completed in accordance with provided design document and field directives.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 713-44 dated 26 May 2005, **\$ 281,911**

3. Telecommunication Drawing Revisions dated 11/15/04

Work associated with addition of outlets in Pool Equipment Room based on drawing revisions dated 15 November 2004. All work shall be completed in accordance with WDD's Letter of Transmittal dated 24 November 2004 and Butler-Ashworth's Overview/Drawing dated 15 November 2004.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 71402-17 dated 16 February 2005, **\$1,533**

4. Electrical and Telecommunications Revision Issue Drawings dated 11/22/04

Work associated with addition of required exit signs and related circuiting, revised lighting and related circuiting, added electrical circuiting for fire/smoke dampers, circuiting for fire shutters, janus boards, plasma screen TVs and food service equipment, revised panel schedules and ceiling/wall removal and replacement. All work shall be completed in accordance with WDD's Letter of Transmittal dated 8 December 2004 and Butler-Ashworth's Overview/Drawing List dated 22 November 2004.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 71402-18 dated 16 February 2005, **\$107,128**

5. Post 9/27/04 Revisions/NOC's

Work associated with Revisions/NOC's priced after 27 September 2004 dealing with revisions to structural and miscellaneous steel, millwork, framing, wallboard and painting, stone and tile, plumbing and HVAC and electrical. All work shall be completed in accordance with provided Summary of Revisions/NOC's priced after 27 September 2004.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 71402-21 dated 23 May 2005, **\$157,005**

6. Post 9/27/04 Miscellaneous Items

Work associated with miscellaneous items priced after 27 September 2004 dealing with structural and miscellaneous steel, millwork, doors and windows, finishes, plumbing and HVAC and electrical. All work shall be completed in accordance with MCA's Summary of Miscellaneous Items priced after 27 September 2004, which is provided.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 71402-22 dated 26 May 2005, **\$341,337**

**TOTAL SCOPE OF WORK – CHANGE ORDER NO. 8**

Increase to Contractor Controlled Budget to incorporate the Scope of Work detailed above.	\$ 4,965,466
<b>Total Guaranteed Maximum Price Increase</b>	<b><u>\$ 4,965,466</u></b>

**1. 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 \$1,078,513,856 to \$ 1,083,479,322 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 May 2005, 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 \$ 1,083,479,322.

**2. PROJECT SCHEDULE**

The current Project Schedule 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, remains unchanged by this Change Order.

As of the date hereof the Guaranteed Date of Substantial Completion for the Project which is defined as 27 April 2005 has been successfully achieved by the Contractor. The Guaranteed Date of Substantial Completion for the Showroom Addition is 26 August 2005. The Contractor does not know of any facts or circumstances which would cause Substantial Completion of the Showroom Addition to be delayed beyond the stated date.

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 May 2005.

**OWNER:**

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

By: /s/ Todd Nisbet  
Name: Todd Nisbet  
Title: Assistant Secretary

**CONTRACTOR:**

MARNELL CORRAO ASSOCIATES, INC.,  
a Nevada corporation

By: /s/ Perry Eiman  
Name: Perry Eiman  
Title: President

**ARCHITECT:**

BUTLER/ASHWORTH ARCHITECTS, LLC

By: /s/ DeRuyter Butler  
Name: DeRuyter Butler  
Title: President

AGREEMENT FOR GUARANTEED MAXIMUM PRICE  
CONSTRUCTION SERVICES

CHANGE ORDER

20 July 2005

**Project: Wynn Las Vegas**

**Change Order No.: 9**

**“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 (“Project”)** dated as of June 4, 2002 (“**Contract**”) is hereby modified as follows:

**1. SCOPE OF WORK**

The Scope of Work associated with Change Order No. 9 is detailed in the following Change Order narrative by project area. It should be noted that the Owner generally agrees with the Scope of the Work but reserves the right to perform a detailed audit of the Change Order documentation pursuant to the terms of this Agreement. Subsequent adjustments, if any, will be credited to the Cost of the Work:

**A. Highrise**

1. Post 9/27/04 Miscellaneous Items

Work associated with miscellaneous items such as final cleaning, miscellaneous steel, millwork, roofing, finishes, plumbing & HVAC, and electrical which were priced after 27 September 2004.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70102-60 dated 26 May 2005 (partial approval) **\$64,493**

**B. Lowrise Master Plan**

1. Bombard – Façade Lighting

Work associated with installation of metal pans for future neon on the North and South Porte Cocheres and Sands Promenade. All work will be done in accordance with field directives provided.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70202-01 dated 21 June 2005, (revised amount) **\$16,829**

2. Fisk Technologies Added Security Cameras

Work associated with installation and addition of security cameras at various locations throughout the property. All work shall be completed in accordance with Notices of Clarifications, Drawing Revisions, Field Directives and Gaming Control Board Requirements.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70202-02 dated 10 June 2005, **\$81,239**

3. Fire Command Monitoring

Work associated with additional cost to provide 24-hour monitoring of the Fire Command Center. All work shall be completed in accordance with written documentation provided by SAFE Electronics.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70202-15 dated 24 May 2005, (partial approval) **\$33,158**

4. Fire Alarm Revisions

Work associated with additions and revisions to fire alarm systems. All work shall be completed in accordance with various drawing revisions, field directives and Clark County Building Department requirements.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 70202-16, dated 25 May 2005 (partial approval) **\$62,780**

5. Security and Surveillance Revisions

Work associated with added security and surveillance equipment. All work will be done in accordance with Notices of Clarifications, Drawing Revisions, Field Directives and Gaming Control Board requirements.



*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 70202-19 dated 7 June 2005 (partial approval) \$146,870*

6. Elevator Revisions

Work associated with revisions to various Lowrise elevators. All work shall be done in accordance with WDD direction and design revisions.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 70202-20, dated 09 June 2005 (partial approval) \$64,351*

7. HVAC Controls

Work associated with the provision of additional various Lowrise HVAC controls such as control panels, override switches, conduit, wire and sensors. All work will be done in accordance with WDD direction and design revisions not included in the original control matrix and Yamas CORs provided.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 70202-22, dated 22 June 2005, (revised amount) \$130,733*

C. Lowrise – Area 1

1. Area 1 Electrical

Work associated with miscellaneous electrical revisions such as fire alarm changes, addition and relocation of fixtures, addition of circuits and cameras, addition of smoke doors, relocation of panels and required premium time. All work shall be completed in accordance with WDD direction and design revisions and provided Bombard Electric CORs.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 71102-30 dated 18 May 2005 (partial approval) \$9,385.*

2. Insulation on the make-up water to Cooling Tower

Work associated with provision of insulation on the make-up water to the Cooling Tower for Lowrise Area 1. All work shall be completed in accordance with Testmarc completion report and JBA specifications.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 71102-35 dated 10 June, 2005, (revised amount) \$9,623.*

3. Relocation of make-up water connection for chilled water.

Work associated with relocation of the make-up water connection for the chilled water for Lowrise Area 1. All work shall be completed in accordance with JBA design sketch.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 71102-36 dated 10 June 2005, (revised amount) \$5,973.*

4. Catwalk Rails

Work associated with the provision of catwalk rails and handrail extensions at the loading dock area. All work shall be completed in accordance with WDD's direction and CCBD code requirements per Vegas Steel CORs provided.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 71102-39, dated 10 June 2005, \$15,238*

5. Paint Booth Assembly

Work associated with the assembly of the Owner's paint booth for the Lowrise Area 1. All work shall be completed in accordance with WDD's request for Southland Industries to assemble the paint booth as well as Southland Industries' CORs provided.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 71102-40, dated 22 June 2005, (revised amount) \$22,816.*

**D. Lowrise – Area 2**

1. Flashing at Self Park Garage

Work associated with installation of aluminum squeeze flashing at the self-park garage to match that of existing flashing previously installed. All work shall be completed in accordance with documentation provided by WDD.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 71202-40, dated 24 June 2005, (revised amount) **\$38,712***

2. Revise Exterior Awning Fabric & Awning

Work associated with revising the exterior awning fabric at the Ferrari Dealership and revising the exterior awning and fabric at the STS Entry. All work shall be completed in accordance with written direction provided by WDD Interiors dated 17 February 2005 and 11 February 2005.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 71202-49 dated 20 May 2005, **\$17,767**.*

3. Highrise Elevator Lobby

Work associated with relocation of columns in the Highrise Elevator Lobby. All work shall be completed in accordance with WDD field direction.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 71202-56, dated 20 May 2005, **\$1,980***

4. Raymond Company Extra Work

Work associated with extra work completed by Raymond Company such as replacement and installation of cast at Patio Arches, installation of elliptical tube @ STS for wall and window support, framing rework at patio alcove, reframing of columns at North Valet. All work shall be completed in accordance with design documentation provided by WDD.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 71202-61 dated 23 May 2005, (partial approval) **\$85,904***

5. Technicoat Waterproofing Extra Work

Work associated with the application of Neogard Coating to concrete deck located beneath spa tubs, deluge showers and hot and cold plunges as well as installation of waterproofing membrane on Spa floor. All work shall be completed in accordance with various field directives provided.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 71202-62R dated 08 June 2005, **\$23,471***

6. Amazon Masonry Extra Work  
Work associated with installation of ST502 stone on meeting room stair walls, installation of additional exterior stone wrapping the corner at the Ferrari Dealership as well as addition of ST501 stone on the backside of the STS Building. All work shall be completed in accordance with various field directives and WDD sketches provided.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71202-80 dated 07 June 2005, **\$52,993**
7. Millwork Remodel for Lighting Change @ W. Ink  
Work associated with remodeling the lighting fixture going into the display cabinets inside the W. Ink store. All work shall be completed in accordance with written documentation provided.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71202-83 dated 09 June 2005, (revised amount) **\$1,451**
8. Wall Molding at Wedding Chapel  
Work associated with modifying the wall molding at the Wedding Chapel. All work shall be completed in accordance with the requirements provided by Coast Draperies as approved by WDD.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71202-84 dated 09 June 2005, (revised amount) **\$583**.
9. Miscellaneous Design Revisions  
Work associated with Owner directed drawing changes for KHS&S for items such as modification to casino ceiling for installation of cameras, patchwork, framing modifications, painting, addition of drywall & finish, modification to door frames and addition and revision of soffits and walls. All work shall be completed in accordance with documentation provided.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71202-85 dated 17 June 2005, (partial approval) **\$269,086**
10. Elevator Machine Room Doors  
Work associated with providing and installing two elevator machine room doors in the basement at the WLV Parking Garage. All work shall be completed in accordance with a directive from the Nevada State Elevator Inspector as approved by WDD.

**E. Lowrise – Area 3**

1. Lobby Atria Mosaics and Columns

Work associated with cutting mosaics flowers to fit the pattern and float and scratch to Atria columns. All work shall be completed in accordance with written documentation provided by Joe Fadel, of WDD, dated 8 June 2005.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal No. 71302-19 dated 19 May 2005, (partial approval) \$56,489*

2. Miscellaneous Extra Work – F. Rodgers Insulation

Work associated with extra work such as ceiling tile repair and addition of FRP panels at various locations by F. Rodgers Insulation. All work shall be completed in accordance with design documents and field directives provided by WDD.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 71302-47 dated 26 May 2005, \$8,671*

3. Miscellaneous Extra Work – Glenn Rieder

Work associated with miscellaneous extra work performed by Glenn Rieder such as:

- Italian Restaurant – upgrading railing, addition of skylight supports for chandeliers, addition of cove moulding in restrooms and changing skylight glass to bronze laminate
- Japanese Restaurant – revise details @ Abaca ceiling, add lids @ Saki Barrels and miscellaneous millwork

All work shall be completed in accordance with miscellaneous design documents and field directives provided by WDD.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 71302-49, dated 27 May 2005. (partial approval) \$306,842*

4. Miscellaneous Extra Work – Universal Brass  
Work associated with miscellaneous extra work required for installation of two additional rails in Art Gallery. All work shall be completed in accordance with design documents and field directives as provided by WDD.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71302-51 dated 27 May 2005, **\$6,098**
  
5. Miscellaneous Extra Work – Northwestern, Inc.  
Work performed by Northwestern, Inc. such as providing various amenities in the Executive offices – vanities, material/finish upgrade, moulding change, keypads and shower door casings; various revisions to jewelry store including addition of gold leaf vitrines, transformer boxes, steel trim and new front door hardware. All work will be completed in accordance with miscellaneous design documents and field directives provided by WDD.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71302-53, dated 27 May 2005, (partial approval) **\$76,996**
  
6. Miscellaneous Extra Work – Powell Cabinets  
Work performed by Powell Cabinets related to replacement of “Stickwall” metal feature. All work will be completed in accordance with field directives provided by WDD.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71302-55, dated 27 May 2005, **\$38,424**
  
7. Miscellaneous Extra Work – Mueller Custom Cabinetry  
Work associated with miscellaneous cabinetry such as provision of Auberge restroom trees, door jambs, steakhouse-custom carved mirrors, additional millwork and cabinets. All work shall be completed in accordance with provided design documents and field directives.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71302-56 dated 31 May 2005, (partial approval) **\$60,373**

8. Miscellaneous Extra Work – KHS&S  
Work associated with miscellaneous extra work performed by KHS&S dealing with metal framing and drywall issues for various areas such as the Night Club, Escalator Bar, Auberge Boulud, North Porte Cochere, Japanese Kitchen, Steak Restaurant, Escalator Foyer, BOH, Atrium ceiling, Italian patio and exit sign relocation. All work shall be completed in accordance with design documents and field directives provided by MCA..  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71302-58, dated 06 June 2005, (revised amount) **\$175,809**
  
9. Miscellaneous Extra Work – International Woodwork Corp.  
Work associated with miscellaneous extra work including changing base from marble to wood at Concierge and revision to casing heads. All work shall be completed in accordance with design documents and field directives provided by WDD.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71302-61 dated 10 June 2005, **\$47,857**
  
10. Revised miscellaneous extra work – Glenn Rieder  
Work associated with miscellaneous extra work provided by Glenn Rieder such as the addition of showcases, tables, cabinet doors, cove moulding, gold leaf finish and base in dressing rooms. All work shall be completed in accordance with design documents and field directives provided by MCA Field Supervision and WDD.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71302-62 (revised), dated 22 June 2005, (partial approval) **\$95,834**
  
11. Executive Offices – Add drawers to E. Wynn’s Office  
Work associated with the addition of vanity drawer banks at E.Wynn’s vanity. All work shall be completed in accordance with design documents and field directives provided by WDD.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71302-64 dated 13 June 2005, **\$6,240**

12. Miscellaneous Extra Work – Hansen Mechanical

Work associated with various miscellaneous extra work such as mechanical equipment watch, stand-by, change out of sheaves and modification of hoods (noise reduction) and addition of dipper-well @ Patisserie. All work shall be completed in accordance with design documents and field directives provided.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71302-65, dated 16 June 2005, **\$11,403**

13. Miscellaneous Extra Work – Raymond

Work associated with extra work performed by Raymond such as painting taxi tunnel walls and North Porte Cochere Valet ramps, addition of walls at Manolo and Italian Restaurant, addition of densglass and EIFS at West Promenade entry and painting in Executive offices. All work shall be completed in accordance with design documents and field directives provided by WDD.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71302-68, dated 17 June 2005, (partial approval) **\$49,516**

14. Lobby Bar Back Bar Display

Work associated with Lobby Bar Back Bar Display. All work shall be completed in accordance with direction provided by WDD.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71302-69, dated 21 June 2005, **\$10,418**

**F. Lowrise – Area 4**

1. Added Electrical Panel for A/V Racks

Work associated with the addition of an electrical panel in the Area 4 Telecommunications Room 4-B154 for two additional A/V Racks that were installed by ProSound. All work shall be completed in accordance with WDD Change Directive dated 14 April 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71402-36, dated 24 June 2005, **\$5,546**



2. Post 12/31/04 Added Work Items

Work associated with miscellaneous items such as structural and miscellaneous steel, millwork, firestopping, door & windows, finishes, equipment, plumbing & HVAC, electrical which were priced after 31 December 2004. All work will be done in accordance with written documentation provided.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71402-39, dated 15 June 2005, (partial approval) **\$1,029,593**

3. Revisions/NOC's – Post 12/31/04

Work associated with revisions and NOC's received after 12/31/04 such as additional lighting for Showroom Retail façade and Buffet, revisions to walls at STS Elevator lobbies, addition of fire/smoke dampers at Housekeeping elevator lobby, reconfiguration of Pool Retail Ceiling, revision to electrical at Baccarat VIP Lounge and addition of clock outlet outside ticket sales. All work shall be completed in accordance with provided documentation.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71402-42, dated 13 June 2005 (partial approval) **\$64,689**

4. Corsa HVAC modification

Work associated with added duct/diffuser and return grill work in Corsa Cucina Storage. All work shall be completed in accordance with WDD Construction Change Directive dated 11 May 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71402-44 dated 21 June 2005, **\$4,975**

5. 2/17/05 Drawing Revisions

Work associated with drawing revisions dated 2/17/05 dealing with Lowrise Area 4 Plumbing revisions to show the relocation of GI-8 and GI-9 with associated piping and equipment away from the existing building foundations. All work shall be completed in accordance with WDD Letter of Transmittal dated 2/22/05 and Overview/Drawing List dated 2/17 /05.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71402-45 dated 21 June 2005, **\$20,964**

6. Exhaust for Pantry

Work associated with addition of an exhaust at the Baccarat Pantry to prevent food odor migration into adjacent areas. All work shall be completed in accordance with WDD Construction Change Directive dated 31 May 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71402-46, dated 21 June 2005, **\$2,956**

7. Safety Screen in Elevator Pit

Work associated with installation of chain link fencing to separate Elevator Nos S-1, P-7 and S-2 pits. All work shall be completed in accordance with provided documentation and at the instruction of the State Elevator Inspector.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71402-47 dated 23 June 2005, **\$3,818**

**G. Lowrise – Area 6**

1. Decorative Manhole/clean out lids – Pool Area

Work associated with the provision of decorative manhole/clean-out lids for the Area 6 Pools. All work shall be completed in accordance with WDD Civil drawing revisions.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71502-09 dated 10 June 2005, **\$5,503**

2. Relocated carbonators at the Pool Bar

Work associated with the provision of labor and materials for the relocating and modification of carbonators at the Pool Bar. All work shall be completed in accordance with WDD sketch dated 15 March 2005 and Hansen Mechanical COR.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 71502-10 dated 24 June 2005, **\$1,920**

3. Additional center rail at bridges and VIP level

Work associated with the addition of center rail at small bridges and additional rail at the VIP level as required by the Clark County Building Department for the Area 6 Pools. All work shall be completed in accordance with provided WDD field directive.

**H. Site Improvements**

1. Revised Street Signs

Work associated with the revision of street name signs for Porte Cocheres. All work shall be completed in accordance with WDD's e-mail directive dated 23 November 2004.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 70602-23 dated 19 May 2005, (revised amount) \$4,039*

2. Miscellaneous Extra Work – Bombard Electric

Work associated with miscellaneous extra work performed by Bombard Electric such as addition of landscape light fixtures along Sands Avenue, added lights and wall sconces, replacement of pole lights, extension of cable conduits and addition of spare underground conduits. All work shall be completed in accordance with design documents and field directives provided.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 70602-26 dated 26 May 2005, (revised amount) \$133,534*

3. Island Removal

Work associated with the removal of the pork chop island at the entry to Wynn Las Vegas that prevents traffic from continuing down to the Self Park Garage entry. All work shall be completed in accordance with WDD Change Directive dated 5 May 2005.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 70602-34 dated 31 May 2005, \$17,290*

4. H.M. Door @ Marquee Sign

Work associated with addition of H.M. door at the Marquee sign to hide the electric gear. All work shall be completed in accordance with revised Architectural drawings issued to supplement NOC#LR3A-116.

*Increase to Guaranteed Maximum Price. Total increase per MCA Change Proposal Request No. 70602-35 dated 31 May 2005, \$2,595*

5. TAB Contractors Extra Work

Work associated with miscellaneous extra work required for completion of underground wet utilities. All work shall be completed in accordance with revised drawings, NOC's and field directives.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70602-36 dated 06 June 2005 (partial approval) **\$281,088**

6. Arcon (KHS&S) – Added Special Finish Concrete

Work associated with providing special finish (stamped) concrete walkways at the North and South Porte Cochere sculpture islands. All work shall be completed in accordance with provided architectural sketches issued 01 April 2005, pursuant to WDD's Change Directive.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70602-37 dated 08 June 2005, **\$24,582**

7. Southern Nevada Paving Miscellaneous Extra Work-Mass Excavation

Work associated with miscellaneous extra work including backfill at added retaining walls @ Nevada Power/Electric Yard, grading and excavating soil at various planter locations throughout the property. All work shall be completed in accordance with MCA field direction.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70602-40 dated 06 June 2005, (partial approval) **\$115,537**

8. Offsite Improvements

Work associated with miscellaneous off-site improvements to Las Vegas Boulevard, such as delayed start of work due to settlement concerns associated with the mountain construction, excavation of sink hole discovered during construction, additional paving, excavation of median islands to prepare planters for landscape contractor, roto-milling and addition of curb and gutter. All work shall be completed in accordance with field conditions and field directives from the CCPW Inspector.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70602-41 dated 06 June 2005, **\$102,659**

9. Shuttle Road CMU Wall – Century Steel  
Work associated with reinforcement of steel for the CMU retaining wall on Shuttle Road. All work shall be completed in accordance with Butler-Ashworth Drawings dated 01 November 2004.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70602-42 dated 06 June 2005, **\$25,909**
  
10. Universal Brass – Miscellaneous Extra Work  
Work associated with miscellaneous extra work performed on the mountain rail fencing including the addition of 30 linear feet of steel fencing at the south end of the Marquee Sign compound, additional gates added to north end of the mountain fence, extend length of fence mounting posts and add post supports to brace fence posts back to shotcrete walls. All work shall be completed in accordance with e-mail directives provided by WDD.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70602-43 dated 13 June 2005, **\$22,124**
  
11. Vegas Steel – Gates on the Nevada Power Yard  
Work associated with the removal, revision and reinstallation of the gates on the Nevada Power Yard (Gates NP-OIA). All work shall be completed in accordance with revised drawing dated 02 August 2004.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70602-44 dated 17 June 2005, (revised amount) **\$9,379**

**I. Lake Mountain Feature**

1. Miscellaneous Extra Work – Bombard Electric  
Work associated with miscellaneous electrical work including addition of lighting control changed and added light fixtures to the top of lighting tunnel, performed by Bombard Electric. All work shall be completed in accordance with various NOC's, and field directives as detailed in Bombard's Change Order Requests.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70702-18, dated 07 June 2005 (partial approval) **\$109,105**

2. Hansen Mechanical – Miscellaneous Added Work

Work associated with miscellaneous added mechanical work such as installation of atmospheric pressure relief vents, installation of plumbing lines, testing check valves in lake aeration system, installation of backflow preventors, start up costs for compressors, cleaning drain lines and installation of piping for planter drains. All work shall be completed in accordance with various NOC's and field directives provided.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70702-19 dated 08 June 2005, (partial approval) **\$ 67,990**

3. Additional Drywall Finish and Paint

Work associated with additional drywall finish and paint for items such as light booths, walls and pipe in light tunnel, various walls and ceilings and exit doors. All work shall be completed in accordance with field directives from WDD as well as written documentation from Wyatt DeFreitas dated 22 June 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70702-20 dated 08 June 2005, (partial approval) **\$20,560**

4. Rock & Waterscapes Systems, Inc. – Miscellaneous Extra Work

Work associated with painting portions of the shotcrete walls various shades of green for review by WDD for use on all exterior surfaces of the mountain. Also includes rock and waterscape rework and repainting the main lake edge rock work. All work shall be completed in accordance with field directives from WDD.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70702-21 dated 08 June 2005, (revised amount) **\$25,935**

5. Vegas Steel – Miscellaneous Extra Work

Work associated with miscellaneous work performed by Vegas Steel in the Equipment Building. All work shall be completed in accordance with revised drawings from Big Show, field directives from WDD, CCBD Inspector and State Elevator Inspector.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70702-23, dated 08 June 2005 (partial approval) **\$28,076**

**J. Villas**

1. Installation of back bar TV “break-away tops”

Work associated with installation of back bar TV “break-a-way tops” at the living rooms for the Lowrise Villas to provide an alternate safety mechanism to prevent the TV lift from injuring individuals. All work shall be completed in accordance with the detailed proposal provided by Powell Cabinets, dated 26 May 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No 70802-07 dated 09 June 2005, **\$15,184.**

**K. Fairway Villas Expansion**

1. Fairway Villas Expansion

Work associated with various electrical revisions for the Area 7 Fairway Villa Expansion. All work shall be completed in accordance with WDD directives and design revisions.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. CP-71002-09, dated 23 May 2005, (partial approval) **\$19,712**

**L. Expansion – Showroom**

1. Mirror at Promenade

Work associated with furnishing and installing 1/4” clear mirror above and along the jamb of Promenade Door Nos. 1-105E, 1-105F, 1-105G and 1-105H. All work shall be completed in accordance with ID Drawing ID4.60 dated 13 May 2005.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 70502-1R (revised), dated 6 June 2005, (revised amount) **\$3,711**

2. Surveillance/Security System

Work associated with furnishing and installing the surveillance/security system in Showroom #1. All work shall be completed in accordance with M. Malia & Associates drawings dated 20 August 2004.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 70502-2, dated 8 June 2005, **\$181,249.**

3. Voice/Data/Wireless Cabling System  
Work associated with the installation, termination and testing of the voice/data and wireless cabling system for Showroom #1. All work shall be completed in accordance with JBA Telecommunication drawings.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 70502-3, dated 8 June 2005, **\$80,026**
  
4. Showroom Plinth Detail  
Work associated with furnishing and installing door casing plinth blocks in the Showroom. All work shall be completed in accordance with ABA SK-6.1 dated 01 June 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 70502-4 dated 10 June 2005, (revised amount) **\$3,976**
  
5. Showroom Revised Wall Cap  
Work associated with revision to the Showroom wall cap detail. All work shall be completed in accordance with ABA SK-6.105A dated 01 June 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 70502-5 dated 10 June 2005, (revised amount) **\$10,698.**
  
6. Drawer Locks  
Work associated with furnishing and installing a quantity of 112 Olympus #777-1C cabinet locks to BOH casework. All work shall be completed in accordance with written documentation provided.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 70502-6 dated 10 June 2005, (revised amount) **\$11,532.**
  
7. Change in Paint Color  
Work associated with changing the paint color in the Promenade Corridor to Showroom #1. All work shall be completed in accordance with WDD Change Directive dated 13 May 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 70502-7 dated 15 June 2005 (revised amount) **\$896**



8. Fire Extinguisher Cabinet Relocation  
Work associated with relocation of one fire extinguisher cabinet in the Promenade Corridor. All work shall be completed in accordance with WDD correspondence dated 03 June 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 70502-8 dated 16 June 2005, (revised amount) **\$664**
  
9. Corner Guards  
Work associated with furnishing and installing of brushed brass wall panel corner guards. All work shall be completed in accordance with ABA Sketch SK-6.15.05B dated 15 June 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 70502-9R, dated 14 July 2005, (revised amount) **\$8,456**.
  
10. Gold Leaf Finish  
Work associated with furnishing and installing a gold leaf finish in the Promenade coffers. All work shall be completed in accordance with Detail 9 on Interior Drawing ID8.14 revised 13 may 2005.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 70502-10, dated 22 June 2005, (revised amount) **\$49,277**

**M. Rain Delay Costs**

1. Southern Nevada Paving – Final Grading & Paving & Rain Damage  
Work associated with miscellaneous extra work and rain damage for on-site paving and roadways, shuttle road and residents' road. All work shall be completed in accordance with provided drawings and field directives described in Southern Nevada Paving's Daily Work Tickets.  
*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70602-38 dated 06 June 2005, **\$186,046**

2. Southern Nevada Paving – Mass Excavation & Rain Damage

Work associated with miscellaneous work resulting from heavy rains, including clean up of mud from site roadways and various locations throughout the property, temporary paving @ North Porte Cochere to control mud, removal of wet pumping soil and stabilization of areas for paving. All work shall be completed in accordance with change order requests from Southern Nevada Paving’s Daily Work Tickets.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal Request No. 70602-39 dated 06 June 2005, **\$243,941**

3. Rock & Waterscape Rain Delay Costs (Lake/Mountain)

Costs associated with standby time due to heavy rains for work to be performed on Lake/Mountain feature. All work shall be completed in accordance with Field Directives provided in an attempt to mitigate rain delays.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 70702-27 dated 21 June 2005, (revised amount) **\$16,573**

4. Technicoat –Rain Damage Costs (Lake/Mountain)

Work associated with replacement of Baricoat fluid applied waterproofing with sheet membrane waterproofing as a result of wet/rainy conditions in order to maintain the construction schedule. All work shall be completed in accordance with field directives provided by MCA.

*Increase to Guaranteed Maximum Price.* Total increase per MCA Change Proposal No. 70702-28 dated 21 June 2005, (revised amount) **\$20,118**

**TOTALSCOPE OF WORK – \$5,118,965 CHANGE ORDER NO. 9**

Transfer Owner Controlled Contingency within current GMP to Contractor Controlled Budget	\$ <5,118,965>
Increase to Contractor Controlled Budget to incorporate the Transfer of Owner Controlled contingency to account for the Scope of Work detailed above.	\$ 5,118,965
<b>Total Guaranteed Maximum Price Increase</b>	<b>\$ <u><u>-0-</u></u></b>

**1. INCREASE TO GUARANTEED MAXIMUM PRICE**

The Guaranteed Maximum Price set forth in Section 3.1 of the Contract is by this Change Order is not increased. 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 \$ 1,083,479,322.

**2. PROJECT SCHEDULE**

As of the date hereof the Guaranteed Date of Substantial Completion for the Project which is defined as 27 April 2005 has been successfully achieved by the Contractor. The Guaranteed Date of Substantial Completion for the Showroom Addition is 26 August 2005. The Contractor does not know of any facts or circumstances which would cause Substantial completion of the Showroom Addition to be delayed beyond the stated date.

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 20 July 2005.

**OWNER:**

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

By: /s/ Todd Nisbet  
Name: Todd Nisbet  
Title: Assistant Secretary

**CONTRACTOR:**

MARNELL CORRAO ASSOCIATES, INC.,  
a Nevada corporation

By: /s/ Perry Eiman  
Name: Perry Eiman  
Title: President

**ARCHITECT:**

BUTLER/ASHWORTH ARCHITECTS, LLC

By: /s/ DeRuyter Butler  
Name: DeRuyter Butler  
Title: President

**AGREEMENT FOR GUARANTEE MAXIMUM PRICE  
CONSTRUCTION SERVICES**

**CHANGE ORDER**

**20 July 2005**

**Project: Wynn Las Vegas**

**Change Order No.: 10**

**“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 fka Le Rêve** dated as of June 4, 2002 (“**Contract**”) is hereby modified as follows:

**1. DEFINITIONS.**

Initial capitalized terms not otherwise defined in this Change Order shall have the meanings attributed to such terms in the Contract.

**2. SCOPE OF WORK/CLAIMS**

Substantial Completion of the Work in its entirety and the Project was achieved on June 24, 2005. Completion of the entire Project and Work (“Completion” as used herein shall mean all of the requirements and deliveries under Section 12.2 of the Contract relating to Final Completion have been satisfied, except for those requirements and deliveries in the following subsections: 12.2.1 - a, b, d (d only from the standpoint that it is a general representation), 12.2.1.2, 12.2.1.3, 12.2.1.4, 12.2.1.7, 12.2.1.9, 12.2.1.8, 12.2.1.14 and 12.2.1.17) is scheduled for September 26, 2005. The only Work remaining to be completed from and after the date of this Change Order, relates to the Showroom with a remaining balance to be billed of \$5,569,549, punch list items and correction of any defective or noncomplying Work.

Owner has previously issued to Contractor several Drawing revisions, Construction Change Directives, and Notices of Clarification (“NOC”) relating to the Project and scope of the Work. Contractor has submitted to Owner various Claims and/or Change Proposals and other requests, directly and indirectly through Contractor’s Anticipated Cost Report and other writings, relating to Changes, and requesting an increase in the Guaranteed Maximum Price (“GMP”) in the total amount of \$76,916,616 (“Claim Amount”) for all such Changes and other Claims (including overtime). Owner disputes the Claims and Claim Amount, and alleges that, pursuant to the Contract, Contractor’s Claims have not been timely presented, and therefore are waived and released and Contractor is estopped from making any such Claims,

and that Contractor is responsible for any and all increased costs for all such Changes and is not entitled to any increase in the GMP. Contractor, on the other hand, alleges that Contractor's Claims have been timely presented and that Contractor believes it is entitled to all such Changes and a corresponding increase in the GMP.

Owner and Contractor have discussed the Changes, Claims and Claim Amount, and, subject to the terms of this Change Order, have mutually agreed to settle the Changes, Claims and Claim Amount by increasing the GMP by the one time total amount of \$50,000,000.00 ("Agreed Change Amount"), in full and complete satisfaction of any and all claims of any kind in any way relating to the Site, Project, Work and/or Contract, including, but not limited to, any and all Claims by Contractor, all as more fully set forth below.

**3. INCREASE TO GUARANTEED MAXIMUM PRICE.**

The GMP set forth in Section 3.1 of the Contract is by this Change Order hereby increased from \$1,083,479,322 to \$1,133,479,322, as described in Paragraph 2 above. 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 \$1,133,479,322.

Contractor agrees and accepts that the Agreed Change Amount constitutes the full and complete satisfaction of all amounts claimed and which could be claimed by Contractor for any and all Work, materials, services and/or construction performed or supplied by, on behalf of, through, or under the supervision of Contractor with regard to the Work, Contract, Site and/or Project through the date of this Change Order, including, without limitation, the Claim Amount and all Changes, whether asserted or unasserted, and is inclusive of any and all direct, indirect, consequential costs, damages or losses based upon any theory of recovery; including, but not limited to, as provided in Section 18.8.2 of the Contract: actual damages, all time-related costs, total costs, modified total costs, Eichleay formula or other equitable adjustment theories, full compensation for general conditions, extended site supervision and administration, all field, site, branch and/or home office overheads, all general and administrative costs, and any other similar direct, indirect and/or time-related costs howsoever derived or formulated.

As a condition precedent to payment, in whole or in part, of the Agreed Change Amount to Contractor, Contractor shall execute and deliver, or cause to be executed and delivered, to Owner, without any reservations or conditions or pending items, (i) duly executed and acknowledged Unconditional Final Lien Waivers (in the form as required in the Contract) from Contractor and each and every Subcontractor and Vendor that provided services or materials with regard to the Work on the Site and/or the Project, and all other persons that could claim lien rights against the Project, the Site or Owner or any predecessor or successor of Owner or any of Owner's Lenders, for, through, by or on behalf of Contractor (collectively, "Lien Holders"), for all Work on the Project and/or Site through and including the date of this Change Order and for which Contractor has previously submitted an Application

for Progress Payment and Contractor has received payment from or on behalf of Owner ("Final Lien Waivers"), (ii) duly executed and acknowledged Conditional Lien Waivers (in the form as required in the Contract) from each and every Lien Holder for all Work on the Project and/or Site through and including the date of this Change Order and shall include any and all Work that was the subject of any Claim ("Conditional Lien Waivers"), and (iii) all such other documents and Certificates as required under the Contract for an Application for Progress Payment with regard to such Work ("Application Certificates"). Owner shall make partial payments of the Agreed Change Amount only to the extent Owner receives the foregoing items in clauses (i), (ii) and (iii) hereof. Contractor agrees to deliver to Owner, not later than September 26, 2005, all required Final Lien Waivers, Conditional Lien Waivers and Application Certificates as defined and described above in this Paragraph, final subcontractor change orders, final OCIP audits and executed Contractor's Completion Certificate (in the form as required in the Disbursement Agreement). Owner reserves the right, as provided in Section 5.5 of the Contract, to make payment of some or all of the Agreed Change Amount by use of joint checks, and as to those portions of the Agreed Change Amount for which Owner uses joint checks, concurrent with delivery of the joint check by Owner to Contractor and/or the other joint payee Lien Holder, Contractor and such joint payee Lien Holder shall deliver to Owner a duly executed and acknowledged Final Lien Waiver instead of a Conditional Lien Waiver with regard to the amount of Work covered by such payment. Subject to Owner making timely payments under this Change Order and/or the Contract (if applicable) as and when such payments become due thereunder, Contractor shall and hereby agrees to indemnify Owner against and be fully responsible for any and all liens against the Project and relating to the Work, as set forth in and pursuant to the Contract, including, but not limited to, Sections 7.19 and 12.2.1.12 of the Contract.

**4. RELEASES.**

In consideration of Owner's entering into this Change Order and the increase in the GMP, of the Agreed Change Amount as provided in this Change Order, and as a condition precedent to such increase, effective as of the date of this Change Order, Contractor, on behalf of itself and its successors, assigns, officers, members, managers and affiliates (each a "Contractor Party"), hereby fully and forever unconditionally releases and discharges Owner and its successors and assigns, officers, members, managers, affiliates, agents, representatives, past and present, from, and hereby fully and completely waives, any and all claims (including, but not limited to, any Claims, any Claim Amount, any Changes (whether implemented or not implemented), any increase in the GMP and/or Contractor's Fee, and/or any adjustment to the Contract Time), wages, compensation, overtime, reimbursement, demands, rights, liens, actions, lawsuits, causes of action, early completion bonus, obligations, debts, costs, expenses, attorneys' fees, damages, judgments, orders and liabilities of any kind or nature, under the Contract, or in law, equity or otherwise, known and unknown, asserted and unasserted, foreseen and unforeseen, fixed or contingent, suspected or unsuspected, whether or not concealed or hidden, which exists or may exist as of the date of this Change Order or is held, or heretofore

owned or may be held by Contractor and/or any Contractor Party, arising out of or in any way related to the Work, Contract, Project and/or the Site, including but not limited to, any and all Changes, Claims, Disputes, Change Orders, NOC's, Drawing revisions, Change Proposals, Construction Change Directives, and/or any materials, labor and/or services supplied or performed by, through or on behalf of Contractor from the beginning of time and through the date of this Change Order, and without any reservation by Contractor or any Contractor Party of any rights or claims of any kind whatsoever, or any other matter, for future consideration. Contractor hereby agrees, represents and warrants that this Change Order fully and finally resolves all outstanding Claims, Change Proposals and Changes, and there are no pending scope or other Changes or Change Proposals or Claims of any kind, including, but not limited to implemented or not implemented, that relate to the period prior to the date of this Change Order that survive this Change Order and the release contained herein.

Contractor hereby agrees, represents and warrants that the matters released in this Change Order are not limited to matters which are known or disclosed, and Contractor may discover facts different from or in addition to those that it now knows or believes to be true with respect to the matters released in this Change Order. Nonetheless, Contractor agrees that the releases and waivers in this Change Order shall be and remain in full force and effect in all respects, notwithstanding such different or additional facts. Contractor's releases and waivers in this Change Order shall be and remain in effect as a full and complete release of all such matters, notwithstanding the discovery by Contractor of the existence of any additional or different claims or facts. Contractor hereby waives with respect to the matters released in this Change Order any and all rights and benefits which it now has, or in the future may have conferred upon it, by virtue of the provisions of federal, state or local law, rules or regulations, including, without limitation, any provision of applicable law which provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor. Contractor has been advised by counsel to its satisfaction as to the effect of this waiver.

In consideration of Contractor's entering into this Change Order, and subject to Paragraph 7 below and the provisions of the Contract (including, but not limited, Sections 5.8.7 and 5.12 thereof) and Contractor's performance of its obligations and covenants under this Change Order, and effective as of the date of receipt by Owner of the Final Lien Waivers, Conditional Lien Waivers and Application Certificates as provided in this Change Order, Owner hereby fully and forever unconditionally releases and discharges Contractor and its successors and assigns, officers, members, managers, affiliates, agents, representatives, past and present, from, and hereby fully and completely waives, any and all claims (including, but not limited to, any Claims, and/or any adjustment to the Contract Time), compensation, reimbursement, demands, rights, liens, actions, lawsuits, causes of action, obligations, debts, costs, expenses, attorneys' fees, damages, judgments, Back Charges due to Project schedule delays and compression solely as a result of and relating to the Work

("Back Charges" as used herein shall mean costs for work performed or costs incurred by Owner that should have been or allegedly should have been performed or incurred by Contractor under the Contract), orders and liabilities of any kind or nature, under the Contract, or in law, equity or otherwise, which exists or may exist as of the date of this Change Order or is held, or heretofore owned or may be held by Owner, and which is actually known to Owner, but solely and only to the extent arising out of or related to the request by Contractor for an increase in the GMP for the Claimed Amount and not relating to any defective or noncomplying Work, whether or not such Work is a part of the Claimed Amount. Owner acknowledges that as of the date of this Change Order, and subject to Contractor's performance of its obligations and covenants under this Change Order and the Contract, Owner is not actually aware of any Claims or any other Back Charges held by Owner against Contractor under the Contract or at law or in equity (other than as to defective or noncomplying work as to which Owner has already provided notice thereof to Contractor).

**5. RETAINAGE.**

As of the date of this Change Order, Owner is holding as Retainage, the total amount of \$58,285,725 ("Retainage Amount"). The Retainage Amount plus any additional Retainage (as defined in Section 5.6 of the Contract) shall be held and may be used and/or applied by Owner as provided in the Contract. The preceding notwithstanding, nothing in this Change Order shall be construed as a release or waiver by either party of any of their respective rights in and to the Retainage Amount and any Retainage under the Contract.

**6. PROJECT SCHEDULE.**

Contractor agrees that it shall achieve Completion of the Project and Work not later than September 26, 2005, and Contractor represents, warrants and agrees that it is not aware of any facts, circumstances or events which would or might cause Completion to be delayed beyond September 26, 2005 or cause the cost of the remaining Work for which Owner would be responsible under the Contract to exceed the current Guaranteed Maximum Price.

**7. MISCELLANEOUS.**

In no event, and notwithstanding any provision or term hereof, shall this Change Order or any term, provision, condition or release herein contained, in any way be or be construed to be a limitation on, or waiver or release of, any liability, responsibility or obligation of Contractor (or any party that provided any services or materials to the Site or Project for, through, under the supervision of or on behalf of Contractor), directly or indirectly relating in any way to or arising out of or under the Contract and or any of the materials, services and/or Work performed by, through, or on behalf of Contractor on the Site and/or Project. Further, nothing in this Change Order shall in any way impair, limit, modify, waive, release, or reduce Owner's rights, including, but not limited to, warranty, audit and/or setoff rights, under the Contract or any terms or conditions therein.



Except to the extent expressly set forth in this Change Order, nothing in this Change Order shall in any way impair, limit, modify, waive, release, or reduce Contractor's rights under the Contract or any terms or conditions therein including, without limitations, its rights to enforce or assert its rights under the Contract in defense of any Claim asserted by Owner against Contractor after the effective date of this Change Order.

Contractor warrants and represents to Owner that it has not assigned, granted or transferred in anyway to any other persons, entity, firm or corporation, in any manner, including by subrogation, any of the matters or claims released by this Change Order.

This Change Order is effective as of July 20, 2005. The invalidity of any of the provisions, or any portion thereof, of this Change Order, shall not affect the remaining provisions or remaining portion thereof, and the remainder shall be construed as if such invalid provision or portion thereof had not been included in this Change Order.

**OWNER:**

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

By: WYNN RESORTS HOLDINGS  
its told member

By: WYNN RESORTS, LIMITED  
its sole member

By: \_\_\_\_\_ /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn  
Title: Chief Executive Officer

**CONTRACTOR:**

MARNELL CORRAO ASSOCIATES, INC.,  
a Nevada corporation

By: \_\_\_\_\_ /s/ ANTHONY A. MARNELL II

Name: Anthony A. Marnell II  
Title: Chairman and Chief Executive Officer

**ARCHITECT:**

BUTLER/ASHWORTH ARCHITECTS, LLC,  
a Nevada limited liability company

By: \_\_\_\_\_ /s/ DERUYTER O. BUTLER

Name: DeRuyter O. Butler  
Title: President

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**EMPLOYMENT AGREEMENT**

**(“Agreement”)**

- by and between -

**WORLDWIDE WYNN, LLC,**

**(“Employer”)**

- and -

**SCOTT PETERSON**

**(“Employee”)**

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**DATED:** as of June 27, 2005

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**EMPLOYMENT AGREEMENT**

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**THIS EMPLOYMENT AGREEMENT (“Agreement”)** is made and entered into the 27th day of June 2005, by and between **WORLDWIDE WYNN, LLC (“Employer”)** and **SCOTT PETERSON (“Employee”)**.

**WITNESSETH:**

**WHEREAS**, Employer is a limited liability company duly organized and existing under the laws of the State of Nevada, and engaged in the business of furnishing management personnel to affiliated casino resort enterprises outside the United States; and,

**WHEREAS**, Employee is a party to that certain Employment Agreement dated as of October 28, 2002 (the “2002 Employment Agreement”) with Wynn Las Vegas, LLC (“WLV”), a affiliate of Employer;

**WHEREAS**, Employee and WLV have agreed to terminate the 2002 Employment Agreement in order to permit Employer and Employee to enter into this Agreement;

**WHEREAS**, Employer is responsible for providing qualified and experienced casino and resort management executives to an affiliate located in Macau, Special Administrative Region, China; and,

**WHEREAS**, Employer has need of executive personnel who are qualified and experienced managers in the casino resort business, including without limitation an executive to perform the duties generally associated with the position of Chief Financial Officer in Macau; and,

**WHEREAS**, Employee is an adult individual currently residing at 8450 Alta, #207, Las Vegas, Nevada 89145; and,

**WHEREAS**, Employee has represented and warranted to Employer that Employee possesses sufficient qualifications, expertise and experience in order to fulfill the terms of the employment stated in this Agreement; and,

**WHEREAS**, Employer is willing to employ Employee, and Employee is desirous of accepting employment from Employer under the terms and pursuant to the conditions set forth herein;

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, and in consideration of the mutual covenants, agreements, understandings, undertakings,

representations, warranties and promises hereinafter set forth, and intending to be legally bound thereby, Employer and Employee do hereby covenant and agree as follows:

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

(a) "**Affiliate**" - means with respect to a specified Person, any other Person who or which is (i) directly or indirectly controlling, controlled by or under common control with the specified Person, or (ii) any member, director, officer or manager of the specified Person. For purposes of this definition, only, "control", "controlling", and "controlled" mean the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting power of the stockholders, members or owners and, with respect to any individual, partnership, trust or other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

(b) "**Anniversary**" - means each anniversary date of the Effective Date during the Term (as defined in Section 6 hereof).

(c) "**Cause**" - means

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

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

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

(iv) Employee's breach, neglect, refusal, or failure to materially discharge his duties (other than due to physical or mental illness) commensurate with his title and function, or Employee's failure to comply with the lawful directions of Employer, that is not cured within fifteen (15) days after Employee has received written notice thereof from Employer;

(v) a willful and knowing material misrepresentation to Employer's or an Affiliate's Board of Directors;

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

(vii) Employee's material violation of a statutory or common law duty of loyalty or fiduciary duty to Employer or an Affiliate, *provided, however*, that Employee's disability due to illness or accident or any other mental or physical incapacity shall not constitute "Cause" as defined herein.

(d) "**Change of Control**" - means the occurrence, after the Effective Date, of any of the following events:

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

(ii) the individuals who, as of the Effective Date, are members of WRL's Board of Directors (the "Existing Directors") cease, for any reason, to constitute more than fifty percent (50%) of the number of authorized directors of WRL as determined in the manner prescribed in WRL's Articles of Incorporation and Bylaws; *provided, however*, that if the election, or nomination for election, by WRL's stockholders of any new director was approved by a vote of at least fifty percent (50%) of the Existing Directors, such new director shall be considered an Existing Director; *provided further, however*, that no individual shall be considered an Existing Director if such individual initially assumed office as a result of either an actual or threatened "Election Contest" (as described in Rule 14a-11 promulgated under the Exchange Act) or other actual or threatened

solicitation of proxies by or on behalf of anyone other than the Board (a "Proxy Contest"), including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest; or

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

For purposes of the foregoing definition of "Change in Control," the term "Excluded Stockholder" means Stephen A. Wynn, the spouse, siblings, children, grandchildren or great grandchildren of Stephen A. Wynn, any trust primarily for the benefit of the foregoing persons, or any Affiliate of any of the foregoing persons.

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

(f) "**Effective Date**" - means June 27, 2005.

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

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

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

(iii) Employer materially reduces the aggregate benefits and perquisites to Employee from those being provided immediately before the Change in Control;

(iv) Employer or any of its Affiliates reduces Employee’s responsibilities or directs Employee to report to a person of lower rank or responsibilities than the person to whom Employee reported immediately before the Change in Control; or

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

(h) “**Benefits Date**” - means April 5, 1993.

(i) “**Wynn Macau**” - means Wynn Resorts (Macau) S.A., a limited liability company organized and existing under the laws of the SAR, and which has entered into an exclusive concession agreement with the SAR to develop and operate one or more casino resorts in the SAR.

(j) “**SAR**” - means Macau, Special Administrative Region, China.

(k) “**Separation Payment**” - means a lump sum equal to (A) one year of Employee’s Base Salary (as defined in Subsection 8(a) of this Agreement) plus (B) the bonus that was paid to Employee under Subparagraph 7(b) for the preceding bonus period, projected over the twelve (12) months following that bonus period, plus (B) any accrued but unpaid

vacation pay plus (D) any Gross-Up Payment required by Exhibit B to this Agreement, which is incorporated herein by reference, said sum to be paid concurrent with the Separation Payment.

**2. BASIC EMPLOYMENT AGREEMENT.** Subject to the terms and pursuant to the conditions hereinafter set forth, Employer hereby employs Employee during the Term hereinafter specified to serve in a capacity, under a title, and with such duties not inconsistent with those set forth in **Section 3** of this Agreement, as the same may be modified and/or assigned to Employee by Employer or Wynn Macau from time to time; provided, however, that no change in Employee's duties shall be permitted if it would result in a material reduction in the level of Employee's duties as in effect prior to the change, it being further understood that a change in Employee's reporting responsibilities is not itself a basis for finding a material reduction in the level of duties.

**3. DUTIES OF EMPLOYEE.** Employee shall perform such duties assigned to Employee by Employer as are generally associated with the duties of **Vice President – Chief Financial Officer** of Wynn Macau, or such similar duties as may be assigned to Employee as Employer or Wynn Macau may reasonably determine. Employee's duties shall include, but not be limited to: (i) the preparation of relevant budgets and allocation of relevant funds; (ii) the selection and delegation of duties and responsibilities of subordinates; (iii) the direction, review and oversight of all matters under Employee's supervision; and (iv) such other and further duties as are consistent with his position and which may be assigned by Employer or Wynn Macau to Employee from time to time. The foregoing notwithstanding, Employee shall devote such time to Employer's Affiliates as may be required by Employer or its Affiliates, provided such duties are not inconsistent with Employee's primary duties hereunder.

**4. ACCEPTANCE OF EMPLOYMENT/ TERMINATION 2002 EMPLOYMENT AGREEMENT.** Employee hereby unconditionally accepts the employment set forth hereunder, under the terms and pursuant to the conditions set forth in this Agreement. Employee hereby covenants and agrees that, during the Term, Employee will devote the whole of Employee's normal and customary working time and best efforts solely to the performance of Employee's duties under this Agreement, and will not perform any services for any casino, hotel/casino or other similar gaming or gambling operation which is not owned by Employer or any of Employer's Affiliates.

As a condition to the acceptance of the employment hereunder and concurrent the execution of this Agreement, Employee agrees that as of the Effective Date and concurrent with the effectiveness of this Agreement Employee agrees to terminate the 2002 Employment Agreement by executing and delivering the Termination Agreement attached hereto as Exhibit A.

**5. TERM.** Unless sooner terminated as provided in this Agreement, the term of this Agreement (the "**Term**") shall consist of four (4) years commencing on the Effective Date of this Agreement and terminating on the fourth Anniversary of the Effective Date.



In the event that Wynn Macau is sold, transferred or otherwise conveyed to an entity (the "Acquirer") that is not an Affiliate of WRL (a "Macau Disposition"), Employee agrees, that if requested by Employer, to serve as a consultant to the Acquirer for a period of up to six months (the "Macau Transition Period") following the effective date of the Macau Disposition. Following the Macau Transition Period, Employer agrees that Employee will be offered a position with one of Employer's affiliates based in the United States of equal or elevated general compensation and professional status as Employee's position and compensation as of the Macau disposition and, if no such offer is made, Employer must tender the Separation Payment to Employee within ten (10) days.

At the end of the Term of this Agreement, Employer agrees that Employee will be offered a position with one of Employer's affiliates based in the United States of equal or elevated general compensation and professional status as Employee's position and compensation at the end of the Term of this Agreement and, if no such offer is made, Employer must tender the Separation Payment to Employee within ten (10) days.

**6. SPECIAL TERMINATION PROVISIONS.** Notwithstanding the provisions of Section 5 of this Agreement, this Agreement shall terminate upon the occurrence of any of the following events:

- (a) the death of Employee;
- (b) the giving of written notice from Employer to Employee of the termination of this Agreement upon the Complete Disability of Employee;
- (c) the giving of written notice by Employer to Employee of the termination of this Agreement upon the discharge of Employee for Cause;
- (d) the giving of written notice by Employer to Employee of the termination of this Agreement following a disapproval of this Agreement or the denial, suspension, limitation or revocation of Employee's License (as defined in Subsection 8(b) of this Agreement); or
- (e) the giving of written notice by Employer to Employee of the termination of this Agreement without Cause, *provided, however,* that, within ten (10) calendar days after such notice, Employer must tender the Separation Payment to Employee;
- (f) the giving of written notice by Employee to Employer upon a material breach of this Agreement by Employer, which material breach remains uncured for a period of thirty (30) days after the giving of such notice, *provided, however,* that, within ten (10) days after the expiration of such cure period without the cure having been effected, Employer must tender the Separation Payment to Employee; or

(g) at Employee's sole election in writing as provided in Section 16 of this Agreement, after both a Change of Control and as a result of Good Reason, *provided, however*, that, within ten (10) calendar days after Employer's receipt of Employee's written election, Employer must tender the Separation Payment to Employee.

In the event of a termination of this Agreement pursuant to the provisions of Subsections 6(a), (b), (c), or (d), Employer shall not be required to make any payments to Employee other than payment of Base Salary and vacation pay accrued but unpaid and expenses incurred but not reimbursed through the termination date. In the event of a termination of this Agreement pursuant to the provisions of Subparagraph 6(e), (f) or (g), Employee will also be entitled to receive health benefits coverage for Employee and Employee's dependents under the same plan(s) or arrangement(s) under which Employee was covered immediately before Employee's termination, or plan(s) established or arrangement(s) provided by Employer or any of its Affiliates thereafter. Such health benefits coverage shall be paid for by Employer to the same extent as if Employee were still employed by Employer, and Employee will be required to make such payments as Employee would be required to make if Employee were still employed by Employer. The health benefits provided under this Paragraph 6 shall continue until the earlier of (x) the expiration of the period for which the Separation Payment is paid, (y) the date Employee becomes covered under any other group health plan not maintained by Employer or any of its Affiliates; *provided, however*, that if such other group health plan excludes any pre-existing condition that Employee or Employee's dependents may have when coverage under such group health plan would otherwise begin, coverage under this Paragraph 6 shall continue (but not beyond the period described in clause (x) of this sentence) with respect to such pre-existing condition until such exclusion under such other group health plan lapses or expires. In the event Employee is required to make an election under Sections 601 through 607 of the Employee Retirement Income Security Act of 1974, as amended (commonly known as COBRA) to qualify for the health benefits described in this Paragraph 6, the obligations of Employer and its Affiliates under this Paragraph 6 shall be conditioned upon Employee's timely making such an election. In the event of a termination of this Agreement pursuant to any of the provisions of this Paragraph 6, Employee shall not be entitled to any benefits pursuant to any severance plan in effect by Employer or any of Employer's Affiliates.

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

(a) **Base Salary.** Employer hereby covenants and agrees to pay to Employee, and Employee hereby covenants and agrees to accept from Employer, a base salary at the rate of Three Hundred Thousand Dollars (\$300,000.00) per annum during the Term, payable in such installments as shall be convenient to Employer (the "Base Salary"). Such 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, any discretionary bonus, executive stock option plan, profit sharing plan, pension plan, retirement plan, disability or life insurance plan, medical and/or hospitalization plan, or any and all other benefit plans which may be in effect during the Term.

Employer agrees to provide Employee with a merit review not later than the second Anniversary of this Agreement at which time Employee's Base Salary may be increased, but not decreased, as a result of any such review.

(b) **Bonus Compensation.** Employee also will be eligible to receive a bonus at such times and in such amounts as Employer, in its sole and exclusive discretion, may determine, until such time as Employer may adopt a performance-based bonus plan, and thereafter in accordance with such plan, provided, however, that Employee's annual (based on the Chinese New Year) bonus shall not be less than twenty-five percent of Employee's then Base Salary (the "Minimum Bonus") for i) the period from the Effective Date through the first day of the Chinese New Year in 2006, and ii) any full twelve month period thereafter. Employee shall be paid a pro rata amount of the Minimum Bonus for the partial year at the end of the Term of this Agreement. Subject to and effective upon the approval of the Compensation Committee of Wynn Resorts, Limited, Employee shall at the earliest possible time after the Effective Date be granted an option to purchase 75,000 shares of Wynn Resorts, Limited common stock under the Wynn Resorts, Limited 2002 Stock Incentive Plan. Except with respect to the payment of the Minimum Bonus, nothing in this Agreement shall limit Employer's discretion to adopt, amend or terminate any bonus plan at any time prior to a Change of Control.

(c) **Employee Benefit Plans.** Employer hereby covenants and agrees that it shall include Employee, if otherwise eligible, in any profit sharing plan, pension plan, executive stock option plan, retirement plan, disability or life insurance plan, medical and/or hospitalization plan, and/or any and all other benefit plans that may be placed in effect by Employer or any of its Affiliates for the benefit of Employer's employees during the Term. Nothing in this Agreement shall limit Employer's or any of its Affiliates' ability to (i) exercise the discretion provided to it under any employee benefit plan, or (ii) adopt, amend or terminate any such benefit plan at any time prior to a Change of Control.

(d) **Expense Reimbursement.** During the Term and provided the same are authorized in advance by Employer, Employer shall either pay directly or reimburse Employee for Employee's reasonable expenses incurred for the benefit of Employer in accordance with Employer's general policy regarding expense reimbursement, as the same may be modified

from time to time. Additionally, Employer shall reimburse Employee for the reasonable cost of relocating from Las Vegas to Macau. Prior to such payment or reimbursement, Employee shall provide Employer with sufficient detailed invoices of such expenses as may be required by Employer's policy.

(e) **Vacations and Holidays.** Commencing as of the Effective Date, Employee shall be entitled to annual paid vacation and paid holidays (or, at Employer's option, an equivalent number of paid days off) in accordance with Employer's respective standard policies.

(f) **Expatriate Benefits.** As additional compensation for, and only for the duration of, Employee relocating his primary residence to Macau, Employer also shall provide Employee with Level 1 benefits available to Wynn Resorts (Macau) executives, except as otherwise noted below:

a. Employee shall receive a housing allowance not to exceed MOP\$30,000 per month, non-cumulative;

b. A monthly transportation allowance not to exceed MOP\$9,000 for use as automobile payments (lease or purchase), taxi fares and ferry fares;

c. Employee shall receive an annual airfare allowance of up to US\$28,000 to be use by Employee and members of Employee's family for personal travel expenses (for purposes of this Section 7(f)c, "annual" shall mean the twelve month period commencing on June 27 and ending on June 26); and

d. Employer shall pay Employee's reasonable expenses to relocate Employee from Macau to Las Vegas, Nevada at the end of the Term or following the Macau Transition Period, as applicable, provided Employee is has not been terminated for Cause or is not in breach of this Agreement. Such relocation must occur within forty-five days of end of the Term or the end of the Macau Transition Period, as applicable.

(g) **Withholdings.** All compensation provided to Employee by Employer under this Section 7 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, charitable contributions and the like. However, Employer covenants and agrees that Employee shall not be required to pay any more income tax for the duration of his employment in Macau than he would have been required to pay on the

same amount of compensation had Employee been employed in Las Vegas, Nevada, and Employer shall either pay any additional tax or “gross up” as much of Employee’s compensation as may be necessary to enforce this covenant.

(k) **Benefits Date.** Employee’s Benefits Date shall be used for determining vacation and other benefits.

**8. LICENSING REQUIREMENTS.**

(a) Employer and Employee hereby covenant and agree that this Agreement may be subject to the approval of one or more gaming regulatory authorities (the “**Authorities**”) pursuant to the provisions of the relevant gaming regulatory statutes (the “**Gaming Acts**”) and the regulations promulgated thereunder (the “**Gaming Regulations**”), as well as Wynn Macau’s concession agreement with the SAR. Employer and Employee hereby covenant and agree to use their best efforts to obtain any and all approvals required by the Gaming Acts, Gaming Regulations, or the concession agreement. In the event that (i) an approval of this Agreement by the Authorities is required for Employee to carry out his duties and responsibilities set forth in Section 3 of this Agreement, (ii) Employer and Employee have used their best efforts to obtain such approval, and (iii) this Agreement is not so approved by the Authorities, then this Agreement shall immediately terminate and shall be null and void.

(b) If applicable, Employer and Employee hereby covenant and agree that, in order for Employee to discharge the duties required under this Agreement, Employee must apply for or hold a license, registration, permit or other approval (the “**License**”) as issued by the Authorities pursuant to the terms of the relevant Gaming Act, Gaming Regulations or the concession agreement, and as otherwise required by this Agreement. In the event Employee fails to apply for and secure, or the Authorities refuse to issue or renew Employee’s License, Employee, at Employer’s sole cost and expense, shall promptly defend such action and shall take such reasonable steps as may be required to either remove the objections or secure or reinstate the Authorities’ approval, respectively. The foregoing notwithstanding, if the source of the objections or the Authorities’ refusal to renew or maintain Employee’s License arise as a result of any of the events described in Subsection 1(c) of this Agreement, then Employer’s obligations under this Section 8 also shall not be operative and Employee shall promptly reimburse Employer upon demand for any expenses incurred by Employer pursuant to this Section 8.

(c) Employer and Employee hereby covenant and agree that the provisions of this Section 8 shall apply in the event Employee’s duties require that Employee also be licensed by governmental agencies other than the Authorities.

**9. CONFIDENTIALITY.** Employee hereby warrants, covenants and agrees that, without the prior express written approval of Employer, Employee shall hold in the strictest confidence, and shall not disclose to any person, firm, corporation or other entity, any and all of Employer's confidential data, including but not limited to (a) information, drawings, sketches, plans or other documents concerning Employer's business or development plans, customers or suppliers or those of Employer's Affiliates, including without limitation Wynn Macau; (b) Employer's or its Affiliates' development, design, construction or sales and marketing methods or techniques; or (c) Employer's or its Affiliates' trade secrets and other "know-how" or information not of a public nature, regardless of how such information came to the custody of Employee. For purposes of this Agreement, such confidential information shall include but not be limited to the terms and conditions of this Agreement, and any other information, including a formula, pattern, compilation, program, device, method, technique or process, that (x) derives independent economic value, present or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (y) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The warranty, covenant and agreement set forth in this Section 9 shall not expire, shall survive this Agreement, and shall be binding upon Employee without regard to the passage of time or other events.

**10. RESTRICTIVE COVENANT/NO SOLICITATION.**

(a) Employee hereby covenants and agrees that, during the Term or for such longer period so long as Employer pays to Employee the compensation set forth in Subsection 7(a) of this Agreement, Employee shall not directly or indirectly, either as a principal, agent, employee, employer, consultant, partner, member of a limited liability company, shareholder of a closely held corporation, or shareholder in excess of two (2%) per cent of a publicly traded corporation, corporate officer or director, manager, or in any other individual or representative capacity, engage or otherwise participate in any manner or fashion in any business that is in competition in any manner whatsoever with the principal business activity of Employer or Employer's Affiliates, in or about any market in which Employer or Employer's Affiliates have or plan to have hotel or gaming operations. Employee hereby further covenants and agrees that the restrictive covenant contained in this Subsection 10(a) is reasonable as to duration, terms and geographical area and that the same protects the legitimate interests of Employer, imposes no undue hardship on Employee, and is not injurious to the public.

(b) Employee hereby further covenants and agrees that, during the Term and for a period of one (1) year following the scheduled expiration

of the Term, Employee shall not directly or indirectly, and Employee shall not suffer others to, solicit or attempt to solicit for employment any management level employee of Employer or Employer's Affiliates with or on behalf of any business that is in competition in any manner whatsoever with the principal business activity of Employer or Employer's Affiliates, in or about any market in which Employer or Employer's Affiliates have or plan to have hotel or gaming operations.

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

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

**13. ASSIGNMENT.** Employee shall not assign this Agreement or delegate his duties hereunder without the prior express written consent of Employer thereto. Any purported assignment by Employee in violation of this Section 13 shall be null and void and of no force or effect. Employer shall have the right to assign this Agreement freely.

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

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

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

TO EMPLOYER: Worldwide Wynn, LLC  
3145 Las Vegas Boulevard South  
Las Vegas, Nevada 89109

WITH A COPY  
THAT SHALL NOT BE  
NOTICE TO: Wynn Resorts, Limited  
3145 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
Attn: Legal Department

TO EMPLOYEE: Scott Peterson  
8450 Alta, #207  
Las Vegas, Nevada 89145

All notices hand-delivered shall be deemed delivered as of the date actually delivered. All notices mailed shall be deemed delivered as of three (3) business days after the date postmarked. Any changes in any of the addresses listed herein shall be made by notice as provided in this Section 16.

**17. INTERPRETATION.** The preamble recitals to this Agreement are incorporated into and made a part of this Agreement; titles of sections are for convenience only and are not to be considered a part of this Agreement; and, this Agreement is not to be construed either for or against Employer or Employee, but shall be interpreted in accordance with the general tenor of its language.

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

**19. DISPUTE RESOLUTION.** Except for equitable actions seeking to enforce the provisions of Sections 9 and 10 of this Agreement, jurisdiction and venue for which is hereby granted to the court of general trial jurisdiction in Las Vegas, Nevada, any and all claims, disputes, or controversies arising between the parties hereto regarding any of the terms of this Agreement or the breach thereof, on the written demand of either of the parties hereto, shall be submitted to and be determined by final and binding arbitration held in Las Vegas, Nevada, in accordance with Employer's or Employer's Affiliates' arbitration policy governing employment disputes, or, in the absence of any such policy, as conducted by and in accordance with the labor arbitration rules of the American Arbitration Association. This agreement to arbitrate shall be specifically enforceable in any court of competent jurisdiction.

**20. WAIVER.** None of the terms of this Agreement, including this Section 20, or any term, right or remedy hereunder shall be deemed waived unless such waiver is in writing and signed by the party to be charged therewith and in no event by reason of any failure to assert or delay in asserting any such term, right or remedy or similar term, right or remedy hereunder.

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



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

**WORLDWIDE WYNN, LLC,  
By Wynn Resorts, Limited  
Its Sole Member**

**EMPLOYEE**

By: /s/ Stephen A. Wynn  
Stephen A. Wynn  
Chief Executive Officer

/s/ Scott Peterson  
Scott Peterson

**EXHIBIT A**  
**TERMINATION AGREEMENT**

This Termination Agreement ("Termination Agreement") is made and entered into as of the 27th day of June 2005, by and between Scott Peterson ("Employee") and Wynn Las Vegas, LLC ("WLV").

**WHEREAS**, Employee has entered into that certain Employment Agreement dated as of October 28, 2002 (the "2002 Employment Agreement") with Wynn Las Vegas, LLC; and

**WHEREAS**, Employee has agreed to enter into an employment agreement with Worldwide Wynn, LLC (the "Macau Employment Agreement") subject to and concurrent with the termination of the 2002 Employment Agreement; and

**WHEREAS**, Employee and WLV have agreed to terminate the 2002 Employment Agreement concurrent with the effectiveness of the Macau Employment Agreement.

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

- 1. TERMINATION OF AGREEMENT.** Employee and WLV agree that the 2002 Employment Agreement shall be terminated and be of no further force or effect concurrent with the effectiveness of the Macau Employment Agreement which is scheduled to become effective as of June 27, 2005.

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

**WYNN LAS VEGAS, LLC**

**EMPLOYEE**

By: /s/ Marc D. Schorr

/s/ Scott Peterson

\_\_\_\_\_  
MARC D. SCHORR

\_\_\_\_\_  
SCOTT PETERSON

Chief Executive Officer

**EXHIBIT B**

*Indemnification and Gross-Up for Excise Taxes*

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

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

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

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

## ADDENDUM TO EMPLOYMENT AGREEMENT

THIS ADDENDUM TO EMPLOYMENT AGREEMENT is made as of the 27th day of June 2005, by and between **WORLDWIDE WYNN, LLC** (“**Employer**”) and **SCOTT PETERSON** (“**Employee**”).

Employer and Employee hereby supplement the Employment Agreement between them as of June 27, 2005 (**this “Employment Agreement”**) by adding the following provision:

**NORMAL WORKING HOURS.** Employee’s normal working days shall not exceed six (6) days per calendar week. Employee’s working hours shall be flexible, meaning that Employee shall be required to work such number of hours as shall be required to fully carry out Employee’s duties and responsibilities under this Agreement. Employee acknowledges and expressly agrees that such working hours were considered in the negotiations between Employer and Employee concerning the Base Salary set forth in Section 7(a) of this Employment Agreement. Employee further acknowledges and expressly agrees that, notwithstanding the other items of compensation set forth in this Employment Agreement, the Base Salary set forth in Section 7(a) provides full and adequate compensation for all of the hours Employee shall be required to work to fully carry out Employee’s duties and responsibilities under this Employment Agreement.

The parties acknowledge that this Employment Agreement is being modified only by adding the above provision, and agree that nothing else in the agreement shall be affected by this Addendum.

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

**WORLDWIDE WYNN, LLC,**

**EMPLOYEE**

**By Wynn Resorts, Limited  
Its Sole Member**

By: /s/ Stephen A. Wynn  
Stephen A. Wynn  
Chief Executive Officer

/s/ Scott Peterson  
Scott Peterson  
Employee # 000034

**THIRD AMENDMENT TO  
CREDIT AGREEMENT**

THIS THIRD AMENDMENT TO CREDIT AGREEMENT (this "Third Amendment"), dated as of March 15, 2006, 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 December 14, 2004 (as amended, modified or supplemented from time to time, the "Credit Agreement") among the Borrower, the Administrative Agent, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Banc of America Securities LLC, as lead arranger and joint book running manager, Bank of America, N.A., as syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, J.P. Morgan Securities Inc., as arranger and joint book running manager, JPMorgan Chase Bank, as joint documentation agent, SG Americas Securities, LLC, as arranger and joint book running manager, Societe Generale, as joint documentation agent, 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) Wynn Las Vegas Capital Corp., a Nevada corporation ("Capital Corp."), Wynn Show Performers, LLC, a Nevada limited liability company ("Show Performers"), Wynn Golf, LLC, a Nevada limited liability company ("Wynn Golf"), Wynn Sunrise, LLC, a Nevada limited liability company ("Wynn Sunrise"), World Travel, LLC, a Nevada limited liability company ("World Travel"), Kevyn, LLC, a Nevada limited liability company ("Kevyn"), and Las Vegas Jet, LLC, a Nevada limited liability company ("Las Vegas Jet" and together with Capital Corp., Show Performers, Wynn Golf, Wynn Sunrise, World Travel, Kevyn, Wynn Resorts Holdings, LLC, a Nevada limited liability company, and Wynn Completion Guarantor, LLC, a Nevada limited liability company, the "Wynn Amendment Parties"), have executed that certain Guarantee dated as of December 14, 2004 (as amended, modified or supplemented from time to time, the "Guarantee");

(ii) 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 December 14, 2004 (as amended, modified or supplemented from time to time, the "Borrower Mortgage") in favor of Nevada Title Company for the benefit of Deutsche Bank Trust Company Americas, as the Collateral Agent (the "Collateral Agent");

(iii) Wynn Golf has executed that certain Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of December 14, 2004 (as amended, modified or supplemented from time to time, the "Wynn Golf Mortgage") in favor of Nevada Title Company for the benefit of the Collateral Agent; and

(iv) Wynn Sunrise has executed that certain Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of December 14, 2004 (as amended, modified or supplemented from time to time, the "Wynn Sunrise Mortgage" and, together with the Borrower Mortgage and the Wynn Golf Mortgage, the "Wynn Mortgages") in favor of Nevada Title Company for the benefit of the Collateral 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, the Disbursement Agreement and certain other Loan Documents, among other things, (i) in connection with the development of the Phase II Project and (ii) to permit the issuance by the Borrower and Capital Corp. of up to an additional \$100,000,000 in principal amount of 2014 Notes pursuant to the 2014 Notes Indenture.

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

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

1. Definitions. Except as otherwise expressly provided herein, capitalized terms used in this 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. Amendments.

(a) The following new definitions are inserted into Section 1.1 of the Credit Agreement in appropriate alphabetical order:

"Additional Notes": as defined in the 2014 Notes Indenture.

"Company's Concentration Account": as defined in the Disbursement Agreement.

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

"Termination Date": as defined in the Disbursement Agreement.

(b) The definitions of "Advance Confirmation Notice" and "Last Project Final Completion Date" are deleted from Section 1.1 of the Credit Agreement.

(c) The Loan Documents are amended by replacing the words “Last Project Final Completion Date” wherever they appear with the words “Termination Date”.

(d) The definition of “Cash Equivalents” set forth in Section 1.1 of the Credit Agreement is amended by (i) deleting the words “or mutual funds” from clause (f) thereof and (ii) inserting the words “; and (h) to the extent not included in clauses (a) through (g) of this definition, funds managed or offered by the 2014 Notes Indenture Trustee that invest exclusively in the securities and instruments described in clauses (a) through (g) above” immediately before the period at the end of such definition.

(e) The definition of “Consolidated EBITDA” set forth in Section 1.1 of the Credit Agreement is amended by inserting the words “and/or the Company’s Concentration Account (and, in such case, credited to the Construction Tracking Account)” immediately following the words “Company’s Funds Account” in the thirty-second line thereof.

(f) The definition of “Funding Account” is deleted from Section 1.1 of the Credit Agreement and replaced with the following:

“Funding Account”: any Account with respect to which the Secured Parties have a perfected first priority Lien (subject only to Permitted Liens) securing the Obligations pursuant to a Control Agreement; provided, that in the case of the use of this definition in Section 2.24, such Funding Account shall be a segregated account established to hold and disburse the relevant Insurance Proceeds and/or Eminent Domain Proceeds only.

(g) The definition of “Swing Line Commitment” set forth in Section 1.1 of the Credit Agreement is amended by deleting the number “\$10,000,000” set forth therein and replacing such number with the number “\$25,000,000”.

(h) The definition of “2014 Notes” set forth in Section 1.1 of the Credit Agreement is amended by inserting the parenthetical “(including any Additional Notes)” after the words “2014 Notes Indenture” in the second line thereof.

(i) Section 2.5(a) of the Credit Agreement is deleted in its entirety and replaced with the following:

(a) Prior to the Final Completion Date with respect to a Project Phase, the Borrower shall have the right to borrow Loans, the proceeds of which are to be used to pay such Project Phase’s Project Costs. If the Borrower desires that Lenders make such Loans, the Borrower shall comply with Section 2.3 of the Disbursement Agreement. Notwithstanding any provisions of the Disbursement Agreement to the contrary, each Notice of Advance Request must be received by the Administrative Agent prior to 12:00 Noon, New York City time, at least three Business Days prior to the requested Borrowing Date (in the case of Eurodollar



Loans or Base Rate Loans) and must specify (x) the amount and Type of Loans to be borrowed, (y) the requested Borrowing Date and (z) in the case of Eurodollar Loans, the length of the initial Interest Period therefor. Upon receipt of any Notice of Advance Request, the Administrative Agent shall promptly notify each Term Loan Lender and/or Revolving Credit Lender, as appropriate, thereof. Each such Lender will make the amount of its pro rata share of each borrowing available to the Administrative Agent at the Funding Office prior to 10:00 A.M., New York City time, on the Borrowing Date requested by the Borrower in immediately available Dollars. Such borrowing will then, upon satisfaction or waiver of the conditions precedent specified in Section 5.2, be deposited by the Administrative Agent, in immediately available Dollars, into the Company's Concentration Account no later than 12:00 Noon, New York City time, on the applicable Borrowing Date.

(j) Section 2.5(d) of the Credit Agreement is amended by deleting the words "and related Advance Confirmation Notice" from the last sentence thereof.

(k) Section 2.5(e) of the Credit Agreement is amended by deleting the words "Disbursement Account" from the first sentence thereof and replacing such words with the words "Company's Concentration Account".

(l) Section 2.12(c) of the Credit Agreement is amended by inserting the words "and/or the Company's Concentration Account (and, in such case, the crediting of such funds to the Construction Tracking Account)" immediately following the words "Company's Funds Account" in the sixth line thereof.

(m) Section 3.2(a) of the Credit Agreement is amended by deleting the words "and related Advance Confirmation Notice" from the last sentence thereof.

(n) Section 5.2(a) of the Credit Agreement is amended by deleting the words "and related Advance Confirmation Notice" therefrom.

(o) Section 5.2(b) of the Credit Agreement is deleted in its entirety and replaced with the words "INTENTIONALLY OMITTED".

(p) Section 6.1(c) of the Credit Agreement is deleted in its entirety and any references thereto in the Credit Agreement are appropriately amended.

(q) Section 6.2(d) of the Credit Agreement is deleted in its entirety and replaced with the following:

(d) concurrently with the delivery of the financial statements referred to in Section 6.1(a) (and only to the extent not otherwise contained in such financial statements), a narrative discussion and analysis of the financial condition and results of operations of the

Loan Parties (taken as a whole) for the Fiscal Year to which such financial statements relate and a comparison thereof to (i) the Projections covering such Fiscal Year and (ii) the actual financial condition and results of operations of the Fiscal Year immediately prior to such Fiscal Year;

(r) Section 6.11(a) of the Credit Agreement is amended by inserting the words “or the Company’s Concentration Account” immediately following the words “Company’s Funds Account” in clause (y) thereof.

(s) Section 6.11(b) of the Credit Agreement is amended by deleting all of clause (iii) thereof.

(t) Section 7.8 of the Credit Agreement is amended by inserting the following new clause (p) thereto:

(p) Investments by the Borrower in the Completion Guarantor as expressly permitted under the Disbursement Agreement.

(u) Section 7.10(j) of the Credit Agreement is amended by inserting the parenthetical “(and any exchange notes issued in exchange for Additional Notes)” immediately before the semicolon in such section.

(v) Section 7.10 of the Credit Agreement is amended by inserting the following new clause (l) thereto:

(l) the transfer of funds between the Borrower and the Completion Guarantor as contemplated by the Disbursement Agreement.

(w) Section 7.23 of the Credit Agreement is deleted in its entirety and replaced with the following:

7.23 Project Costs for the Phase II Project. Permit expenditures with respect to Project Costs for the Phase II Project in excess of the sum of (a) \$1,400,000,000, (b) the net proceeds of any Additional Notes issued by the Borrower and Capital Corp., (c) any cash equity contributions made by Mr. Wynn, Wynn Resorts or any of their Affiliates (other than the Borrowers or any other Loan Party) to the Borrower and deposited into the Company’s Concentration Account and credited to the Construction Tracking Account (and subsequently applied to Project Costs for the Phase II Project) and (d) without duplication to clause (c) above, any amounts committed by Wynn Resorts pursuant to a commitment described in clause (viii) of the definition of “Available Funds” set forth in the Disbursement Agreement (and subsequently applied to Project Costs for the Phase II Project). For purposes of this Section 7.23, any proceeds of the 2014 Notes applied on the

Closing Date in order to consummate the Refinancing Transaction shall not be deemed expended in furtherance of Project Costs with respect to the Phase II Project.

### 3. Conditions to Issuance of Additional Notes.

(a) The Borrower and Capital Corp. shall be entitled, subject to the conditions set forth in Section 3(b) below, to issue up to an additional \$100,000,000 in principal amount of 2014 Notes (the "Additional 2014 Notes") secured by the Collateral and, in furtherance of the foregoing, Section 7.2(f)(ii) of the Credit Agreement is amended, effective on the date of issuance of the Additional 2014 Notes, by replacing the number "\$1,300,000,000" with a number equal to the sum of \$1,300,000,000 plus the principal amount of Additional 2014 Notes actually issued by the Borrower and Capital Corp. not to exceed \$100,000,000.

(b) The Additional 2014 Notes may only be issued once after the Phase II Commitment Sunset Date has occurred and the Borrower and Capital Corp. shall not issue the Additional 2014 Notes unless each of the following conditions shall have been satisfied (or waived):

(i) no Default or Event of Default shall have occurred and be continuing immediately prior to the issuance of the Additional 2014 Notes or could reasonably be expected to result therefrom;

(ii) the Wynn Mortgages shall have been amended pursuant to an amendment substantially in the form attached hereto as Exhibit A (the "Mortgage Amendment") (and the Lenders authorize the Administrative Agent to enter into such amendments on behalf of the Lenders) and such amendment shall have been recorded in the appropriate real property records of the State of Nevada;

(iii) concurrently with the recordation of the Mortgage Amendment, the applicable Wynn Amendment Parties shall have obtained and delivered to the Administrative Agent appropriate endorsements or supplements to the Title Policy with respect to the Wynn Mortgages (the "Existing Title Policy"), or a commitment to issue such endorsements or supplements, in each case, in form and substance reasonably satisfactory to the Administrative Agent

(x) ensuring the Lenders that the amendments to the applicable Wynn Mortgages made pursuant to the Mortgage Amendment do not adversely affect the Lender's title and extended coverage insurance contained in the Existing Title Policy and (y) increasing the insured amount of the Existing Title Policy by the principal amount of Additional 2014 Notes actually issued by the Borrower and Capital Corp.

(iv) each of the Security Agreement, and the Company Disbursement Collateral Account Agreement, the Completion Guaranty Collateral Account Agreement, that certain Control Agreement dated as of December 14, 2004 among the Borrower, Bank of America, N.A. and Deutsche Bank Trust Company Americas (the "Borrower Control Agreement"), that certain Control Agreement dated as of December 14, 2004 among Las Vegas Jet, Bank of America, N.A. and Deutsche Bank Trust Company Americas (the "Las Vegas Jet Control Agreement"), and that certain Control Agreement dated as of December 14, 2004 among Show Performers,

Bank of America, N.A. and Deutsche Bank Trust Company Americas (the “Show Performers Control Agreement”) shall have been amended and restated substantially in the forms attached hereto as Exhibits B, C, D, E, F and G, respectively (together with the Mortgage Amendments, the “Additional Note Collateral Document Amendments”) (and the Lenders authorize the Administrative Agent to enter into such amendments and restatements on behalf of the Lenders);

(v) as of the issuance of the Additional 2014 Notes, the representations and warranties contained in Section 6 of this Third Amendment shall be true and correct (provided that to the extent such representations and warranties relate to the Third Amendment Documents (as defined below), such representations and warranties shall relate to the Additional Note Collateral Document Amendments and any supplements made to the 2014 Notes Indenture in connection with the issuance of the Additional 2014 Notes); and

(vi) on or prior to the issuance of the Additional 2014 Notes, the Borrower shall have delivered to the Administrative Agent one or more legal opinions of counsel to the Borrower and each of the Wynn Amendment Parties substantially as to the matters set forth in Sections 6(a), (b), (c)(i), (c)(ii), (c)(iv) (with respect to the 2014 Notes Indenture only) and (d) hereof (in each case, only as they relate to the Additional Note Collateral Document Amendments) and such other matters as the Administrative Agent may reasonably request, all in form and substance reasonably satisfactory to the Administrative Agent.

4. Disbursement Agreement Amendment. The Administrative Agent is hereby directed to execute on the date hereof that certain Third Amendment to Disbursement Agreement (the “Disbursement Agreement Amendment”), substantially in the form attached hereto as Exhibit H on behalf of the Lenders.

5. Collateral Agreement Amendments. The Administrative Agent is hereby directed to execute on the date hereof that certain First Amendment to Security Agreement, that certain First Amendment to Company Disbursement Collateral Account Agreement, that certain First Amendment to Completion Guaranty Collateral Account Agreement, that certain First Amendment to Borrower Control Agreement, that certain First Amendment to Las Vegas Jet Control Agreement and that certain First Amendment to Show Performers Control Agreement (together the “Collateral Agreement Amendments”), substantially in the forms attached hereto as Exhibits I, J, K, L, M and N, respectively on behalf of the Lenders.

6. 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 date hereof:

(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 Collateral Agreement Amendments (collectively, the “Third Amendment Documents”) to which each is a party and that have been entered into by the Borrower and each of the Wynn Amendment Parties as of the date this representation is being made, and to carry out the transactions contemplated by, and to perform its obligations under or in respect of, the Third Amendment Documents to which each is a party;

(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 to which each is a party and that have been entered into by the Borrower and each of the Wynn Amendment Parties as of the date this representation is being made have been duly authorized by all necessary action on the part of the Borrower and each of the Wynn Amendment Parties;

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

(d) the 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 the Credit Agreement and the other Loan Documents, as amended by the Third Amendment Documents, are the legal, valid and binding obligations of the Borrower and each of the Wynn Amendment Parties, enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law);

(e) after giving effect to 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, 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 and the Wynn Amendment Parties in or pursuant to the Loan Documents to which each is a party shall be true and correct in all material respects on and as of the date this representation is being made, except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date.

7. Effectiveness of this Third Amendment. This Third Amendment shall be effective only if and when (i) executed by the Borrower, the Wynn Amendment Parties and the

Administrative Agent, on behalf of the Lenders, and (ii) each of the Disbursement Agreement Amendment and the Collateral Agreement Amendments shall have been executed by all parties thereto.

8. Acknowledgments. By executing this Third Amendment, each of the Wynn Amendment Parties (a) consents to the Third Amendment Documents, the Additional Note Collateral Document Amendments and the issuance of the Additional 2014 Notes, (b) acknowledges that, notwithstanding the execution and delivery of the Third Amendment Documents or the Additional Note Collateral Document Amendments, or the issuance of the Additional 2014 Notes, the obligations of each of the Wynn Amendment Parties under the Guarantee, the Completion Guaranty Collateral Account Agreement, the Completion Guaranty and the Security Agreement are not impaired or affected, and the Guarantee, the Completion Guaranty Collateral Account Agreement, the Completion Guaranty and the Security Agreement continue in full force and effect, and (c) affirms and ratifies, to the extent it is a party thereto, the Guarantee, the Completion Guaranty Collateral Account Agreement, the Completion Guaranty and the Security Agreement.

9. Miscellaneous. **THIS THIRD AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAW RULES THEREOF (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW)**. This 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 officers of their sole ultimate members 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: Wynn Resorts, Limited,  
a Nevada corporation,  
its sole member

By: /s/ Ronald J. Kramer  
Name: Ronald J. Kramer  
Title: President

WYNN GOLF, LLC,  
a Nevada limited liability company

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

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

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

By: /s/ Ronald J. Kramer  
Name: Ronald J. Kramer  
Title: President

WYNN SUNRISE, LLC,  
a Nevada limited liability company

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

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

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

By: /s/ 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: 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: 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 SHOW PERFORMERS, LLC,  
a Nevada limited liability company

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

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

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

By: /s/ Ronald J. Kramer  
Name: Ronald J. Kramer  
Title: President

KEVYN, LLC,  
a Nevada limited liability company

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

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

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

By: /s/ Ronald J. Kramer  
Name: Ronald J. Kramer  
Title: President



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

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

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

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

By: /s/ Ronald J. Kramer  
Name: Ronald J. Kramer  
Title: President

DEUTSCHE BANK TRUST COMPANY  
AMERICAS, as the Administrative Agent  
on behalf of the Lenders

By: /s/ Steven P. Lapham  
Name: Steven P. Lapham  
Title: Managing Director

By: /s/ Joanna Soliman  
Name: Joanna Soliman  
Title: Assistant Vice President

**THIRD AMENDMENT  
TO MASTER DISBURSEMENT AGREEMENT**

THIS THIRD AMENDMENT TO MASTER DISBURSEMENT AGREEMENT (this "Amendment") is made and entered into as of March 15, 2006, by and among WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "Company"), DEUTSCHE BANK TRUST COMPANY AMERICAS, as the Bank Agent (the "Bank Agent"), and DEUTSCHE BANK TRUST COMPANY AMERICAS, as the Disbursement Agent (the "Disbursement Agent"), with respect to the following:

**Recitals**

A. Disbursement Agreement. The undersigned are parties to that certain Master Disbursement Agreement, dated as of December 14, 2004 (as amended by that certain First Amendment to Master Disbursement Agreement, dated as of April 26, 2005, as amended by that certain Second Amendment to Master Disbursement Agreement, dated as of June 28, 2005, and as further amended, amended and restated, supplemented or otherwise modified from time to time, the "Disbursement Agreement"), among the Company, the Bank Agent, U.S. Bank National Association as the indenture trustee (the "Indenture Trustee"), and the Disbursement Agent. The defined terms used herein and not otherwise defined herein shall have the meanings given in the Disbursement Agreement.

B. Right to Amend Disbursement Agreement Without Consent of Indenture Trustee. The Bank Agent, the Disbursement Agent and the Company have the right to amend the Disbursement Agreement as set forth therein without the Indenture Trustee's consent.

C. Amendment. The undersigned desire to amend the Disbursement Agreement to reflect certain agreements of the parties hereto, all as more particularly set forth herein.

**Agreement**

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agree as follows:

1. AMENDMENT. The Disbursement Agreement is hereby amended to read in its entirety as set forth in Exhibit A attached hereto.

2. MISCELLANEOUS. Except as set forth in this Amendment, all other terms and provisions of the Disbursement Agreement remain unmodified and in full force and effect. This Amendment shall be construed and enforced in accordance with the laws of the State of New York. In the event that any term or provision contained herein is held to be invalid, void or otherwise unenforceable by any court of competent jurisdiction, the fact that such term or provision is invalid, void or otherwise unenforceable shall in no way affect the validity or enforceability of any other term or provision contained herein. This Amendment may be executed in any number of identical counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first written above.

COMPANY:

WYNN LAS VEGAS, LLC,  
a Nevada limited liability company

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

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

By: /s/ Ronald J. Kramer  
Name: Ronald J. Kramer  
Title: \_\_\_\_\_

BANK AGENT:

DEUTSCHE BANK TRUST COMPANY AMERICAS

By: /s/ Steven P. Lapham  
Name: Steven P. Lapham  
Title: Managing Director

By: /s/ Joanna Soliman  
Name: Joanna Soliman  
Title: Assistant Vice President

DISBURSEMENT AGENT:

DEUTSCHE BANK TRUST COMPANY AMERICAS

By: /s/ Stephen P. Lapham  
Name: Stephen P. Lapham  
Title: Managing Director

By: /s/ Joanna Soliman  
Name: Joanna Soliman  
Title: Assistant Vice President

**MASTER DISBURSEMENT AGREEMENT**

among

**WYNN LAS VEGAS, LLC,**

as the Company,

**DEUTSCHE BANK TRUST COMPANY AMERICAS,**

as the Bank Agent,

**U.S. BANK NATIONAL ASSOCIATION,**

as the 2014 Notes Indenture Trustee,

and

**DEUTSCHE BANK TRUST COMPANY AMERICAS,**

as the Disbursement Agent

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## EXHIBITS

Exhibit A	Definitions
Exhibit B-1	The Company's Closing Certificate
Exhibit B-2	Construction Consultant's Closing Certificate
Exhibit B-3	Insurance Advisor's Closing Certificate
Exhibit B-4	Company's Insurance Broker's Closing Certificate (Willis)
Exhibit C-1	Form of Advance Request and Certificate
Exhibit C-2	Form of Construction Consultant's Advance Certificate
Exhibit C-3	Form of Phase I Architect's Advance Certificate
Exhibit C-4	Form of Phase I Primary Contractor's Advance Certificate
Exhibit C-5	Form of Phase I Golf Course Designer's Advance Certificate
Exhibit C-6	Form of Phase I Golf Course Contractor's Advance Certificate
Exhibit C-7	Form of Phase I Aqua Theater and Showroom Designer's Advance Certificate
Exhibit C-8	Form of Phase II Major Architect's Advance Certificate
Exhibit C-9	Form of Phase II Major Contractor's Advance Certificate
Exhibit D	Notice of Advance Request
Exhibit E	Project Schedule Amendment Certificate
Exhibit F-1	Phase I Project Budget
Exhibit F-2	Phase I Summary Anticipated Cost Report
Exhibit F-3	Phase I Anticipated Cost Report
Exhibit F-4	Phase II Project Budget
Exhibit F-5	Phase II Summary Anticipated Cost Report
Exhibit F-6	Phase II Anticipated Cost Report
Exhibit F-7	Phase I Projected Excess Cash Flow Schedule

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Exhibit G-1	Phase I Project Schedule
Exhibit G-2	Phase II Project Schedule
Exhibit H-1	Form of Unconditional Release of Lien Upon Progress Payment
Exhibit H-2	Form of Conditional Release of Lien Upon Progress Payment
Exhibit H-3	Form of Unconditional Release of Lien Upon Final Payment
Exhibit H-4	Form of Conditional Release of Lien Upon Final Payment
Exhibit I	Form of Local Company Collateral Account Agreement
Exhibit J-1	Schedule of Permits Phase I Project
Exhibit J-2	Schedule of Permits Phase II Project
Exhibit K-1	Wynn Las Vegas Permitted Encumbrances
Exhibit K-2	Wynn Golf Permitted Encumbrances
Exhibit K-3	Wynn Sunrise Permitted Encumbrances
Exhibit L	Insurance Requirements
Exhibit M	[Intentionally Omitted]
Exhibit N	Opinion List
Exhibit O	Form of Payment and Performance Bond
Exhibit P	Form of Consent to Assignment
Exhibit Q-1	Description of the Phase I Project
Exhibit Q-2	Description of the Phase II Project
Exhibit Q-3	Description of the Site
Part A	Description of the Golf Course Land
Part B	Description of the Wynn Sunrise Land
Part C	Description of the Phase II Land
Exhibit Q-4	List of Plans and Specifications
Exhibit Q-5	List of Contracts and all other Material Project Documents

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Exhibit R-1	Form of Company's Phase II Approval Date Certificate
Exhibit R-2	[Intentionally Omitted]
Exhibit R-3	[Intentionally Omitted]
Exhibit R-4	[Intentionally Omitted]
Exhibit R-5	[Intentionally Omitted]
Exhibit R-6	Form of Company's Completion Guaranty Release Certificate
Exhibit R-7	Form of Construction Consultant's Completion Guaranty Release Certificate
Exhibit S-1	Form of Company's Opening Date Certificate
Exhibit S-2	Form of Construction Consultant's Opening Date Certificate
Exhibit S-3	[Intentionally Omitted]
Exhibit S-4	[Intentionally Omitted]
Exhibit S-5	[Intentionally Omitted]
Exhibit S-6	[Intentionally Omitted]
Exhibit T-1	Form of Company's Completion Certificate
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Exhibit T-6	Form of Phase I Aqua Theater and Showroom Designer's Completion Certificate
Exhibit T-7	Form of Phase I Golf Course Contractor's Completion Certificate
Exhibit T-8	Form of Phase I Parking Structure Contractor's Completion Certificate
Exhibit T-9	Form of Phase II Major Architect's Completion Certificate
Exhibit T-10	Form of Phase II Major Contractor's Completion Certificate
Exhibit U-1	Form of Company's Final Completion Certificate

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Exhibit U-2	Form of Construction Consultant's Final Completion Certificate
Exhibit U-3	Form of Phase I Architect's Final Completion Certificate
Exhibit U-4	Form of Phase I Primary Contractor's Final Completion Certificate
Exhibit U-5	Form of Phase II Architect's Final Completion Certificate
Exhibit U-6	Form of Phase II Primary Contractor's Final Completion Certificate
Exhibit V-1	Minimum Phase I Project Requirements
Exhibit V-2	Minimum Phase II Project Requirements

**THIS MASTER DISBURSEMENT AGREEMENT** (this "Agreement"), dated as of December 14, 2004, is entered into by and among **WYNN LAS VEGAS, LLC**, a Nevada limited liability company (the "Company"), **DEUTSCHE BANK TRUST COMPANY AMERICAS**, as the initial Bank Agent, **U.S. BANK NATIONAL ASSOCIATION**, as the initial 2014 Notes Indenture Trustee, and **DEUTSCHE BANK TRUST COMPANY AMERICAS**, as the initial Disbursement Agent.

#### **RECITALS**

A. The Projects. The Company is in the process of developing and constructing and proposes to operate the Phase I Project and, at the Company's option and subject to certain conditions, may develop, construct and operate the Phase II Project. Prior to the date hereof, the Company has entered into certain Contracts in respect of the Phase I Project and has incurred and paid for certain Project Costs.

B. Bank Credit Agreement. Concurrently herewith, the Company, the Bank Agent, Deutsche Bank Securities Inc., as lead arranger and joint book-running manager, Bank of America, N.A., as syndication agent, Banc of America Securities LLC, as lead arranger and joint book-running manager, Bear Stearns Corporate Lending, Inc., as joint documentation agent, Bear, Stearns & Co. Inc., as arranger and joint book-running manager, JPMorgan Chase Bank, N.A., as joint documentation agent, J.P. Morgan Securities Inc., as arranger and joint book-running manager, Societe Generale, as joint documentation agent, SG Americas Securities, LLC, as arranger and joint book-running manager, and the Bank Lenders have entered into the Bank Credit Agreement pursuant to which the Bank Lenders have agreed, subject to the terms thereof and hereof, to provide certain revolving loans to the Company in an aggregate principal amount not to exceed \$600,000,000 and certain term loans to the Company in an aggregate principal amount not to exceed \$400,000,000, as more particularly described therein.

C. 2014 Notes Indenture. Concurrently herewith, the Company, Wynn Las Vegas Capital Corp. ("Capital Corp."), certain guarantors signatory thereto and the 2014 Notes Indenture Trustee have entered into the 2014 Notes Indenture pursuant to which the Company and Capital Corp. will issue the 2014 Notes, as more particularly described therein. The Bank Lenders and the 2014 Noteholders will share first priority Liens on the Project Security (subject to certain exceptions).

D. Purpose. The parties are entering into this Agreement in order to set forth, among other things, (a) the mechanics for and allocation of the Company's requests for Advances under the various Facilities and from the Company's Funds Account, and (b) the conditions precedent to the Closing Date, to the initial Advance and to subsequent Advances.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

### ARTICLE 1.

#### DEFINITIONS; RULES OF INTERPRETATION

1.1 **Definitions.** Except as otherwise expressly provided herein or in the exhibits hereto, capitalized terms used in this Agreement and its exhibits shall have the meanings given in Exhibit A hereto.

1.2 **Rules of Interpretation.** Except as otherwise expressly provided herein, the rules of interpretation set forth in Exhibit A hereto shall apply to this Agreement.

### ARTICLE 2.

#### ACCOUNTS, ADVANCES AND DISBURSEMENTS

2.1 **Availability of Advances.** Subject to the satisfaction of all conditions precedent listed in Article 3 and the other terms and provisions of this Agreement, Advances under the Facilities and from the Company's Funds Account shall be made during the Availability Period.

#### 2.2 **Company Accounts.**

2.2.1 **Company's Funds Account.** On or prior to the Closing Date, the Company's Funds Account shall be established at Deutsche Bank Trust Company Americas, as the Securities Intermediary. There shall be deposited into the Company's Funds Account (a) the amounts required pursuant to Sections 5.5.1 and 5.5.2, (b) all funds received by the Company relating to the Phase I Project prior to the Phase I Final Completion Date (i) consisting of liquidated or other damages under the Construction Agreements, (ii) under the Construction Guaranty, (iii) under any Payment and Performance Bond provided under Section 5.9, or (iv) consisting of any amounts related to construction of the Phase I Project or to any other Construction Agreement, (c) all funds received by the Company relating to the Phase II Project prior to the Phase II Final Completion Date (i) consisting of liquidated or other damages under the Construction Agreements, (ii) under any Construction Guaranty, (iii) under any Payment and Performance Bond or other risk mitigant provided under Section 5.9, or (iv) consisting of any amounts related to construction of the Phase II Project or to any other Construction Agreement, (d) prior to the Phase I Substantial Completion Date, all Loss Proceeds in respect of the Phase I Project required to be deposited into the Company's Funds Account pursuant to Section 5.14, (e) prior to the Phase II Completion Date, all Loss Proceeds in respect of the Phase II Project required to be deposited into the Company's Funds Account pursuant to Section 5.14, (f) at the Company's option, any additional equity contributions made to the Company prior to the Termination Date and (h) if the Company so elects in accordance with the terms hereof, investment income from Permitted Investments in the Completion Guaranty Deposit Account and the Project Liquidity Reserve Account. Subject to the provisions of Section 10.2 and the Company Collateral Account Agreements, amounts on deposit in the Company's Funds Account shall from time to time, be transferred by the Disbursement Agent to the Company's Concentration Account for application in accordance with the provisions of this Agreement or applied to prepay the Obligations in accordance with Section 5.14. The Disbursement Agent shall cause investment income from Permitted Investments on amounts on deposit in the Company's Funds Account to be deposited at all times therein until applied as provided in this Agreement.

**2.2.2 2014 Notes Proceeds Account.** On or prior to the Closing Date, the 2014 Notes Proceeds Account shall be established at Deutsche Bank Trust Company Americas, as the Securities Intermediary. In addition, on or prior to the initial issuance of any Additional Notes, the Additional Notes Sub-Account shall be established as a sub-account of the 2014 Notes Proceeds Account. There shall be deposited (a) into the 2014 Notes Proceeds Account (but not the Additional Notes Sub-Account) certain proceeds of the 2014 Notes described in clause (i) of the definition of 2014 Notes and (b) into the Additional Notes Sub-Account, the net proceeds from the issuance of any Additional Notes. Subject to the provisions of Section 10.2 and the Company Collateral Account Agreements, amounts on deposit in the 2014 Notes Proceeds Account shall, from time to time, be transferred by the Disbursement Agent to the Company's Concentration Account for application in accordance with the provisions of this Agreement. The Disbursement Agent shall cause (i) investment income from Permitted Investments on amounts on deposit in the Additional Notes Sub-Account, to be deposited therein and (ii) all other investment income from Permitted Investments on amounts on deposit in the 2014 Notes Proceeds Account to be deposited in the 2014 Notes Proceeds Account (but not the Additional Notes Sub-Account), in each case, until applied as provided in this Agreement.

**2.2.3 Disbursement Account.** On or prior to the Closing Date, the Disbursement Account shall be established at Deutsche Bank Trust Company Americas, as the Securities Intermediary. On the Amendment Date, the Disbursement Agent shall cause all amounts then on deposit in the Disbursement Account to be transferred to and deposited in the Company's Concentration Account.

**2.2.4 Cash Management Account.** On or prior to the Closing Date, the Company shall establish a local deposit account (the "Cash Management Account") in Las Vegas, Nevada with a bank (i) that is reasonably acceptable to the Disbursement Agent and (ii) that enters into a control agreement substantially in the form of Exhibit I hereto or otherwise satisfactory to the Disbursement Agent. On the Amendment Date, the Disbursement Agent shall cause all amounts then on deposit in the Cash Management Account to be transferred to and deposited in the Company's Concentration Account.

**2.2.5 Bank Proceeds Account.** On or prior to the Closing Date, the Bank Proceeds Account shall be established at Deutsche Bank Trust Company Americas, as the Securities Intermediary. There shall be deposited in the Bank Proceeds Account proceeds of "Term Loans" funded from time to time by the Bank Lenders pursuant to Section 2.5(c) of the Bank Credit Agreement. Subject to the provisions of Section 10.2 and the Company Collateral Account Agreements, amounts on deposit in the Bank Proceeds Account shall from time to time be transferred by the Disbursement Agent to the Company's Concentration Account for application in accordance with the provisions of this Agreement. Upon receipt of a written request from the Company on or within one (1) Banking Day after the Phase II Revolving Commitment Sunset Date (if the Phase II Approval Date shall have not occurred), the Disbursement Agent shall release any proceeds of "Term Loans" funded under Section 2.5(c) of the Bank Credit Agreement then on deposit in the Bank Proceeds Account to the Bank Agent for application to the repayment of "Term Loans" pursuant to Section 2.12(e) of the Bank Credit Agreement. The Disbursement Agent shall cause investment income from Permitted Investments on amounts on deposit in the Bank Proceeds Account to be deposited at all times therein until applied as provided in this Agreement.

**2.2.6 Company's Concentration Account.** (a) The Company has established the Company's Concentration Account. In addition to other funds deposited by the Company in the Company's Concentration Account, there shall be deposited into the Company's Concentration Account:

(i) all funds from time to time advanced by the Bank Lenders under the Bank Credit Facility pursuant to Section 2.5(a) of the Bank Credit Agreement;

(ii) all funds transferred from the Company's Funds Account, the Bank Proceeds Account and the 2014 Notes Proceeds Account pursuant to the provisions of this Agreement; and

(iii) investment income from Permitted Investments on amounts on deposit therein at all times until applied as provided in this Agreement.

(b) Subject to the provisions of Section 10.2 and the Company Collateral Account Agreements, (i) the Company shall be permitted, at any time and from time to time, without submitting an Advance Request or satisfying any of the conditions or other requirements set forth in Article 3, to cause funds on deposit in the Company's Funds Account to be transferred to the Company's Concentration Account, (ii) on each Advance Date, the Disbursement Agent shall transfer from the Bank Proceeds Account and the 2014 Notes Proceeds Account into the Company's Concentration Account and shall deposit into the Company's Concentration Account, as applicable, the amounts provided in Section 2.3.3(a)(ii), and the funds advanced by the Bank Lenders pursuant to Section 2.5(a) of the Bank Credit Agreement and (iii) the Company shall be permitted from time to time to draw checks on and otherwise withdraw amounts on deposit in the Company's Concentration Account to (A) pay Project Costs by writing checks or wiring funds that clear through a zero balance account used exclusively for clearing Project Costs and (B) make other payments and disbursements not otherwise prohibited by the Financing Agreements.

**2.2.7 Completion Guaranty Deposit Account.** On or prior to the Closing Date, the Completion Guaranty Deposit Account shall be established at Deutsche Bank Trust Company Americas, as the Securities Intermediary. On the Closing Date, the Company shall cause \$50,000,000 to be on deposit in the Completion Guaranty Deposit Account. There shall also be deposited into the Completion Guaranty Deposit Account all amounts described in Section 5.1.4. Subject to the provisions of Section 10.2 and the Completion Guaranty Collateral Account Agreement, amounts on deposit in the Completion Guaranty Deposit Account shall, from time to time, be (a) transferred or applied by the Disbursement Agent to the Company's Funds Account or the Company's Concentration Account for application as provided in accordance with Sections 5.5.1 or 5.5.3, as applicable or (b) applied to prepayment of the Obligations in accordance with Section 5.14. The Disbursement Agent shall cause investment income from Permitted Investments on amounts on deposit in the Completion Guaranty Deposit Account to be deposited therein unless the Company shall request that such investment income be transferred to and deposited in the Company's Funds Account, which transfer shall be effected as a dividend from the Completion Guarantor to the Company. The Disbursement Agent shall release all amounts remaining on deposit in the Completion Guaranty Deposit Account, other than the Reserved Amounts, to the Company on the Completion Guaranty Release Date, which release



shall be effected as a dividend from the Completion Guarantor to the Company. The Disbursement Agent shall release all amounts remaining on deposit in the Completion Guaranty Deposit Account to the Company on the Termination Date.

**2.2.8 Project Liquidity Reserve Account.** On or prior to the Closing Date, the Project Liquidity Reserve Account shall be established at Deutsche Bank Trust Company Americas, as the Securities Intermediary. On or prior to the Closing Date, the Company shall cause \$30,000,000 to be on deposit in the Project Liquidity Reserve Account. Subject to the provisions of Section 10.2 and the Company Collateral Account Agreements, amounts on deposit in the Project Liquidity Reserve Account shall, from time to time, be applied by the Disbursement Agent to prepayment of the Obligations in accordance with Section 5.14. After the Phase I Final Completion Date, upon receipt of a written request from the Company pursuant to Section 2.12(f) of the Bank Credit Agreement, the Disbursement Agent shall release all amounts remaining on deposit in the Project Liquidity Reserve Account to the Bank Agent for application to the repayment of Obligations under the Bank Credit Agreement (such amounts to be applied in accordance with Section 2.12(g) of the Bank Credit Agreement and without reduction of any commitments thereunder). The Disbursement Agent shall cause investment income from Permitted Investments on amounts on deposit in the Project Liquidity Reserve Account to be deposited at all times therein until applied by the Bank Agent as described above.

### **2.3 Mechanics for Obtaining Advances.**

#### **2.3.1 Advance Requests.**

(a) Other than as provided in Sections 2.6(b) and 3.7, the Company shall have the right, from time to time, to deliver to the Disbursement Agent and the Construction Consultant an Advance Request containing, in each case, all exhibits, attachments and certificates thereto, all appropriately completed and duly executed, requesting that an Advance be made (i) if the Construction Consultant will be required, pursuant to Section 3.2.6(a)(ii), to deliver to the Disbursement Agent its Construction Consultant's Advance Certificate with respect to such Advance Request, on or after the tenth (10th) Banking Day after delivery of such Advance Request and (ii) with respect to all other Advance Requests, on or after the third (3<sup>rd</sup>) Banking Day after delivery of such Advance Request; provided that in the event the Disbursement Agent receives an Advance Request from the Company after 12:00 p.m. New York, New York time on the day such Advance Request is delivered by the Company, such Advance Request shall be deemed to have been delivered on the following Banking Day; provided further that any Advance Request that does not request an Advance for the purpose of payment to Contractors shall not be required to include the exhibits, attachments and certificates thereto. Except with respect to Advances under Section 3.3, Advance Requests with respect to the Phase II Project may only be submitted after the Phase II Approval Date.

(b) For each Advance with respect to Project Costs allocated to the Phase I Project in the Phase I Project Budget, the Company's Advance Request shall include the Phase I Required Contractor and Architect Advance Certificates (in each case, to the extent that such Advance Request requests that payment be made to such Person or to any Contractor or Subcontractor implementing the work designed by such Person).

(c) For each Advance with respect to Project Costs allocated to the Phase II Project in the Phase II Project Budget from and after the Phase II Approval Date, the Company's Advance Request shall include the Phase II Major Contractors' Advance Certificate(s) and the Phase II Major Architects' Advance Certificate(s) (in each case, to the extent that such Advance Request requests that payment be made to such Person or to any Contractor or Subcontractor implementing the work designed by such Person).

(d) (i) Each Advance Request shall (A) request Advances (1) in an amount sufficient to pay all Project Costs specifically allocated to either the Phase I Project or (subject to Section 3.3 and 3.4) the Phase II Project in the applicable Project Budget that are due and payable or that are estimated to become due and payable within thirty (30) days after the Advance Date or (2) request Advances in order to issue a Letter of Credit under the Bank Credit Facility and (B) without limiting any other provision of this Section 2.3.1, substantiate, in the manner contemplated by the Advance Request, that any amounts previously debited by the Company from the Construction Tracking Account have been used to pay Project Costs in accordance with the applicable Project Budget and in the amounts specified in the previous Advance Requests.

(ii) Except with respect to Advances from the Company's Funds Account and the issuance of Letters of Credit, the requested Advance may not exceed the positive difference, if any, between (A) the aggregate amount of Project Costs which the Company may request pursuant to clause (i)(A)(i) above, less (B) the credit balance in the Construction Tracking Account (such difference being referred to as the "Maximum Permitted Advance Amount").

(iii) Without limiting the generality of the foregoing, from and after the Phase I Opening Date, Advances for the purpose of paying Debt Service shall be limited to the amount of Debt Service that accrues on the portion of the proceeds of the loans under the Bank Credit Facility and the portion of the proceeds of the 2014 Notes that have been applied to pay Project Costs allocated to the Phase II Project under the Phase II Project Budget.

(iv) Each Advance Request submitted by the Company shall request Advances from the various Funding Sources consistent with the requirements of Section 2.4 and shall include (A) an estimated use of proceeds for the requested Advance and, if applicable, broken down for each Project by Contractor and Line Item, (B) at any time that the aggregate amount of the Project Costs anticipated to be paid by the Company in a calendar month exceeds the aggregate amount of Project Costs anticipated to be incurred during such month pursuant to the Project Budgets by an amount equal to or greater than \$10,000,000 (a "Monthly Disbursement Excess"), written notice thereof, and (C) a detailed calculation of the balance of the Construction Tracking Account. The Company shall certify as to the matters set forth in each Advance Request.

(v) Promptly after delivery of each Advance Request, the Disbursement Agent shall review such Advance Request and any certificates, attachments or exhibits thereto to determine whether all required documentation has been provided.

(e) Concurrently with the delivery by the Company of each Advance Request, the Company shall deliver to the Funding Agents and the Disbursement Agent a Notice of Advance Request substantially in the form of Exhibit D, appropriately completed and duly executed by a Responsible Officer of the Company. Each Funding Agent shall, as soon as practicable (but no later than two (2) Banking Days) after receiving each Notice of Advance Request, deliver a notice confirming such receipt to the Disbursement Agent and, in the case of the Bank Agent, confirming that the Company's calculation of interest and fees scheduled to become due and payable under its Facility on and after the requested Advance Date and through the scheduled next succeeding Advance Date is accurate (or, if not accurate, shall provide the appropriate revisions to the Disbursement Agent).

(f) Promptly after receipt of a request therefor, the Disbursement Agent shall deliver copies of any Advance Request to the Funding Agents.

#### 2.3.2 Funding Notices from Disbursement Agent.

(a) (i) Promptly after delivery of each Advance Request and related Notice of Advance Request by the Company pursuant to Section 2.3.1, the Disbursement Agent shall review the same in order to (A) reconcile the information set forth in the Advance Request with the information set forth in the related Notice of Advance Request and (B) determine whether all required documentation has been provided and whether all applicable conditions precedent pursuant to this Agreement have been satisfied. In particular, and without limiting the generality of the foregoing, the Disbursement Agent may verify, to the extent set forth herein, based on information provided to it by the Funding Agents, the Company and the Construction Consultant (V) that the amount of the Requested Advance (excluding Advances from the Company's Funds Account and the issuance of Letters of Credit) does not exceed the Maximum Permitted Advance Amount, (W) the Company's calculation of Available Funds, including Anticipated Earnings, set forth in the Advance Request, (X) that the Projects are In Balance as of the Advance Date, (Y) that the allocation of the requested Advance among the various Funding Sources complies with the provisions of Section 2.4 and (Z) that the Company's calculation of interest and fees scheduled to become due and payable under the Bank Credit Agreement and the 2014 Notes, in each case, from and after the requested Advance Date and through the date that is thirty (30) days after the Advance Date, is accurate. The parties hereto recognize that the Disbursement Agent will be reviewing the Company's Advance Request prior to receipt by the Disbursement Agent of the Construction Consultant's certifications in respect of such Advance Request. Accordingly, and notwithstanding anything in this Agreement to the contrary, the Disbursement Agent shall be entitled to approve any Advance Request so long as such Advance Request satisfies, on its face, the requirements of this Agreement. The Disbursement Agent shall have no obligation to make any further review or investigation of the Advance Request, the contents thereof or the accuracy of any statement, information or certification therein.

(ii) If based on the Disbursement Agent's review of the Advance Request and accompanying Notice of Advance Request, the Disbursement Agent finds any errors or inaccuracies in the Advance Request or the Notice of Advance Request (including any inaccuracy in the allocations made pursuant to Section 2.4 hereof), but the Advance Request and Notice of Advance Request otherwise conform to the requirements of this Agreement, the Disbursement Agent shall (A) notify the Company thereof, (B) revise (to the extent it is able to

do so and with the Company's consent, which may be provided electronically) or request that the Company revise the relevant certificates to remove the request for the disapproved payment and/or rectify any errors or inaccuracies, (C) deliver or request that the Company execute and deliver to the Funding Agents a revised Notice of Advance Request and (D) approve the requested Advance after making the required revisions (or receiving from the Company the revised certificates) on the basis of the certificates as so revised. In the event that the Disbursement Agent revises the Advance Request and Notice of Advance Request so as to increase the amount to be advanced under the Bank Credit Facility, the amount of such increase shall constitute the same type of Loans as requested in such Advance Request (unless otherwise prohibited under the Bank Credit Agreement). In the event that the Disbursement Agent revises the Advance Request and Notice of Advance Request so as to decrease the amount to be advanced under the Bank Credit Facility, the amount of such decrease shall (unless otherwise requested by the Company and permitted under the Bank Credit Agreement) first reduce the amount of "Base Rate Loans" requested under such Facility and then reduce the amount of "Eurodollar Loans" requested under such Facility. All references to a particular requested Advance, Advance Request or Notice of Advance Request in the ensuing provisions of this Article 2 shall, to the extent the context so requires, refer to the same as revised or modified pursuant to this clause (ii).

(b) In the event that the Disbursement Agent (i) on or prior to the requested Advance Date, determines that the conditions precedent to an Advance have not been satisfied or (ii) prior to the requested Advance Date receives notice from any Funding Agent that a Potential Event of Default or an Event of Default has occurred and is continuing, then the Disbursement Agent shall notify the Company and each Funding Agent thereof as soon as reasonably possible but in no event later than one (1) Banking Day after such determination or receipt, as the case may be (such notification, a "Stop Funding Notice"). The Stop Funding Notice shall specify, in reasonable detail, the conditions precedent which the Disbursement Agent has determined have not been satisfied and/or shall include as an attachment a copy of any notice of default received by the Disbursement Agent. Upon such written notice from the Disbursement Agent, subject to the provisions of Section 3.5, and until the Disbursement Agent notifies the Company and the Funding Agents that the Stop Funding Notice has been withdrawn, (i) no Bank Lender shall have any obligation to advance its portion of the requested Advance, if any, (ii) the Disbursement Agent shall not withdraw any funds from the 2014 Notes Proceeds Account for the purpose of transferring such funds to the Company's Concentration Account (provided that the Disbursement Agent shall withdraw funds from the 2014 Notes Proceeds Account for the purpose of paying scheduled Debt Service on the 2014 Notes), (iii) the Disbursement Agent shall not withdraw any funds from the Company's Funds Account to satisfy such requested Advance, (iv) the Disbursement Agent shall not withdraw, transfer or release to the Company any funds then on deposit in the Bank Proceeds Account (provided that the Disbursement Agent shall withdraw funds from the Bank Proceeds Account for the purpose of paying scheduled Debt Service on the Bank Credit Facility) and (v) the Company shall not be permitted to pay Project Costs (other than Debt Service) from amounts on deposit in the Company's Concentration Account; provided that such Stop Funding Notice shall not affect the obligations of the Company for break funding costs under the Bank Credit Facility.

(c) Prior to the earliest of (i) termination of the "Term Loan Commitments" (as defined in the Bank Credit Agreement) other than due to the funding in full

thereof, (ii) termination of the “Revolving Credit Commitments” (as defined in the Bank Credit Agreement) and (iii) acceleration by any Funding Agent of amounts owed under its Facility, unless any such action has been rescinded, at such time, if ever, as the Disbursement Agent (x) determines that the condition precedent to the requested Advance which had not been satisfied has become satisfied or (y) receives notice from the Funding Agent who issued the notice of default described in the preceding paragraph that the Potential Event of Default or Event of Default has been cured or waived, as the case may be, the Disbursement Agent shall notify the Company and the Funding Agents that the Stop Funding Notice has been withdrawn.

(d) In the event that a Funding Agent entitled to waive conditions precedent to funding pursuant to Section 3.5 or the Bank Agent pursuant to Section 3.6 informs the Disbursement Agent in writing that it has waived the event or events giving rise to the Stop Funding Notice, the Disbursement Agent shall withdraw the Stop Funding Notice (with respect only to amounts to be advanced under such Funding Agent’s Facility unless all Funding Agents entitled to waive conditions with respect to such Advance Request have waived the conditions or the Bank Agent has waived such conditions pursuant to Section 3.6, in which case the Disbursement Agent shall withdraw the Stop Funding Notice with respect to all Advances requested by the Company and all amounts in the Company’s Concentration Account) by notice to the Company and each of the Funding Agents.

#### 2.3.3 Provision of Funds by the Bank Lenders.

(a) (i) (A) On the requested Advance Date or (B) in the event that a Stop Funding Notice has been issued and subsequently withdrawn, on the third (3<sup>rd</sup>) Banking Day after the withdrawal of such Stop Funding Notice, before 12:00 p.m. New York, New York time, the Bank Agent shall send written notice to the Disbursement Agent (x) that the Bank Agent (subject to Section 2.4.3) is prepared to deposit or cause to be deposited in the Company’s Concentration Account, in immediately available funds, the Bank Credit Facility’s portion of the requested Advance, if any, as determined pursuant to Sections 2.4.1 and 2.4.2 and (y) if the related Notice of Advance Request includes a request for the issuance of one or more Letters of Credit under the Bank Credit Agreement, that the “Issuing Lenders” (as defined in the Bank Credit Agreement) have advised the Bank Agent that they are committed to issue each such Letter of Credit.

(ii) Upon receipt of written notice from the Bank Agent pursuant to clause (i) above that the Bank Agent is prepared to deposit the funds required to be deposited in the Company’s Concentration Account and, if applicable, upon receipt of the Bank Agent’s confirmation that the “Issuing Lenders” (as defined in the Bank Credit Agreement) have advised the Bank Agent that they are committed to issue each requested Letter of Credit, the Disbursement Agent shall (A) instruct the Bank Agent to deposit or cause to be deposited the required funds into the Company’s Concentration Account and (B) (subject to Section 2.3.2(b)) promptly withdraw from the Company’s Funds Account, the 2014 Notes Proceeds Account, the Bank Proceeds Account and the Completion Guaranty Account the portion of the Advance to be funded from each such account as determined pursuant to Section 2.4, deposit such funds in the Company’s Concentration Account and notify the Bank Agent that such transfer to the Company’s Concentration Account has been made. Upon receipt of such notice, if applicable,

the Bank Agent shall instruct the “Issuing Lenders” (as defined in the Bank Credit Agreement) under the Bank Revolving Facility to issue the requested Letters of Credit.

(b) Neither the Disbursement Agent nor the Bank Agent shall be responsible for any Bank Lender’s failure to make any required Advance or, if applicable, the failure of any “Issuing Lender” under the Bank Credit Agreement to issue any Letter of Credit. The Bank Agent shall not deposit or cause to be deposited in the Company’s Concentration Account any amounts requested by the relevant Advance Request until (i) instructed so to do by the Disbursement Agent and (ii) the Bank Agent has confirmed that each Bank Lender has made the required Advance and, if applicable, that the “Issuing Lenders” (as defined in the Bank Credit Agreement) under the Bank Revolving Facility have advised the Bank Agent that they are committed to issue each requested Letter of Credit, unless one or more of the Lenders who have provided to the Bank Agent their share of the Advance request that the funds advanced by such Lender be deposited in the Company’s Concentration Account (the Bank Agent shall promptly notify the Disbursement Agent and the 2014 Notes Indenture Trustee upon receiving any such request). However, the withholding of such Advances by the Disbursement Agent and/or the Bank Agent shall not release the Lender who failed to make the Advance under its Facility or any “Issuing Lender” who failed to issue a Letter of Credit from liability. The Disbursement Agent shall have no liability to the Company arising from any Stop Funding Notice issued pursuant to Section 2.3.2(b) at the request of any Funding Agent (such a request, a “Stop Funding Request”), whether or not such Funding Agent was entitled to issue such Stop Funding Request. A Funding Agent shall not have any liability to the Company, the Disbursement Agent, any other Funding Agent or any Lender arising from any Stop Funding Notice issued by the Disbursement Agent in response to a Stop Funding Request by such Funding Agent; provided, however, that nothing herein shall release from liability the Funding Agent who issued the Stop Funding Request if such issuance resulted from, or constituted an act of gross negligence or willful misconduct on the part of such Funding Agent, as finally judicially determined by a court of competent jurisdiction.

2.3.4 Change in Facts Certified. The Company shall promptly notify the Disbursement Agent prior to the making of any Advances in the event that the Company obtains knowledge that any of the matters to which the Company certified in the corresponding Advance Request are no longer true and correct in all material respects. The acceptance by the Company of the proceeds of any Advance shall constitute a re-certification by the Company, as of the applicable Advance Date, of all matters certified to in the related Advance Request, except to the extent that any matter so certified to relates to a specific earlier date in which case such certification shall be true and correct in all material respects as of such earlier date.

2.3.5 References to Dates. In the event that any day or date referred to in the foregoing provisions of this Section 2.3 occurs on a day that is not a Banking Day, the reference shall be deemed to be to the next succeeding Banking Day.

#### 2.4 Order of Sources of Funding.

2.4.1 Order of Withdrawals From Funding Sources. The full amount of all Advances to be made on any given date shall be made from the following sources and in the following order of priority:

- (a) first, from funds from time to time on deposit in the Company’s Funds Account, until Exhausted;

(b) second, until the funds on deposit in the 2014 Notes Proceeds Account have been Exhausted and subject to Section 2.4.2, from funds from time to time on deposit in the 2014 Notes Proceeds Account and from funds available to be drawn under the Bank Credit Facility, in such amounts so that the aggregate amount of Advances on any given date pursuant to this Section 2.4.1(b) shall have been made in the following percentages: (A) sixty-six and two-thirds percent (66 2/3%) shall have been Advanced from the 2014 Notes Proceeds Account and (B) thirty-three and 1/3 percent (33 1/3%) shall have been Advanced from the Bank Credit Facility;

(c) third, from funds available to be drawn under the Bank Credit Facility, until Exhausted;

(d) fourth, from funds available to be transferred from the Completion Guaranty Deposit Account under Section 5.5.3, until Exhausted; and

(e) fifth, from funds available to be transferred from the Project Liquidity Reserve Account under Section 5.5.3, until Exhausted.

2.4.2 Advances for Letters of Credit. For purposes of determining the funding ratio of the Bank Credit Facility under Section 2.4.1 (b) above, all Advances consisting of Letters of Credit shall be counted as an Advance made from the Bank Credit Facility in an amount equal to the stated amount of such Letters of Credit outstanding from time to time.

2.4.3 Advances Under the Bank Credit Facility. All issuances of Letters of Credit under the Bank Credit Facility shall be satisfied through the Bank Revolving Facility pursuant to the procedures set forth in Article 3 of the Bank Credit Agreement. All other amounts required to be obtained from the Bank Credit Facility for deposit in the Company's Concentration Account shall be satisfied as follows:

(a) first, from amounts on deposit in the Bank Proceeds Account on the relevant date, to the extent thereof; and

(b) second, from funds available to be drawn under the Bank Credit Facility.

2.4.4 Advances from the 2014 Notes Proceeds Account. With respect to any Advance from the 2014 Notes Proceeds Account, the Company shall specify in the applicable Advance Request the portion of such Advance that is to be withdrawn from the Additional Notes Sub-Account, the portion of such Advance that is to be withdrawn from other funds on deposit in the 2014 Notes Proceeds Account, and the Project Costs that will be paid from each such portion. The amounts withdrawn from the Additional Notes Sub-Account and from other funds on deposit in the 2014 Notes Proceeds Account will be deemed to have been used to pay the Project Costs specified in the applicable Advance Request.

2.4.5 **Post-Funding Reallocations.** In the event that at any time the Disbursement Agent determines that the allocations made in any previous Advance Request pursuant to the foregoing provisions of this Section 2.4 were erroneous or inaccurate, the parties shall cooperate to rectify such misallocations by allocating future Advances in a manner that accounts for the previous misallocation or by using such other methods reasonably determined by the Disbursement Agent.

## 2.5 **Disbursements.**

### 2.5.1 **[Intentionally Omitted].**

2.5.2 **Special Procedures for Unpaid Contractors.** The Company agrees that the Disbursement Agent may make payments from the Company's Concentration Account (or instruct the financial institution where such Account is held to pay) to any Contractor for amounts due and owing to such Contractor under the relevant Contract, or any other Subcontractors in payment of amounts due and owing to such party from the Company without further authorization from the Company, and the Company hereby constitutes and appoints the Disbursement Agent its true and lawful attorney in fact to make such direct payments and this power of attorney shall be deemed to be a power coupled with an interest and shall be irrevocable; provided that, except upon the occurrence and continuation of an Event of Default, the Disbursement Agent shall not exercise its rights under this power of attorney except to make payments as directed by the Company pursuant to an Advance Request. No further direction or authorization from the Company shall be necessary to warrant or permit the Disbursement Agent to make such payments in accordance with the foregoing sentence and, to the extent funds in the Company's Concentration Account are not sufficient to make such payments, the Disbursement Agent may withdraw the shortfall from any other Company Account and transfer sufficient funds from such Company Accounts to the Company's Concentration Account as needed to make such payments.

## 2.6 **Phase I Substantial Completion Date Procedures.**

(a) No less than thirty (30) days prior to the anticipated Phase I Substantial Completion Date, the Company shall deliver notice of the anticipated Phase I Substantial Completion Date to the Disbursement Agent, the Construction Consultant, the Phase I Architect and the Funding Agents. Thereafter, in order to cause the Phase I Substantial Completion to occur, the Company shall deliver to the Construction Consultant, the Disbursement Agent and each Funding Agent the Company's Phase I Substantial Completion Certificate relating thereto, appropriately completed and duly executed by a Responsible Officer of the Company with all attachments thereto.

(b) The Disbursement Agent shall, and shall instruct the Construction Consultant to, review the Company's Phase I Substantial Completion Certificate delivered pursuant to Section 2.6(a). In the event that the Disbursement Agent or the Construction Consultant discovers any errors in the Company's Phase I Substantial Completion Certificate, they shall request that the Company revise and resubmit the certificate. The Disbursement Agent shall promptly instruct the Construction Consultant to, within ten (10) Banking Days after its receipt of the Company's Phase I Substantial Completion Certificate, deliver to the



Disbursement Agent, the Bank Agent, the 2014 Notes Indenture Trustee and the Company the Construction Consultant's Phase I Substantial Completion Certificate approving or disapproving the Company's Phase I Substantial Completion Certificate. If the Construction Consultant disapproves the Company's Phase I Substantial Completion Certificate, the Disbursement Agent shall instruct the Construction Consultant to provide the Company, in reasonable detail, its reason(s) for such disapproval.

(c) Within five (5) Banking Days after receipt by the Disbursement Agent of the Construction Consultant's Phase I Substantial Completion Certificate approving the Company's Phase I Substantial Completion Certificate, the Disbursement Agent shall, subject to its reasonable determination that each of the conditions to the Phase I Substantial Completion has been satisfied, countersign the Company's Phase I Substantial Completion Certificate and forward the same to the Bank Agent, the 2014 Notes Indenture Trustee and the Company. The Phase I Substantial Completion Date shall be deemed to occur on the date the Disbursement Agent countersigns the Company's Phase I Substantial Completion Certificate relating thereto.

## **2.7 Completion Date Procedures.**

(a) No less than thirty (30) days prior to the anticipated Completion Date for a Project, the Company shall deliver notice of the anticipated Completion Date for such Project to the Disbursement Agent, the Construction Consultant, the Project Architects and the Funding Agents. Thereafter, in order to cause Completion for such Project to occur, the Company shall deliver to the Construction Consultant, the Disbursement Agent and each Funding Agent the Company's Completion Certificate relating to such Project, appropriately completed and duly executed by a Responsible Officer of the Company together with all attachments thereto.

(b) The Disbursement Agent shall, and shall instruct the Construction Consultant to, review the Company's Completion Certificate for the applicable Project. In the event that the Disbursement Agent or the Construction Consultant discovers any errors in the Company's Completion Certificate, they shall request that the Company revise and resubmit the certificate. The Disbursement Agent shall promptly instruct the Construction Consultant to, within ten (10) Banking Days after its receipt of the Company's Completion Certificate for each Project, deliver to the Disbursement Agent, the Bank Agent, the 2014 Notes Indenture Trustee and the Company the Construction Consultant's Completion Certificate with respect to such Project approving or disapproving the Company's Completion Certificate. If the Construction Consultant disapproves the Company's Completion Certificate, the Disbursement Agent shall instruct the Construction Consultant to provide the Company, in reasonable detail, its reason(s) for such disapproval.

(c) Within five (5) Banking Days after receipt by the Disbursement Agent of the Construction Consultant's Completion Certificate approving the Company's Completion Certificate for the applicable Project, the Disbursement Agent shall, subject to its reasonable determination that each of the conditions to Completion of such Project has been satisfied, countersign the Company's Completion Certificate for such Project and forward the same to the Bank Agent, the 2014 Notes Indenture Trustee and the Company. The Completion

Date for the applicable Project shall be deemed to occur on the date the Disbursement Agent countersigns the Company's Completion Certificate for such Project.

## **2.8 Completion Guaranty Release Procedures.**

(a) In order to cause the Completion Guaranty Release Date to occur, the Company shall deliver to the Construction Consultant, the Disbursement Agent and the Bank Agent the Company's Completion Guaranty Release Certificate appropriately completed and duly executed by a Responsible Officer of the Company, with all attachments thereto. The Company's Completion Guaranty Release Certificate shall indicate that the Company believes the Completion Guaranty Release Conditions have been satisfied, and shall contain all other information required thereby, including the Company's calculation of the Reserved Amount (if any).

(b) The Disbursement Agent shall, and shall instruct the Construction Consultant to, promptly review the Company's Completion Guaranty Release Certificate. In the event that the Disbursement Agent or the Construction Consultant discovers any errors in the Company's Completion Guaranty Release Certificate, it shall so inform the Company, stating in reasonable detail the revisions required, and shall request that the Company revise and resubmit the certificate. The Disbursement Agent shall promptly instruct the Construction Consultant to, within ten (10) Banking Days after its receipt of the Company's Completion Guaranty Release Certificate, deliver to the Disbursement Agent, the Bank Agent and the Company, the Construction Consultant's Completion Guaranty Release Certificate approving or disapproving the Company's Completion Guaranty Release Certificate. If the Construction Consultant disapproves the Company's Completion Guaranty Release Certificate, the Disbursement Agent shall instruct the Construction Consultant to provide the Company, in reasonable detail, its reason(s) for such disapproval.

(c) Within five (5) Banking Days after receipt by the Disbursement Agent of the Construction Consultant's Completion Guaranty Release Certificate approving the Company's Completion Guaranty Release Certificate, the Disbursement Agent shall, subject to its reasonable determination that each of the Completion Guaranty Release Conditions has been satisfied, countersign the Company's Completion Guaranty Release Certificate and forward the same to the Bank Agent and the Company. The Completion Guaranty Release Date shall be deemed to occur on the date the Disbursement Agent countersigns the Company's Completion Guaranty Release Certificate.

(d) On the Completion Guaranty Release Date, the Disbursement Agent shall release to the Company all amounts on deposit in the Completion Guaranty Deposit Account, excluding the Reserved Amounts, which release shall be effected as a dividend from the Completion Guarantor to the Company.

## **2.9 Final Completion Procedures.**

### **2.9.1 Procedures.**

(a) No less than thirty (30) days prior to the anticipated Final Completion Date for a Project, the Company shall deliver notice of the anticipated Final

Completion Date for such Project to the Disbursement Agent, the Construction Consultant, the Project Architects and the Funding Agents. Thereafter, in order to cause Final Completion for such Project to occur, the Company shall deliver to the Construction Consultant, the Disbursement Agent and each Funding Agent the Company's Final Completion Certificate relating to such Project, appropriately completed and duly executed by a Responsible Officer of the Company together with all attachments thereto.

(b) The Disbursement Agent shall, and shall instruct the Construction Consultant to, review the Company's Final Completion Certificate for the applicable Project. In the event that the Disbursement Agent or the Construction Consultant discovers any errors in the Company's Final Completion Certificate, they shall request that the Company revise and resubmit the certificate. The Disbursement Agent shall promptly instruct the Construction Consultant to, within ten (10) Banking Days after its receipt of the Company's Final Completion Certificate for each Project, deliver to the Disbursement Agent, the Bank Agent, the 2014 Notes Indenture Trustee and the Company, the Construction Consultant's Final Completion Certificate with respect to such Project approving or disapproving the Company's Final Completion Certificate. If the Construction Consultant disapproves the Company's Final Completion Certificate, the Disbursement Agent shall instruct the Construction Consultant to provide the Company, in reasonable detail, its reason(s) for such disapproval.

(c) Within five (5) Banking Days after receipt by the Disbursement Agent of the Construction Consultant's Final Completion Certificate approving the Company's Final Completion Certificate for the applicable Project, the Disbursement Agent shall, subject to its reasonable determination that each of the conditions to Final Completion of such Project has been satisfied, countersign the Company's Final Completion Certificate for such Project and forward the same to the Bank Agent, the 2014 Notes Indenture Trustee and the Company. The Final Completion Date for the applicable Project shall be deemed to occur on the date the Disbursement Agent countersigns the Company's Final Completion Certificate for such Project.

2.9.2 Phase I Project. On the Final Completion Date for the Phase I Project, the Disbursement Agent shall permit the release to the Company of any amounts in excess of \$30,000,000 then on deposit in the Completion Guaranty Deposit Account. Any such release shall be effected as a dividend from the Completion Guarantor to the Company.

2.9.3 Last Project. On the Termination Date, the Disbursement Agent shall release to the Company all amounts on deposit in the Company Accounts, other than the Project Liquidity Reserve Account which shall be released as provided in Section 2.2.8. Any such release to the Company from the Completion Guaranty Deposit Account shall be effected as a dividend from the Completion Guarantor to the Company.

2.10 **No Approval of Work**. The making of any Advance shall not be deemed an approval or acceptance by the Disbursement Agent, any Funding Agent, any Lender or the Construction Consultant (except to the extent set forth in the Construction Consultant Engagement Agreement, and then only for the benefit of the Lenders) of any work, labor, supplies, materials or equipment furnished or supplied with respect to the Projects.

2.11 **Security.** The Obligations shall be secured by the Project Security in accordance with the Security Documents. Further, all funds advanced by the Bank Lenders to complete the Projects or to protect the rights and interests of the Secured Parties under the Financing Agreements are deemed to be obligatory advances and are to be added to the total indebtedness secured by each of the Security Documents (including the Deeds of Trust). All sums so advanced shall be secured by each such Deed of Trust with the same priority of lien as the security for any other obligations secured thereunder.

**ARTICLE 3.**  
**CONDITIONS PRECEDENT TO**  
**THE CLOSING DATE, PHASE II APPROVAL DATE AND ADVANCES**

3.1 **Conditions Precedent to the Closing Date.** The occurrence of the Closing Date is subject to the prior satisfaction of each of the conditions precedent hereinafter set forth in this Section 3.1 in form and substance satisfactory to each of the Bank Agent and the Representatives of the Initial Purchasers in its sole discretion. Subject to Section 3.5, by executing this Agreement (or, in the case of (a) the Representatives of the Initial Purchasers, by purchasing the 2014 Notes and (b) the Bank Lenders, by becoming a party to the Bank Credit Agreement) each of the Bank Agent, the Bank Lenders and the Representatives of the Initial Purchasers shall be deemed to have confirmed that it has become satisfied that each of the following conditions precedent applicable to its Facility in this Section 3.1 has been satisfied.

3.1.1 **Financing Agreements and Material Project Documents.** Delivery to each of the Bank Agent, the Representatives of the Initial Purchasers and the Disbursement Agent (with such number of originally executed copies as they may reasonably request) of (a) executed originals of each Financing Agreement (other than those Financing Agreements, including the Phase II Deliverables, that are not required to be executed and delivered on the Closing Date) (collectively, the "Closing Financing Agreements"), and true and correct copies of each Material Project Document then in effect and any supplements or amendments thereto then in effect (including each Payment and Performance Bond securing the Phase I Primary Construction Contract and each Subcontract with a total contract amount or value of more than \$25,000,000 with an endorsement thereto naming the Collateral Agent as additional obligee and otherwise complying with the requirements of Section 5.9), all of which shall be in form and substance satisfactory to each of the Bank Agent and the Representatives of the Initial Purchasers, shall have been duly authorized, executed and delivered by the parties thereto, and each such Material Project Document shall be certified by a Responsible Officer of the Company as of the Closing Date as being true, complete and correct and in full force and effect and (b) evidence satisfactory to each of the Bank Agent and the Representatives of the Initial Purchasers that each such Material Project Document and each such Closing Financing Agreement is in full force and effect and that no party to any such Material Project Document or Closing Financing Agreement is or, but for the passage of time or giving of notice or both will be, in breach of any obligation thereunder.

3.1.2 **Corporate and/or LLC Authority of the Loan Parties.** Delivery to each of the Bank Agent, the Representatives of the Initial Purchasers and the Disbursement Agent of (a) a certified copy of the Articles of Incorporation, Articles of Organization or other similar formation document(s) of the each of the Loan Parties, (b) good standing certificates for each of

the Loan Parties issued by the Secretary of State of Nevada or any other state of incorporation or organization, (c) a certified copy of the bylaws or a copy of the Operating Agreement of each of the Loan Parties, certified by a Responsible Officer of each such Loan Party or a member of such Loan Party, as applicable, and (d) a copy of one or more resolutions or other authorizations of the Loan Parties certified by a Responsible Officer of each such Loan Party, as being in full force and effect on the Closing Date, authorizing the Advances herein provided for and the execution, delivery and performance of this Agreement and the other Operative Documents and any instruments or agreements required hereunder or thereunder to which each such entity is a party.

3.1.3 Incumbency of the Loan Parties. Delivery to each of the Bank Agent, the Representatives of the Initial Purchasers and the Disbursement Agent of a certificate from each of the Loan Parties satisfactory in form and substance to each of the Bank Agent and the Representatives of the Initial Purchasers signed by a Responsible Officer of each such Loan Party, and dated as of the Closing Date, as to the incumbency of the Person or Persons authorized to execute and deliver this Agreement and the other Material Project Documents (not theretofore executed) and Closing Financing Agreements and any documents, instruments or agreements required hereunder or thereunder to which each such entity is a party.

3.1.4 Insurance.

(a) Policies. Insurance complying with the requirements of Exhibit L shall be in place and in full force and effect.

(b) The Company Insurance Broker's Certificate. Delivery to each of the Bank Agent, the Representatives of the Initial Purchasers and the Disbursement Agent of (i) a certificate, in the form of Exhibit B-4 attached hereto or otherwise in form and substance reasonably satisfactory to each of the Bank Agent and the Representatives of the Initial Purchasers from the Company's insurance broker(s), dated as of the Closing Date and identifying underwriters, type of insurance, insurance limits and policy terms, listing the special provisions required as set forth in Exhibit L, describing the insurance obtained and stating that such insurance is in full force and effect and that all premiums then due thereon have been paid and (ii) certified copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer along with a commitment to deliver certified copies of the policies within forty-five (45) days after the Closing Date) meeting the requirements of Exhibit L and otherwise in form and substance reasonably satisfactory to each of the Bank Agent and the Representatives of the Initial Purchasers.

(c) Company's Insurance Certificate. The Company shall have identified, in the Company's Closing Certificate, the type of insurance, insurance limits and policy terms of any insurance then required to be obtained by any Contractor under the Material Project Documents then in effect and shall have certified that, to the best of Company's knowledge, all insurance required to be obtained by each Contractor under such Material Project Document or Exhibit L is in full force and effect if the same is required to be in effect and that if then required to be in effect, all premiums then due thereon have been paid, and that such insurance complies with the requirement of such Material Project Documents and Exhibit L.

(d) Insurance Advisor's Closing Certificate. Delivery to each of the Bank Agent, the Representatives of the Initial Purchasers and the Disbursement Agent of the Insurance Advisor's Closing Certificate, substantially in the form of Exhibit B-3, or otherwise in form and substance reasonably satisfactory to each of the Bank Agent and the Representatives of the Initial Purchasers.

3.1.5 Project Security. All of the Security Documents other than those not required to be delivered as of the Closing Date, in form and substance satisfactory to the Bank Agent and the Representatives of the Initial Purchasers, shall have been executed and delivered to the Secured Parties thereunder and shall be in full force and effect and all actions necessary or desirable, including all filings, in the opinion of the Funding Agents party thereto to perfect the security interests granted therein as a valid security interest over the Project Security having the priority contemplated therefor by this Agreement, the Intercreditor Agreement and the Security Documents shall have been taken or made (except for any filings or recordings to perfect the Secured Parties' lien in any motor vehicles).

3.1.6 Opinions. Each of the Bank Agent, the Representatives of the Initial Purchasers and the Disbursement Agent shall have received the opinions identified in Exhibit N.

3.1.7 Company's Closing Certificate. Delivery to each of the Bank Agent, the Representatives of the Initial Purchasers and the Disbursement Agent of the Company's Closing Certificate (which shall include, among other things, a certification as to the solvency of the Company and each of the Loan Parties on a consolidated basis after giving pro forma effect to the transactions contemplated hereby) signed by a Responsible Officer of each Loan Party.

3.1.8 Projections. The Bank Lenders and the Representatives of the Initial Purchasers shall have received Projections for the seven year period following the Closing Date in form and substance satisfactory to the Bank Lenders and the Representatives of the Initial Purchasers.

3.1.9 Advance Request. Delivery to the Disbursement Agent, the Bank Agent and the Construction Consultant of an Advance Request in form and substance satisfactory to the Bank Agent and the Disbursement Agent. Such Advance Request shall request an Advance in an amount sufficient to pay all fees and expenses then due and payable to the Secured Parties and their respective advisors and consultants. Neither delivery of a Construction Consultant's Advance Certificate nor delivery of an advance certificate from the Phase I Architect (in the Form of Exhibit C-3) approving the requested Advance shall be required for the initial Advance Request on the Closing Date.

3.1.10 Consultant Certificates and Report. Delivery to each of the Bank Agent, the Representatives of the Initial Purchasers and the Disbursement Agent of the Construction Consultant's Closing Certificate with the Construction Consultant's Report in form and substance reasonably satisfactory to each of the Bank Agent and the Representatives of the Initial Purchasers attached thereto.

3.1.11 Litigation. No action, suit, proceeding or investigation of any kind shall have been instituted or, to the Company's knowledge, pending or threatened, including actions or

proceedings of or before any Governmental Authority, to which any Loan Party, the Phase I Project or, to the knowledge of the Company, any Major Project Participant, is a party or is subject, or by which any of them or any of their properties or the Phase I Project are bound 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.

3.1.12 Fees. All amounts required to be paid to or deposited with the Funding Agents, the Representatives of the Initial Purchasers, the Disbursement Agent or the Independent Consultants and all taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the documents and instruments referred to in this Section 3.1, shall have been paid or deposited, as the case may be, in full. 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 this Agreement or other Financing Agreements or under any agreements between the Company and any of the Independent Consultants.

3.1.13 Phase I Project Budget. Delivery to each of the Disbursement Agent, the Bank Agent, the Representatives of the Initial Purchasers and the Construction Consultant of a budget substantially in the form of Exhibit F-1 (as amended from time to time in accordance with the terms hereof, the "Phase I Project Budget") for all anticipated Project Costs of the Phase I Project (including, without limitation, Project Costs incurred prior to, as well as after, the Closing Date including closing costs and Debt Service expected to be incurred prior to the Phase I Opening Date), which includes a drawdown schedule for Advances necessary to achieve Final Completion for the Phase I Project and such other information and supporting data as any of the Bank Agent, the Representatives of the Initial Purchasers, the Disbursement Agent or the Construction Consultant may reasonably require, together with a balanced statement of sources and uses of proceeds (and any other funds necessary to complete the Phase I Project), broken down by Facility and Line Item Category, which Phase I Project Budget, drawdown schedule and statement of sources and uses shall be reasonably satisfactory to the Construction Consultant, as and to the extent certified to in the Construction Consultant's Closing Certificate, and to the Bank Lenders and the Representatives of the Initial Purchasers, it being acknowledged by the Bank Lenders and the Representatives of the Initial Purchasers, that the level of detail of the Phase I Project Budget shall be commensurate with the state of completion of the Plans and Specifications relating to the Phase I Project.

3.1.14 Phase I Project Schedule and Schedule of Key Dates. Delivery to the Disbursement Agent, the Bank Agent, the Representatives of the Initial Purchasers and the Construction Consultant of a schedule for construction and completion of the Phase I Project substantially in the form of Exhibit G-1 (as amended from time to time in accordance with the terms hereof, the "Phase I Project Schedule") which demonstrates that the Phase I Opening Date is expected to occur on or before the Phase I Scheduled Opening Date, the Phase I Substantial Completion Date is expected to occur on or before the Phase I Scheduled Substantial Completion Date and the Phase I Completion Date is expected to occur on or before the Phase I Scheduled Completion Date and which is otherwise reasonably satisfactory to the Construction Consultant, as certified to in the Construction Consultant's Closing Certificate.

3.1.15 Financial Statements. Delivery to the Disbursement Agent, the Bank Agent and the Representatives of the Initial Purchasers of the most recent annual consolidated financial statements and most recent quarterly consolidated financial statements from the Company and its consolidated Subsidiaries, together with certificates from a Responsible Officer of such Person certifying such financial statements.

3.1.16 Material Adverse Effect. Since December 31, 2003, after giving effect to the corporate restructuring, there shall not have occurred any material adverse condition or material adverse change in or affecting the Phase I Project Budget, the economics or feasibility of developing and/or constructing and/or operating the Phase I Project, or business, assets, liabilities, property, condition (financial or otherwise), results of operations, prospects, or management of the Company and the other Loan Parties taken as a whole, or any Project Credit Support Provider, or calls into question in any material respect the Projections or any of the material assumptions on which the Projections were prepared, or any other event, development or circumstance that has caused or resulted in or could reasonably be expected to cause or result in a Material Adverse Effect as certified by a Responsible Officer of the Company in the Company's Closing Certificate.

3.1.17 Events of Default. No Event of Default or Potential Event of Default shall have occurred and be continuing, as certified by a Responsible Officer of the Company in the Company's Closing Certificate.

3.1.18 Permits.

(a) All Permits described in Exhibit J-1 as required to have been obtained by any Loan Party or any Contractor by the Closing Date 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 Closing 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 Phase I Project or otherwise impose material adverse conditions on the Phase I Project or the financing contemplated under the Financing Agreements and all applicable appeal periods with respect thereto shall have expired.

(b) With respect to any of the Permits described in Exhibit J-1 as not yet required to be obtained by any Loan Party or any Contractor (other than Gaming/Liquor Licenses and any massage or second-hand dealer licenses to be issued by Clark County), (i) each such Permit is of a type that is routinely granted on application and compliance with the conditions for issuance and (ii) no facts or circumstances exist 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.

3.1.19 Buy-Sell. The Buy-Sell Agreement is in full force and effect.

3.1.20 Third Party Consents. Delivery to the Disbursement Agent and each of the Bank Agent and the Representatives of the Initial Purchasers of Consents from (a) the Phase I Primary Contractor, (b) the Construction Guarantor, (c) the Phase I Architect and (d) the Phase I Aqua Theater and Showroom Designer, each in the form of Exhibit P or otherwise in form and



substance reasonably satisfactory to the Bank Agent and the Representatives of the Initial Purchasers.

3.1.21 Representations and Warranties. Each representation and warranty of (a) each Loan Party set forth in Article 4 hereof, in the Bank Credit Agreement or in any of the other Operative Documents shall be true and correct in all material respects on the date made in the applicable document and (b) to the Company's knowledge, each Major Project Participant (other than any Loan Party) set forth in any of the Operative Documents shall be true and correct in all material respects as of the date made in the applicable document, unless the failure of any such representation and warranty referred to in this clause (b) to be true and correct could not reasonably be expected to have a Material Adverse Effect, in each case, as certified by the Company in the Company's Closing Certificate.

3.1.22 Service of Process. Delivery to the Funding Agents and the Disbursement Agent of a letter from CT Corporation System or any other Person reasonably satisfactory to each of the Bank Agent and the Representatives of the Initial Purchasers consenting to its appointment by each Loan Party in each case in form and substance reasonably acceptable to each of the Bank Agent and the Representatives of the Initial Purchasers, as each such Person's agent to receive service of process in New York, New York.

3.1.23 Establishing of Company Accounts; 2014 Notes Proceeds. (a) Each of the Company Accounts shall have been established pursuant hereto and the Collateral Account Agreements; (b) the 2014 Notes shall have been issued in a principal amount at maturity of One Billion Three Hundred Million Dollars (\$1,300,000,000), and net proceeds of Seven Hundred Thirty Million, Seventy-Two Thousand, Five Hundred Fifty-Six Dollars and Thirty-Seven Cents (\$730,072,556.37) shall have been deposited in the 2014 Notes Proceeds Account; (c) funds in an amount equal to Fifty Million Dollars (\$50,000,000) shall be on deposit in the Completion Guaranty Deposit Account, and (d) funds in an amount equal to Thirty Million Dollars (\$30,000,000) shall be on deposit in the Project Liquidity Reserve Account.

3.1.24 Funding of Equity. The Company shall have certified in the Company's Closing Certificate (as confirmed by the Construction Consultant to the extent set forth in the Construction Consultant's Closing Certificate) that (a) the amounts on deposit in the Project Liquidity Reserve Account have been irrevocably and unconditionally contributed to the Company; and (b) in addition thereto, cash or property in an amount not less than Four Hundred Million Dollars (\$400,000,000.00) has been irrevocably and unconditionally contributed to the Company.

3.1.25 A.L.T.A. Surveys. The Disbursement Agent and each of the Bank Agent and the Representatives of the Initial Purchasers shall have received A.L.T.A. surveys of the Site and the Site Easements, satisfactory in form and substance to the Title Insurer and each of the Bank Agent and the Representatives of the Initial Purchasers, dated no earlier than sixty (60) days prior to the Closing Date and certified to each such Person by a licensed surveyor satisfactory to each such Person, showing (a) as to the Site, the exact location and dimensions thereof, including the location of all means of access thereto, the perimeters within which all of foundations for the Phase I Project are located, and all easements relating thereto; (b) as to the Site Easements, the exact location and dimensions thereof to the extent capable of being

described, including the location of all means of access thereto, and all improvements or other encroachments in or on the Site Easements; (c) the existing utility facilities servicing the Phase I Project (including water, electricity, gas, telephone, sanitary sewer and storm water distribution and detention facilities); (d) that such existing improvements do not encroach or interfere (in any manner that could reasonably be expected to have a Material Adverse Effect) with adjacent property or existing easements or other rights (whether on, above or below ground), and that there are no gaps, gores, projections, protrusions or other survey defects other than Permitted Encumbrances applicable to such real property; (e) whether the Site or any portion thereof is located in a special earthquake or flood hazard zone; and (f) that there are no other matters that could reasonably be expected to be disclosed by a survey constituting a defect in title other than the Permitted Encumbrances.

3.1.26 Title Policies. The Company shall have delivered to the Collateral Agent, a lender's A.L.T.A. policy of title insurance, or a commitment to issue such policy, in the amount of \$2,300,000,000. Such policy or commitment shall (i) include such endorsements as are required by the Bank Agent and the Representatives of the Initial Purchasers, respectively, (ii) reasonably be reinsured by such reinsurance as is satisfactory to the Bank Agent and the Representatives of the Initial Purchasers, respectively, (iii) be reasonably issued by Title Insurer in form and substance reasonably satisfactory to the Bank Agent and the Representatives of the Initial Purchasers, respectively, and (iv) insure (or agree to insure) that:

(a) The Company has fee simple title to the Site and the Site Easements (other than the Mortgaged Property encumbered or to be encumbered by Wynn Sunrise and Wynn Golf) and a valid leasehold estate or easement interest, as the case may be, in the portions of the Site described in the Affiliate Real Estate Agreements, free and clear of liens, encumbrances and other exceptions to title except those exceptions specified on Exhibit K-1 ("Wynn Las Vegas Permitted Encumbrances");

(b) Wynn Golf has fee simple title to the Golf Course Land (including the Home Site Land and the Wynn Home Site) and the Golf Course Land Easements, free and clear of liens, encumbrances and other exceptions to title except those exceptions specified on Exhibit K-2 ("Wynn Golf Permitted Encumbrances");

(c) Wynn Sunrise has fee simple title to the Wynn Sunrise Land and the Wynn Sunrise Land Easements, free and clear of liens, encumbrances and other exceptions to title except those exceptions specified on Exhibit K-3 ("Wynn Sunrise Permitted Encumbrances"); and

(d) Each Deed of Trust is (or will be when recorded) a valid, first priority lien on the "Trust Estate" (as defined in each Deed of Trust), free and clear of all liens, encumbrances and exceptions to title whatsoever, other than (i) Wynn Las Vegas Permitted Encumbrances in the case of the Deeds of Trust executed by the Company, (ii) Wynn Golf Permitted Encumbrances in the case of the Deeds of Trust executed by Wynn Golf, and (iii) Wynn Sunrise Permitted Encumbrances in the case of the Deeds of Trust executed by Wynn Sunrise.

3.1.27 Commitment and Fee Letters. The letters regarding the fees of the Bank Agent, the Collateral Agent, the Nevada Collateral Agent and the Disbursement Agent, respectively, shall have been executed and delivered. The Company shall have complied with all of its obligations under and agreements in the Commitment Letter and the various fee letters entered into with the Arrangers, the Bank Agent, the Collateral Agent, the Nevada Collateral Agent or the Disbursement Agent then required to be complied with.

3.1.28 Phase I Plans and Specifications. The Company shall have delivered to the Construction Consultant Plans and Specifications for the Phase I Project in form and substance reasonably satisfactory to the Construction Consultant, as certified to in the Construction Consultant's Closing Certificate. Subject to approval of the finalized Plans and Specifications for the Phase I Project by the proper Governmental Authorities, such Plans and Specifications for the Phase I Project shall constitute Final Plans and Specifications.

3.1.29 Corporate and Capital Structure; Management. The corporate organization structure, capital structure and ownership of the Project Credit Support Providers, the Company and its Subsidiaries shall be satisfactory to each of the Bank Agent and the Representatives of the Initial Purchasers. The management structure of the Company and its Subsidiaries shall be satisfactory to each of the Bank Agent and the Representatives of the Initial Purchasers.

3.1.30 Real Estate Appraisals. Each of the Bank Agent, the Representatives of the Initial Purchasers and the Disbursement Agent shall have received a FIRREA appraisal of the Site from an independent real estate appraiser reasonably satisfactory to the Bank Agent and the Representatives of the Initial Purchasers, in form, scope and substance satisfactory to each such Person, satisfying the requirements of any applicable laws and regulations.

3.1.31 Environmental Reports. Each of the Bank Agent, the Representatives of the Initial Purchasers and the Disbursement Agent shall have received (a) the Phase I Environmental Site Assessment for the Site and the Site Easements (excluding the Wynn Sunrise Land and Wynn Sunrise Land Easements) conducted by Terracon and dated November 22, 2004 and the Phase I Environmental Site Assessment for the Wynn Sunrise Land and Wynn Sunrise Land Easements conducted by Terracon and dated November 5, 2004 (collectively, the "Phase I Reports") and (b) that certain reliance letter from Terracon dated December 7, 2004.

3.1.32 In Balance Requirement. The Phase I Project shall be In Balance.

3.1.33 No Restrictions. No order, judgment or decree of any court, arbitrator or governmental authority shall purport to enjoin or restrain any of the Bank Lenders from making the Advances to be made by them on the Closing Date.

3.1.34 Violation of Certain Regulations. The making of the requested Advance shall not violate any law including Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System.

3.1.35 Notices of Pledges of Water Permits. The Company and Wynn Golf shall have executed duplicate original notices of pledge in form and substance reasonably satisfactory to the Bank Agent and the Representatives of the Initial Purchasers describing Nevada Water

Permit Nos. 69513 (Certificate no. 4765), 69514 (Certificate no. 4766), 69515 (Certificate no. 7828), 69516 (Certificate no. 7827), 69517 (Certificate no. 7829) and 69518 (Certificate no. 7830), 69512 (Certificate no. 4731), 60164 (Certificate no. 15447), 60165 (Certificate no. 15448) and such notices of pledge shall have been completed and delivered to the Disbursement Agent. Upon the occurrence of the Closing Date, the Company hereby authorizes the Disbursement Agent to complete the recording information from each Deed of Trust signed by the Company and Wynn Golf and to file them with the Nevada State Engineer promptly after recordation of such Deeds of Trust, together with a Report of Conveyance and Abstract of Title for each permit.

3.1.36 Liens. The Company shall have delivered or caused to be delivered to the Disbursement Agent a lien release summary chart substantially in the form of Appendix VI to Exhibit C-1 and the following releases:

(a) Unconditional Releases. Duly executed acknowledgments of payments and unconditional releases of mechanics' and materialmen's liens substantially in the form of Exhibit H-1 from the Contractors and Subcontractors listed in clauses (i) and (ii) below for all work, services and materials, including equipment and fixtures of all kinds, done, performed or furnished for the construction of each Project through October 31, 2004, except for such work, services and materials the payment for which does not exceed, in the aggregate \$10,000,000 and is being disputed in good faith, so long as (1) such proceedings shall not involve any substantial danger of the sale, forfeiture or loss of either Project, or any Mortgaged Property, as the case may be, title thereto or any interest therein and shall not interfere in any material respect with either Project or any Mortgaged Property and (2) adequate cash reserves have been provided therefor through an allocation in the Phase I Anticipated Cost Report. The Persons required to provide such lien releases are:

(i) The Primary Contractors and each of their first tier trade subcontractors and materialmen under the Primary Construction Contracts, in each case performing work with a contract price (or expected aggregate amount to be paid in the case of "cost-plus" contracts) in excess of \$25,000; and

(ii) (A) Each Contractor party to a "fixed price" contract and (B) each other Contractor and each of its first tier trade subcontractors and materialmen, in each case performing work with a contract price (or expected aggregate amount to be paid in the case of "cost-plus" contracts) in excess of \$100,000 (or with respect to suppliers and vendors who are located outside the United States and do not provide labor at the Site, \$200,000).

(b) Conditional Releases. Duly executed acknowledgments of payments and releases of mechanics' and materialmen's liens substantially in the form of Exhibit H-2 from the Contractors and Subcontractors listed in clauses (i) and (ii) below for all work, services and materials, including equipment and fixtures of all kinds, done, performed or furnished for the construction of each Project from November 30, 2004, except for such work, services and materials the payment for which does not exceed, in the aggregate \$10,000,000 and is being disputed in good faith, so long as (1) such proceedings shall not involve any substantial danger of the sale, forfeiture or loss of either Project or any Mortgaged Property, as the case may be, title thereto or any interest therein and shall not interfere in any material respect with either Project or any Mortgaged Property and (2) adequate cash reserves have been provided therefor

through an allocation in the Phase I Anticipated Cost Report. The Persons required to provide such lien releases are:

(i) The Primary Contractors and each of its first tier trade subcontractors and materialmen under the Primary Construction Contracts, in each case performing work with a contract price (or expected aggregate amount to be paid in the case of “cost-plus” contracts) in excess of \$25,000;

(ii) (A) Each Contractor party to a “fixed price” contract and (B) each other Contractor and each of its first tier trade subcontractors and materialmen, in each case performing work with a contract price (or expected aggregate amount to be paid in the case of “cost-plus” contracts) in excess of \$100,000 (or, with respect to suppliers and vendors who are located outside the United States and do not provide labor at the Site, \$200,000).

Notwithstanding the foregoing, if the Company or any Contractor does not obtain any of the foregoing waivers and releases of liens required under clauses (a) or (b) above (collectively, “Closing Date Outstanding Releases”), then instead of delivering such Closing Date Outstanding Releases, the Company may obtain and provide to the Disbursement Agent from the Title Insurer bonds or endorsements to the title insurance policies reasonably satisfactory to the Disbursement Agent insuring the lien free status of the work and the Mortgaged Property; provided, however, that at no time shall the aggregate of all Closing Date Outstanding Releases represent work with an aggregate value in excess of \$2,000,000.

3.1.37 Phase I Excess Cash Flow Schedule. Delivery to each of the Disbursement Agent, the Bank Agent, the Arrangers, the Representatives of the Initial Purchasers and the Construction Consultant of the Phase I Projected Excess Cash Flow Schedule substantially in the form of Exhibit F-7 identifying the anticipated “Excess Cash Flows” (as such term is defined in the Bank Credit Agreement) for the Phase I Project designated by the Company to be used to pay Project Costs with respect to the Phase II Project (if the Phase II Approval Date occurs), broken down by quarter for each quarter from the then anticipated Phase I Opening Date through the then anticipated Phase II Final Completion Date, which Phase I Projected Excess Cash Flow Schedule shall be reasonably satisfactory to each of the Disbursement Agent, the Bank Agent, the Arrangers, the Representatives of the Initial Purchasers and the Construction Consultant.

3.1.38 Closing Date Transactions. The Closing Transactions shall have occurred or shall be occurring substantially concurrently herewith.

3.1.39 Other Documents. The Disbursement Agent and each of the Bank Agent and the Representatives of the Initial Purchasers shall have received such other documents and evidence as are customary for transactions of this type as each such Person may reasonably request in connection with the transactions contemplated hereby.

3.2 **Conditions Precedent to Advances to the Phase I Project and, After the Phase II Approval Date, the Phase II Project**. Subject to Sections 2.2.6(b) and 3.3, the obligation of the Bank Lenders, the 2014 Notes Indenture Trustee and the Disbursement Agent to make Advances and to pay Project Costs with respect to the Phase I Project and, from and

after the Phase II Approval Date, the Phase II Project are subject to the prior satisfaction of each of the following conditions precedent in form and substance reasonably satisfactory to the Disbursement Agent in its reasonable discretion:

3.2.1 Certain Operative Documents. Each Material Project Document and each Financing Agreement shall be in full force and effect (unless it has expired in accordance with its terms), without amendment since the respective date of its execution and delivery, and in a form which was provided to the Bank Agent and the Representatives of the Initial Purchasers prior to the Closing Date except (a) for amendments or terminations to Material Project Documents not prohibited by Section 6.1, the Bank Credit Agreement or the 2014 Notes Indenture, (b) to the extent the Company has entered into a replacement Material Project Document to the extent permitted by Section 7.1.6, or if pursuant to such Section the Company is not required to enter into a replacement Material Project Document, and each certificate delivered by the Company with respect to any such document shall be true and correct in all material respects, as certified by the Company in the relevant Advance Request, (c) amendments to the Financing Agreements to the extent not prohibited under the Facility Agreements and (d) prior to the Phase II Approval Date, the Phase II Deliverables.

3.2.2 Representations and Warranties. Each representation and warranty of (a) each Loan Party set forth in Article 4 hereof or in any of the other Financing Agreements shall be 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), (b) each Loan Party set forth in each Material Project Document shall have been true and correct in all material respects on the date made in the applicable document and (c) to the Company's knowledge, each Major Project Participant (other than any Loan Party) set forth in any of the Material Project Documents shall have been true and correct in all material respects on the date made in the applicable document, unless the failure of any such representation and warranty referred to in clauses (b) or (c) to be true and correct could not reasonably be expected to have a Material Adverse Effect, in each case, as certified by the Company in the relevant Advance Request.

3.2.3 Events of Default. No Event of Default or Potential Event of Default shall have occurred and be continuing or could reasonably be expected to result from such Advance, as certified by the Company in the relevant Advance Request.

3.2.4 Notice of Advance Request. The Disbursement Agent shall have received and shall have been notified that the Funding Agents have received a Notice of Advance Request in accordance with Section 2.3.1(e) with respect to the requested Advance.

3.2.5 Advance Request and Certificate. The Company shall have delivered to the Disbursement Agent and the Construction Consultant an Advance Request, as required by Section 2.3.1. The Disbursement Agent shall have reviewed and evaluated the same as provided in Section 2.3.2(a) and, subject to Section 2.3.2(a)(ii), shall not have become aware of any material error, inaccuracy, misstatement or omission of fact in the Advance Request or an attachment, exhibit or certificate attached thereto or information provided by the Company upon the reasonable request of the Disbursement Agent.

### 3.2.6 Consultant's Certificates.

(a) The Disbursement Agent shall have received the Construction Consultant's Advance Certificate with respect to:

(i) each Advance Request submitted by the Company thirty (30) or more days prior to the requested Advance (provided that if the Construction Consultant disapproves any prior Advance Request in the form originally submitted but the item so disapproved is addressed to the Construction Consultant's reasonable satisfaction on or prior to the requested Advance, then such previously submitted Advance Request shall be deemed to be approved); and

(ii) the requested Advance, in the event that a Monthly Disbursement Excess is anticipated to occur in the calendar month of the requested Advance or the ensuing calendar month;

in each case, substantially in the form of Exhibit C-2, approving the corresponding Advance Request.

(b) The Construction Consultant shall have notified the Disbursement Agent that it has approved any amendments to the Project Budgets implemented by the Company that had not been previously approved by the Construction Consultant.

3.2.7 Liens. The Company shall have delivered or caused to be delivered to the Disbursement Agent an updated lien release summary chart substantially in the form of Appendix VI to the Company's Advance Request and the following releases:

(a) Unconditional Releases. Duly executed acknowledgments of payments and unconditional releases of mechanics' and materialmen's liens substantially in the form of Exhibit H-1 from the Contractors and Subcontractors listed in clauses (i) and (ii) below for all work, services and materials, including equipment and fixtures of all kinds, done, performed or furnished for the construction of the Projects the payment for which became due and payable prior to the date of the immediately preceding Advance Request, except for such work, services and materials the payment for which does not exceed, in the aggregate \$10,000,000 and is being disputed in good faith, so long as (1) such proceedings shall not involve any substantial danger of the sale, forfeiture or loss of the Projects, or any Mortgaged Property, as the case may be, title thereto or any interest therein and shall not interfere in any material respect with the Projects or any Mortgaged Property and (2) adequate cash reserves have been provided therefor through an allocation in the applicable Anticipated Cost Report. The Persons required to provide such lien releases are:

(i) the Primary Contractors and each of their first tier trade subcontractors and materialmen under the Primary Construction Contracts, in each case performing work with a contract price (or expected aggregate amount to be paid in the case of "cost-plus" contracts) in excess of \$25,000; and

(ii) (A) each Contractor party to a "fixed price" contract and (B) each other Contractor and each of its first tier trade subcontractors and materialmen, in each

case performing work with a contract price (or expected aggregate amount to be paid in the case of “cost-plus” contracts) in excess of \$100,000 (or with respect to suppliers and vendors who are located outside the United States and do not provide labor at the Site, \$200,000).

(b) Conditional Releases. Duly executed acknowledgments of payments and releases of mechanics’ and materialmen’s liens substantially in the form of Exhibit H-2 from the Contractors and Subcontractors listed in clauses (i) and (ii) below for all work, services and materials, including equipment and fixtures of all kinds, done, performed or furnished for the construction of the Projects the payment for which became due and payable on or after the date of the immediately preceding Advance Request and prior to the date of the current Advance Request except for such work, services and materials the payment for which does not exceed, in the aggregate \$10,000,000 and is being disputed in good faith, so long as (1) such proceedings shall not involve any substantial danger of the sale, forfeiture of loss of the Projects or any Mortgaged Property, as the case may be, title thereto or any interest therein and shall not interfere in any material respect with the Projects or any Mortgaged Property and (2) adequate cash reserves have been provided therefor through an allocation in the applicable Anticipated Cost Report. The Persons required to provide such lien releases are:

(i) the Primary Contractors and each of its first tier trade subcontractors and materialmen under the Primary Construction Contracts, in each case performing work with a contract price (or expected aggregate amount to be paid in the case of “cost-plus” contracts) in excess of \$25,000;

(ii) (A) each Contractor party to a “fixed price” contract and (B) each other Contractor and each of its first tier trade subcontractors and materialmen, in each case performing work with a contract price (or expected aggregate amount to be paid in the case of “cost-plus” contracts) in excess of \$100,000 (or, with respect to suppliers and vendors who are located outside the United States and do not provide labor at the Site, \$200,000).

Notwithstanding the foregoing, if the Company or any Contractor does not obtain any of the foregoing waivers and releases of liens required under clauses (a) or (b) above (collectively, “Outstanding Releases”), then instead of delivering such Outstanding Releases and as a condition to any progress or other payment from the proceeds of the requested Advance, the Company may obtain and provide to the Disbursement Agent from the Title Insurer bonds or endorsements to the title insurance policies insuring the lien free status of the work and the Mortgaged Property; provided, however, that at no time shall the aggregate of all Outstanding Releases represent work with an aggregate value in excess of \$2,000,000.

3.2.8 Title Policy Endorsement. The Disbursement Agent shall have received a commitment from the Title Insurer, attached to the Advance Request, evidencing the Title Insurer’s unconditional commitment to issue an endorsement to the Title Policies (such endorsement to be dated as of the applicable Advance Date) in the form of a 122 CLTA Endorsement insuring the continuing priority of the Lien of each Deed of Trust as security for the requested Advance and confirming and/or insuring that (i) since the previous Advance, there has been no change in the condition of title unless permitted by the Financing Agreements and (ii) there are no intervening liens or encumbrances which may then or thereafter take priority over the respective Liens of the Deeds of Trust other than Permitted Encumbrances and such



intervening liens or encumbrances securing amounts the payment of which is being disputed in good faith by the Company, so long as the Disbursement Agent has received confirmation from the applicable Funding Agents that the Title Insurer has delivered to such Funding Agents any endorsement to the respective Title Policies required or desirable to assure against loss to the Secured Parties due to the priority of such lien or encumbrance.

3.2.9 Permits. The Company shall have certified that:

(a) other than exceptions to any of the following that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) each of the Loan Parties and each Contractor has obtained and holds all Permits described in Exhibit J-1 or Exhibit J-2 required to be obtained by such Loan Party or Contractor as of the date this certification is deemed made, (ii) all such Permits are in full force and effect and each of the Loan Parties and, to the Company's knowledge, each Contractor, has performed and observed all requirements of such Permits to the extent required to be performed as of the date this certification is deemed made, (iii) no event has occurred which allows or results in, or after notice or lapse of time would allow or result in, revocation, modification, suspension or termination by the issuer thereof or in any other impairment of the rights of the holder of any such Permit, (iv) no such Permits contain any restrictions, either individually or in the aggregate, that could reasonably be expected to materially and adversely affect any of the Loan Parties, or the operation of the business of any such Loan Party or any property owned, leased or otherwise operated by such Person, (v) the Company has no knowledge that any Governmental Authority is considering limiting, modifying, suspending, revoking or renewing any such Permit on terms that could reasonably be expected to materially and adversely affect any of the Loan Parties or the operation of the business of any such Loan Party or any property owned, leased or otherwise operated by such Person and (vi) each of the Loan Parties reasonably believes that each such Permit will be timely renewed and complied with, without undue expense or delay; and

(b) with respect to any of the Permits described in Exhibit J-1 or Exhibit J-2 as not yet required to be obtained by any Loan Party or any Contractor (other than the Gaming/Liquor Licenses and any massage or second-hand dealer licenses to be issued by Clark County), (i) each such Permit is of a type that is routinely granted on application and compliance with the conditions for issuance and (ii) no facts or circumstances exist 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.

3.2.10 Additional Documents. With respect to any Material Construction Agreements entered into or obtained, transferred or required (whether because of the status of the construction or operation of the Projects or otherwise) since the date of the most recent Advance, the Bank Agent shall have confirmed that the Company has complied with the requirements of Section 6.5.

3.2.11 Plans and Specifications. The Disbursement Agent and the Construction Consultant shall have received copies of all Plans and Specifications which, as of the date of the requested Advance Date, constitute Final Plans and Specifications to the extent not theretofore delivered.

3.2.12 As-Built Survey. At the time of the first Advance Request occurring after completion of the foundation work for each Project, the Company shall cause an updated as-built survey to be delivered to the Construction Consultant and the Disbursement Agent satisfactory in form and substance to the Title Insurer and the Disbursement Agent.

3.2.13 Litigation. No action, suit, proceeding or investigation of any kind shall have been instituted or, to the Company's knowledge, pending or threatened, including actions or proceedings of or before any Governmental Authority, to which any Loan Party, the Projects or, to the knowledge of the Company, any Major Project Participant (other than any Loan Party), is a party or is subject, or by which any of them or any of their properties or the Projects are bound 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 could reasonably be expected to have a Material Adverse Effect.

3.2.14 In Balance Requirement. The Projects shall be In Balance.

3.2.15 No Restriction. No order, judgment or decree of any court, arbitrator or governmental authority shall purport to enjoin or restrain any of the Bank Lenders or the 2014 Notes Indenture Trustee from making the Advances to be made by it on the requested Advance Date.

3.2.16 Violation of Certain Regulations. The making of the requested Advance shall not violate any law, including Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System.

3.2.17 Material Adverse Effect. Since the Closing Date, there shall not have occurred any change in the Project Budgets (excluding any amendment thereto permitted under Section 6.3), in the economics or feasibility of constructing and/or operating the Projects, or in the financial condition, business or property of the Loan Parties, any of which could reasonably be expected to have a Material Adverse Effect.

3.2.18 Subcontracts. The Company shall have delivered a copy of (i) each Contract entered into between the Company and any Contractor with a contract price (or expected aggregate amount to be paid in the case of "cost plus" contracts) in excess of \$5,000,000, (ii) each first tier Subcontract entered into by any Primary Contractors with a contract price (or expected aggregate amount to be paid in the case of "cost plus" contracts) in excess of \$5,000,000, (iii) 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 \$5,000,000 entered into by any other Contractor who is party to a Contract entered into with the Company that is not subject to a fixed price and (iv) a copy of any Payment and Performance Bond required pursuant to Section 5.9 hereof to the Disbursement Agent, the Construction Consultant and the Bank Agent promptly after mutual execution and delivery thereof.

3.2.19 Unincorporated Materials. (a) The Company shall have delivered to the Disbursement Agent and the Construction Consultant a written inventory in the form of

Appendix IX to the Company's Advance Request identifying all materials, machinery, fixtures, furniture, equipment or other items purchased or manufactured for incorporation into the Project but which, at the time of the Advance Request, (i) are not located at the Site and for which the Company has paid or intends to pay with the proceeds of the Advance Request all or a portion of the purchase price or (ii) are located at the Site but are not expected to be incorporated into the Projects within thirty (30) days after such Advance Request (such materials, the "Unincorporated Materials") and including the value thereof, together with evidence reasonably satisfactory to the Construction Consultant and the Disbursement Agent that the following conditions have been satisfied with respect to such Unincorporated Materials:

(A) all Unincorporated Materials for which full payment has previously been made or is being made with the proceeds of the Advance to be disbursed are, or will be upon full payment, owned by the Company, as evidenced by the bills of sale, certificates of title or other evidence reasonably satisfactory to the Construction Consultant, and all lien rights or claims of the supplier have been or will be released simultaneously with such full payment and all amounts, if any, required to be paid to the supplier thereof with respect to the installation of such Unincorporated Materials (including any Retainage Amounts);

(B) the Company believes that the Unincorporated Materials consist of fabricated or unfabricated components that conform to the Final Plans and Specifications and that will be ready for incorporation into the Projects upon delivery thereof or within a reasonable period of time thereafter;

(C) all Unincorporated Materials are properly inventoried, securely stored, protected against theft and damage at the Site or at such other location which has been specifically identified by its complete address to the Construction Consultant and the Disbursement Agent (or if the Company cannot provide the complete address of the current storage location, the Company shall list the name and complete address of the applicable contracting party supplying or manufacturing such Unincorporated Materials);

(D) all Unincorporated Materials are insured against casualty, loss and theft for an amount equal to their replacement costs in accordance with Section 5.13;

(E) the value of Unincorporated Materials located at the Site but not expected to be incorporated into the Projects within the ensuing calendar month at any time is not more than \$20,000,000;

(F) the amounts paid by the Company in respect of Unincorporated Materials not at the Site at any one time is not more than \$60,000,000; and

(G) the amount of contract deposits paid by the Company in respect of Unincorporated Materials at any one time is not more than \$80,000,000.

(b) The Disbursement Agent and the Construction Consultant, at the request of the Company, may from time to time mutually agree to increase the thresholds set forth in Sections 3.2.19(E), (F) and (G) above.

3.2.20 [Intentionally Omitted].

3.2.21 [Intentionally Omitted].

3.2.22 Suspension of Performance. Construction of the Projects shall be proceeding in accordance with the Project Schedules and the Final Plans and Specifications and no Contractor party to any Material Construction Agreements and no first tier Subcontractor under the Primary Construction Contracts party to a Subcontract with a total contract amount or value in excess of \$15,000,000 shall have suspended performance or otherwise repudiated its obligation to perform any duty or obligation under its respective Material Construction Agreements or Subcontract (unless such suspended or repudiated Material Construction Agreements or Subcontract is permitted to be, and actually has been, replaced, or a replacement is determined not to be necessary, pursuant to Section 7.1.5).

3.2.23 Advances with respect to Phase II Project. Prior to the later of: (a) the Phase I Opening Date and (b) the Phase II Approval Date, the aggregate amount of Advances made relating to Project Costs allocable to the Phase II Project shall not exceed One Hundred Million Dollars (\$100,000,000.00).

3.2.24 Other Documents. The Disbursement Agent and the Bank Agent shall have received such other documents and evidence as are customary for transactions of this type as the Bank Agent or the Disbursement Agent may reasonably request in connection with the Phase II Project.

3.2.25 Contracts for Phase II Project. With respect to the first Advance requested by the Company for the purpose of paying Project Costs relating to the Phase II Project that, together with all previous Advances relating to Project Costs for the Phase II Project, exceeds One Hundred Fifty Million Dollars (\$150,000,000), (i) the Company shall have executed the Phase II Primary Construction Contract and other guaranteed maximum price Contracts in respect of at least fifty percent (50%) of the total costs reflected in the Phase II Project Budget, (ii) if the Phase II Primary Construction Contract is not a "design/build" agreement, the Company shall have executed the Phase II Architect's Agreement for the Phase II Project, (iii) copies of all such Contracts shall have been delivered to the Construction Consultant and (iv) such Contracts shall have been approved by the Disbursement Agent and the Construction Consultant (such approval not to be unreasonably withheld). The Company shall have certified in the Company's Advance Request that such Contracts are consistent with the Phase II Project Budget, the Phase II Project Schedule and the Final Plans and Specifications for the Phase II Project.

3.2.26 Insurance. With respect to the first Advance requested by the Company for the purpose of paying Project Costs in respect of the construction of any improvements for the Phase II Project:

(a) Policies. Insurance with respect to the Phase II Project complying with the requirements of Exhibit L shall be in place and in full force and effect.

(b) The Company's Insurance Broker's Certificate. The Company shall have delivered to each of the Arrangers and the Disbursement Agent (i) a certificate,

substantially in the form of Exhibit B-4 attached hereto addressing the insurance coverage for the Phase II Project or otherwise in form and substance reasonably satisfactory to the Majority of the Arrangers from the Company's insurance broker(s), identifying underwriters, type of insurance, insurance limits and policy terms, listing the special provisions required as set forth in Exhibit L, describing the insurance obtained and stating that such insurance is in full force and effect and that all premiums then due thereon have been paid and (ii) certified copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer along with a commitment to deliver certified copies of the policies within forty-five (45) days after the Advance Date) meeting the requirements of Exhibit L.

(c) Company's Insurance Certificate. The Company shall have identified in the Company's Advance Request the type of insurance, insurance limits and policy terms of any insurance then required to be obtained by any Contractor under the Material Project Documents with respect to the Phase II Project then in effect and shall have certified, to the best of the Company's knowledge, that all insurance required to be obtained by each Contractor under such Material Project Documents or Exhibit L is in full force and effect if the same is required to be in effect and that if then required to be in effect, all premiums then due thereon have been paid, and that such insurance complies with the requirement of such Material Project Documents and Exhibit L. The Company shall have delivered to each of the Arrangers and the Disbursement Agent (i) for each Contractor party to a Material Project Document with respect to the Phase II Project, certified copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer) which insurance shall, to the extent reasonably available, name the Disbursement Agent, the Collateral Agent, the Funding Agents and the Lenders as additional insureds.

(d) Insurance Advisor's Certificate. Each of the Arrangers and the Disbursement Agent shall have received the Insurance Advisor's Certificate addressing the insurance coverage for the Phase II Project, substantially in the form of Exhibit B-3.

**3.3 Conditions Precedent to Advances for the Phase II Project Prior to the Phase II Approval Date**. Notwithstanding Section 3.2, after the Closing Date and prior to the Phase II Approval Date, the obligation of the Bank Lenders, the 2014 Notes Indenture Trustee and the Disbursement Agent to make Advances to pay Project Costs with respect to the Phase II Project are subject only to satisfaction of each of the conditions precedent set forth in Sections 3.2.2, 3.2.3, 3.2.4, 3.2.7, 3.2.8, 3.2.14, 3.2.15, 3.2.16, 3.2.17 and 3.2.23 (with such changes to the form of Notice of Advance Request as are reasonably acceptable to or reasonably required by the Disbursement Agent but including, at a minimum, an allocation of such Advance among the Funding Sources and representations by the Company that such Advance will be used to pay Project Costs relating to the Phase II Project and that each of the foregoing conditions precedent shall have been satisfied) in form and substance reasonably satisfactory to the Disbursement Agent in its reasonable discretion.

**3.4 Conditions Precedent to Phase II Approval Date**. In order to request that the Phase II Approval Date occur (which request shall be made at the option of the Company), the Company shall deliver to the Construction Consultant, the Disbursement Agent, the Bank Agent and each Arranger as soon as practicable but in no event later than fifteen (15) days before the

Phase II Revolving Commitment Sunset Date (the “Phase II Deliverables Submission Deadline”), the conceptual plans and specifications for the Phase II Project, copies of all Phase II Deliverables reasonably required by the Construction Consultant in order for the Construction Consultant to prepare its updated report to be delivered under Section 3.4.8, and all other Phase II Deliverables (excluding the updated Construction Consultant’s Report), including the Company’s Phase II Approval Date Certificate appropriately completed and duly executed by a Responsible Officer of the Company, with all attachments thereto. The Disbursement Agent and the Arrangers shall use reasonable efforts to review the Phase II Deliverables and respond to the Company as soon as practicable after their receipt thereof. To the extent that the Company delivers any Phase II Deliverables prior to the Phase II Deliverables Submission Deadline, the Company shall be entitled to revise and re-submit such Phase II Deliverables from time to time prior to the Phase II Deliverables Submission Deadline. If all of the Phase II Deliverables have been delivered prior to the Phase II Deliverables Submission Deadline, the Disbursement Agent and the Arrangers shall use reasonable efforts to review the Phase II Deliverables and determine, prior to the Phase II Revolving Commitment Sunset Date, whether each of the conditions precedent to the Phase II Approval Date have been satisfied. If the Majority of the Arrangers, in consultation with the Construction Consultant, reasonably determine that each of the following conditions precedent to the Phase II Approval Date shall have been satisfied (in form and substance reasonably satisfactory to the Majority of the Arrangers) on or prior to the Phase II Revolving Commitment Sunset Date, then the Bank Agent shall countersign the Company’s Phase II Approval Date Certificate and promptly forward the same to the Disbursement Agent, the Arrangers, the 2014 Notes Indenture Trustee, the Construction Consultant and the Company. The Phase II Approval Date shall be deemed to occur on the date the Bank Agent countersigns the Company’s Phase II Approval Date Certificate.

3.4.1 Intentionally Omitted.

3.4.2 Phase II Project Budget. The Company shall have delivered to each of the Disbursement Agent, the Arrangers and the Construction Consultant a budget, with Line Item Categories substantially similar to the Phase I Project Budget (as amended from time to time in accordance with the terms hereof, the “Phase II Project Budget”) for all anticipated Project Costs of the Phase II Project (including, without limitation, Project Costs incurred prior to, as well as after, the Phase II Approval Date, including closing costs and Debt Service expected to be incurred from and after the Phase I Opening Date and accruing with respect to Advances made under the Bank Credit Agreement or from the 2014 Notes Proceeds Account to pay Project Costs allocated to the Phase II Project), which includes a drawdown schedule for Advances necessary to achieve Final Completion of the Phase II Project and such other information and supporting data as any of the Arrangers, the Disbursement Agent or the Construction Consultant may reasonably require, together with a balanced statement of sources and uses of proceeds (and any other funds necessary to complete the Phase II Project), broken down by Facility and Line Item Category, which Phase II Project Budget, drawdown schedule and statement of sources and uses shall be reasonably satisfactory to the Construction Consultant, as and to the extent certified to in the Construction Consultant’s Report delivered under Section 3.4.8, and to the Majority of the Arrangers (it being acknowledged that the level of detail of the Phase II Project Budget shall be commensurate with the state of completion of the Plans and Specifications relating to the Phase II Project). The Phase II Project Budget shall include a total contingency of at least \$40,000,000.

On the Phase II Approval Date, the budget delivered under this Section shall be deemed to be Exhibit F-4.

3.4.3 Phase II Project Schedule and Schedule of Key Dates. The Company shall have delivered to the Disbursement Agent, the Arrangers and the Construction Consultant a schedule for construction and completion of the Phase II Project in a format substantially similar to the Phase I Project Schedule (as amended from time to time in accordance with the terms hereof, the "Phase II Project Schedule") which demonstrates that the Phase II Opening Date will occur before the Phase II Scheduled Opening Date and the Phase II Completion Date will occur on or before the Phase II Scheduled Completion Date and which is otherwise reasonably satisfactory to the Construction Consultant, as certified to in the Construction Consultant's report delivered under Section 3.4.8, and to the Majority of the Arrangers. On the Phase II Approval Date, the schedule delivered under this Section shall be deemed to be Exhibit G-2.

3.4.4 Third Party Consents. The Company shall have delivered to the Disbursement Agent and the Arrangers Consents from each of the Phase II Major Contractors (other than the Phase II Primary Contractor) and the Phase II Major Architects (other than the Phase II Architect) with respect to the Phase II Project, each substantially in the form of Exhibit P or otherwise in form and substance reasonably satisfactory to the Majority of Arrangers.

3.4.5 Utility Availability. The Construction Consultant shall have become reasonably satisfied, as certified in the updated report delivered pursuant to Section 3.4.8, that arrangements, which are reflected accurately in the Phase II Project Budget, shall have been or will be made under the Material Project Documents or otherwise on commercially reasonable terms for the provision of all utilities necessary for the construction, operation and maintenance of the Phase II Project as contemplated by the Operative Documents and the Final Plans and Specifications.

3.4.6 Phase II Plans and Specifications. The Company shall have delivered to the Construction Consultant Plans and Specifications for the Phase II Project consistent with the minimum standards for the Phase II Project set forth on Exhibit V-2 and otherwise in form and substance reasonably satisfactory to the Construction Consultant, as certified to in the Construction Consultant's Report delivered pursuant to Section 3.4.8, and to the Majority of the Arrangers. The Disbursement Agent and the Construction Consultant shall have received all Plans and Specifications for the Phase II Project which, as of the Phase II Approval Date, constitute Final Plans and Specifications, to the extent not theretofore delivered.

3.4.7 [Intentionally Omitted].

3.4.8 Updated Consultant Certificates and Reports. Each of the Arrangers and the Disbursement Agent shall have received an updated Construction Consultant's Report in form and substance reasonably satisfactory to the Majority of the Arrangers which shall address (i) construction progress and Project Costs spent during the period from the Closing Date through the Phase II Approval Date, (ii) the Final Plans and Specifications that have been completed through such period to the extent not theretofore delivered and (iii) the other Phase II Deliverables relating to construction of the Phase II Project.

3.4.9 Completion Guaranty Deposit Account. If the Phase I Substantial Completion Date has previously occurred, then on the Phase II Approval Date the Completion Guaranty Deposit Account shall have a balance in an amount equal to at least Thirty Million Dollars (\$30,000,000).

3.4.10 Project Costs Incurred To Date. The Company shall have substantiated (a) to the Construction Consultant's reasonable satisfaction (as certified to in the Construction Consultant's Report delivered pursuant to Section 3.4.8) that the amounts previously drawn by the Company under Section 3.3 to pay Hard Costs relating to the Phase II Project have, in fact, been used to pay Hard Costs allocated to the Phase II Project in accordance with the Phase II Project Budget and (b) to the Disbursement Agent's reasonable satisfaction that the amounts previously drawn by the Company under Section 3.3 to pay Soft Costs relating to the Phase II Project have, in fact, been used to pay Soft Costs allocated to the Phase II Project in accordance with the Phase II Project Budget.

3.4.11 Permits. The Company shall have delivered to the Disbursement Agent, the Arrangers and the Construction Consultant a schedule of material Permits that are required or will become required under existing Legal Requirements to be obtained by any Loan Party or any Contractor for the ownership, development, construction, financing or operation of the Phase II Project in form and substance reasonably satisfactory to the Construction Consultant, as certified to in the Construction Consultant's Report delivered pursuant to Section 3.4.8. On the Phase II Approval Date, the schedule delivered under this Section 3.4.11 shall be deemed to be Exhibit J-2 without any further consent of any party hereto.

3.4.12 Projections. The Company shall have delivered to the Disbursement Agent and the Arrangers updated Projections for the seven year period following the Closing Date consistent with the Projections delivered under Section 3.1.8 or otherwise in form and substance satisfactory to the Majority of the Arrangers.

3.4.13 Real Estate Appraisals. If applicable law or banking regulations require a FIRREA appraisal in connection with the approval of the Phase II Project (in addition to the appraisal provided by the Company on the Closing Date under Section 3.1.30), then the Bank Agent shall have received such an appraisal from an independent real estate appraiser in form and substance satisfactory to the Bank Agent.

### **3.5 No Waiver or Estoppel**

3.5.1 The occurrence of the Closing Date and making of any Advance hereunder shall not preclude any Funding Agent from later asserting that, and enforcing any remedies it may have if, any representation, warranty or certification made or deemed made by the Company in connection with such Advance was not true and accurate in all material respects when made. No course of dealing or waiver by any Funding Agent or Secured Party in connection with any condition precedent to any Advance under this Agreement or any Facility Agreement shall impair any right, power or remedy of any such Funding Agent or Secured Party with respect to any other condition precedent, or be construed to be a waiver thereof; nor shall the action of any Funding Agent or Secured Party in respect of any Advance affect or impair any right, power or remedy of any Funding Agent or Secured Party in respect of any other Advance.



3.5.2 Unless the Company is otherwise notified by a Funding Agent or Secured Party and without prejudice to the generality of Section 3.5.1, the right of any Funding Agent or Secured Party to require compliance with any condition under this Agreement or its respective Facility Agreement which may be waived by such Funding Agent or Secured Party in respect of any Advance is expressly preserved for the purpose of any subsequent Advance.

3.6 **Waiver of Conditions.** The Bank Agent (acting under the Bank Credit Agreement) shall be entitled to waive the conditions precedent under Sections 3.2 and 3.3 with respect to Advances under the Bank Credit Facility and from the Company's Funds Account or the 2014 Notes Proceeds Account without the 2014 Notes Indenture Trustee's consent or the consent of any other Person; provided, however that the Bank Agent shall not be entitled to waive the funding allocation between the 2014 Notes Proceeds Account and the Bank Credit Facility set forth in Section 2.4.1(b). Until such time as the 2014 Notes Proceeds Account is exhausted, the 2014 Notes Indenture Trustee (acting under the 2014 Notes Indenture) shall be entitled to waive the conditions precedent under Sections 3.2 or 3.3 with respect to Advances from the 2014 Notes Proceeds Account without the Bank Agent's or the Bank Lenders' consent.

**3.7 Special Procedures Regarding Reimbursements to the Company and its Affiliates.**

3.7.1 Previously Paid Project Costs. If, at any time and from time to time, the Company shall be unable to:

(i) satisfy the conditions precedent to the initial Advance or any subsequent Advance set forth in Sections 3.2 or 3.3 for any reason other than as a result of the Projects not being In Balance, or shall be prohibited from paying Project Costs from the Company's Concentration Account pursuant to Section 6.7 for any reason other than as a result of the Projects not being in In Balance, or

(ii) request an Advance from the Additional Notes Sub-Account as a result of restrictions on the permitted use of funds under Section 4.09(b)(7) of the 2014 Notes Indenture,

then the Company shall be entitled to allow Affiliates of the Company (other than any Loan Party) to pay Project Costs then due and owing with respect to a particular Project and to later reimburse such Affiliates for the payments of such Project Costs from the Funding Sources at the time (if any) that the Company is able to satisfy the conditions precedent to Advances set forth in Sections 3.2 or 3.3 hereof, or in the 2014 Notes Indenture, as applicable.

3.7.2 Loss Proceeds. If, at any time:

(a) an Event of Loss occurs that causes the Projects to no longer be In Balance, and

(b) as a result thereof, and in order to cause the Projects to be In Balance pending receipt of any Loss Proceeds in connection with such Event of Loss and the deposit of such Loss Proceeds into the Company's Funds Account, any Affiliate of the Company

(other than any Loan Party) deposits or causes to be deposited additional equity contributions into the Company's Funds Account,

then, upon deposit of Loss Proceeds in respect of such Event of Loss into the Company's Funds Account and so long as no Potential Event of Default or Event of Default has occurred and is continuing or would occur after giving effect thereto, the Company shall be entitled to submit a request for an Advance (in form and substance, and with such attachments, certificates and exhibits, as reasonably requested by the Disbursement Agent) requesting an Advance to be used to make a reimbursement to such Affiliate (which reimbursement may take the form of a distribution to such Affiliate) in an amount equal to the lesser of (i) the amount of the Loss Proceeds received and deposited into the Company's Funds Account and (ii) the amount of such additional cash equity contribution deposited into the Company's Funds Account. Such Advance shall be made for such purpose so long as the Company satisfies the conditions precedent set forth in Section 3.2 or 3.3, as applicable.

3.8 **Closing Date Transactions.** For purposes of this Agreement, so long as the Closing Transactions occur prior to, concurrently with, or immediately after the Closing, the implementation of such Closing Transactions shall be deemed to have occurred immediately prior to the Closing and shall not constitute a breach or violation of any representation or covenant set forth in this Agreement.

#### **ARTICLE 4.** **REPRESENTATIONS AND WARRANTIES**

The Company makes all of the following representations and warranties to and in favor of each Funding Agent (so long as such Funding Agent is a party hereto), the Lenders and the Disbursement Agent as of the Closing Date and the date of each Advance, except as such representations relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date). All of these representations and warranties shall survive the Closing Date and the Advances until, with respect to each Funding Agent and the Lenders, the Obligations under such Funding Agent's and Lenders' respective Facilities have been repaid in full in immediately available funds and their respective Facility Agreements and the other respective Financing Agreements and the commitments thereunder have terminated. The following representations and warranties are made (i) as to the Phase I Project prior to the Phase I Final Completion Date only and (ii) as to the Phase II Project, only after the Phase II Approval Date.

4.1 **Permits.** There are no material Permits that are required or will become required under existing Legal Requirements to be obtained by any Loan Party or any Contractor for the ownership, development, construction, financing or operation of the Projects, other than: (a) with respect to the Phase I Project, the Permits described in Exhibit J-1 and (b) with respect to the Phase II Project, from and after the Phase II Approval Date, Exhibit J-2. Exhibit J-1 and, from and after the Phase II Approval Date, the Permits described in Exhibit J-2 accurately state the stage in construction by which each such Permit is required to be obtained. Each material Permit described in Exhibit J-1 and, from and after the Phase II Approval Date, Exhibit J-2, as required to be obtained by the date that this representation is deemed to be made is in full force and effect and is not at such time subject to any appeals or further proceedings or to any unsatisfied

condition (that is required to be satisfied by the date that this representation is deemed to be made) that could reasonably be expected to materially and adversely modify any material Permit, to revoke any material Permit, to restrain or prevent the construction or operation of the Projects or otherwise impose adverse conditions on the Projects or the financing contemplated under the Financing Agreements. Each material Permit described in Exhibit J-1 and, from and after the Phase II Approval Date, Exhibit J-2, as not required to have been obtained by the date that this representation is deemed to be made (other than Gaming/Liquor Licenses and any massage or second-hand dealer licenses to be issued by Clark County) is of a type that is routinely granted on application and compliance with the conditions for issuance. The Company has no reason to believe that any material Permit so indicated will not be obtained before it becomes necessary for the ownership, development, construction, financing or operation of the Projects or that obtaining such Permit will result in undue expense or delay. Neither the Company nor any of its Affiliates are in violation of any condition in any Permit the effect of which could reasonably be expected to have a Material Adverse Effect. Exhibit J-1 and Exhibit J-2 may be updated from time to time by the Company in response to changes in Legal Requirements and such updates shall be effective upon the delivery of such updated exhibits to the Disbursement Agent and the Construction Consultant.

4.2 **In Balance Requirement.** As of each Advance Date the Projects are In Balance.

4.3 **Sufficiency of Interests and Project Documents.**

4.3.1 The Company owns the Site and the Site Easements (other than the Mortgaged Property encumbered or to be encumbered by Wynn Golf and Wynn Sunrise) in fee simple. The Company has a valid leasehold estate or easement interest, as the case may be, in the portions of the Site described in the Affiliate Real Estate Agreements. Except as permitted by the Bank Credit Agreement and the 2014 Notes Indenture, Wynn Golf owns the Golf Course Land (including the Home Site Land and the Wynn Home Site) and the Golf Course Land Easements in fee simple and Wynn Sunrise owns the Wynn Sunrise Land and Wynn Sunrise Easements in fee simple.

4.3.2 Each of the Funding Agents has received a true, complete and correct copy of each of the Material Project Documents in effect or required to be in effect as of the date this representation is made or deemed made (including all exhibits, schedules, material side letters and material disclosure letters referred to therein or delivered pursuant thereto, if any). A list of (a) all Project Documents that are Contracts and (b) all other Material Project Documents, in each case, that have been entered into as of the Closing Date and are necessary to the construction or operation of the Phase I Project (excluding Contracts entered into in the ordinary course of business for services or materials that are easily obtained from replacement contractors or vendors on similar terms and any Project Document with a total contract amount or value of less than \$15,000,000) is attached hereto as Exhibit Q-5. Each representation and warranty of (a) each Loan Party set forth in Article 4 hereof or in any of the other Financing Agreements shall be true and correct in all material respects as if made on the Closing Date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date), (b) each Loan Party set forth in each Material Project Document was true and correct in all material respects on the date made in the applicable documents and (c) to the Company's knowledge, each Major Project Participant (other than any Loan Party) set forth in

any of the Material Project Documents was true and correct in all material respects on the date made in the applicable document, unless the failure of any such representation and warranty referred to in clauses (b) or (c) to be true and correct could not reasonably be expected to have a Material Adverse Effect.

4.3.3 All conditions precedent to the obligations of the respective parties (other than the Company) under the Material Project Documents have been satisfied, except for immaterial conditions waived by the Loan Parties and 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, the failure to satisfy 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.

#### **4.4 Project Budget; Summary Anticipated Cost Report.**

4.4.1 The Phase I Project Budget (a) is, to the Company's knowledge as of the Closing Date, based on assumptions believed by the Company to be reasonable at the time made as to all legal and factual matters material to the estimates set forth therein, (b) as of the Closing Date is consistent with the provisions of the Operative Documents in all material respects, (c) has been prepared in good faith and with due care, (d) as of the Closing Date sets forth, for each Line Item Category, the total costs reasonably anticipated to be incurred to achieve the Phase I Opening Date on or before the Phase I Scheduled Opening Date, Phase I Substantial Completion on or before the Phase I Scheduled Substantial Completion Date, Completion of the entire Phase I Project (including the Entertainment Facility and the Fairway Villas) on or before the Phase I Scheduled Completion Date and Final Completion of the Phase I Project thereafter, (e) fairly represents the Company's expectation as to the matters covered thereby as of its date and (f) as of the Closing Date sets forth a total amount of Project Costs allocated to the Phase I Project, including contingencies, which is less than or equal to the Available Funds. On and after the Phase II Approval Date, the Phase II Project Budget (a) is, to the Company's knowledge as of the Phase II Approval Date, based on assumptions believed by the Company to be reasonable at the time made as to all legal and factual matters material to the estimates set forth therein, (b) as of the Phase II Approval Date is consistent with the provisions of the Operative Documents in all material respects, (c) has been and will be prepared in good faith and with due care, (d) as of the Phase II Approval Date sets forth, for each Line Item Category allocated to the Phase II Project, the total costs anticipated to be incurred to achieve the Phase II Opening Date on or before the Phase II Scheduled Opening Date, Completion of the Phase II Project on or before the Phase II Scheduled Completion Date and Final Completion of the Phase II Project thereafter, (e) fairly represents the Company's expectation as to the matters covered thereby as of its date and (f) as of the Phase II Approval Date sets forth a total amount of Project Costs for the Phase II Project, including contingencies, which is less than or equal to the Available Funds for the Phase II Project.

4.4.2 The Construction Consultant has approved (such approval not to be unreasonably withheld) any discrepancies between (a) the aggregate anticipated costs to complete the work under a Primary Construction Contract set forth in the Anticipated Cost Report to be provided (from time to time) by the applicable Primary Contractor to the Company

and (b) the amount set forth in column I (“Anticipated Cost”) of the “GMP Contract” Line Item Category with respect to the applicable Project in the Summary Anticipated Cost Report for such Project.

4.4.3 The Summary Anticipated Cost Reports (as in effect from time to time):

(a) set forth in column I (“Anticipated Cost”) thereof:

(i) until the Phase I Opening Date, for the “Capitalized Interest and Commitment Fees” Line Item Category in respect of the Phase I Project Budget, the total amount of interest and commitment fees anticipated to be accrued on the Facilities through the anticipated Phase I Opening Date;

(ii) until the Phase II Opening Date, for the “Capitalized Interest and Commitment Fees” Line Item Category in respect of the Phase II Project Budget, the total amount of interest and commitment fees anticipated to be accrued on the Facilities and allocated to the Phase II Project through the anticipated Phase II Opening Date;

(iii) for each Line Item Category allocated to the Phase I Project and, from and after the Phase II Approval Date, the Phase II Project, an aggregate amount equal to the aggregate amount set forth for such Line Item Category in the applicable Project Budget then in effect;

(iv) for each Line Item Category allocated to the Phase I Project (other than the “Phase I Construction Contingency” Line Item Category) and from and after the “Phase II Approval Date, the Phase II Project (other than the “Phase II Construction Contingency” Line Item Category), an amount no less than the total anticipated costs to be incurred by the Company from the commencement through the completion of the work contemplated by such Line Item Category, as determined by the Company and (i) with respect to Hard Costs, approved by the Disbursement Agent and the Construction Consultant (to the extent set forth in the Construction Consultant’s Advance Certificate dated the date on which this representation is made or deemed made), and (ii) with respect to Soft Costs, approved by the Disbursement Agent; and

(b) (i) with respect to costs previously incurred, are true and correct in all material respects and (ii) with respect to costs anticipated to be incurred, are based upon good faith estimates and assumptions believed by Responsible Officers of the Company to be reasonable at the time made.

4.4.4 The Anticipated Cost Reports (as in effect from time to time):

(a) set forth in column I (“Anticipated Cost”) thereof, for each Line Item other than any Line Items under the “Phase I Construction Contingency” Line Item Category and, from and after the Phase II Approval Date, any Line Items under the “Phase II Construction Contingency,” an amount no less than the total anticipated costs to be incurred by the Company from the commencement through the completion of the work contemplated by such Line Item, as determined by the Company and (i) with respect to Hard Costs, approved by the Construction Consultant in the Construction Consultant’s Advance Certificate dated the date

on which this representation is made or deemed made and (ii) with respect to Soft Costs, approved by the Disbursement Agent;

(b) (i) with respect to costs previously incurred, are true and correct in all material respects and (ii) with respect to costs anticipated to be incurred, are based upon good faith estimates and assumptions believed by Responsible Officers of the Company to be reasonable at the time made; and

(c) accurately reflect, for each Line Item Category of the applicable Project Budget, the detail underlying the corresponding Summary Anticipated Cost Report with respect to each Line Item of such Line Item Category described therein.

4.4.5 The total aggregate amount of Project Costs for the Phase II Project set forth in column I (“Anticipated Cost”) of the Phase II Anticipated Cost Report (as in effect from time to time) does not exceed the limit set forth in Section 7.23 of the Bank Credit Agreement.

4.4.6 Each Monthly Requisition Report (as in effect from time to time):

(a) sets forth in column D (“Revised Project Budget”) thereof the amount allocated to each Line Item Category pursuant to the applicable Project Budget then in effect;

(b) (i) with respect to costs previously incurred, is true and correct in all material respects and (ii) with respect to costs anticipated to be incurred, is based upon good faith estimates and assumptions believed by Responsible Officers of the Company to be reasonable at the time made.

4.5 **Project Schedule.** To the Company’s knowledge, the Project Schedules accurately specify in summary form the work that the Company proposes to complete in each calendar quarter from the Closing Date through the Final Completion of each Project, all of which are reasonably expected to be achieved.

4.6 **Plans and Specifications.** The Plans and Specifications (a) are, to the Company’s knowledge as of the Closing Date with respect to the Phase I Project and, to the Company’s knowledge, from and after the Phase II Approval Date with respect to the Phase II Project, based on assumptions believed by the Company to be reasonable at the time made as to all legal and factual matters material thereto, (b) are, and except to the extent permitted under Sections 6.1 and 6.2 will be from time to time, consistent with the provisions of the Operative Documents in all material respects and (solely with respect to the Phase I Project) with the “Premises and Assumptions” (as defined in the Phase I Primary Construction Contract), (c) have been prepared in good faith with due care and (d) fairly represent the Company’s reasonable expectation as to the matters covered thereby. The Final Plans and Specifications as and when prepared (i) have been prepared in good faith with due care and (ii) are accurate in all material respects and fairly represent the Company’s expectation as to the matters covered thereby.

**ARTICLE 5.**  
**AFFIRMATIVE COVENANTS**

The following covenants are made (i) as to the Phase I Project, prior to the Phase I Final Completion Date only and (ii) as to the Phase II Project, after the Phase II Approval Date only; provided, however, that the covenants set forth in Section 5.1.1, 5.1.2, 5.1.3 and 5.14 shall apply as to the Phase II Project prior to and after the Phase II Approval Date. Subject to the preceding sentence, the Company covenants and agrees, with and for the benefit of the Bank Agent, the Lenders, the Disbursement Agent and, at such times as any funds are on deposit in the 2014 Notes Proceeds Account, the 2014 Notes Indenture Trustee, to the following:

**5.1 Use of Proceeds.**

5.1.1 Construction Tracking Account. The Company shall maintain a tracking account within the Company's Concentration Account for the purpose of tracking the funds earmarked for use in construction of the Projects (the "Construction Tracking Account").

(a) The Construction Tracking Account shall be credited with:

- (i) the amount of all Advances deposited into the Company's Concentration Account; and
- (ii) all amounts credited thereto pursuant to Section 5.5.2.

(b) The Construction Tracking Account shall be debited with (i) the amount of Project Costs paid from the Company's Concentration Account in accordance with the terms of this Agreement, (ii) any amounts paid from the Company's Concentration Account to reimburse Affiliates of the Company pursuant to Section 3.7 and (iii) all amounts used to prepay the Obligations pursuant to Section 5.14.

(c) The Company shall deposit or cause to be deposited into the Company's Concentration Account the amounts required to be deposited therein by the Company pursuant to Section 2.2.6. The Company shall ensure that at all times the amount of funds on deposit in the Company's Concentration Account equals or exceeds the credit balance in the Construction Tracking Account.

5.1.2 Project Costs. The Company shall apply all amounts received by the Company and/or deposited in the Company's Concentration Account, (a) with respect to the portion thereof credited to the Construction Tracking Account, only to pay Project Costs or reimburse Affiliates to the extent permitted by this Agreement or prepay the Obligations pursuant to Section 5.14, and (b) with respect to other amounts deposited therein, for such other uses as are not prohibited by the Financing Agreements.

5.1.3 Completion Guaranty Deposit Account. This Section 5.1.4 shall only apply from and after the Phase II Approval Date and shall not be applicable should the Phase II Approval Date not occur on or before the Phase II Revolving Commitment Sunset Date. On the Phase I Substantial Completion Date (if the Phase II Approval Date shall have previously occurred) or on the Phase II Approval Date (if such date occurs after the Phase I Substantial

Completion Date), the Company shall cause the amount on deposit in the Completion Guaranty Deposit Account to equal at least Thirty Million Dollars (\$30,000,000) for utilization with respect to the Phase II Project.

5.1.4 **Excess Cash Flows.** This Section 5.1.4 shall only apply from and after the Phase II Approval Date and shall not be applicable should the Phase II Approval Date not occur on or before the Phase II Revolving Commitment Sunset Date.

(a) Within three (3) Banking Days after the end of each calendar quarter occurring from and after the Phase I Opening Date and prior to the Phase II Final Completion Date, the Company shall deposit or cause to be deposited into the Company's Funds Account an amount at least equal to the lesser of: (x) the amount shown under the column "Excess Cash Flow" for such calendar quarter in the Phase I Projected Excess Cash Flow Schedule and (y) the amount required for the Projects to be In Balance.

(b) In the event the actual "Excess Cash Flow" (as such term is defined in the Bank Credit Agreement) generated by the Phase I Project in any two consecutive full calendar quarters (the second such quarter being referred to herein as the "Second Shortfall Quarter") from and after the Phase I Opening Date and prior to the Phase II Final Completion Date is less than the aggregate amount shown under the column "Excess Cash Flow" for such calendar quarters, then the Company shall immediately notify the Bank Agent of such shortfall and no later than thirty (30) days after the end of the second shortfall quarter, submit to the Bank Agent a revised Phase I Excess Cash Flow Schedule reflecting the Bank Agent's reasonable expectations (after consultation with the Company and after taking into consideration, among other things, the prior performance of the Phase I Project) for the generation of Excess Cash Flow by the Phase I Project from such date through the Phase II Final Completion Date. Such revised schedule shall thereafter be deemed to be the "Phase I Projected Excess Cash Flow Schedule" for purposes of this Agreement without any further consent of any party hereto.

5.2 **Diligent Construction of the Projects.** 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 Projects diligently in accordance with the Primary Construction Contracts, the Final Plans and Specifications and the other Operative Documents (except for delays caused by any Event of Force Majeure).

5.3 **Reports; Cooperation.** The Company shall deliver to the Funding Agents, the Construction Consultant and the Disbursement Agent:

(a) prior to the Final Completion Date for each Project, within twenty (20) days following the end of each calendar quarter, a quarterly status report describing in reasonable detail the progress of the construction of such Project since the immediately preceding report hereunder, including without limitation, the cost incurred to the end of such quarter for such Project, an estimate of the time and cost required to complete such Project and such other information which any Funding Agent or the Disbursement Agent may reasonably request, including information and reports reasonably requested by the Construction Consultant;



(b) within twenty (20) days following the end of each calendar quarter, a quarterly status report describing in reasonable detail the progress of the leasing activities with respect to the Projects, if any, and all leases, if any, that have been entered into since the immediately preceding report hereunder;

(c) within twenty (20) days following the end of each month, all progress reports provided by each Contractor pursuant to the Material Construction Agreements and such additional information as the Bank Agent or the Disbursement Agent may reasonably request; and

(d) within twenty (20) days following the end of each month, copies of any applicable bailee or Lien waivers delivered pursuant to Section 5.13.1.3 of the Phase I Primary Construction Contract or any similar provision of the Phase II Primary Construction Contract.

5.4 **Notices.** Promptly, upon an officer of the Company acquiring notice or giving notice, or upon an officer of the Company obtaining knowledge thereof, as the case may be, the Company shall provide to the Disbursement Agent, the Construction Consultant and the Funding Agents written notice of:

5.4.1 Any Event of Default or Potential Event of Default of which it has knowledge, specifically stating that an Event of Default or Potential Event of Default has occurred and describing such Event of Default or Potential Event of Default and any action being taken or proposed to be taken with respect to such Event of Default or Potential Event of Default.

5.4.2 Any event, occurrence or circumstance which reasonably could be expected to cause the Projects to not be In Balance or render the Company incapable of, or prevent the Company from (a) achieving the Phase I Opening Date on or before the Phase I Scheduled Opening Date, (b) achieving Phase I Substantial Completion on or before the Phase I Scheduled Substantial Completion Date, (c) achieving Completion of the entire Phase I Project (including the Entertainment Facility and the Fairway Villas) on or before the Phase I Scheduled Completion Date, (d) achieving the Phase II Opening Date on or before the Phase II Scheduled Opening Date, (e) achieving the Completion of the Phase II Project on or before the Phase II Scheduled Completion Date, or (f) meeting any material obligation of the Company under the Primary Construction Contracts or the other Material Project Documents as and when required thereunder.

5.4.3 Any termination or event of default or notice thereof under any Material Project Document or any notice under Nevada Revised Statutes Section 624.610 issued by any Contractor.

5.4.4 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 Funding Agent or the Disbursement Agent, satisfactory evidence of the authority of such new Responsible Officer.

5.4.5 Any proposed material change in the nature or scope of the Projects or the business or operations of the Company.

5.4.6 Any notice of any schedule delay delivered under the Primary Construction Contracts and all remedial plans and updates thereof.

5.4.7 Any anticipated Monthly Disbursement Excess.

5.4.8 Any other event or development which could reasonably be expected to have a Material Adverse Effect.

5.4.9 "Substantial Completion" or "Final Completion" certificates or notices thereof delivered under any Material Project Document.

**5.5 Certain Transfers from Company Accounts.**

5.5.1 Event of Default; Bankruptcy. (a) Upon the request of the Collateral Agent following the occurrence of an Event of Default, (b) immediately upon the dissolution, liquidation or Bankruptcy of the Completion Guarantor or (c) upon the request of the Collateral Agent following the occurrence of a breach by the Completion Guarantor of any of its covenants and agreements under the Completion Guaranty, the Company shall cause the Completion Guarantor to instruct the Disbursement Agent to transfer to the Company's Funds Account from the Completion Guaranty Deposit Account an amount equal to the amount of funds then on deposit in the Completion Guaranty Deposit Account. In the event that the Completion Guarantor fails to so instruct, the Disbursement Agent shall be entitled to transfer such funds from the Completion Guaranty Deposit Account to the Company's Funds Account, which transfer shall be effected as a dividend from the Completion Guarantor to the Company. In the event that after the transfer of such funds, such Event of Default or breach by the Completion Guarantor is cured or waived, and the Company obtains additional Advances hereunder, such funds shall be returned to the Completion Guaranty Deposit Account (minus any portion of such funds that has been expended prior to the date such Event of Default or breach is cured or waived) and shall be treated as a capital contribution by the Company in the Completion Guarantor.

5.5.2 Contingencies. At such times, if ever, as the Projects shall not be In Balance, the Company shall (a) credit the balance in the Construction Tracking Account by an amount no greater than the excess of amounts on deposit in the Company's Concentration Account over the then current balance of the Construction Tracking Account and/or (b) deposit or cause to be deposited in the Company's Funds Account, funds (other than from the Completion Guaranty Deposit Account or the Project Liquidity Reserve Account) in an aggregate amount that would cause the Projects to be In Balance.

5.5.3 Completion Guaranty Deposit Account.

(a) At such times, if ever, as no other source of funds is available to the Company for the timely payment of Project Costs allocated to a particular Project in the applicable Project Budget, the Company shall instruct the Disbursement Agent to transfer from the Completion Guaranty Deposit Account to the Company's Concentration Account funds in the amount required to timely pay all Project Costs then due and payable. The Company shall not apply any funds on deposit in the Completion Guaranty Deposit Account except as permitted in Sections 5.5.1, 5.5.3(b) and 5.14.2.

(b) The Company may withdraw funds from the Completion Guaranty Deposit Account for the sole purpose of transferring such funds to the Company's Concentration Account to be Advanced to pay Project Costs related to the Phase II Project.

5.6 **Material Project Documents and Permits.** The Company shall deliver to the Disbursement Agent, the Funding Agents and the Construction Consultant promptly, but in no event later than twenty (20) days after the receipt thereof by the Company, copies of (a) all Material Project Documents and Permits described on Exhibit J-1 or J-2 that are obtained or entered into by the Company or any other Loan Party after the Closing Date and (b) any material amendment, supplement or other material modification to any Permit received by the Company or any other Loan Party after the Closing Date.

5.7 **Storage Requirements for Off-Site Materials and Deposits.** The Company shall cause all Unincorporated Materials to be stored and identified in a manner that would satisfy the conditions set forth in clauses (A) through (G) of Section 3.2.19 in all material respects.

5.8 **Plans and Specifications.** The Company shall provide to the Disbursement Agent and the Construction Consultant copies of, and maintain at the Site, a complete set of Final Plans and Specifications, as in effect from time to time.

5.9 **Payment and Performance Bonds.** The Company shall cause (a) the Phase I Primary Contractor to provide a Payment and Performance Bond to secure its obligations under the Phase I Primary Construction Contract; (b) the Phase I Primary Contractor to cause each Subcontractor (working under a Subcontract in effect on the Closing Date with a total contract amount or value of more than \$25,000,000) to provide a Payment and Performance Bond to secure its obligations under its respective Subcontract; (c) the Phase II Primary Contractor to, within the later of: (i) ten (10) days after execution of the Phase II Primary Construction Contract and (ii) the date construction of the Phase II Project commences, provide either (x) a Payment and Performance Bond to secure its obligations under the Phase II Primary Construction Contract or (y) a parent guaranty, or be covered by a subguard policy or another risk mitigant in form and substance reasonably satisfactory to the Majority of the Arrangers and the Construction Consultant; and (d) unless otherwise agreed by the Majority of the Arrangers and the Construction Consultant, each Phase II Primary Contractor to cause each Subcontractor (working under a Subcontract with a total contract amount or value of more than \$25,000,000), within fifteen (15) calendar days after execution of its Subcontract, to provide either (x) a Payment and Performance Bond to secure its obligations under its respective Subcontract or (y) a parent guaranty, or be covered by a subguard policy or another risk mitigant in form and substance reasonably satisfactory to the Majority of the Arrangers and the Construction Consultant. Each such Payment and Performance Bond shall name the Collateral Agent as additional obligee and shall be in substantially the form of Exhibit O hereto or as otherwise approved by the Disbursement Agent. Promptly after receipt thereof, the Company shall deliver the originals of each such Payment and Performance Bonds to the Disbursement Agent with a copy to the Construction Consultant.

5.10 **Retainage Amounts.** The Company shall withhold from each Contractor performing labor at the Site (excluding the Phase I Parking Structure Contractor and any other

Contractor reasonably approved by the Disbursement Agent (in consultation with the Construction Consultant)), and cause each such Contractor to withhold from its first tier Subcontractors performing labor at the Site, a retainage equal to ten (10%) percent (or, in the case of Subcontractors performing labor at the Site pursuant to Subcontracts greater than \$100,000,000, five (5%) percent) of each payment made to such Contractor or Subcontractor pursuant to its respective Contract or Subcontract; provided, however, that at such time as (i) the applicable Contractor or Subcontractor shall have completed fifty percent (50%) of the work under its respective Contract or Subcontract and (ii) if a Payment and Performance Bond is delivered under Section 5.9 with respect to such Contract or Subcontract, the Company shall have obtained a "Consent of Surety to Reduction in or Partial Release of Retainage" (AIA form G707A) from the surety that issued such Payment and Performance Bond and delivered such consent to the Disbursement Agent with a copy to the Construction Consultant, then the retainage withheld may be reduced, as applicable, from ten (10%) percent to five (5%) percent of the contract value as adjusted by change orders, if any.

5.11 **Construction Consultant.** The Company shall:

(a) cooperate and use commercially reasonable efforts to cause the Project Architects, the Primary Contractors, the Phase I Golf Course Designer, the Phase I Aqua Theater and Showroom Designer, the Phase I Golf Course Contractor, the Phase II Major Architects and the Phase II Major Contractors to cooperate with the Construction Consultant in the performance of the Construction Consultant's duties hereunder and under the Construction Consultant Engagement Agreement. Without limiting the generality of the foregoing, the Company shall and shall use commercially reasonable efforts to cause the Project Architects, the Primary Contractors, the Phase I Golf Course Designer, the Phase I Aqua Theater and Showroom Designer, the Phase I Golf Course Contractor, the Phase II Major Architects and the Phase II Major Contractors to: (i) communicate with and promptly provide copies of all invoices over One Million Dollars (\$1,000,000), documents, plans and other information reasonably requested by the Construction Consultant relating to the work, (ii) authorize any material subcontractors or subconsultants of any tier to communicate directly with the Construction Consultant regarding the progress of the work, (iii) provide the Construction Consultant with access to the Site and, subject to required safety precautions, the construction areas, (iv) solely in the case of the Primary Contractors, provide the Construction Consultant with reasonable working space and access to telephone, copying and telecopying equipment and (v) otherwise facilitate the Construction Consultant's review of the construction of the Projects and preparation of the certificates required hereby. Any invoices for amounts less than One Million Dollars (\$1,000,000) and payable by the Company directly to any Contractors shall not be required to be delivered to the Construction Consultant but shall be made available to the Construction Consultant at the Company's offices upon the Construction Consultant's request.

(b) pay or cause to be paid to the Construction Consultant out of the Advances made hereunder all amounts required hereunder and under the Construction Consultant Engagement Agreement.

(c) in addition to any other consultation required hereunder, following the end of each quarter, upon the request of the Bank Agent, consult with the Bank Agent

regarding any adverse event or condition identified in any report prepared by the Construction Consultant.

(d) deliver to the Construction Consultant, no less frequently than every thirty (30) days, the Phase I Anticipated Cost Report and, from and after the Phase II Approval Date, the Phase II Anticipated Cost Report, in each case, as in effect from time to time.

5.12 **Governmental and Environmental Reports.** The Company shall deliver to the Funding Agents, the Disbursement Agent and the Construction Consultant copies of all material reports required to be filed by the Company with any Governmental Authority.

5.13 **Insurance.** The Company shall, and shall cause each Loan Party to, at all times maintain in full force and effect the insurance policies and programs listed on Exhibit L. The Company shall have delivered to the Disbursement Agent (i) within 45 days after the Closing Date for each Contractor party to a Material Project Document in effect on the Closing Date and (ii) for any Material Project Document entered into after the Closing Date, within 45 days after execution of such Material Project Document, certified copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer) which insurance shall, to the extent reasonably available, name the Disbursement Agent, the Collateral Agent, the Funding Agents and the Lenders as additional insureds.

5.14 **Application of Insurance and Condemnation Proceeds.**

5.14.1 **Event of Loss.** If any Event of Loss shall occur with respect to a Project or any other asset of any Loan Party, the Company shall and shall cause each other Loan Party (a) promptly upon discovery or receipt of notice thereof to provide written notice thereof to the Disbursement Agent with respect to any Event of Loss over One Hundred Thousand Dollars (\$100,000), and (b) diligently to pursue all its rights to compensation against all relevant insurers, reinsurers and/or Governmental Authorities, as applicable, in respect of such event to the extent that the Company or such Loan Party has a reasonable basis for a claim for compensation or reimbursement, including, without limitation, under any insurance policy required to be maintained hereunder. All amounts and proceeds (including instruments) in respect of any Event of Loss, including the proceeds of any insurance policy required to be maintained by the Company hereunder (collectively, "Loss Proceeds") shall be applied as provided in this Section.

5.14.2 **Application of Loss Proceeds.**

(a) **Phase I Project.** The Company shall direct that all Loss Proceeds in respect of the Phase I Project at any time prior to the Phase I Substantial Completion Date in respect of such Project shall be paid by the insurers, reinsurers, Governmental Authorities or other payors directly to the Disbursement Agent for deposit in the Company's Funds Account. In the event that for a period of one hundred twenty (120) days after any such Loss Proceeds are deposited in the Company's Funds Account, the Company is not permitted pursuant to the terms hereof to obtain Advances of such Loss Proceeds to pay Project Costs allocated to the Phase I Project in the Phase I Project Budget, then the Company shall use all other such proceeds and

funds on deposit in the Completion Guaranty Deposit Account and the Project Liquidity Reserve Account to prepay the Loans and the 2014 Notes in accordance with the Bank Credit Agreement and the 2014 Notes Indenture, respectively, in each case, subject to the Intercreditor Agreement.

(b) **Phase II Project.** The Company shall direct that all Loss Proceeds in respect of the Phase II Project at any time prior to the Phase II Completion Date shall be paid by the insurers, reinsurers, Governmental Authorities or other payors directly to the Disbursement Agent for deposit in the Company's Funds Account. In the event that for a period of one hundred twenty (120) days after any such Loss Proceeds are deposited in the Company's Funds Account, the Company is not permitted pursuant to the terms hereof to obtain Advances of such Loss Proceeds to pay Project Costs allocated to the Phase II Project in the Phase II Project Budget, then the Company shall use all funds on deposit in the Company's Funds Account, the Completion Guaranty Deposit Account, the Project Liquidity Reserve Account and an amount from the Company's Concentration Account equal to the credit balance in the Construction Tracking Account to prepay the Loans and the 2014 Notes in accordance with the Bank Credit Agreement and the 2014 Notes Indenture, respectively, in each case, subject to the Intercreditor Agreement.

**5.14.3 Loss Proceeds Received by Other Parties.** If any Loss Proceeds required to be deposited into the Company's Funds Account under Section 5.14.2 above are paid directly to any affiliate of the Company, any Funding Agent or Lender, or any other Person other than the Company by any insurer, reinsurer, Governmental Authority, any landlord or grantor under the Affiliate Real Estate Agreements or such other payor, (i) such Loss Proceeds shall be received in trust for the Company, (ii) such Loss Proceeds shall be segregated from other funds of such other Person and (iii) such other Person shall pay (or, if applicable, the Company shall cause such of its affiliates to pay) such Loss Proceeds over to the Company in the same form as received (with any necessary endorsement) for deposit in the Company's Funds Account to be applied as provided in Section 5.14.2 above.

**5.15 Compliance with Material Project Documents.** The Company shall comply, in all material respects, with its obligations, and enforce all of its respective rights under all Material Project Documents, except where the failure to comply or enforce such rights, as the case may be, could not reasonably be expected to have a Material Adverse Effect.

**5.16 Utility Easement Modifications.** The Company shall diligently cause all utility or other easements that would interfere in any material respect with the construction or maintenance of the improvements contemplated with respect to the Projects to be removed as expeditiously as possible. In any event, the Company shall remove such easements before they interfere in any material respect with the prosecution of the work involved with the Phase I Project or the Phase II Project in accordance with the Project Schedules, and in any event, prior to the Phase I Opening Date (for easements affecting the Phase I Project) and prior to the Phase II Opening Date (for easements affecting the Phase II Project).

**ARTICLE 6.**  
**NEGATIVE COVENANTS**

The following covenants are made (i) as to the Phase I Project, prior to the Phase I Final Completion Date only and (ii) as to the Phase II Project, after the Phase II Approval Date only; provided, however, that the covenants set forth in Sections 6.1.1, 6.4, 6.5 and 6.6 shall apply to the Phase II Project both prior to and after the Phase II Approval Date. Subject to the preceding sentence, the Company covenants and agrees, with and for the benefit of the Bank Agent, the Lenders, the Disbursement Agent and, at such times as any funds are on deposit in the 2014 Notes Proceeds Account, the 2014 Notes Indenture Trustee, that it shall not:

**6.1 Waiver, Modification, Termination and Amendment of Permits and Contracts.** Enter into, amend, modify, terminate (except in accordance with its terms), supplement or waive a right or consent to the amendment, modification, termination (except in accordance with its terms), supplementation or waiver of any of the provisions of, or give any consent under (a) any Permit, the effect of which could reasonably be expected to have a Material Adverse Effect, (b) the Construction Guaranty or any material Payment and Performance Bond without the consent of the Bank Agent (such consent not to be unreasonably withheld) unless it could not reasonably be expected to have an adverse effect on the Company or any Lender or (c) any other Contract, the effect of which could reasonably be expected to have a Material Adverse Effect; except, in each case, only in accordance with the procedures set forth in Section 6.1.1 or 6.1.2 below, as applicable. Subject to the foregoing, the Company may:

6.1.1 Enter into Contracts consistent with the Final Plans and Specifications, the applicable Project Schedule and the applicable Project Budget, as each is in effect from time to time. Each such Contract shall be permitted so long as the Company shall have satisfied the following conditions: (a) if entering into such Contract will result in an amendment to the Project Budget, the Company shall have complied with the requirements of Section 6.3; (b) if entering into such Contract will have the effect of a Scope Change, the Company shall have complied with the provisions of Section 6.2; (c) if entering into such Contract will cause the Project to fail to be In Balance, the Company shall have complied with the requirements of Section 5.5; (d) if a Payment and Performance Bond is required under Section 5.9 with respect to such Contract, the Company shall have obtained and delivered such Payment and Performance Bond to the Disbursement Agent within the time period required under Section 5.9; and (e) for Contracts relating to the Phase II Project with a total contract amount or value in excess of \$150,000,000, the Majority of the Arrangers shall have approved such Contract (such approval not to be unreasonably withheld or delayed); and

6.1.2 From time to time, amend any Contracts so long as (a) if such amendment will result in an amendment to the Project Budget, the Company shall have complied with the requirements of Section 6.3; (b) if such amendment will have the effect of a Scope Change, the Company shall have complied with the provisions of Section 6.2; (c) if such amendment will cause the Project to fail to be In Balance, the Company shall have complied with the requirements of Section 5.5; (d) the Company and the Contractor shall have executed the contract amendment and delivered such contract amendment to the Disbursement Agent (or, in the case of any amendment to a purchase order, such amendment shall have otherwise become enforceable against the Company and the Contractor thereunder); and (e) if a Payment and

Performance Bond is delivered under Section 5.9 with respect to such Contract after giving effect to the amendment, the Company shall have obtained the written consent of the surety that issued such Payment and Performance Bond to such amendment and delivered such consent to the Disbursement Agent with a copy to the Construction Consultant.

**6.2 Scope Changes; Completion; Drawings.**

6.2.1 Scope Changes. Without obtaining the Required Scope Change Approval, direct, consent to or enter into any Scope Change if such Scope Change:

(a) will cause the Projects not to be In Balance;

(b) is not, in the reasonable judgment of (i) the Company (in the case of any De Minimis Scope Change) or (ii) the Construction Consultant (in the case of any Scope Change that is not a De Minimis Scope Change), consistent with the requirements of Exhibits V-1 and V-2;

(c) in the reasonable judgment of the (i) the Company (in the case of any De Minimis Scope Change) or (ii) the Construction Consultant (in the case of any Scope Change that is not a De Minimis Scope Change) (based on its experience, familiarity and review of the Projects and representations provided by the Company, the Contractors and Subcontractors), could reasonably be expected to delay the Phase I Opening Date beyond the Phase I Scheduled Opening Date, the Phase I Substantial Completion Date beyond the Phase I Scheduled Substantial Completion Date, the Phase I Completion Date beyond the Phase I Scheduled Completion Date, the Phase II Opening Date beyond the Phase II Scheduled Opening Date or the Phase II Completion Date beyond the Phase II Scheduled Completion Date;

(d) in the reasonable judgment of (i) the Company (in the case of any De Minimis Scope Change) or (ii) the Construction Consultant (in the case of any Scope Change that is not a De Minimis Scope Change), could reasonably be expected to result in any materially adverse modification of, or materially impair the enforceability of, any material warranty under any Material Construction Agreement;

(e) in the reasonable judgment of (i) the Company (in the case of any De Minimis Scope Change) or (ii) the Construction Consultant (in the case of any Scope Change that is not a De Minimis Scope Change), could reasonably be expected to present a significant risk of the revocation or material adverse modification of any material Permit;

(f) in the reasonable judgment of (i) the Company (in the case of any De Minimis Scope Change) or (ii) the Construction Consultant or the Project Architects (in the case of any Scope Change that is not a De Minimis Scope Change), could reasonably be expected to cause the Projects or any portion thereof not to comply with Legal Requirements in any material respect (provided that the Construction Consultant shall be entitled to determine that no violation of any Legal Requirement will occur on the basis of a certification by the Company to such effect unless the Construction Consultant is aware of any inaccuracies in such certification); or



(g) in the reasonable judgment of the Company could reasonably be expected to result in a material adverse modification, cancellation or termination of any insurance policy required to be maintained by the Company pursuant to Section 5.13.

Prior to implementing any Scope Change (other than a De Minimis Scope Change or the acceptance of non-conforming work), the Company shall comply with the provisions of Section 6.1. Prior to implementing any Scope Change (including a De Minimis Scope Change but excluding the acceptance of non-conforming work) (x) under the Phase I Primary Construction Contract, the Company shall comply with Section 18.10.1 of the Phase I Primary Construction Contract (including obtaining the written consent of the surety under the Phase I Primary Contractors Payment and Performance Bond to such Scope Change) and (y) under any other Contract as to which the Company is required to obtain a Payment and Performance Bond pursuant to Section 5.9 the Company shall obtain the written consent of the surety under the relevant Payment and Performance Bond to such Scope Change (if required under the applicable Payment and Performance Bond).

6.2.2 Substantial and Final Completion. Accept (or be deemed to have confirmed) any notice of “Substantial Completion” or “Final Completion” of all or any portion of the Projects issued by any Contractor under any Material Construction Agreement (including, without limitation, Sections 12.1 and 12.2 of the Phase I Primary Construction Contract) without the written approval of the Construction Consultant and the Project Architects (provided that the Construction Consultant and Project Architects shall act with due diligence and as promptly as possible in making their determination to approve or disapprove and the Disbursement Agent shall instruct the Construction Consultant to approve such notice if the conditions to “Substantial Completion” or “Final Completion” set forth in such Material Construction Agreement have been satisfied).

6.2.3 Reduction of Retainage Amounts. Reduce the level of Retainage Amounts withheld pursuant to Section 5.6 of the Phase I Primary Construction Contract.

6.2.4 Failure to Withhold Retainage Amounts. Fail to retain as Retainage Amounts pursuant to Section 5.7 of the Phase I Primary Construction Contract a sum equal to at least one hundred and fifty percent (150%) of the costs reasonably estimated by the Company (and confirmed by the Construction Consultant) as necessary to complete “Punch List Items” (as defined in the Phase I Primary Construction Contract) unless such retention is not permitted under applicable laws.

6.2.5 Acceptance of Non-Conforming Work. Knowingly accept any non-conforming “Work” (as defined in the Phase I Primary Construction Contract) pursuant to Section 10.9 of the Phase I Primary Construction Contract unless the Company shall have complied with the requirements of Section 6.2.1.

6.2.6 Approval of the Schedule of Values. (a) Approve any change, modification or supplement to the “Schedule of Values” in effect on the Closing Date for the Phase I Project pursuant to Section 5.1 of the Phase I Primary Construction Contract or approve the initial “Schedule of Values” (or comparable provision) for the Phase II Project under the Phase II Primary Construction Contract, or any change, modification or supplement thereto,

without, in each case, the consent of the Construction Consultant or (b) fail to direct any Primary Contractors to adjust the Schedule of Values for any portion of the Projects as contemplated in the last sentence of Section 5.1 of the Phase I Primary Construction Contract or any similar provision of the Phase II Primary Construction Contract as and when required by the Construction Consultant.

6.2.7 Increase in Contractor's Fee. Accept or agree to any increase in the "Contractor's Fee" (as defined in the Phase I Primary Construction Contract) for any reason, except to the extent required pursuant to Section 18.5.2 of the Phase I Primary Construction Contract.

6.3 **Project Budget and Project Schedule Amendment.** Amend, modify, allocate, re-allocate or supplement or consent to the amendment, modification, allocation, re-allocation or supplementation of, any of the Line Item Categories or other provisions of the Project Budgets or modify or extend the Phase I Scheduled Opening Date, the Phase I Scheduled Substantial Completion Date, the Phase I Scheduled Completion Date, the Phase II Scheduled Opening Date or the Phase II Scheduled Completion Date, except as follows:

6.3.1 Permitted Budget Amendments.

(a) Concurrently with the implementation of any Scope Change, the Company shall amend the applicable Project Budget in accordance with the provisions of Section 6.3.1(c) to the extent necessary so that the amount set forth therein for each Line Item Category shall reflect all Scope Changes that have been made to such Line Item Category.

(b) The Company may from time to time amend the Project Budgets in accordance with the provisions of Section 6.3.1(c) in order to increase, decrease or otherwise reallocate amounts allocated to specific Line Item Categories.

(c) (i) Increases to the aggregate amount budgeted for any Line Item Category allocated to any particular Project in the applicable Project Budget will only be permitted to the extent of (A) allocation of Realized Savings obtained in a different Line Item Category, (B) allocation of the previously unallocated amounts under the "Construction Contingency" Line Item Category for such Project or (C) allocation of an increase in Available Funds, including additional funds credited to the Construction Tracking Account.

(ii) Decreases to any Line Item Category allocated to any particular Project in the applicable Project Budget will only be permitted upon obtaining Realized Savings in such Line Item Category.

(d) Increases and decreases to particular Line Items set forth in column C ("Current Budget") of the Anticipated Cost Reports or Column D ("Revised Project Budget") of the Monthly Requisition Reports shall be permitted to the extent not inconsistent with the foregoing provisions of Sections 6.3.1(a) and (c); provided that increases to the "Hard Cost Construction Contingency" Line Item and the "Soft Cost Construction Contingency" Line Item allocated to any particular Project in the applicable Project Budget shall only be permitted to the extent of (x) an allocation of Realized Savings obtained in any Line Item Category allocated to such Project in the applicable Project Budget or (y) an increase in Available Funds,

including additional funds credited to the Construction Tracking Account or (z) solely with respect to the Phase II Project Budget after the Phase I Completion Date has occurred, an allocation of Realized Savings obtained in any Line Item Category in the Phase I Project Budget.

(e) Promptly but no more than ten (10) Banking Days after implementing any amendment to a Project Budget, the Company shall deliver to the Disbursement Agent and the Construction Consultant a copy of the amended Project Budget along with an explanation of the amendment and such information as may be reasonably requested by the Disbursement Agent or the Construction Consultant to verify that the foregoing provisions of this Section 6.3.1 have been complied with.

#### 6.3.2 Permitted Schedule Amendments.

(a) The Company may, from time to time, amend the Project Schedules (i) to extend the Phase I Scheduled Opening Date, the Phase I Scheduled Substantial Completion Date or the Phase I Scheduled Completion Date, but not beyond the Outside Phase I Opening Deadline, the Outside Phase I Substantial Completion Deadline and the Outside Phase I Completion Deadline, respectively, and/or (ii) to extend the Phase II Scheduled Opening Date or the Phase II Scheduled Completion Date but not beyond the Outside Phase II Opening Deadline and the Outside Phase II Completion Deadline, respectively, by delivering to the Disbursement Agent a Project Schedule Amendment Certificate (a) containing a revised Project Schedule reflecting the new Phase I Scheduled Opening Date, Phase I Scheduled Substantial Completion Date, Phase I Scheduled Completion Date, Phase II Scheduled Opening Date or Phase II Scheduled Completion Date, as the case may be, and (b) complying with the provisions of Section 6.3.1(c) with respect to the changes in the Project Budgets that will result from such extension.

(b) If an Event of Force Majeure occurs, then the Company shall be permitted to extend the Outside Phase I Opening Deadline to the extent that the Company certifies in writing, and the Construction Consultant confirms in its reasonable judgment, to the Disbursement Agent that such extension is reasonably necessary to overcome any delays caused by the Event of Force Majeure, provided that no such extension may extend beyond December 30, 2005. If an Event of Force Majeure occurs, then the Company shall be permitted to extend the Outside Phase I Substantial Completion Deadline to the extent that the Company certifies in writing, and the Construction Consultant confirms in its reasonable judgment, to the Disbursement Agent that such extension is reasonably necessary to overcome any delays caused by the Event of Force Majeure, provided that no such extension may extend beyond December 30, 2005. If an Event of Force Majeure occurs, then the Company shall be permitted to extend the Outside Phase I Completion Deadline to the extent that the Company certifies in writing, and the Construction Consultant confirms in its reasonable judgment, to the Disbursement Agent that such extension is reasonably necessary to overcome any delays caused by the Event of Force Majeure, provided that no such extension may extend beyond March 30, 2006.

(c) If an Event of Force Majeure occurs, then the Company shall be permitted to extend the Outside Phase II Opening Deadline to the extent that the Company certifies in writing, and the Construction Consultant confirms in its reasonable judgment, to the Disbursement Agent that such extension is reasonably necessary to overcome any delays caused

by the Event of Force Majeure, provided that no such extension may extend beyond March 31, 2010. If an Event of Force Majeure occurs, then the Company shall be permitted to extend the Outside Phase II Completion Deadline to the extent that the Company certifies in writing, and the Construction Consultant confirms in its reasonable judgment, to the Disbursement Agent that such extension is reasonably necessary to overcome any delays caused by the Event of Force Majeure, provided that no such extension may extend beyond June 30, 2010.

6.3.3 **Amendment Certificates.** Upon submission of the Project Schedule Amendment Certificate for a particular Project to the Disbursement Agent, together with all exhibits, attachments and certificates required pursuant thereto, each duly executed, such amendment shall become effective hereunder, and the applicable Project Budget and, if applicable, the applicable Project Schedule and the Phase I Scheduled Opening Date, the Phase I Scheduled Substantial Completion Date, the Phase I Scheduled Completion Date, the Phase II Scheduled Opening Date or Phase II Scheduled Completion Date, as the case may be, shall thereafter be as so amended.

6.4 **Opening.** Cause or permit the Opening Date for either Project to occur unless each of the Opening Conditions for such Project has been satisfied or waived by the Majority of the Arrangers and (i) the Company has delivered to the Disbursement Agent a certificate substantially in the form of Exhibit S-1 (or as otherwise approved by the Majority of the Arrangers) and (ii) the Construction Consultant has delivered to the Disbursement Agent a certificate in the form of Exhibit S-2 to this Agreement (or as otherwise approved by the Majority of the Arrangers); provided, however, that the Company shall be permitted to open the Phase I Project at such time as the Phase I Project (excluding the Entertainment Facility and the Fairway Villas) satisfies the Opening Conditions and upon delivery of the certificates required above; provided, further, that the Company shall be permitted to open the Phase II Project at such time as the Phase II Project (excluding the Retail Facility) satisfies the Opening Conditions and upon delivery of the certificates required above. The Company shall thereafter open the Entertainment Facility and the Fairway Villas for business upon the Company's reasonable determination that the Phase I Project (including the Entertainment Facility and the Fairway Villas) satisfies the Opening Conditions. If the Company has elected to build the Retail Facility as part of the Phase II Project, then the Company shall thereafter open the Retail Facility for business upon the Company's reasonable determination that the Phase II Project (including the Retail Facility) satisfies the Opening Conditions.

6.5 **Additional Construction Agreements.** Enter into or become a party to any Additional Construction Agreement except (a) with the prior written consent of the Bank Agent or as permitted under Section 6.1 and (b) if such Additional Construction Agreement is a Material Construction Agreement, upon delivery to the Bank Agent of a Consent from each third party to such Additional Construction Agreement; provided that the consent of the Bank Agent shall not be required for a Loan Party to enter into Additional Construction Agreements (i) with Persons other than Affiliates of Loan Parties and (ii) pursuant to which the Loan Parties as a whole will incur obligations or liabilities with a value of not more than \$15,000,000 per year with respect to any Additional Construction Agreement.

6.6 **Unincorporated Materials.** Cause or permit (a) the value of Unincorporated Materials located at the Site but not expected to be incorporated into the Projects within the

ensuing calendar month to exceed \$20,000,000 at any time, (b) the amounts paid by the Company in respect of Unincorporated Materials not located at the Site to exceed a value of \$60,000,000 at any time or (c) the amount of contract deposits paid by the Company in respect of Unincorporated Materials to exceed a value of \$80,000,000 at any time. The foregoing limits on Unincorporated Materials may be increased from time to time to an amount mutually agreed upon among the Company, the Construction Consultant and the Disbursement Agent.

6.7 **Payment of Project Costs.** Pay any Project Costs (other than Debt Service) from the Company's Concentration Account if (a) a Stop Funding Notice has been issued and has not been withdrawn, (b) an Advance Request that was submitted more than thirty (30) days before has not been approved (or deemed approved pursuant to Section 3.2.6(a)(i)), by the Construction Consultant, or (c) an Event of Default has occurred and is continuing.

## **ARTICLE 7.** **EVENTS OF DEFAULT**

7.1 **Events of Default.** The occurrence of any of the following events shall constitute an event of default ("Event of Default") hereunder:

7.1.1 **Other Financing Documents.** The occurrence of an "Event of Default" under and as defined in the (a) Bank Credit Agreement or (b) 2014 Notes Indenture.

7.1.2 **Failure to Demonstrate Balancing.** The failure of the Projects to be In Balance and such failure shall continue for thirty (30) days without being cured; provided, however, that the cure period may be extended as is reasonably necessary beyond such 30 day period if such failure is the result of any Event of Force Majeure (but in no event shall such cure period, as extended, be longer than sixty (60) days in the aggregate).

7.1.3 **Failure to Deliver Advance Request.** The failure, for sixty (60) consecutive days, of the Company to submit an Advance Request which is approved by the Disbursement Agent; provided, however, that such sixty (60) day period may be extended as is reasonably necessary if such failure is the result of any Event of Force Majeure (but in no event shall such period, as extended, be longer than ninety (90) days in the aggregate).

7.1.4 **Covenants.**

(a) The Company shall fail to perform or observe any of its obligations under Sections 5.1, 5.5.1, 5.5.3, 5.9, 5.14, 6.1, 6.2, 6.3, 6.4 or 6.7 hereof; or

(b) The Company shall fail, or shall fail to cause each Loan Party, to at all times maintain in full force and effect the insurance policies and programs listed on Exhibit L (except for automobile, workers compensation, pollution liability and design errors and omissions insurance); or

(c) The Company shall fail, or shall fail to cause each Loan Party, to at all times maintain in full force and effect the insurance policies and programs with respect to automobile, workers compensation, pollution liability and design errors and omissions insurance listed on Exhibit L where such default shall not have been remedied within thirty (30) days after

the earlier of (i) the Company or any other Loan Party becoming aware of such breach or default or (ii) notice of such failure from the Disbursement Agent or any Funding Agent to the Company; or

(d) The Company shall fail to perform or observe any of its obligations under Articles 5 or 6 hereof (other than those listed in Sections 7.1.4(a), (b) or (c) above) where such default shall not have been remedied within thirty (30) days after the earlier of (i) the Company or any other Loan Party becoming aware of such breach or default or (ii) notice of such failure from the Disbursement Agent or any Funding Agent to the Company; provided, however, solely with respect to Section 5.5.2 the cure period may be extended as is reasonably necessary beyond such 30 day period if such failure is the result of any Event of Force Majeure (but in no event shall such cure period, as extended, be longer than sixty (60) days in the aggregate).

#### 7.1.5 Breach of Material Construction Agreements.

(a) Any Loan Party shall breach or default (after giving effect to applicable cure periods and grace periods) under any term, condition, provision, covenant, representation or warranty contained in any Material Construction Agreement in any material respect and such breach or default shall continue unremedied for thirty (30) days after the earlier of (i) the Company or any other Loan Party becoming aware of such breach or default or (ii) receipt by the Company or any other Loan Party of notice from the Disbursement Agent or any Funding Agent of such breach or default; provided, however, that if the breach or default is reasonably susceptible to cure within forty-five (45) days but cannot be cured within such thirty (30) days despite such other party's good faith and diligent efforts to do so, the cure period shall be extended as is reasonably necessary beyond such thirty (30) day period (but in no event shall such cure period, as extended, be longer than forty-five (45) days in the aggregate) if remedial action reasonably likely to result in cure is promptly instituted within such thirty (30) day period and is thereafter diligently pursued until the breach or default is corrected; or

(b) Any party (other than any Loan Party) shall breach or default (after giving effect to applicable cure periods and grace periods) in any material respect under any term, condition, provision, covenant, representation or warranty contained in any Primary Construction Contract, any Construction Guaranty or any other Contract with a total contract amount or value in excess of \$100,000,000 and such breach or default shall continue unremedied for thirty (30) days after the earlier of (i) the Company or any other Loan Party becoming aware of such breach or default or (ii) receipt by the Company or any other Loan Party of notice from any Funding Agent of such breach or default; provided, however, that (A) if the breach or default is reasonably susceptible to cure within ninety (90) days but cannot be cured within such thirty (30) days despite such other party's good faith and diligent efforts to do so, the cure period shall be extended as is reasonably necessary beyond such thirty (30) day period (but in no event shall such cure period, as extended, be longer than ninety (90) days in the aggregate) if remedial action reasonably likely to result in cure is promptly instituted within such thirty (30) day period and is thereafter diligently pursued until the breach or default is corrected and (B) no Potential Event of Default or Event of Default shall be deemed to have occurred as a result of such breach if the Company provides written notice to the Funding Agents promptly upon (but in no event more than five (5) Banking Days after) the Company or any Loan Party becoming aware of such

breach that the Company intends to replace such Contract (or that replacement is not necessary) and (1) within ninety (90) days of such breach the Company obtains a replacement obligor or obligors reasonably acceptable to the Disbursement Agent (in consultation with the Construction Consultant) for the affected party (if in the judgment of the Disbursement Agent (in consultation with the Construction Consultant) a replacement is necessary), (2) the Company enters into a replacement Contract on terms no less beneficial, taken as a whole, to the Company and the Secured Parties in any material respect than the Contract so breached within ninety (90) days of such breach (if in the reasonable judgment of the Disbursement Agent (in consultation with the Construction Consultant) a replacement is necessary); provided, however that the replacement Contract may require the Company to pay amounts to the replacement obligor in excess of those that would have been payable under the breached Contract if such additional payments in the reasonable judgment of the Disbursement Agent, in consultation with the Construction Consultant, do not cause the Projects to fail to be In Balance and (3) such breach or default, after considering any replacement obligor and replacement Contract and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect; or

(c) Any party (other than any Loan Party) shall breach or default (after giving effect to applicable cure periods and grace periods) in any material respect under any term, condition, provision, covenant, representation or warranty contained in any other Contract the effect of which could reasonably be expected to have a Material Adverse Effect and such breach or default shall continue unremedied for thirty (30) days after the earlier of (i) the Company or any other Loan Party becoming aware of such breach or default or (ii) receipt by the Company or any other Loan Party of notice from any Funding Agent of such breach or default; provided, however, that (A) if the breach or default is reasonably susceptible to cure within ninety (90) days but cannot be cured within such thirty (30) days despite such other party's good faith and diligent efforts to do so, the cure period shall be extended as is reasonably necessary beyond such thirty (30) day period (but in no event shall such cure period, as extended, be longer than ninety (90) days in the aggregate) if remedial action reasonably likely to result in cure is promptly instituted within such thirty (30) day period and is thereafter diligently pursued until the breach or default is corrected and (B) no Potential Event of Default or Event of Default shall be deemed to have occurred as a result of such breach if the Company provides written notice to the Funding Agents promptly upon (but in no event more than five (5) Banking Days after) the Company or any Loan Party becoming aware of such breach that the Company intends to replace such Contract (or that replacement is not necessary) and (1) within ninety (90) days of such breach the Company obtains a replacement obligor or obligors reasonably acceptable to the Disbursement Agent (in consultation with the Construction Consultant) for the affected party (if in the judgment of the Disbursement Agent (in consultation with the Construction Consultant) a replacement is necessary), (2) the Company enters into a replacement Contract on terms no less beneficial, taken as a whole, to the Company and the Secured Parties in any material respect than the Contract so breached within ninety (90) days of such breach (if in the reasonable judgment of the Disbursement Agent (in consultation with the Construction Consultant) a replacement is necessary); provided, however that the replacement Contract may require the Company to pay amounts to the replacement obligor in excess of those that would have been payable under the breached Contract if such additional payments in the reasonable judgment of the Disbursement Agent, in consultation with the Construction Consultant, do not cause the Projects to fail to be In Balance and (3) such breach or default, after considering any replacement obligor and

replacement Contract and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect; or

(d) The Company shall have received a “stop work” notice under Nevada Revised Statutes Section 624.610 with respect to any Contract with a total contract amount or value in excess of \$15,000,000.

#### 7.1.6 Termination or Invalidity of Material Construction Agreements; Abandonment of Projects.

(a) Any of the Material Construction Agreements shall have terminated (other than in accordance with its terms), become invalid or illegal, or otherwise ceased to be in full force and effect, provided that with respect to any Material Construction Agreement other than the Primary Construction Contracts or the Construction Guaranty, no Potential Event of Default or Event of Default shall be deemed to have occurred as a result of such termination if the Company provides written notice to the Funding Agents promptly upon (but in no event more than five (5) Banking Days after) the Company, the Construction Guarantor or any Loan Party becoming aware of such Material Construction Agreement ceasing to be in full force or effect that the Company intends to replace such Material Construction Agreement (or that replacement is not necessary) and (i) within ninety (90) days of such event the Company obtains a replacement obligor or obligors reasonably acceptable to the Disbursement Agent (in consultation with the Construction Consultant), for the affected party (if in the judgment of the Disbursement Agent (in consultation with the Construction Consultant) a replacement is necessary), (ii) the Company enters into a replacement Material Construction Agreement, on terms no less beneficial, taken as a whole, to the Company and the Secured Parties in any material respect than the Material Construction Agreement so terminated, within ninety (90) days of such termination (if in the reasonable judgment of the Disbursement Agent (in consultation with the Construction Consultant) a replacement is necessary); provided, however that the replacement Material Construction Agreement may require the Company to pay additional amounts to the replacement obligor that would have otherwise been payable under the terminated Material Construction Agreement if such additional payments in the reasonable judgment of the Disbursement Agent, in consultation with the Construction Consultant, do not cause the Company to fail to be In Balance and (iii) such termination, after considering any replacement obligor and replacement Material Construction Agreement and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect;

(b) The Company shall abandon the Phase I Project for a period of forty-five (45) days, or, if the Phase II Approval Date occurs, the Company shall abandon the Phase II Project for a period of 45 days, or otherwise cease to pursue the operations of either such Project for a period of forty-five (45) days; provided, however, that such forty-five (45)-day period may be extended as is reasonably necessary as a result of any Event of Force Majeure (but in no event shall such period, as extended, be longer than ninety (90) days in the aggregate).



7.1.7 Schedule: Completion.

- (a) Failure to achieve Phase I Opening Date on or before the Phase I Scheduled Opening Date;
- (b) Failure to achieve Phase I Substantial Completion Date on or before the Phase I Scheduled Substantial Completion Date;
- (c) Failure to achieve the Phase I Completion Date on or before the Phase I Scheduled Completion Date;
- (d) If the Phase II Approval Date occurs, failure to achieve Phase II Opening Date on or before the Phase II Scheduled Opening Date; or
- (e) If the Phase II Approval Date occurs, failure to achieve the Phase II Completion Date on or before the Phase II Scheduled Completion Date.

7.2 **Remedies.** Upon the occurrence and during the continuation of an Event of Default, the Funding Agents and the Disbursement Agent may, without further notice refuse to make any Advances or make any payments from any Account or other funds held by the Disbursement Agent by or on behalf of the Company.

The Bank Agent (acting under the Bank Credit Agreement) shall be entitled to waive any Potential Event of Default or Event of Default without the consent of the 2014 Notes Indenture Trustee or any other Person. If the Bank Agent so waives any Potential Event of Default or Event of Default, such Potential Event of Default or Event of Default shall cease to continue for all purposes of the Disbursement Agreement and the other Financing Agreements; provided that any waiver by the Bank Agent (acting under the Bank Credit Agreement) of any Potential Event of Default or Event of Default under this Agreement shall not constitute a waiver of any default or event of default arising under the 2014 Notes Indenture (other than any event of default arising as a result of a “cross-default” to the Disbursement Agreement under Clauses (h) and (i) of the definition of “Events of Default” set forth in the 2014 Notes Indenture). Any cure or waiver of any “Event of Default” under the Bank Credit Agreement that is effective under the terms of the Bank Credit Agreement shall automatically cure an Event of Default under clause (a) of Section 7.1.1. Any cure or waiver of any “Event of Default” under the 2014 Notes Indenture that is effective under the terms of the 2014 Notes Indenture shall automatically cure an Event of Default under clause (b) of Section 7.1.1.

**ARTICLE 8.**  
**CONSULTANTS AND REPORTS**

8.1 **Removal and Fees.** Only the Bank Agent in its sole discretion may remove from time to time the Independent Consultants and upon such removal a replacement acceptable to the Bank Agent (in its sole discretion) and the Company (so long as no Event of Default then exists) shall be appointed. Notice of any replacement Independent Consultant shall be given by the Bank Agent to the 2014 Notes Indenture Trustee, the Disbursement Agent, the Company and the Independent Consultant being replaced. All reasonable fees and out-of-pocket expenses of the Independent Consultants (whether the original ones or replacements) shall be paid by the Company. The Bank Agent will reasonably consult with the Company on a regular basis with respect to on-going costs of the Independent Consultants and unless no Event of Default shall

have occurred and be continuing, if requested by the Company, the Bank Agent may agree with the Company that such costs be subject to a reasonable fee cap. The 2014 Notes Indenture Trustee shall not have the right to remove an Independent Consultant or appoint a replacement. The Company has reviewed the Construction Consultant's Engagement Agreement and hereby agrees to reimburse the Disbursement Agent and the Funding Agents for the fees of the Construction Consultant set forth therein.

8.2 **Duties.** The Disbursement Agent shall cause the Independent Consultants to be contractually obligated to the Disbursement Agent, the Bank Agent and the 2014 Notes Indenture Trustee to carry out the activities required of them in this Agreement and in the Construction Consultant Engagement Agreement and as otherwise requested by such Funding Agents. The Company acknowledges that it will not have any cause of action or claim against any Independent Consultant resulting from any decision made or not made, any action taken or not taken or any advice given by such Independent Consultant in the due performance in good faith of its duties, except to the extent arising from the gross negligence or willful misconduct of such Independent Consultant.

8.3 **Acts of Disbursement Agent.** The Disbursement Agent will take such actions as any Funding Agent or the Company may reasonably request to cause the Independent Consultants to act diligently in the issuance of all certificates required to be delivered by the Independent Consultants hereunder and to otherwise fulfill their obligations to the Disbursement Agent, the Bank Agent and the 2014 Notes Indenture Trustee as described in the first sentence of Section 8.2.

## **ARTICLE 9.**

### **THE DISBURSEMENT AGENT**

9.1 **Appointment and Acceptance.** Subject to and on the terms and conditions of this Agreement, the Bank Agent, each Bank Lender (by its execution and delivery of the Bank Credit Agreement or acceptance of an assignment thereof in accordance with the terms of the Bank Credit Agreement) and the 2014 Notes Indenture Trustee hereby irrevocably appoint and authorize the Disbursement Agent to act on their behalf hereunder and under the Collateral Account Agreements. The Disbursement Agent accepts such appointment and agrees to exercise commercially reasonable efforts and utilize commercially prudent practices in the performance of its duties hereunder consistent with those of similar institutions holding collateral, administering construction loans and disbursing disbursement control funds.

#### **9.2 Duties and Liabilities of the Disbursement Agent Generally.**

9.2.1 Commencing upon execution and delivery hereof, the Disbursement Agent shall have the right to meet periodically at reasonable times, however no less frequently than quarterly, upon three (3) Banking Days' notice, with representatives of the Company, the Construction Consultant, the Primary Contractors and the Project Architects. The Disbursement Agent may (or may instruct the Construction Consultant to) perform such inspections of the Projects as it deems reasonably appropriate in the performance of its duties hereunder and shall request the Construction Consultant to perform the duties of, and timely deliver any certificates required to be delivered by, the Construction Consultant hereunder. In addition, the

Disbursement Agent shall have the right at reasonable times upon prior notice to review all relevant information (including Project Documents) in the Company's possession supporting the amendments to the Project Budgets, amendments to any Project Documents, the Company's Advance Requests and any certificates in support of any of the foregoing, to inspect materials stored on the Mortgaged Property or at any other location, to review the insurance required pursuant to the terms of the Financing Agreements, to confirm receipt of endorsements from the Title Insurer insuring the continuing priority of the liens of the Deeds of Trust as security for each Advance hereunder, and to examine the Plans and Specifications and all shop drawings relating to the Projects. The Disbursement Agent is authorized to contact (or to instruct the Construction Consultant to contact) any Contractor for purposes of confirming receipt of progress payments. From time to time, at the request of the Disbursement Agent, the Company shall make available to the Disbursement Agent the Project Schedule. The Company agrees to cooperate with the Disbursement Agent in assisting the Disbursement Agent to perform its duties hereunder and to take such further steps as the Disbursement Agent reasonably may request in order to facilitate the Disbursement Agent's performance of its obligations hereunder.

9.2.2 Powers, Rights and Remedies. The Disbursement Agent is authorized to take such actions and to exercise such powers, rights and remedies under this Agreement as are specifically delegated or granted to the Disbursement Agent by the terms hereof, together with such powers, rights and remedies as are reasonably incidental thereto. The Disbursement Agent agrees to act in accordance with the instructions of the Bank Agent and in the absence of such instructions shall take such actions or refrain from acting as it deems reasonable subject to any express requirements of this Agreement. The Disbursement Agent shall not act in accordance with the instructions of the 2014 Notes Indenture Trustee, and the 2014 Notes Indenture Trustee shall not give any instructions to the Disbursement Agent (except, in each case, for instructions relating to the 2014 Notes Proceeds Account). The Bank Agent shall be entitled to give instructions to the Disbursement Agent without consulting with the 2014 Notes Indenture Trustee (except for instructions relating to the 2014 Notes Proceeds Account).

9.2.3 No Risk of Own Funds. None of the provisions of this Agreement shall require the Disbursement Agent to expend or risk its own funds or otherwise to incur any personal financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers (in the absence of gross negligence or willful misconduct on the part of the Disbursement Agent, as finally, judicially determined by a court of competent jurisdiction) if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

9.2.4 No Imputed Knowledge. Notwithstanding anything to the contrary in this Agreement, if the entity acting as Disbursement Agent also serves as the Collateral Agent or Funding Agent under the Financing Agreements, and except if such functions shall be performed by the same individuals within such entity, to the maximum extent permitted by law, the Disbursement Agent shall not be deemed to have any knowledge of any fact known to such entity in its capacity as the Collateral Agent or Funding Agent by reason of the fact that the Disbursement Agent and the Collateral Agent or Funding Agent, as the case may be, are the same entity. Except as aforesaid, no knowledge of the Collateral Agent or any Funding Agent shall be attributed to the Disbursement Agent. The Disbursement Agent's duties and functions hereunder shall in no way impair or affect any of the rights and powers of, or impose any duties

or obligations upon the Disbursement Agent in its capacity as Bank Agent or as Lender. With respect to its participation in the extensions of credit under the Bank Credit Agreement, the Disbursement Agent shall have the same rights and powers thereunder as any other Funding Agent or Lender and may exercise the same as though it were not performing its duties and functions hereunder. The Disbursement Agent and its Affiliates may accept deposits from, lend money to and generally engage in any kind of banking, trust, financial advisory or other business with the Company or any of its Affiliates, and may accept fees and other consideration from the Company for services in connection with this Agreement and otherwise without having to account for the same to the Lenders. Each party hereto acknowledges that, as of the Closing Date, Deutsche Bank Trust Company Americas and its Affiliates are, in addition to acting as the Disbursement Agent hereunder, also acting as the initial Bank Agent, Securities Intermediary, Collateral Agent, investment manager on behalf of the Loan Parties, and may be a Bank Lender.

### **9.3 Particular Duties and Liabilities of the Disbursement Agent.**

9.3.1 **Reliance For Instructions.** The Disbursement Agent may, from time to time, in the event that any matter arises as to which specific instructions are not provided herein, request directions from the Bank Agent with respect to such matters and may refuse to act until so instructed and shall be fully protected in acting or refusing to act in accordance with such instructions.

9.3.2 **Notice of Events of Default.** The Disbursement Agent shall notify each Funding Agent of an Event of Default or a Potential Event of Default known to it (which has not been cured or waived).

9.3.3 **Reliance Generally.** The Disbursement Agent may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval or other paper or document believed by it on reasonable grounds to be genuine and to have been signed or presented by the proper party or parties. Notwithstanding anything else in this Agreement to the contrary, in performing its duties hereunder (including, without limitation, approving any Advance Requests and confirming that any of the Opening, Phase I Substantial Completion, Completion, Final Completion or Completion Guaranty Release Dates have occurred), making any other determinations or taking any other actions hereunder, the Disbursement Agent shall be entitled to rely on certifications from the Company (and, where contemplated herein, certifications from third parties, including the Construction Consultant, the Project Architects, the Primary Contractors or any other Contractor) as to satisfaction of any requirements and/or conditions imposed by this Agreement. The Disbursement Agent shall not be required to conduct any independent investigation as to the accuracy, veracity or completeness of any such items or to investigate any other facts or circumstances to verify compliance by the Company with its obligations hereunder.

9.3.4 **Court Orders.** The Disbursement Agent is authorized, in its exclusive discretion, to obey and comply with all writs, orders, judgments or decrees issued by any court or administrative agency affecting any money, documents or things held by the Disbursement Agent. The Disbursement Agent shall not be liable to any of the parties hereto, their successors, heirs or personal representatives by reason of the Disbursement Agent's compliance with such

writs, orders, judgments or decrees, notwithstanding the fact that such writ, order, judgment or decree is later reversed, modified, set aside or vacated.

9.3.5 Requests, etc. of the Company. Any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced (unless other evidence in respect thereof be herein specifically prescribed) by an instrument signed by one of its Responsible Officers and any resolution of the Company may be evidenced to the Disbursement Agent by a copy thereof certified by the Secretary or an Assistant Secretary of the Company.

9.3.6 Reliance on Opinions of Counsel. The Disbursement Agent may consult with counsel and any written opinion of counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such opinion of counsel except to the extent the Disbursement Agent is grossly negligent or engages in willful misconduct as finally judicially determined by a court of competent jurisdiction.

9.3.7 Action through Agents or Attorneys. The Disbursement Agent may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys appointed with due care and the Disbursement Agent shall not be responsible for any act on the part of any agent or attorney so appointed.

9.3.8 Disagreements.

(a) In the event of any disagreement between a Funding Agent and the Company or any other Person or Persons whether or not named herein, and adverse claims or demands are made in connection with or for any of the investments or amounts held pursuant to this Agreement, the Disbursement Agent shall be entitled at its option to refuse to comply with any such claim or demand so long as such disagreement shall continue, and in so doing, the Disbursement Agent shall not be or become liable for damages or interest to such Funding Agent or the Company or any other Person or Persons for the Disbursement Agent's failure or refusal to comply with such conflicting or adverse claims or demands. The Disbursement Agent shall be entitled to continue so to refrain and refuse so to act until:

(i) the rights of the adverse claimants have been fully adjudicated in the court assuming and having jurisdiction of the claimants and the investments and amounts held pursuant to this Agreement; or

(ii) all differences shall have been adjusted by agreement, and the Disbursement Agent shall have been notified thereof in writing by all persons deemed by the Disbursement Agent, in its sole discretion, to have an interest therein.

(b) In addition, the Disbursement Agent, in its sole discretion, may file a suit in interpleader for the purpose of having the respective rights of all claimants adjudicated, and may deposit with the court all of the investments and amounts held pursuant to this Agreement. The Company agrees to pay all costs and reasonable counsel fees incurred by the Disbursement Agent in such action, said costs and fees to be included in the judgment in any such action.

**9.4 Segregation of Funds and Property Interest.** Monies and other property received by the Disbursement Agent shall, until used or applied as herein provided, be held for the purposes for which they were received, and shall be segregated from other funds except to the extent required herein or by law. To the extent that the Disbursement Agent also acts as securities intermediary, (a) the Disbursement Agent shall note in its records that all funds and other assets in the Company Accounts, have been pledged to the Collateral Agent for the benefit of all or certain of the Secured Parties and that the Disbursement Agent is holding such items for the Collateral Agent, (b) the Disbursement Agent shall note in its records that all funds and other assets in the Bank Proceeds Account have been pledged to the Collateral Agent for the benefit of the Bank Lenders and (c) the Disbursement Agent shall note in its records that all funds and other assets in the 2014 Notes Proceeds Account have been pledged to the Collateral Agent for the benefit of the 2014 Noteholders. Accordingly, all such funds and assets shall not be within the bankruptcy “estate” (as such term is used in 11 U.S.C. § 541) of the Disbursement Agent. The Disbursement Agent shall not be under any liability for interest on any monies received by it hereunder, except as otherwise specified in this Agreement. The Disbursement Agent hereby expressly waives any right of set-off or similar right it may have against or in relation to the Company Accounts and any monies, Permitted Investments or other amounts on deposit therein.

**9.5 Compensation and Reimbursement of the Disbursement Agent.** The Company covenants and agrees to pay to the Disbursement Agent from time to time, and the Disbursement Agent shall be entitled to, the fees set forth in that certain letter agreement between the Company and the Disbursement Agent, and the Company will further pay or reimburse the Disbursement Agent upon its request for all reasonable out-of-pocket expenses, disbursements and advances incurred or made by the Disbursement Agent in accordance herewith. The obligations of the Company under this Section 9.5 to compensate the Disbursement Agent and to pay or reimburse the Disbursement Agent for reasonable expenses, disbursements and advances shall constitute additional Obligations (and shall be deemed permitted indebtedness under each Financing Agreement) hereunder and shall survive the satisfaction and discharge of this Agreement.

**9.6 Qualification of the Disbursement Agent.** The Disbursement Agent hereunder shall at all times be a corporation with offices in New York City, New York which (a) is authorized to exercise corporation trust powers, (b) is subject to supervision or examination by the applicable Governmental Authority, (c) shall have a combined capital and surplus of at least Five Hundred Million Dollars (\$500,000,000), (d) shall have a long-term credit rating of not less than A- or A3, respectively, by S&P or Moody’s; and provided, that any such bank with a long-term credit rating of A- or A3 shall not cease to be eligible to act as Disbursement Agent upon a downward change in either such rating of no more than one category or grade of such minimum rating, as the case may be; and (e) with respect to any replacement of the Person acting as Disbursement Agent as of the Closing Date, shall be acceptable to each of the Bank Agent and the Company (so long as no Potential Event of Default or Event of Default then exists) and the 2014 Notes Indenture Trustee acting pursuant to the Intercreditor Agreement. In case at any time the Disbursement Agent shall cease to be eligible in accordance with the provisions of this Section 9.6, the Disbursement Agent shall resign immediately upon appointment of a successor Disbursement Agent in accordance with Section 9.7.

**9.7 Resignation and Removal of the Disbursement Agent.** The Bank Agent and the 2014 Notes Indenture Trustee, acting pursuant to the Intercreditor Agreement, shall have the right should they reasonably determine that the Disbursement Agent has breached or failed to perform its obligations hereunder or has engaged in willful misconduct or gross negligence, upon the expiration of thirty (30) days following delivery of written notice of substitution to the Disbursement Agent and the Company, to cause the Disbursement Agent to be relieved of its duties hereunder and to select a substitute disbursement agent to serve hereunder. The Disbursement Agent may resign at any time upon sixty (60) days' written notice to all parties hereto. Such resignation shall take effect upon the earlier of receipt by the Disbursement Agent of an instrument of acceptance executed by a successor disbursement agent meeting the qualifications set forth in Section 9.6 and consented to by the other parties hereto or sixty (60) days after the giving of such notice. Upon selection of a substitute disbursement agent, the Funding Agent and the Company and the substitute disbursement agent shall enter into an agreement substantially identical to this Agreement and, upon appointment of a substitute Disbursement Agent, the Disbursement Agent shall promptly transfer to the substitute Disbursement Agent originals of all books, records, and other documents in the Disbursement Agent's possession relating to this Agreement and the transactions contemplated hereby.

**9.8 Merger or Consolidation of the Disbursement Agent.** Any corporation into which the Disbursement Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Disbursement Agent shall be a party, or any corporation succeeding to the corporate trust business of the Disbursement Agent, shall, if eligible hereunder, be the successor of the Disbursement Agent hereunder; provided, that such corporation shall be eligible under the provisions of Section 9.6 without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

**9.9 Statements; Information.** The Disbursement Agent shall provide to the Funding Agents and the Company a monthly statement of all deposits to, and disbursements from, each account maintained with it and interest and earnings credited to each account established and maintained hereunder by the Disbursement Agent.

**9.10 Limitation of Liability.** The Disbursement Agent's responsibility and liability under this Agreement shall be limited as follows: (a) the Disbursement Agent does not represent, warrant or guaranty to the Funding Agents or the Lenders the performance by the Company, the Primary Contractors, the Construction Guarantor, the Phase I Golf Course Contractor, the Construction Consultant, the Project Architects, the Phase I Golf Course Designer, the Phase I Aqua Theater and Showroom Designer, the Phase II Major Architects, the Phase II Major Contractors, or any other Contractor or Subcontractor of their respective obligations under the Operative Documents and shall have no duty to inquire of any Person whether a Potential Event of Default or an Event of Default has occurred and is continuing; (b) the Disbursement Agent shall have no responsibility to the Company, the Funding Agents or the Lenders as a consequence of performance by the Disbursement Agent hereunder except for any bad faith, fraud, gross negligence or willful misconduct of the Disbursement Agent as finally judicially determined by a court of competent jurisdiction; (c) the Company shall remain solely

responsible for all aspects of its business and conduct in connection with the Projects, including but not limited to the quality and suitability of the Plans and Specifications, the supervision of the work of construction, the qualifications, financial condition and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants and property managers, the accuracy of all applications for payment, and the proper application of all disbursements; and (d) the Disbursement Agent is not obligated to supervise, inspect or inform the Company of any aspect of the development, construction or operation of the Projects or any other matter referred to above. Each Funding Agent, each 2014 Noteholder, and each Bank Lender (by its execution and delivery of the Bank Credit Agreement or acceptance of an assignment thereof in accordance with the terms of the Bank Credit Agreement) has made its own independent investigation of the financial condition and affairs of the Loan Parties in connection with the making of the extensions of credit contemplated by the Financing Agreements and has made and shall continue to make its own appraisal of the creditworthiness of the Loan Parties. Except as specifically set forth herein, the Disbursement Agent shall not have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of the Funding Agents or Lenders or to provide any Funding Agent or Lender with any credit or other information with respect thereto. The Disbursement Agent shall not have, by reason of this Agreement, a fiduciary relationship in respect of any Funding Agent or Lender; and nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon the Disbursement Agent any obligations in respect of this Agreement except as expressly set forth herein or therein. The Disbursement Agent shall have no duties or obligations hereunder except as expressly set forth herein, shall be responsible only for the performance of such duties and obligations and shall not be required to take any action otherwise than in accordance with the terms hereof. In performing its functions and duties under this Agreement, the Disbursement Agent does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for the Company or any of its Affiliates. Neither the Disbursement Agent nor any of its officers, directors, employees or agents shall be in any manner liable or responsible for any loss or damage arising by reason of any act or omission to act by it or them hereunder or in connection with any of the transactions contemplated hereby, including, but not limited to, any loss that may occur by reason of forgery, false representations, the exercise of its or their discretion, or any other reason, except as a result of its or their bad faith, fraud, gross negligence or willful misconduct as finally judicially determined by a court of competent jurisdiction.

**ARTICLE 10.**  
**SAFEKEEPING OF ACCOUNTS**

10.1 **Application of Funds in Company Accounts.** Amounts deposited in the Company Accounts shall be applied exclusively as provided in this Agreement and the Disbursement Agent shall at all times act and direct the securities intermediaries under the Collateral Account Agreements so as to implement the application of funds provisions and procedures herein set forth. The Disbursement Agent is hereby authorized to direct the Securities Intermediary to reduce to cash any Permitted Investment (without regard to maturity) in any account in order to make any application required hereunder. No amount held in any Account maintained hereunder shall be disbursed except in accordance with the provisions hereof or as required by law.



10.2 **Event of Default.** Notwithstanding anything to the contrary in this Agreement, (a) upon the occurrence and during the continuance of a Potential Event of Default or an Event of Default of which it has actual knowledge, the Disbursement Agent shall not in any such event deposit or cause to be deposited any amounts into the Bank Proceeds Account or the Company's Concentration Account or release or cause to be released any amounts to the Company unless instructed to the contrary by (i) in the case of the 2014 Notes Proceeds Account, the 2014 Notes Indenture Trustee and (ii) in the case of all other Company Accounts, the Bank Agent; and (b) (i) upon the request of the Collateral Agent after the occurrence of an Event of Default, (ii) immediately upon obtaining knowledge of the dissolution or liquidation or Bankruptcy of the Completion Guarantor, or (iii) upon the request of the Collateral Agent upon a breach by the Completion Guarantor of any of its covenants and agreements under the Completion Guaranty, the Disbursement Agent shall withdraw all funds then on deposit in the Completion Guaranty Deposit Account and deposit the same in the Company's Funds Account. During the continuance of an Event of Default, the Disbursement Agent is hereby irrevocably authorized by the Company to apply, or cause to be applied, amounts in any Company Account to the payment of interest, principal, fees, costs, charges or other amounts or obligations due or payable to the Secured Parties when instructed to do so (i) by the 2014 Notes Indenture Trustee, with respect to the 2014 Notes Proceeds Account and (ii) by the Bank Agent with respect to all other Company Accounts.

10.3 **Liens.** The Disbursement Agent shall take such actions within its control that it customarily takes in the conduct of its business to protect the Company Accounts, and all cash, funds, Permitted Investments from time to time deposited therein, as well as any proceeds or income therefrom (collectively, the "Company Accounts Collateral") free and clear of all liens, security interests, safekeeping or other charges, demands and claims of any nature whatsoever now or hereafter existing, in favor of anyone other than the Secured Parties (or the Disbursement Agent, as agent for the Secured Parties) (collectively, the "Third Party Claims"); it being understood, however, that the foregoing shall in no way be deemed to be a guaranty or other assurance by the Disbursement Agent that Third Party Claims will not arise.

10.4 **Perfection.** The Disbursement Agent shall take any steps from time to time requested by the Collateral Agent to confirm or cause the securities intermediaries under the Collateral Account Agreements to confirm and maintain the priority of their respective security interests in the Company Accounts Collateral.

**ARTICLE 11.**  
**MISCELLANEOUS**

11.1 **Addresses.** Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to the Company:      Wynn Las Vegas, LLC  
                                 3131 Las Vegas Boulevard South  
                                 Las Vegas, Nevada 89109  
                                 Attn: President  
                                 Telephone No.: (702) 770-7000  
                                 Facsimile No.: (702) 770-1100

With a copy to: Wynn Resorts, Limited  
3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
Attn: General Counsel  
Telephone No.: (702) 770-2112  
Facsimile No.: (702) 770-1349

And a copy to: Skadden, Arps, Slate, Meagher & Flom LLP  
300 South Grand Avenue, Suite 3400  
Los Angeles, California 90071-3144  
Attn: Jerome L. Coben, Esq.  
Telephone No.: (213) 687-5000  
Facsimile No.: (213) 621-5010

If to the Bank Agent: Deutsche Bank Trust Company Americas  
c/o Deutsche Bank Securities Inc.  
200 Crescent Court, Suite 550  
Dallas, TX 75201  
Attn: Gerard Dupont  
Telephone No.: (214) 740-7913  
Facsimile No.: (214) 740-7910  
If to the 2014 Notes

Indenture Trustee: U.S. Bank National Association  
60 Livingston Avenue  
St. Paul, MN 55107  
Attn: Corporate Trust Services  
Telephone No.: (651) 495-3909  
Facsimile No.: (651) 495-8097

If to the Disbursement Agent: Deutsche Bank Trust Company Americas  
60 Wall Street, 11th Floor  
New York, New York 10005  
Attn: Amy Sinensky  
Telephone No.: (212) 250-4063  
Facsimile No.: (212) 797-4885

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by reputable overnight delivery service, (c) in the event overnight delivery services are not readily available, if mailed by first class mail, postage prepaid, registered or certified with return receipt requested or (d) if sent by prepaid telex, or by telecopy with correct answer back received. Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by telecopy or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is validly transmitted if transmitted before 4 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided,

however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location by giving no less than ten (10) days' notice to the other parties in the manner set forth hereinabove.

11.2 **Delay and Waiver.** No delay or omission to exercise any right, power or remedy accruing upon the occurrence of any Potential Event of Default or Event of Default or any other breach or default of the Company under this Agreement shall impair any such right, power or remedy of the Funding Agents, the Lenders, the Disbursement Agent or any other Secured Party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or in any similar breach or default thereafter occurring, nor shall any waiver of any single Potential Event of Default, Event of Default or other breach or default be deemed a waiver of any other Potential Event of Default, Event of Default or other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any of the Funding Agents, the Lenders or the Disbursement Agent, of any Potential Event of Default, Event of Default or other breach or default under this Agreement, or any waiver on the part of any of the Funding Agents, the Lenders or the Disbursement Agent, of any provision or condition of this Agreement, must be in writing and shall be effective only to the extent in such writing specifically set forth. Neither any waiver, permit, consent or approval of any kind or character on the part of any of the Funding Agents, the Lenders or the Disbursement Agent of any Potential Event of Default, Event of Default or other breach or default under this Agreement nor any waiver on the part of any of the Funding Agents, the Lenders or the Disbursement Agent of any provision or condition of this Agreement shall be effective or binding with respect to any other Operative Document. All remedies under this Agreement or by law or otherwise afforded to any of the Funding Agents, the Lenders or the Disbursement Agent shall be cumulative and not alternative.

11.3 **Entire Agreement.** This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof, all of which negotiations and writings are deemed void and of no force and effect.

11.4 **Governing Law.** This Agreement shall be governed by the laws of the State of New York of the United States of America and shall for all purposes be governed by and construed in accordance with the laws of such state without regard to the conflict of law rules thereof other than Section 5-1401 of the New York General Obligations Law.

11.5 **Severability.** In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the parties hereto shall enter into good faith negotiations to replace the invalid, illegal or unenforceable provision.

11.6 **Headings.** Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

11.7 **Limitation on Liability.** NO CLAIM SHALL BE MADE BY THE COMPANY OR ANY OF ITS AFFILIATES AGAINST THE FUNDING AGENTS, THE LENDERS, THE DISBURSEMENT AGENT OR ANY OTHER SECURED PARTY OR ANY OF THEIR RESPECTIVE AFFILIATES, DIRECTORS, EMPLOYEES, ATTORNEYS OR AGENTS FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (WHETHER OR NOT THE CLAIM THEREFOR IS BASED ON CONTRACT, TORT OR DUTY IMPOSED BY LAW), IN CONNECTION WITH, ARISING OUT OF OR IN ANY WAY RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE OTHER OPERATIVE DOCUMENTS OR ANY ACT OR OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH; AND THE COMPANY HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY SUCH CLAIM FOR ANY SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

11.8 **Waiver of Jury Trial.** ALL PARTIES TO THIS AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER FINANCING AGREEMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE FUNDING AGENTS, DISBURSEMENT AGENT AND EACH OF THE OTHER LENDERS AND SECURED PARTIES TO ENTER INTO THIS AGREEMENT.

11.9 **Consent to Jurisdiction.** Any legal action or proceeding by or against the Company or with respect to or arising out of this Agreement may be brought in or removed to the courts of the State of New York, in and for the County of New York, or of the United States of America for the Southern District of New York. By execution and delivery of this Agreement, the Company accepts, for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts for legal proceedings arising out of or in connection with this Agreement and irrevocably consents to the appointment of the CT Corporation System, whose current address is 111 Eighth Avenue, New York, NY 10011, as its agent to receive service of process in New York, New York. Nothing herein shall affect the right to serve process in any other manner permitted by law or any right to bring legal action or proceedings in any other competent jurisdiction, including judicial or non-judicial foreclosure of real property interests which are part of the Project Security. The Company further agrees that the aforesaid courts of the State of New York and of the United States of America for the Southern District of New York shall have exclusive jurisdiction with respect to any claim or counterclaim of the Company based upon the assertion that the rate of interest charged by or under this Agreement, or under the other Financing Agreements is usurious. The Company hereby waives any right to stay or dismiss any action or proceeding under or in connection with any or all of the Projects, this Agreement or any other Operative Document brought before the foregoing courts on the basis of *forum non-conveniens*.

11.10 **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Notwithstanding the foregoing, the Company may not assign or otherwise transfer any of its rights under this Agreement.

11.11 **Reinstatement.** This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Company's obligations hereunder or under the other Financing Agreements, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by the Secured Parties. In the event that any payment or any part thereof is so rescinded, reduced, restored or returned, such obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

11.12 **No Partnership; Etc.** The Secured Parties and the Company intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Agreement or in any of the other Financing Agreements shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between the Secured Parties and the Company or any other Person. The Secured Parties shall not be in any way responsible or liable for the debts, losses, obligations or duties of the Company or any other Person with respect to the Projects or otherwise. All obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and charges arising from the ownership, operation or occupancy of the Projects and to perform all obligations under the agreements and contracts relating to the Projects shall be the sole responsibility of the Company.

### 11.13 **Costs and Expenses.**

11.13.1 **Reimbursement of Costs.** The Company shall (subject to the limitations set forth herein and, with respect to the Bank Agent, the Disbursement Agent, the Collateral Agent and the Nevada Collateral Agent, to the express provisions of the Financing Agreements or any other fee letters or engagement letters to which such Funding Agent, the Disbursement Agent, the Collateral Agent or the Nevada Collateral Agent is a party) pay the reasonable legal, engineering, other professional and all other fees and costs of the Funding Agents, the Disbursement Agent, the Collateral Agent and the Nevada Collateral Agent and their consultants and advisors, the reasonable travel expenses and other out-of-pocket costs incurred by each of them in connection with preparation, negotiation, execution and delivery, and where appropriate, registration, of the Operative Documents (and all matters incidental thereto), the administration of the transactions contemplated by the Operative Documents (including, without limitation the administration of this Agreement, the other Operative Documents and the Security Documents) and the preservation or enforcement of any of their respective rights or in connection with any amendments, waivers or consents required under this Agreement. The Funding Agents, the Disbursement Agent, the Collateral Agent and the Nevada Collateral Agent will reasonably consult with the Company on a regular basis with respect to on-going costs of such Persons' consultants and advisors and unless a Potential Event of Default or Event of Default shall have occurred and be continuing, if requested by the Company, the Funding Agents, the Disbursement Agent, Collateral Agent and the Nevada Collateral Agent may agree with the Company that such costs be subject to a reasonable fee cap.

11.13.2 **Foreclosure.** The provisions of this Section 11.13 shall survive foreclosure of the Security Documents and satisfaction or discharge of the Company's

obligations hereunder, and shall be in addition to any other rights and remedies of any the Funding Agents, the Disbursement Agent, Collateral Agent and the Nevada Collateral Agent.

11.13.3 **Payment Due Dates.** Any amounts payable by the Company pursuant to this Section 11.13 shall be payable thirty (30) Banking Days after the Company receives an invoice for such amounts from the Funding Agents, the Disbursement Agent, Collateral Agent or the Nevada Collateral Agent, as the case may be.

11.14 **Counterparts.** This Agreement may be executed in one or more duplicate counterparts (including by facsimile) and when signed by all of the parties listed below shall constitute a single binding agreement.

11.15 **Termination.** This Agreement shall, subject to Section 11.11 and to the next sentence, terminate and be of no further force or effect on the Termination Date upon completion of the transfer and release of funds contemplated by Section 2.9.3 (other than amounts on deposit in the Project Liquidity Reserve Account that are not yet eligible for release to the Company pursuant to Section 2.2.8). The provisions of Article 9 and Section 11.13 shall survive the termination of this Agreement. The provisions of Section 2.2.8 with respect to the Project Liquidity Reserve Account shall survive until all amounts on deposit therein are released to the Company pursuant to Section 2.2.8. This Agreement shall cease to apply to or otherwise govern the Phase I Project from and after the Phase I Final Completion Date.

11.16 **Amendments.** The Bank Agent (acting under the Bank Credit Agreement) may amend this Agreement without the 2014 Notes Indenture Trustee's consent; provided, however that the Bank Agent shall not be entitled to amend the funding allocation between the 2014 Notes Proceeds Account and the Bank Credit Facility set forth in Section 2.4.1(b). Except as otherwise provided in the preceding sentence, any amendment to this Agreement must be in writing and must be signed by each party hereto.

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**DEFINITIONS**

“Additional Construction Agreements” means any other documents or agreements entered into after the Closing Date relating to the development, design, engineering, installation or construction of a Project (including, without limitation, any Contracts with respect to the Phase II Project).

“Additional Notes” shall have the meaning given in the 2014 Notes Indenture.

“Additional Notes Sub-Account” means a sub-account within the 2014 Notes Proceeds Account established under and designated as such pursuant to the Company Disbursement Collateral Account Agreement.

“Advance” means (a) with respect to the Bank Credit Facility, an advance of Loans deposited in the Company’s Concentration Account or a transfer of funds from the Bank Proceeds Account to the Company’s Concentration Account or the issuance of a Letter of Credit thereunder, (b) with respect to the 2014 Notes, a transfer of funds from the 2014 Notes Proceeds Account to the Company’s Concentration Account, (c) with respect to amounts on deposit in the Company’s Funds Account, a release or transfer of funds from the Company’s Funds Account and (d) a transfer of funds from the Completion Guaranty Deposit Account or the Project Liquidity Reserve Account pursuant to Section 5.5.3.

“Advance Date” means the date on which an Advance is required to be deposited in the Company’s Concentration Account pursuant to Section 2.3.3(a)(i) of the Disbursement Agreement.

“Advance Request” means an advance request and certificate in the form of Exhibit C-1 to the Disbursement Agreement.

“Affiliate” as applied to any Person, 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, either to (a) vote 10% or more of the securities having ordinary voting power for the election 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.

“Affiliate Real Estate Agreements” means, collectively, the Golf Course Lease, the Water Access Easement and the Shuttle Easement.

“Amendment Date” means [\_\_\_\_\_, \_\_ 2006].

“Anticipated Cost Reports” means, collectively, the Phase I Anticipated Cost Report and, from and after the Phase II Approval Date, the Phase II Anticipated Cost Report.

“Anticipated Earnings” means, at any time, with respect to the Company’s Funds Account, the 2014 Notes Proceeds Account, the portion of the Company’s Concentration Account that is credited to the Construction Tracking Account, the Completion Guaranty Deposit Account, the Bank Proceeds Account and the Project Liquidity Reserve Account, respectively, the amount of investment income which the Company reasonably determines with the concurrence of the Disbursement Agent (acting in its sole discretion exercised in good faith) will accrue on the funds in each such Company Account through the anticipated Completion Date of the last Project, taking into account the current and future anticipated rates of return on Permitted Investments in such Company Accounts and the anticipated times and amounts of draws from each such Company Account for the payment of Project Costs.

“Arrangers” shall have the meaning given in the Bank Credit Agreement.

“Availability Period” shall mean the period commencing on the Closing Date and ending on the earlier to occur of (a) the Termination Date and (b) (i) with respect to Project Costs allocated to the Phase I Project in the Phase I Project Budget, the Outside Phase I Completion Deadline and (ii) with respect to Project Costs allocated to the Phase II Project in the Phase II Project Budget, the Phase II Revolving Commitment Sunset Date (if the Phase II Approval Date has not previously occurred), and otherwise, the Outside Phase II Completion Deadline.

“Available Funds” means, from time to time, the sum of (i) the unutilized Commitments (excluding, at any time prior to the Phase II Approval Date, the sum of \$550,000,000 plus the aggregate net proceeds of Additional Notes issued as of such time), plus (ii) the aggregate then undrawn and unexpired amount of the standby Letters of Credit then outstanding under the Bank Credit Facility to the extent issued in respect of Project Costs, plus (iii) the credit balance of the Construction Tracking Account and amounts on deposit in the Company’s Funds Account and the 2014 Notes Proceeds Account and all Anticipated Earnings thereon, plus (iv) the aggregate amount on deposit in the Completion Guaranty Deposit Account, plus (v) all Anticipated Earnings on the Completion Guaranty Deposit Account, plus (vi) the amounts on deposit in the Bank Proceeds Account and all Anticipated Earnings thereon, plus (vii) the lesser of (A) the aggregate amount of Project Costs with respect to the Phase I Project or the Phase II Project, as the case may be, which the Construction Guarantor and/or the applicable Primary Contractor has agreed or confirmed in writing, to the reasonable satisfaction of the Disbursement Agent, that it is responsible for paying (on a timely basis relative to the Project’s cash needs) from its own funds but which it has not yet paid, but only to the extent that such funds have been deposited in an account which is subject to a perfected first priority security interest in favor of the Disbursement Agent on behalf of the Secured Parties and (B) the aggregate amount of Remaining Costs for the “GMP Contract” Line Item Category allocated to such Project in the applicable Project Budget plus, (viii) any amounts committed by Wynn Resorts to be contributed to the payment of Project Costs pursuant to a commitment and documentation that is in form and substance reasonably acceptable to the Majority of the Arrangers, plus, (ix) from and after the Phase II Approval Date, the Phase I Excess Cash Flow Credit Amount.



“Bank Agent” means Deutsche Bank Trust Company Americas in its capacity as Administrative Agent under the Bank Credit Agreement and its successors in such capacity.

“Bank Credit Agreement” means that certain Credit Agreement dated as of December 14, 2004 among the Company, the Bank Agent, Deutsche Bank Securities Inc., as lead arranger and joint book-running manager, Bank of America, N.A., as syndication agent, Banc of America Securities LLC, as joint book-running manager, Bear Stearns Corporate Lending, Inc., as joint documentation agent, Bear, Stearns & Co. Inc., as arranger and joint book-running manager, JPMorgan Chase Bank, N.A., as joint documentation agent, J.P. Morgan Securities Inc., as arranger and joint book-running manager, Societe Generale, as joint documentation agent, SG Americas Securities, LLC, as arranger and joint book-running manager, and the Bank Lenders, as amended by that certain First Amendment to Credit Agreement, dated as of April 26, 2005, that certain Second Amendment to Credit Agreement, dated as of June 29, 2005, that certain [Third Amendment to Credit Agreement], dated as of [\_\_\_\_\_], 2006, and as further amended, amended and restated, supplemented or otherwise modified from time to time, or any permitted refinancings thereof.

“Bank Credit Facility” means, collectively, the term loan credit facility and the revolving facility described in and made available from time to time to the Company by the Bank Lenders under the Bank Credit Agreement.

“Bank Environmental Indemnity Agreements” means those certain Indemnity Agreements dated as of December 14, 2004 and made by each of the Company, Wynn Golf and Wynn Sunrise for the benefit of the Bank Agent and certain other indemnified parties.

“Bank Guarantee” means that certain Guarantee, dated as of December 14, 2004, executed by the Company and each other Loan Party, in favor of the Collateral Agent.

“Bank Lenders” has the meaning given to the term “Lenders” in the Bank Credit Agreement.

“Bank Proceeds Account” means the account referenced in Section 2.2.5 of the Disbursement Agreement and established pursuant to the Company Disbursement Collateral Account Agreement.

“Bank Revolving Facility” means the revolving loan credit facility described in and made available from time to time to the Company by the Bank Lenders under the Bank Credit Agreement.

“Banking Day” means (a) for all purposes other than as covered by clause (b) below, any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or Nevada or is a day on which banking institutions located in either such state are authorized or required by law or other governmental action to close, and (b) with respect to all notices, determinations, fundings and payments in connection with the “Eurodollar Rate” (as defined in the Bank Credit Agreement) or any “Eurodollar Loans” (as defined in the Bank Credit Agreement), any day that is a Banking Day described in clause (a) above and that is also a day for trading by and between banks in Dollar deposits in the London, England interbank market.

“Bankruptcy” means, with respect to any Person, that (i) a court having jurisdiction over any Project Security shall have entered a decree or order for relief in respect of such Person in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order has not been stayed; or any other similar relief shall have been granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against such Person, under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction over any Project Security for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over such Person, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of such Person, for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of such Person, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or (iii) such Person shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or such Person shall make any assignment for the benefit of creditors, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable or if the fair market value of its assets does not exceed its aggregate liabilities; or (iv) such Person shall, or the board of directors, manager or managing member of such Person (or any committee thereof) shall, adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (iii) above.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute thereto.

“Building Department” means the Clark County Building Department.

“Buy-Sell Agreement” means that certain Buy-Sell Agreement dated as of June 13, 2002 among Stephen A. Wynn, an individual, Kazuo Okada, an individual, Aruze USA, Inc., a Nevada corporation, and Aruze Corp., a Japanese public corporation, as supplemented by that certain Agreement, dated as of June 13, 2002, between Stephen A. Wynn, an individual, and Wynn Resorts, Limited, a Nevada corporation.

“Cage Cash” means any amounts held in cash at the Projects in connection with and necessary for the ordinary course of operations of the casino and gaming areas within the Projects.

“Cash Management Account” means the account referenced in Section 2.2.4 of the Disbursement Agreement and established pursuant to the Local Company Collateral Account Agreement.

“Capital Corp.” means Wynn Las Vegas Capital Corp., a Nevada corporation.

“Closing Date” means the first date on which each of the conditions precedent listed in Section 3.1 of the Disbursement Agreement have been satisfied or waived.

“Closing Date Outstanding Releases” has the meaning given in Section 3.1.36 of the Disbursement Agreement.

“Closing Financing Agreements” has the meaning given in Section 3.1.1 of the Disbursement Agreement.

“Closing Transactions” means all transactions contemplated to occur on the Closing Date pursuant to the Offering Memorandum, dated as of November 22, 2004, relating to the offering by the Company and Capital Corp. of the 2014 Notes, including the “Refinancing Transactions” (as such term is defined in the Bank Credit Agreement).

“Collateral Account Agreements” means, collectively, the Company Collateral Account Agreements, the Completion Guaranty Collateral Account Agreement and any other collateral account agreement entered into on or after the Closing Date granting any one or more of the Secured Parties a security interest in any account.

“Collateral Agent” means Deutsche Bank Trust Company Americas, in its capacity as collateral agent under the Intercreditor Agreement and its successors in such capacity.

“Collateral Agency Agreement” means that certain Collateral Agency Agreement, dated as of December 14, 2004, among the Bank Agent, the 2014 Notes Indenture Trustee and the Nevada Collateral Agent.

“Commitment” means the aggregate principal amount of all Loans to the Company which may be made under the Bank Credit Facility for the purpose of financing Project Costs.

“Commitment Letter” means that certain Commitment Letter dated November 15, 2004, among Wynn Resorts, Limited, the Company, Deutsche Bank Securities Inc., Bank of America Securities LLC, Bank of America, N.A., Bear Sterns Corporate Lending, Inc., Bear, Sterns & Co. Inc., JPMorgan Chase Bank, J.P. Morgan Securities Inc., Societe Generale, SG Americas Securities, LLC and those certain initial agents and arrangers party thereto.

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

“Company Accounts” means the Company’s Funds Account, the 2014 Notes Proceeds Account, the Disbursement Account, the Cash Management Account, the Company’s Concentration Account, the Bank Proceeds Account, the Completion Guaranty Deposit Account, the Project Liquidity Reserve Account and any sub-accounts thereof or any successor accounts or sub-accounts established pursuant to the Collateral Account Agreements.

“Company Accounts Collateral” has the meaning given in Section 10.3 of the Disbursement Agreement.

“Company Collateral Account Agreements” means, collectively, the Company Disbursement Collateral Account Agreement and the Local Company Collateral Account Agreements.

“Company Disbursement Collateral Account Agreement” means that certain Disbursement Collateral Account Agreement, dated as of December 14, 2004, among the Company, the Collateral Agent and the Securities Intermediary.

“Company’s Closing Certificate” means a Closing Certificate in the form of Exhibit B-1 to the Disbursement Agreement.

“Company’s Concentration Account” means the account No. 00 496 907 2858 held at Bank of America, N.A..

“Company’s Funds Account” means the account referenced in Section 2.2.1 of the Disbursement Agreement and established pursuant to the Company Disbursement Collateral Account Agreement.

“Company’s Phase II Approval Date Certificate” means a certificate substantially in the form of Exhibit R-1 to the Disbursement Agreement.

“Completion” means that, for the applicable Project, each of the following has occurred:

- (a) the Opening Date for such Project shall have occurred;
- (b) all Contractors and Subcontractors shall have been paid in full for all work performed with respect to such Project (other than (A) Retainage Amounts and other amounts that, as of the Completion Date for such Project, are being withheld from the Contractors and Subcontractors in accordance with the provisions of the Project Documents, (B) amounts being contested in accordance with the Financing Agreements so long as adequate reserves have been established through an allocation in the Anticipated Cost Report for such Project and in accordance with any requirements of such Financing Agreements and (C) amounts payable in respect of Project Punchlist Items for such Project to the extent not covered by the foregoing clause (A));
- (c) for Project Punchlist Items, a list of any remaining Project Punchlist Items for such Project (including the estimated cost of each such remaining Project Punchlist Item) shall have been delivered to the Construction Consultant and the Disbursement Agent by the Company and approved by the Construction Consultant as a reasonable final punchlist (such approval not to be unreasonably withheld);
- (d) with respect to the Phase I Project, each of the Phase I Primary Contractor, the Phase I Golf Course Contractor, the Phase I Parking Structure Contractor, the Phase I Architect, the Phase I Golf Course Designer, and

the Phase I Aqua Theater and Showroom Designer, and, with respect to the Phase II Project, each of the Phase II Major Contractors and the Phase II Major Architects, shall have delivered its Completion Certificate certifying, among other things, that “substantial completion” of the work under its respective Construction Agreement with respect to such Project has occurred and such certifications shall have been accepted by the Company and the Construction Consultant in accordance with Section 6.2.2 of the Disbursement Agreement; and

- (e) for each Contract and Subcontract for which a Payment and Performance Bond is required pursuant to Section 5.9 of the Disbursement Agreement and for which the Company (or the applicable Contractor) will release retainage as a result of Completion of such Project being achieved, the Company shall have delivered from the surety under each such Payment and Performance Bond (i) a “Consent of Surety to Reduction in or Partial Release of Retainage” (AIA form G707A) if a partial release of Retainage Amounts held under such Contract or Subcontract will be made or (ii) a “Consent of Surety to Final Payment” (AIA form G707) if a release of all Retainage Amounts held under such Contract or Subcontract will be made).

“Completion Certificates” means, collectively, with respect to each Project, the Completion Certificates substantially in the form of Exhibits T-1, T-2, T-3, T-4, T-5, T-6, T-7, T-8, T-9 and T-10 to the Disbursement Agreement to be delivered by the Company, the Construction Consultant, the Project Architects, the Primary Contractors, the Phase I Golf Course Designer, the Phase I Aqua Theater and Showroom Designer, the Phase I Golf Course Contractor, the Phase I Parking Structure Contractor, the Phase II Major Architects and the Phase II Major Contractors, as the case may be, relating to Completion of each Project.

“Completion Date” means the Phase I Completion Date or the Phase II Completion Date, as the case may be.

“Completion Guarantor” means Wynn Completion Guarantor, LLC, a Nevada limited liability company.

“Completion Guaranty” means that certain Completion Guaranty, dated as of December 14, 2004, executed by the Completion Guarantor in favor of the Bank Agent and the 2014 Notes Indenture Trustee.

“Completion Guaranty Collateral Account Agreement” means that certain Completion Guaranty Collateral Account Agreement, dated as of December 14, 2004, among the Completion Guarantor, the Collateral Agent and the Securities Intermediary.

“Completion Guaranty Deposit Account” means the account referenced in Section 2.2.7 of the Disbursement Agreement and established pursuant to the Completion Guaranty Collateral Account Agreement.

“Completion Guaranty Release Certificate” means the Completion Guaranty Release Certificates substantially in the form of Exhibits R-6 and R-7 to the Disbursement Agreement to be delivered by the Company and the Construction Consultant.

“Completion Guaranty Release Conditions” means that (a) the Phase I Substantial Completion Date and the Phase I Completion Date shall have occurred and either (i) the Phase II Completion Date (if the Phase II Approval Date shall have occurred prior to the Phase II Revolving Commitment Sunset Date) shall have occurred or (ii) the Phase II Revolving Commitment Sunset Date (if the Phase II Approval Date shall have not occurred prior to the Phase II Revolving Commitment Sunset Date) shall have occurred, (b) a Notice of Completion has been posted with respect to each Project and recorded in the Office of the County Recorder of Clark County, Nevada and the statutory period for filing mechanics liens under Nevada law with respect to work performed before filing such Notice of Completion has expired, (c) the Funding Agents have received final 101.6 endorsements from the Title Insurer insuring the priority of their respective Liens on the Project Security, (d) the Company shall have delivered to the Disbursement Agent, the Bank Agent and the 2014 Notes Indenture Trustee its Completion Guaranty Release Certificate certifying that (i) all Project Punchlist Items have been completed for each Project other than Punchlist Items with an aggregate value (as reasonably determined by the Construction Consultant) of not more than \$17.5 million so long as 150% of the Project Punchlist Completion Amount for such uncompleted Punchlist Items shall have been reserved in the Company’s Concentration Account (and credited to the Construction Tracking Account), the Bank Proceeds Account and/or the Completion Guaranty Deposit Account and (ii) the Company has settled with the Contractors all claims for payments and amounts due under the Contracts and the Company has received a final lien release from each Contractor and Subcontractor as required under the Disbursement Agreement, each in the form of Exhibit H-3 to the Disbursement Agreement, other than with respect to disputed claims (including claims subject to audit before payment) not exceeding \$15.0 million in the aggregate so long as an amount equal to such disputed amounts shall have been reserved in the Company’s Concentration Account (and credited to the Construction Tracking Account), the Bank Proceeds Account and/or the Completion Guaranty Deposit Account, (e) the Construction Consultant shall have delivered its Completion Guaranty Release Certificate, and (f) the Company shall have delivered from the surety under each Payment and Performance Bond required pursuant to Section 5.9 of the Disbursement Agreement a “Consent of Surety to Final Payment” (AIA form G707) other than with respect to Contracts and Subcontracts for which the Company is disputing amounts in accordance with clause (d)(ii) above.

“Completion Guaranty Release Date” means the date on which the Disbursement Agent countersigns the Company’s Completion Guaranty Release Certificate acknowledging that the Completion Guaranty Release Conditions have been satisfied.

“Consents” means consents to the collateral assignment by the Company of Material Project Documents in substantially the form of Exhibit P to the Disbursement Agreement (or as otherwise approved by the Majority of the Arrangers (in the case of Section 3.4) or the Bank Agent (in the case of Section 6.5), as applicable).

“Construction Agreements” means each Contract, each Payment and Performance Bond and the Construction Guaranty and each other guarantee related to any Contract.

“Construction Consultant” means Inspection & Valuation International, Inc. or any other Person appointed from time to time in accordance with Section 8.1 of the Disbursement Agreement to serve as the Construction Consultant under the Disbursement Agreement.

“Construction Consultant Engagement Agreement” means that certain proposal letter, dated as of December 8, 2004, by and among the Construction Consultant, the Disbursement Agent, the Bank Agent and the 2014 Notes Indenture Trustee.

“Construction Consultant’s Advance Certificate” means, with respect to any Advance Request, a certificate in the form of Exhibit C-2 to the Distribution Agreement in which the Construction Consultant shall either confirm or object to the certifications made in such Advance Request.

“Construction Consultant’s Closing Certificate” means a closing certificate in the form of Exhibit B-2 to the Disbursement Agreement.

“Construction Consultant’s Report” means a report or an updated report of the Construction Consultant delivered to the Disbursement Agent, the Bank Agent and/or the Representatives of the Initial Purchasers pursuant to Section 3.1.10 and Section 3.4.8 of the Disbursement Agreement and stating, among other things, that (a) the Construction Consultant has reviewed the Material Project Documents, the Plans and Specifications, and other material information reasonably deemed necessary by the Construction Consultant for the purpose of evaluating whether the applicable Project can be constructed and completed in the manner contemplated by the Operative Documents and (b) based on its review of such information, the Construction Consultant is of the opinion that the Phase I Project or the Phase II Project, as applicable, can be constructed in the manner contemplated by the Operative Documents and, in particular, that each Project can be constructed and completed in accordance with the Material Project Documents and the Plans and Specifications within the parameters set by the Project Schedule and the Project Budget for such Project.

“Construction Guarantor” means Austi, Inc., a Nevada corporation.

“Construction Guaranty” means that certain Amended and Restated Continuing Guaranty dated as of October 22, 2002, executed by the Construction Guarantor in favor of the Company.

“Construction Tracking Account” has the meaning given in Section 5.1.1 of the Disbursement Agreement.

“Contractors” means any architects, consultants, designers, contractors, Subcontractors, suppliers, laborers or any other Persons engaged by any Loan Party in connection with the design, engineering, installation and construction of the Projects (including the Project Architects, the Primary Contractors, the Phase I Golf Course Contractor, the Phase I Parking Structure Contractor, the Phase I Golf Course Designer, the Phase I Aqua Theater and Showroom Designer, the Phase II Major Architects and the Phase II Major Contractors).

“Contracts” means, collectively, the contracts entered into, from time to time, between any Loan Party and any Contractor for performance of services or sale of goods in connection with the design, engineering, installation or construction of any Projects.

“Debt Service” means all principal payments, interest or premium, if any, and other amounts payable or accrued from time to time under the Bank Credit Agreement or the 2014 Notes.

“Deeds of Trust” means, collectively, the Wynn Las Vegas Deed of Trust, the Wynn Sunrise Deed of Trust and the Wynn Golf Deed of Trust.

“De Minimis Scope Change(s)” means any Scope Change which does not increase or decrease the amount of Project Costs for any particular Project by more than \$5,000,000; provided that, the aggregate absolute value of all such De Minimis Scope Changes for any particular Project may not exceed \$50,000,000, in the aggregate.

“Development Agreements” means collectively, (a) that certain Restrictive Covenant Running with the Land, by and between Clark County, Nevada and Sheraton Desert Inn Corporation, dated as of December 9, 1999, (b) that certain Dedication Agreement by and between Clark County, Nevada and Hotel A LLC, a Nevada limited liability company, dated as of May 21, 2002, (c) that certain Road Improvement Agreement, by and between Clark County, Nevada and Sheraton Desert Inn Corporation, dated as of December 21, 1999 and recorded February 4, 2000, in Book 20000204 as Document No. 00871, of Official Records, (d) that certain Off-Site Improvement Agreement, by and between Clark County, Nevada and Wynn Design & Development, LLC, dated as of April 15, 2002 and recorded April 29, 2002, in Book 20020429 as Document No. 03371, of Official Records, (e) that certain Off-Site Improvements Agreement, by and between Clark County, Nevada and Wynn Design & Development, LLC, dated as of April 15, 2002 and recorded April 29, 2002, in Book 20020429 as Document No. 03372, of Official Records, (f) that certain Cost Participation Agreement for Pedestrian Bridges at Spring Mountain Road and Las Vegas Boulevard South, by and between Clark County, Nevada and the Company, dated as of January 21, 2003 and recorded January 29, 2003, in Book 20030129 as Document No. 03174, of Official Records, and (g) any other agreements relating to the construction of the Projects entered into between the Company and a Governmental Authority.

“Disbursement Account” means the account referenced in Section 2.2.3 of the Disbursement Agreement and established pursuant to the Company Disbursement Collateral Account Agreement.

“Disbursement Agent” means Deutsche Bank Trust Company Americas, in its capacity as the disbursement agent under the Disbursement Agreement, and its successors in such capacity.

“Disbursement Agreement” means that certain Master Disbursement Agreement, dated as of December 14, 2004, among the Company, the Bank Agent, the 2014 Notes Indenture Trustee and the Disbursement Agent, as amended by that certain First Amendment to Master Disbursement Agreement, dated as of April 26, 2005, as amended by that certain Second



Amendment to Master Disbursement Agreement, dated as of June 28, 2005, as amended by that certain Third Amendment to Master Disbursement Agreement, dated as of [\_\_\_\_\_], 2006, and as further amended, amended and restated, supplemented or otherwise modified from time to time.

“Dollar” and “\$” means dollars in lawful currency of the United States of America.

“Entertainment Facility” means the Avenue Q showroom or entertainment facility adjoining the Phase I Project on the Site.

“Event of Default” has the meaning given in Section 7.1 of the Disbursement Agreement.

“Event of Force Majeure” means any event that causes a delay in the construction of the Projects and is outside any Loan Party’s reasonable control but only to the extent (a) such event does not arise out of the negligence or willful misconduct of any Loan Party and (b) such event consists: of an Act of God (such as tornado, flood, hurricane, etc.); fires and other casualties; strikes, lockouts or other labor disturbances (except to the extent taking place at the Site only); riots, insurrections or civil commotions; embargoes, shortages or unavailability of materials, supplies, labor, equipment and systems that first arise after the Closing Date, but only to the extent caused by another act, event or condition covered by this clause (b); the requirements of law, statutes, regulations and other Legal Requirements enacted after the Closing Date; orders or judgments; or any similar types of events, provided that the Company has sought to mitigate the impact of the delay.

“Event of Loss” means, with respect to any property or asset (tangible or intangible, real or personal), any of the following: (i) any loss, destruction or damage of such property or asset; (ii) 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 (iii) any settlement in lieu of clause (ii) above.

“Exhausted” means, (a) with respect to the Bank Credit Facility, the time at which the Commitment under such Facility has been utilized and the Bank Proceeds Account has no funds remaining on deposit therein and no further Advances are available thereunder for the payment of Project Costs, (b) with respect to the 2014 Notes, the time at which no funds remain in the 2014 Notes Proceeds Account and (c) with respect to the Company’s Funds Account, the Completion Guaranty Deposit Account or the Project Liquidity Reserve Account, the time at which no funds remain on deposit therein.

“Facility” or “Facilities” means, as the context may require, any or all of the Bank Credit Facility and the 2014 Notes Proceeds.

“Facility Agreements” means, collectively, the Bank Credit Agreement and the 2014 Notes Indenture.

“Fairway Villas” means the eighteen additional luxury suites fairway villas to be built as part of the Phase I Project on the portion of the Phase I Site referred to as “Area 7” under the Phase I Primary Construction Contract.

“Final Completion” means that, with respect to each Project: (a) the Completion Date for such Project shall have occurred, (b) such Project shall have received a permanent certificate of occupancy from the Building Department (and copies of such certificate shall have been delivered to the Disbursement Agent, the Bank Agent, and the Construction Consultant), (c) a Notice of Completion shall have been posted with respect to such Project and recorded in the Office of the County Recorder of Clark County, Nevada and the statutory period for filing mechanics liens under Nevada law with respect to work performed before filing such Notice of Completion shall have expired, (d) the Funding Agents shall have received final 101.6 endorsements from the Title Insurer insuring the priority of their respective Liens on the Project Security, (e) the Company shall have delivered to the Disbursement Agent, the Bank Agent and the 2014 Notes Indenture Trustee its Final Completion Certificate certifying that (i) all Project Punchlist Items for such Project have been completed and the Company has settled with the Contractors all claims for payments and amounts due under the Contracts relating to such Project and the Company has received a final lien release from each Contractor and Subcontractor as required under the Disbursement Agreement, each in the form of Exhibit H-3 of the Disbursement Agreement, (f) the Construction Consultant, the Project Architect and the Primary Contractor for such Project each shall have delivered its Final Completion Certificate and the Company and the Construction Consultant shall have accepted the Primary Contractor’s Final Completion Certificate in accordance with Section 6.2.2 of the Disbursement Agreement, (g) the Company shall have delivered to the Funding Agents and the Construction Consultant an “as built survey” of such Project, and (h) the Company shall have delivered from the surety under each Payment and Performance Bond delivered in connection with any Contracts relating to such Project required pursuant to Section 5.9 of the Disbursement Agreement a “Consent of Surety to Final Payment” (AIA form G707).

“Final Completion Certificates” means, collectively, the Final Completion Certificates substantially in the form of Exhibits U-1, U-2, U-3, U-4, U-5 and U-6 to the Disbursement Agreement to be delivered by the Company, the Construction Consultant, the Project Architects and the Primary Contractors, as the case may be.

“Final Completion Date” means, with respect to each Project, the date on which the Disbursement Agent countersigns the Company’s Final Completion Certificate pursuant to Section 2.9 of the Disbursement Agreement acknowledging that Final Completion of such Project has occurred.

“Final Plans and Specifications” means, with respect to any particular work or improvement, Plans and Specifications which (i) have received final approval from all Governmental Authorities required to approve such Plans and Specifications prior to completion of the work or improvements; (ii) contain sufficient specificity to permit the completion of the work or improvement and (iii) are consistent with the standards set forth in Exhibits V-1 and V-2 of the Disbursement Agreement.

“Financing Agreements” means, collectively, the Disbursement Agreement, the Bank Credit Agreement, the 2014 Notes Indenture, the Security Documents, the 2014 Notes, the Collateral Agency Agreement, any fee letters or engagement letters to which the Arrangers, the Bank Agent, the Collateral Agent, the Nevada Collateral Agent or the Disbursement Agent is a party, and any other loan or security agreements entered into on, prior to or after the Closing Date with the Disbursement Agent, the Bank Agent, the 2014 Notes Indenture Trustee, the Collateral Agent or the Nevada Collateral Agent in connection with the financing of the Projects.

“Funding Agents” means, collectively, the Bank Agent and the 2014 Notes Indenture Trustee.

“Funding Sources” means the Bank Credit Facility, the 2014 Notes Proceeds, amounts on deposit in the Company’s Funds Account and (to the extent permitted under Section 5.5.3 of the Disbursement Agreement) amounts on deposit in the Completion Guaranty Deposit Account and the Project Liquidity Reserve Account.

“Gaming/Liquor Licenses” means all licenses, permits, approvals, authorizations, exemptions, waivers, findings of suitability and registrations issued by the Nevada Gaming Authorities and required by the Company and its Affiliates to own and operate the Projects.

“Golf Course” means the Tom Fazio/Stephen A. Wynn designed 18-hole golf course to be situated on the Golf Course Land.

“Golf Course Land” means the land on which the Golf Course is located, as more particularly described in Part A of Exhibit Q-3 to the Disbursement Agreement.

“Golf Course Land Easements” means the easements appurtenant, easements in gross, license agreements and other rights running for the benefit of the Company or Wynn Golf and/or appurtenant to the Golf Course Land, including, without limitation, those certain easements and licenses described in the Title Policy.

“Golf Course Lease” means that certain Golf Course Lease, dated as of December 14, 2004, between Wynn Golf, as landlord, and the Company, as tenant.

“Governmental Authority” means any national, state 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, (including the Nevada Gaming Authorities, any zoning authority, the FDIC, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority), any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any arbitrator with authority to bind a party at law.

“Hard Costs” means:

- (a) with respect to the Phase I Project, the Project Costs set forth in the Phase I Project Budget under the following Line Items or Line Item Categories:
  - (i) GMP Contract Line Item Category;

- (ii) Interior Furnishings/Signage/Electronic Systems Line Item Category;
- (iii) Miscellaneous Capital Projects Line Item Category; and
- (iv) Parking Garage Line Item Category.

(b) with respect to the Phase II Project, the Line Items and Line Item Categories set forth in the Phase II Project Budget delivered by the Company pursuant to Section 3.4.2 and designated by the Company to be associated with Hard Costs (which designation shall be reasonably acceptable to the Disbursement Agent and the Construction Consultant and substantially similar to those designated as Hard Costs for the Phase I Project under clause (a) above).

“Hazardous Substances” means (statutory acronyms and abbreviations having the meaning given them in the definition of “Environmental Laws” under the Bank Credit Agreement) substances defined as “hazardous substances,” “pollutants” or “contaminants” in Section 101 of the CERCLA; those substances defined as “hazardous waste” by the RCRA; those substances designated as a “hazardous substance” pursuant to Section 311 of the CWA; those substances regulated as a hazardous chemical substance or mixture or as an imminently hazardous chemical substance or mixture pursuant to Sections 6 or 7 of the TSCA; those substances defined as “contaminants” by Section 1401 of the SDWA, if present in excess of permissible levels; those substances regulated by the Oil Pollution Act; those substances defined as a pesticide pursuant to Section 2(u) of the FIFRA; those substances defined as a source, special nuclear or by-product material by Section 11 of the AEA; those substances defined as “residual radioactive material” by Section 101 of the UMTRCA; those substances defined as “toxic materials” or “harmful physical agents” pursuant to Section 6 of the OSHA; those substances defined as hazardous wastes in 40 C.F.R. Part 261.3; those substances defined as hazardous waste constituents in 40 C.F.R. Part 260.10, specifically including Appendix VII and VIII of Subpart D of 40 C.F.R. Part 261; those substances designated as hazardous substances in 40 C.F.R. Parts 116.4 and 302.4; those substances defined as hazardous substances or hazardous materials in 49 C.F.R. Part 171.8; those substances regulated as hazardous materials, hazardous substances, or toxic substances in any other “Environmental Laws” (as such term is defined in the Bank Credit Agreement) and in the regulations adopted and publications promulgated pursuant to said laws, whether or not such regulations or publications are specifically referenced herein.

“Home Site Land” means a tract of land of approximately 20 acres located on the Golf Course where residential and non-gaming related developments may be built after release of the Home Site Land in accordance with Section 7.5 of the Bank Credit Agreement and Section 10.03 of the 2014 Notes Indenture.

“Improvements” means the buildings, fixtures and other improvements to be situated on the Mortgaged Property.

“In Balance” means that, at the time of calculation and after giving effect to any requested Advance (or, if no Advance is then being requested, after deducting from Available

Funds the amount of costs incurred but not paid since the date of the immediately preceding Advance), (a) the Available Funds equal or exceed the sum of the aggregate Remaining Costs for each Line Item Category allocated to each of the Phase I Project and, after the Phase II Approval Date, the Phase II Project in the applicable Project Budget and (b) there shall be no negative number identified for any Line Item Category in column L (“Variance Over/Under”) of the Summary Anticipated Cost Reports.

“Independent Consultants” means, collectively, the Insurance Advisor and the Construction Consultant.

“Insurance Advisor” means Moore-McNeil, LLC, or its successor, appointed from time to time in accordance with Section 8.1 of the Disbursement Agreement.

“Insurance Advisor’s Closing Certificate” means a closing certificate in the form of Exhibit B-3 to the Disbursement Agreement.

“Intercreditor Agreement” means that certain Intercreditor Agreement, dated as of December 14, 2004, between the Bank Agent, the 2014 Notes Indenture Trustee and the Collateral Agent, as amended, amended and restated, supplemented or otherwise modified from time to time.

“Interest Rate Agreement” means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement or arrangement (including, without limitation, the “Specified Hedge Agreements” (as such term is defined in the Bank Credit Agreement)).

“IP Security Agreement” means that certain Intellectual Property Security Agreement, dated as of December 14, 2004, made by the Company for the benefit of the Collateral Agent.

“Koval Land” means the approximately 18 acres of land located across from the Projects on Koval Lane and Sands Avenue and owned as of the Closing Date by Wynn Sunrise.

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

“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, including, without limitation, Nevada Gaming Laws.

“Lender” means any of the Bank Lenders and the 2014 Noteholders.

“Letter of Credit” has the meaning given to such term in the Bank Credit Agreement.

“Lien” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof and any option or other agreement to sell

or give a security interest in such asset but excluding any license or similar agreement (such as an option to obtain a license) of intellectual property).

“Line Item” means each of the individual line items set forth in the Anticipated Cost Reports and the Monthly Requisition Reports (as in effect from time to time), which individual line items shall be reasonably acceptable to the Disbursement Agent and the Construction Consultant.

“Line Item Category” means

(a) with respect to the Phase I Project Budget, each of the following line item categories:

- (i) Land and Buildings;
- (ii) Global Express Airplane Purchase;
- (iii) GMP Contract;
- (iv) Interior Furnishings/Signage/Electronic Systems;
- (v) Owner FF&E;
- (vi) Miscellaneous Capital Projects;
- (vii) Golf Course;
- (viii) Parking Garage;
- (ix) Capitalized Interest & Commitment Fees;
- (x) Pre-Opening Expense;
- (xi) Transaction Fees & Expenses;
- (xii) Design and Engineering Fees;
- (xiii) Working Capital Requirements at Opening;
- (xiv) Entertainment Production;
- (xv) Insurance/Utilities/Security;
- (xvi) Property Taxes;
- (xvii) Government Approvals & Permits;
- (xviii) Miscellaneous Operating Costs; and

(xix) Phase I Construction Contingency; and

(b) with respect to the Phase II Project Budget, each of the line item categories included in the Phase II Project Budget delivered by the Company and approved by the Majority of the Arrangers pursuant to Section 3.4.2.

“Loan Parties” shall mean the Company, Capital Corp., Wynn Sunrise, Wynn Show Performers, Wynn Golf, World Travel, LLC, Las Vegas Jet, and each other Subsidiary of the Company (other than the Completion Guarantor) which is a party to a Material Project Document or a Security Document.

“Loans” has the meaning given such term in the Bank Credit Agreement.

“Local Company Collateral Account Agreement(s)” means one or more control agreements with respect to the Cash Management Account and the Company’s Concentration Account substantially in the form of Exhibit I (or as otherwise approved by the Disbursement Agent) and entered into by a bank that is reasonably acceptable to the Disbursement Agent pursuant to Sections 2.2.4 and 2.2.6 of the Disbursement Agreement.

“Loss Proceeds” has the meaning given in Section 5.14.1 of the Disbursement Agreement.

“Major Project Participant” has the meaning given in the Bank Credit Agreement.

“Majority of the Arrangers” shall have the meaning given in the Bank Credit Agreement.

“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 and the other Loan Parties, taken as a whole, or of any Project Credit Support Provider, (b) the Projects, (c) the ability of the Company to achieve the Phase I Opening Date prior to the Phase I Scheduled Opening Date, the Phase I Substantial Completion Date prior to the Phase I Scheduled Substantial Completion Date, the Phase I Completion Date on or prior to the Phase I Scheduled Completion Date, the Phase II Opening Date prior to the Phase II Scheduled Opening Date and the Phase II Completion Date prior to the Phase II Scheduled Completion Date; (d) the validity or enforceability of any Financing Agreement; (e) the validity, enforceability or priority of the Liens purported to be created under the Security Documents; or (f) the rights and remedies of any Secured Party under any Financing Agreement.

“Material Construction Agreements” means any of the Phase I Construction Agreements, the Phase I Professional Design Services Agreements, the Construction Guaranty, each Contract entered into with the Phase II Major Contractors or the Phase II Major Architects, and, without duplication, any Construction Agreement with a total contract amount or value in excess of \$15,000,000, and each Payment and Performance Bond issued to support any of the foregoing.

“Material Project Documents” has the meaning given to the term “Material Contracts” in the Bank Credit Agreement.

“Maximum Permitted Advance Amount” has the meaning given in Section 2.3.1(d)(ii) of the Disbursement Agreement.

“Monthly Disbursement Excess” has the meaning given in Section 2.3.1(d)(iv) of the Disbursement Agreement.

“Monthly Requisition Report” means one or more Monthly Requisition Reports substantially in the form of Appendix III to Exhibit C-1 to the Disbursement Agreement or as otherwise approved by the Disbursement Agent and which provides the information therein segregated by Line Item Categories and by Line Item for the Phase I Project and, from and after the Phase II Approval Date, the Phase II Project.

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, or any successor thereof.

“Mortgaged Property” means, collectively, all real and personal property which is subject or is intended to become subject to the security interests or liens granted by any Deeds of Trust.

“Nevada Collateral Agent” means Bank of America, N.A., in its capacity as collateral agent under the Collateral Agency Agreement, and its successors in such capacity.

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

“Nevada Gaming Laws” means the Nevada Gaming Control Act, as codified in Chapter 463 of the Nevada Revised Statutes, as amended from time to time, and the regulations of the Nevada Gaming Commission promulgated thereunder, as amended from time to time, and other laws or regulations promulgated by the Nevada Gaming Authorities and applying to gaming operations in the State of Nevada.

“Notice of Advance Request” means a Notice of Advance Request in the form of Exhibit D to the Disbursement Agreement.

“Obligations” means (a) all loans, advances, debts, liabilities, and obligations, howsoever arising, owed by the Company or any other Loan Party to any Lender 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 any of the Financing Agreements, including all interest (including interest accruing after the maturity of the Loans and the 2014 Notes and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), fees, premiums, if any,



charges, expenses, attorneys' fees and accountants fees chargeable to any Loan Party in connection with its dealings with the such Loan Party and payable by any Loan Party hereunder or thereunder and including, without limitation, all "Obligations" as defined in the Bank Credit Agreement; (b) any and all sums advanced by the Disbursement Agent or the Collateral Agent in order to preserve the Project Security or preserve any Secured Party's security interest in the Project Security, including all Protective Advances; and (c) in the event of any proceeding for the collection or enforcement of the Obligations after an Event of Default shall have occurred and be continuing, the reasonable expenses of the Collateral Agent of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Project Security, or of any exercise by any Secured Party of its rights under the Security Documents, together with reasonable attorneys' fees and court costs.

"Opening Conditions" means, collectively, with respect to each Project, the following:

- (a) the Funding Agents shall have received from the Company its Opening Date Certificate, pursuant to which the Company certifies that:
  - (i) the construction of such Project and all infrastructure and other improvements required to be constructed under applicable Legal Requirements or pursuant to the Development Agreements shall have been completed (except for Project Punchlist Items with respect to such Project) in accordance with the Plans and Specifications;
  - (ii) all furnishings, fixtures and equipment necessary to use and occupy the various portions of such Project for their intended uses shall have been installed and shall be operational;
  - (iii) all Project Costs (other than Project Costs consisting of (A) Retainage Amounts, and other amounts, that, as of the applicable Opening Date, are being withheld from the Contractors in accordance with the provisions of the Project Documents, (B) amounts being contested in accordance with the Financing Agreements so long as adequate reserves have been established through an allocation in the Anticipated Cost Report for such Project and in accordance with any requirements of such Financing Agreements, (C) amounts payable in respect of Project Punchlist Items with respect to such Project to the extent not covered by the foregoing clause (A) and (D) amounts incurred by any Contractors or Subcontractors within the last thirty (30) days and to be paid under the current Advance Request which has been submitted but not yet disbursed) shall have been paid in full;
  - (iv) such Project shall be served by, and shall be equipped to accept water, gas, electric, sewer, sanitary sewer, storm drain and other facilities and utilities necessary for use of such Project and each portion thereof for its intended uses, which utility service is provided by public or private utilities over utility lines, pipes, wires and other facilities that run

solely over public streets or private property (in the case of private property, pursuant to recorded easements);

- (v) a Project Certificate of Occupancy shall have been issued for such Project and each other Permit required to be obtained prior to opening of such Project shall have been obtained (including the gaming license for the Project);
  - (vi) such Project (other than the premises to be occupied by individual retail and restaurant tenants in such Project) shall be ready to open for business to the general public for its intended uses; provided that in all events all rooms shall be ready for occupancy, and with respect to the Phase I Project, each restaurant shall be ready to open for business, and, at least sixty-seven percent (67%) of the retail tenants shall be ready to open for business and with respect to the Phase II Project, each restaurant shall be ready to open for business and at least sixty-seven percent (67%) of the retail tenants (excluding the Retail Facility) shall be ready to open for business; and
  - (vii) the Company shall have delivered an update to the Projections.
- (b) the Construction Consultant has delivered its Opening Date Certificate approving the Company's Opening Date Certificate with respect to such Project and the Project Architect has delivered its Opening Date Certificate;
  - (c) the remaining work on the Project shall be such that it will not interfere with or disrupt the operation of such Project for its intended purposes or detract from the aesthetic appearance of such Project other than to a de minimis extent;
  - (d) the failure to complete the remaining work would not interfere with or disrupt the operation of such Project for its intended purposes or detract from the aesthetic appearance of such Project other than to a de minimis extent; and
  - (e) the Company shall have available a fully trained staff to operate such Project in accordance with industry standards;

provided, however that the Phase I Project may open for business despite the fact that the Entertainment Facility and the Fairway Villas are not sufficiently completed so as to satisfy the foregoing conditions and the Phase II Project may open for business despite the fact that the Retail Facility is not sufficiently completed so as to satisfy the foregoing conditions.

“Opening Date” means, with respect to each Project, the date on which the Disbursement Agent countersigns the Company's Opening Date Certificate for such Project

acknowledging that the Opening Conditions have been satisfied and such Project shall be open for business.

“Opening Date Certificates” means, collectively, the certificates substantially in the form of Exhibits S-1 and S-2 to the Disbursement Agreement to be delivered by the Company and the Construction Consultant, as the case may be.

“Operating Costs” means all actual cash costs incurred by the Company and related to the operation of the Projects or any portion thereof in the ordinary course of business, including, without limitation, costs incurred for labor, consumables, utility services, and all other operation related costs; provided that (a) Operating Costs shall not include non-cash charges (including depreciation and amortization) and (b) Debt Service accruing with respect to Advances made under the Bank Credit Agreement or from the 2014 Notes Proceeds Account to pay Project Costs allocated to the Phase I Project under the Phase I Project Budget shall constitute Operating Costs from and after the Phase I Opening Date but not prior to such date.

“Operative Documents” means the Financing Agreements and the Project Documents.

“Outside Phase I Completion Deadline” means September 30, 2005, as extended pursuant to Section 6.3.2 of the Disbursement Agreement.

“Outside Phase I Substantial Completion Deadline” means June 30, 2005, as extended pursuant to Section 6.3.2 of the Disbursement Agreement.

“Outside Phase I Opening Deadline” means June 30, 2005, as extended pursuant to Section 6.3.2 of the Disbursement Agreement.

“Outside Phase II Completion Deadline” means September 30, 2009, as extended from time to time by the Company (i) in accordance with Section 6.3.2 of the Disbursement Agreement or (ii) with the approval of the Required Lenders.

“Outside Phase II Opening Deadline” means June 30, 2009, as extended from time to time by the Company (i) in accordance with Section 6.3.2 of the Disbursement Agreement or (ii) with the approval of the Required Lenders.

“Outstanding Releases” has the meaning given in Section 3.2.7 of the Disbursement Agreement.

“Payment and Performance Bond” means any payment and performance bond delivered under any Contract or Subcontract (including the Phase I Primary Contractor Payment and Performance Bond) in favor of the Company or any Primary Contractor, the Collateral Agent, the Bank Agent (acting on behalf of the Bank Lenders) or the 2014 Notes Indenture Trustee (acting on behalf of the 2014 Noteholders) supporting the Contractor’s or Subcontractor’s obligations under any such Contract.

“Permits” means all authorizations, consents, decrees, permits, waivers, exemptions, privileges, approvals from and registrations and filings with all Governmental

Authorities necessary for the construction, development, ownership, lease or operation of a Project in accordance with the Operative Documents, including all Gaming/Liquor Licenses.

“Permitted Encumbrances” means with respect to the Deed of Trust executed by the Company, the Wynn Las Vegas Permitted Encumbrances; with respect to the Deed of Trust executed by Wynn Golf, the Wynn Golf Permitted Encumbrances; and with respect to the Deed of Trust executed by Wynn Sunrise, the Wynn Sunrise Permitted Encumbrances.

“Permitted Investments” means:

(a) for purposes of the 2014 Notes Proceeds Account, “Permitted Securities” (as such term is defined in the 2014 Notes Indenture); and

(b) for purposes of all Company Accounts other than the 2014 Notes Proceeds Account, “Cash Equivalents” (as such term is defined in the 2014 Notes Indenture).

“Permitted Liens” means Liens permitted under each of the Facility Agreements.

“Person” means any natural person, corporation, limited liability company, partnership, firm, association, Governmental Authority or any other entity, whether acting in an individual, fiduciary or other capacity.

“Phase I Anticipated Cost Report” means any of the anticipated cost reports in the form of Exhibit F-3 to the Disbursement Agreement and which provides, for each Line Item Category relating to the Phase I Project, detailed supporting information broken down by Line Item.

“Phase I Aqua Theater and Showroom Design Services Agreements” means (i) that certain Professional Design Services Agreement, dated as of October 5, 2001 between the Phase I Aqua Theater and Showroom Designer and the Company; and (ii) that certain Professional Design Services Agreement, dated as of June 30, 2004, between the Phase I Aqua Theater and Showroom Designer and the Company.

“Phase I Aqua Theater and Showroom Designer” means Marnell Architecture, a Professional Corporation, a Nevada corporation (fka A.A. Marnell II, Chtd.).

“Phase I Architect” means Butler/Ashworth Architects Ltd., LLC, a Nevada limited liability company.

“Phase I Architect’s Agreement” means that certain Agreement between Owner and Project Architect dated as of October 30, 2002 between the Company and the Phase I Architect.

“Phase I Completion” means Completion of the Phase I Project.

“Phase I Completion Date” means the date on which the Disbursement Agent countersigns the Company’s Completion Certificate for the Phase I Project (including the

Entertainment Facility and the Fairway Villas) pursuant to Section 2.7 of the Disbursement Agreement acknowledging that Completion of the Phase I Project has occurred.

“Phase I Construction Agreements” means, collectively, the Phase I Primary Construction Contract, the Phase I Golf Course Construction Contract and the Phase I Parking Structure Construction Contract.

“Phase I Excess Cash Flow Credit Amount” means, at any given time from and after the Phase II Approval Date, the sum of (1) the sum of all dollar amounts included under the column “Excess Cash Flow” for the then-current calendar quarter and all ensuing calendar quarters (or any portion thereof) prior to the Phase II Scheduled Opening Date included in the Phase I Projected Excess Cash Flow Schedule plus (2) the lesser of: (x) the sum of all dollar amounts included under the column “Excess Cash Flow” from the calendar quarter (or portion thereof) occurring from and after the Phase II Scheduled Opening Date and all ensuing calendar quarters prior to the then-anticipated Phase II Project Final Completion Date included in the Phase I Projected Excess Cash Flow Schedule and (y) the Remaining Costs with respect to the Phase II Project then anticipated to become due and payable from and after the Phase II Scheduled Opening Date. To the extent required, the Excess Cash Flow attributable to any calendar quarter shall be pro-rated based on the number of days in such quarter.

“Phase I Final Completion” means Final Completion of the Phase I Project.

“Phase I Golf Course Contractor” means Wadsworth Golf Construction Company.

“Phase I Golf Course Construction Contract” means the Lump Sum Agreement, effective as of February 18, 2003, by and between the Company and the Phase I Golf Course Contractor, relating to the construction of the Golf Course, as amended by (i) Change Order No. 1, dated May 21, 2003, (ii) Change Order No. 2, dated September 18, 2003, (iii) Change Order No. 3, dated January 26, 2004, (iv) Change Order No. 4, dated April 5, 2004, (v) Change Order No. 5, dated September 30, 2004, and as further amended, including by change orders, from time to time as permitted by the Disbursement Agreement.

“Phase I Golf Course Design Services Agreement” means that certain Agreement, dated as of October 21, 2002, between the Phase I Golf Course Designer and the Company.

“Phase I Golf Course Designer” means T.J.F. Golf, Inc., a Florida corporation.

“Phase I Opening Date” means the date on which the Disbursement Agent countersigns the Company’s Opening Date Certificate for the Phase I Project (which may exclude the Entertainment Facility and the Fairway Villas) acknowledging that the Opening Conditions for the Phase I Project have been satisfied.

“Phase I Parking Structure Construction Contract” means that certain Design/Build Agreement, dated as of June 6, 2002, between the Company and the Phase I Parking Structure Contractor, as amended by (i) Change Order No. 1, dated December 27, 2002, (ii) Change Order No. 2, dated February 18, 2003, (iii) Change Order No. 3, dated July 11, 2003, (iv) Change Order No. 4, dated August 29, 2003, (v) Change Order No. 5, dated March 18, 2004,

and as further amended, including by change orders, from time to time as permitted by the Disbursement Agreement.

“Phase I Parking Structure Contractor” means Bomel Construction Co., Inc., a California corporation.

“Phase I Primary Contractor” means Marnell Corrao Associates, Inc., a Nevada corporation.

“Phase I Primary Construction Contract” means that certain Agreement for Guaranteed Maximum Price Construction Services for Le Rêve, dated as of June 4, 2002, between the Company and the Phase I Primary Contractor, as amended by (i) Change Order No. 1, dated as of August 12, 2002, (ii) Change Order No. 2, dated as of August 31, 2003, (iii) Change Order No. 3, dated March 31, 2004, (iv) Change Order No. 4, dated June 30, 2004, (v) Change Order No. 5, dated August 30, 2004, (vi) Change Order No. 6, dated November 30, 2004, and as further amended, including by change orders, from time to time as permitted by the Disbursement Agreement.

“Phase I Primary Contractor Payment and Performance Bond” means that certain payment and performance bond issued by American International Companies (AIG) and Kemper Insurance, jointly and severally, in favor of the Company, the Bank Agent (acting on behalf of the Bank Lenders) and the 2014 Notes Indenture Trustee (acting on behalf of the 2014 Noteholders) supporting the Phase I Primary Contractor’s obligations under the Phase I Primary Construction Contract.

“Phase I Professional Design Services Agreements” means, collectively, the Phase I Golf Course Design Services Agreement, the Phase I Aqua Theater and Showroom Design Services Agreements and the Phase I Architect’s Agreement.

“Phase I Project” means Wynn Las Vegas hotel and casino resort, with related parking structure and golf course facilities to be developed at the Site, all as more particularly described in Exhibit Q-1 to the Disbursement Agreement.

“Phase I Project Budget” means the budget for the Phase I Project delivered pursuant to Section 3.1.13 of the Disbursement Agreement, as amended from time to time in accordance with Section 6.3 of the Disbursement Agreement.

“Phase I Project Schedule” means the construction schedule for the Phase I Project delivered pursuant to Section 3.1.14 of the Disbursement Agreement, as from time to time in accordance with Section 6.3 of the Disbursement Agreement.

“Phase I Projected Excess Cash Flow Schedule” means the schedule of projected “Excess Cash Flow” (as such term is defined in the Bank Credit Agreement) reasonably anticipated by the Company to be generated by operation of the Phase I Project from and after the Phase I Opening Date until the Phase II Project Final Completion Date delivered pursuant to Section 3.1.37 of the Disbursement Agreement and any subsequent or revised schedule adopted as provided in Section 5.1.4(b) of the Disbursement Agreement.

“Phase I Reports” shall have the meaning given in Section 3.1.31 of the Disbursement Agreement.

“Phase I Required Contractor and Architect Advance Certificates” means, collectively, with respect to each Advance Request relating to the Phase I Project, the certificates substantially in the form of Exhibits C-3, C-4, C-5, C-6, and C-7 to the Disbursement Agreement from the Phase I Architect, the Phase I Primary Contractor, the Phase I Golf Course Designer, the Phase I Golf Course Contractor and the Phase I Aqua Theater and Showroom Designer, as the case may be, required to be attached thereto pursuant to Section 2.3.1(b) of the Disbursement Agreement.

“Phase I Scheduled Completion Date” means August 26, 2005, as the same may from time to time be extended pursuant to Section 6.3 of the Disbursement Agreement.

“Phase I Scheduled Opening Date” means April 28, 2005, as the same may from time to time be extended pursuant to Section 6.3 of the Disbursement Agreement.

“Phase I Scheduled Substantial Completion Date” means April 27, 2005, as the same may from time to time be extended pursuant to Section 6.3 of the Disbursement Agreement.

“Phase I Substantial Completion” means that each of the following shall have occurred:

- (a) the Opening Date for the Phase I Project shall have occurred under Section 6.4 of the Disbursement Agreement;
- (b) all Contractors and Subcontractors shall have been paid in full for all work performed with respect to the Phase I Project (other than (A) Retainage Amounts and other amounts that, as of the Phase I Substantial Completion Date, are being withheld from the Contractors and Subcontractors in accordance with the provisions of the Project Documents, (B) amounts being contested in accordance with the Financing Agreements so long as adequate reserves have been established through an allocation in the Phase I Anticipated Cost Report and in accordance with any requirements of such Financing Agreements, (C) amounts with respect to the Entertainment Facility and the Fairway Villas, and (D) amounts payable in respect of Project Punchlist Items for the Phase I Project (excluding the Entertainment Facility and the Fairway Villas) to the extent not covered by the foregoing clause (A));
- (c) for Project Punchlist Items, a list of any remaining Project Punchlist Items for the Phase I Project (excluding the Entertainment Facility and the Fairway Villas) (including the cost of each such remaining Project Punchlist Item) shall have been delivered to the Construction Consultant and the Disbursement Agent by the Company and approved by the Construction Consultant as a reasonable final punchlist (such approval not to be unreasonably withheld);

- (d) the Phase I Primary Contractor, the Phase I Golf Course Contractor, the Phase I Parking Structure Contractor, the Phase I Architect, the Phase I Golf Course Designer and the Phase I Aqua Theater and Showroom Designer each shall have delivered its Completion Certificate certifying, among other things, that “substantial completion” of the work under its respective Construction Agreement with respect to the Phase I Project (excluding the Entertainment Facility and the Fairway Villas) has occurred and such certifications shall have been accepted by the Company and the Construction Consultant in accordance with Section 6.2.2 of the Disbursement Agreement; and
- (e) for each Contract and Subcontract for which a Payment and Performance Bond is required pursuant to Section 5.9 of the Disbursement Agreement and for which the Company (or the applicable Contractor) will release retainage as a result of Phase I Substantial Completion being achieved, the Company shall have delivered from the surety under each such Payment and Performance Bond (i) a “Consent of Surety to Reduction in or Partial Release of Retainage” (AIA form G707A) if a partial release of Retainage Amounts held under such Contract or Subcontract will be made or (ii) a “Consent of Surety to Final Payment” (AIA form G707) if a release of all Retainage Amounts held under such Contract or Subcontract will be made).

“Phase I Substantial Completion Certificates” means, collectively, the Completion Certificates substantially in the form of Exhibits T-1, T-2, T-3, T-4, T-5, T-6, T-7 and T-8 to the Disbursement Agreement to be delivered by the Company, the Construction Consultant, the Phase I Project Architect, the Phase I Primary Contractor, the Phase I Golf Course Contractor, the Phase I Parking Structure Contractor, the Phase I Golf Course Designer, the Phase I Aqua Theater and Showroom Designer and relating to Phase I Substantial Completion of the Phase I Project (excluding the Entertainment Facility and the Fairway Villas).

“Phase I Substantial Completion Date” means the date on which the Disbursement Agent countersigns the Company’s Phase I Substantial Completion Certificate pursuant to Section 2.6 of the Disbursement Agreement acknowledging that Phase I Substantial Completion has occurred.

“Phase I Summary Anticipated Cost Report” means an anticipated cost report in the form of Exhibit F-2 to the Disbursement Agreement and which provides the information indicated therein with respect to the Phase I Project segregated by each Line Item Category.

“Phase II Anticipated Cost Report” means any of the anticipated cost reports in the form of Exhibit F-6 to the Disbursement Agreement and which provides, for each Line Item Category relating to the Phase II Project, detailed supporting information broken down by Line Item.



“Phase II Approval Date” means the date on which the Disbursement Agent and the Bank Agent countersign the Company’s Phase II Approval Date Certificate pursuant to Section 3.4 of the Disbursement Agreement.

“Phase II Architect” means any one or more Contractors reasonably acceptable to the Majority of the Arrangers that enters into the Phase II Architect’s Agreement with the Company to design the Phase II Project.

“Phase II Architect’s Agreement” means any one or more agreements to be entered into between the Company and the Phase II Architect for the design of the Phase II Project in form and substance reasonably satisfactory to the Majority of the Arrangers.

“Phase II Completion” means Completion of the Phase II Project.

“Phase II Completion Date” means the date on which the Disbursement Agent countersigns the Company’s Completion Certificate for the Phase II Project pursuant to Section 2.7 of the Disbursement Agreement acknowledging that Completion of the Phase II Project has occurred.

“Phase II Deliverables” means the Phase II Project Budget, the Phase II Project Schedule, the Plans and Specifications relating to the Phase II Project, the updated Construction Consultant’s Report and each other document or agreement relating to the Phase II Project required to be delivered by the Company or any other Person under Section 3.4 of the Disbursement Agreement in order to satisfy the conditions precedent to the Phase II Approval Date.

“Phase II Deliverables Submission Deadline” has the meaning given in Section 3.4 of the Disbursement Agreement.

“Phase II Final Completion” means Final Completion of the Phase II Project.

“Phase II Major Architects” means the Phase II Architect and each other Contractor designated as such by the Majority of Arrangers (in consultation with the Construction Consultant) that has entered into a Contract with the Company to design a material portion of the Phase II Project.

“Phase II Major Architect’s Advance Certificate” means, with respect to each Advance Request relating to the Phase II Project after the Phase II Approval Date, a certificate from each Phase II Major Architect, as applicable, in the form of Exhibit C-8 to the Disbursement Agreement, required to be attached thereto pursuant to Section 2.3.1(c) of the Disbursement Agreement.

“Phase II Major Contractors” means the Phase II Primary Contractor and each other Contractor designated by the Majority of Arrangers (in consultation with the Construction Consultant) that has entered into a Construction Agreement with the Company to build a material portion of the Phase II Project.

“Phase II Major Contractor’s Advance Certificate” means, with respect to each Advance Request relating to the Phase II Project after the Phase II Approval Date, a certificate from each Phase II Major Contractor, as applicable, in the form of Exhibit C-9 to the Disbursement Agreement, required to be attached thereto pursuant to Section 2.3.1(c) of the Disbursement Agreement.

“Phase II Opening Date” means the date on which the Disbursement Agent countersigns the Company’s Opening Date Certificate for the Phase II Project pursuant to Section 6.4 of the Disbursement Agreement acknowledging that the Opening Conditions have been satisfied.

“Phase II Primary Contractor” means a Contractor reasonably acceptable to the Majority of the Arrangers that enters into the Phase II Primary Construction Contract with the Company to build the Phase II Project.

“Phase II Primary Construction Contract” means one or more guaranteed, fixed price construction contracts to be entered into by the Company and a Phase II Primary Contractor for the construction of the Phase II Project in form and substance reasonably satisfactory to the Majority of the Arrangers.

“Phase II Project” means Encore at Wynn Las Vegas, a hotel and casino complex to be developed on the Site and integrated with the Phase I Project, as more particularly described in Exhibit Q-2 to the Disbursement Agreement.

“Phase II Project Budget” means the budget for the Phase II Project delivered by the Company and approved by the Majority of the Arrangers pursuant to Section 3.4.2 of the Disbursement Agreement, and as amended from time to time in accordance with Section 6.3 of the Disbursement Agreement.

“Phase II Project Schedule” means the construction schedule for the Phase II Project delivered by the Company and approved by the Majority of the Arrangers pursuant to Section 3.4.3 of the Disbursement Agreement, as from time to time in accordance with Section 6.3 of the Disbursement Agreement.

“Phase II Revolving Commitment Sunset Date” means the Phase II Commitment Sunset Date (as defined in the Bank Credit Agreement), as the same may be extended in accordance with the terms of the Bank Credit Agreement.

“Phase II Scheduled Completion Date” means the completion date for the Phase II Project set forth in the Phase II Project Schedule delivered by the Company and approved by the Majority of the Arrangers pursuant to Section 3.4.3 of the Disbursement Agreement, as the same may from time to time be extended pursuant to Section 6.3 of the Disbursement Agreement.

“Phase II Scheduled Opening Date” means the opening date for the Phase II Project set forth in the Phase II Project Schedule delivered by the Company and approved by the Majority of the Arrangers pursuant to Section 3.4.3 of the Disbursement Agreement, as the same may from time to time be extended pursuant to Section 6.3 of the Disbursement Agreement.

“Phase II Summary Anticipated Cost Report” means an anticipated cost report substantially in the form of Exhibit F-5 to the Disbursement Agreement and which provides the information indicated therein with respect to the Phase II Project segregated by each Line Item Category.

“Plans and Specifications” means all plans, specifications, design documents, schematic drawings and related items for the design, architecture and construction of each Project that are listed on Exhibit Q-4 including, from time to time, any further such plans, specifications, design documents, schematic drawings and related items which are consistent with the standards of Exhibit V-1 or Exhibit V-2, as applicable, and delivered pursuant to Section 3.2.11 and Section 3.4.6 of the Disbursement Agreement, in each case, as amended in accordance with Section 6.2 of this Disbursement Agreement.

“Potential Event of Default” means (i) any event which with the giving of notice, the lapse of time, or both, would constitute an Event of Default and (ii) the occurrence of any “Default” under any Facility Agreement.

“Primary Contractors” means, collectively, the Phase I Primary Contractor and the Phase II Primary Contractor.

“Primary Construction Contracts” means, collectively, the Phase I Primary Construction Contract and the Phase II Primary Construction Contract.

“Project(s)” means, collectively, the Phase I Project and the Phase II Project provided, however, that, if the Phase II Approval Date has not occurred on or before the Phase II Revolving Commitment Sunset Date, then “Project(s)” shall mean solely the Phase I Project.

“Project Architects” means the Phase I Architect and the Phase II Architect.

“Project Budget” means collectively, the Phase I Project Budget and, from and after the Phase II Approval Date, the Phase II Project Budget.

“Project Schedule Amendment Certificate” means a certificate substantially in the form of Exhibit E to the Disbursement Agreement delivered from time to time in accordance with Section 6.3 of the Disbursement Agreement.

“Project Certificate of Occupancy” means a permanent certificate of occupancy or a temporary certificate of occupancy, in either case, for any Project issued by the Building Department pursuant to applicable Legal Requirements which permanent or temporary certificate of occupancy shall permit such Project to be used for the Project Intended Uses, shall be in full force and effect and, in the case of a temporary certificate of occupancy, if such temporary certificate of occupancy shall provide for an expiration date, the number of days in the period from the Opening Date of such Project to such expiration date shall be not less than 133% of the number of days that the Construction Consultant, pursuant to the applicable Opening Date Certificate, estimates it will take to complete the Project Punchlist Items with respect to such Project (assuming reasonable diligence in performing the same).

“Project Costs” means all costs incurred or to be incurred in accordance with the Project Budgets (other than Operating Costs with respect to the Phase I Project incurred from and after the Phase I Opening Date and Operating Costs with respect to the Phase II Project incurred from and after the Phase II Opening Date), which costs shall include, but not be limited to: (a) all costs incurred under the Contracts, (b) Debt Service accruing with respect to Advances made under the Bank Credit Agreement or from the 2014 Notes Proceeds Account to pay Project Costs allocated (i) to either Project under the applicable Project Budget prior to the Phase I Opening Date and (ii) to the Phase II Project under the Phase II Project Budget from and after the Phase I Opening Date, (c) reasonable financing, closing and administration costs related to each Project until the Completion Date for such Project including, but not limited to, insurance costs (including, with respect to directors and officers insurance costs, costs relating to such insurance extending beyond the Phase I Completion Date for such Project), guarantee fees, legal fees and expenses, financial advisory fees and expenses, technical fees and expenses (including, without limitation, fees and expenses of the Construction Consultant and the Insurance Advisor), commitment fees, management fees, and corporate overhead agency fees (including, without limitation, fees and expenses of the Disbursement Agent), interest (other than amounts listed in clause (b) above), taxes (including value added tax), and other out-of-pocket expenses payable by the Company under all documents related to the financing and administration of the Phase I Project until the Phase I Opening Date and the Phase II Project until the Phase II Opening Date, (d) the costs of acquiring Permits for the Phase I Project prior to the Phase I Completion Date and the Phase II Project prior to the Phase II Completion Date, (e) costs incurred in settling insurance claims in connection with Events of Loss and collecting Loss Proceeds at any time prior to the Termination Date, (f) working capital costs incurred in accordance with the Phase I Project Budget prior to the Phase I Opening Date and the Phase II Project Budget prior to the Phase II Opening Date, (g) cash to collateralize 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 exceed \$25,000,000.

“Project Credit Support Providers” means the Construction Guarantor, the Completion Guarantor, the issuers of any Phase I Primary Contractor Payment and Performance Bond and the issuer of any Payment and Performance Bond for the Phase II Primary Contractor.

“Project Documents” has the meaning given in the Bank Credit Agreement.

“Project Intended Uses” means the intended uses of the Projects, as more particularly set forth in Exhibits Q-1 and Q-2 to the Disbursement Agreement.

“Project Liquidity Reserve Account” means the account referenced in Section 2.2.8 of the Disbursement Agreement and established pursuant to the Company Disbursement Collateral Account Agreement.

“Project Punchlist Completion Amount” means, from time to time from and after the Completion Date, the estimated cost to complete all remaining Project Punchlist Items if the owner of the Project were to engage independent, reputable and appropriately experienced and licensed contractor(s) to complete such work and no other work (certified by the Company and the Construction Consultant with respect to each Advance from and after the Completion Date

for such Project in their respective certificates in the form of Exhibits C-1 and C-2 to the Disbursement Agreement).

“Project Punchlist Items” means, with respect to either Project, 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 such Projects (or any Project) for the Project Intended Uses or the ability of the owner or master lessee, as applicable, of any portion of such Projects (or any tenant thereof) to perform work that is necessary or desirable to prepare such portion of such Projects 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 Primary Construction Contracts and all items that are listed on the “punchlists” furnished by the Building Department, the Nevada Department of Transportation or the Clark County Department of Public Works in connection with, or after, the issuance of the Project’s temporary certificate of occupancy as those that must be completed in order for the Building Department to issue such Project a permanent certificate of occupancy.

“Project Schedule” means, collectively, the Phase I Project Schedule and, from and after the Phase II Approval Date, the Phase II Project Schedule.

“Project Security” means all real and personal property which is subject or is intended to become subject to the security interests or liens granted by any of the Security Documents.

“Projections” means the consolidated statements of projected cash flow, projected debt service and projected income of the Company and its consolidated Subsidiaries through the seventh anniversary of the Closing Date (including the Phase I Project and the Phase II Project).

“Protective Advances” means any Advances with respect to (i) the payment of any delinquent taxes or insurance premiums owed by any of the Company or its Affiliates with respect to the Projects or other Mortgaged Property, (ii) the removal of any lien or encumbrance on the Projects or the Mortgaged Property or the defense of the Company’s or any of its Affiliates’ title thereto or of the validity, enforceability, perfection or priority of the liens and security interests granted or purported to be granted pursuant to the Security Documents, (iii) the payment of Project Costs after delivery of a Stop Funding Notice by the Disbursement Agent, or (iv) the repair, maintenance, protection or preservation of the value of the Projects or any portion thereof, including, without limitation, the payment of heating, gas, electric and other utility bills.

“Realized Savings” means, with respect to each Line Item Category, a decrease in the anticipated cost to complete the work contemplated by such Line Item Category.

“Remaining Costs” means, at any given time for any Line Item Category or Line Item (other than the “Construction Contingency” Line Item Category), the “Balance to Complete (Net Amount)” set forth in column N of the Monthly Requisition Report (as in effect from time to time); provided, however, that any Remaining Costs which, after a particular date (such as the Phase I Opening Date), do not constitute Project Costs for such Project in accordance with the

definition of "Project Costs" shall be disregarded for purposes of calculating whether the Project is In Balance.

"Representatives of the Initial Purchasers" means Deutsche Bank Securities Inc. and Banc of America Securities LLC.

"Required Contractor and Architect Advance Certificates" means (a) with respect to the Phase I Project, the Phase I Required Contractor and Architect Advance Certificates and (b) with respect to the Phase II Project, the Phase II Major Contractors Advance Certificates and Phase II Major Architects Advance Certificates.

"Required Scope Change Approval" means, with respect to each proposed Scope Change, each of the following: (a) the consent of the Construction Consultant, and (b) the consent of the Bank Agent.

"Reserved Amounts" means, collectively, the portion, if any, of the Completion Guaranty Deposit Account to be reserved to pay Project Punchlist Items and/or disputed amounts pursuant to clauses (d)(i) and (ii) of the definition of "Completion Guaranty Release Conditions" after giving effect to (a) any amounts then on deposit in the Company's Funds Account and the Bank Proceeds Account or segregated as Reserved Amounts in the Company's Concentration Account and credited to the Construction Tracking Account and (b) any amounts then available under the Bank Revolving Credit Facility to pay Project Costs allocated to the Phase I Project in the Phase I Budget.

"Responsible Officer" means as to any Person, the chief executive officer, president or chief financial officer of such Person or such Person's member if such Person is a member-managed limited liability company, but in any event, with respect to financial matters, the chief financial officer of such Person.

"Retail Facility" means an up to approximately 60,000 square foot retail facility adjoining the Projects on the Site (other than any retail facility included in the Plans and Specifications for the Phase I Project in effect on the Closing Date).

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

"S&P" means Standard & Poor's Ratings Group, a New York corporation, or any successor thereof.

"Scope Change" means any change in the Plans and Specifications or any other change to the design, layout, architecture or quality of the Projects from that which is contemplated on the Closing Date, (unless such change is required by Legal Requirements), including, without limitation, (a) changes to the "Premises and Assumptions" (as defined in the Phase I Primary Construction Contract), (b) approval or submission to the Phase I Primary Contractor of "Drawings" or "Specifications" (each as defined in the Phase I Primary

Construction Contract) that are inconsistent with the Premises and Assumptions, (c) additions, deletions or modifications in the “Work” (as defined in the Phase I Primary Construction Contract) (including, without limitation, the acceptance of any non-conforming “Work” (as defined in the Phase I Primary Construction Contract) pursuant to Section 10.9 of the Phase I Primary Construction Contract), (d) the issuance of a “Construction Change Directive” (as defined in the Phase I Primary Construction Contract) directing a “Change” (as defined in the Phase I Primary Construction Contract) in the work and a proposed basis for adjustments, if any, in the “Guaranteed Maximum Price” (as defined in the Phase I Primary Construction Contract) or “Contract Time” (as defined in the Phase I Primary Construction Contract), or any combination of them, (e) modifications to the “Drawings” (as defined in the Phase I Architect’s Agreement) to the extent the same constitute an “Additional Service” under the Phase I Architect’s Agreement and (f) any other similar changes, modifications or directives entered into or issued under the Phase II Primary Construction Contract or the Phase II Architect’s Agreement.

“Second Shortfall Quarter” has the meaning given in Section 5.1.4(b) of the Disbursement Agreement.

“Secured Parties” means the Bank Agent, the 2014 Notes Indenture Trustee, the Bank Lenders, the 2014 Noteholders, the Collateral Agent, the Nevada Collateral Agent, the counterparties to any Interest Rate Agreements entered into by the Company under the Bank Credit Agreement (to the extent that the Credit Agreement permits such Interest Rate Agreements to be secured) and the Disbursement Agent acting on behalf of any one or more of the foregoing.

“Securities Intermediary” means Deutsche Bank Trust Company Americas, in its capacity as securities intermediary under the Company Disbursement Collateral Account Agreement and the Completion Guaranty Collateral Account Agreement, and Bank of America, N.A., in its capacity as bank under the Local Company Collateral Account Agreements, and its successors in such capacity.

“Security Agreement” means that certain Pledge and Security Agreement, dated as of December 14, 2004, executed by the Company and each other Loan Party, in favor of the Collateral Agent, as the same may be amended, amended and restated, supplemental or otherwise modified from time to time.

“Security Documents” means, collectively and without duplication, the Deeds of Trust, the Security Agreement, the Bank Environmental Indemnity Agreements, the 2014 Notes Environmental Indemnity Agreements, the Collateral Agency Agreement, the IP Security Agreement, the Bank Guarantee, the Completion Guaranty, the Construction Guaranty, each Payment and Performance Bond, the Collateral Account Agreements, the Consents, and any other deeds of trust, security agreements or collateral account agreements entered into by any of the Loan Parties and/or one or more of their direct or indirect Subsidiaries for the benefit of any Secured Party in accordance with the terms of the Financing Agreements or the Intercreditor Agreement.

“Shuttle Easement” means that certain Easement Agreement, dated as of December 14, 2004, by Wynn Golf, as grantor, and the Company, as grantee.

“Site” means all or any portion of the Projects, as described in Exhibit Q-3 to the Disbursement Agreement, and any other real property which is subject to a lien under any Deeds of Trust. The Site includes the Golf Course Land, the Wynn Home Site, the Home Site Land and the Koval Land until such time (if ever) as the release conditions set forth in Section 7.5 of the Bank Credit Agreement and Section 10.03 of the 2014 Notes Indenture shall have been satisfied.

“Site Easements” means the easements appurtenant, easements in gross, license agreements and other rights running for the benefit of the Company and/or appurtenant to the Site, including, without limitation, those certain easements and licenses described in the Title Policy. The Site Easements include the Golf Course Land Easements until such time (if ever) as the release conditions set forth in Section 7.5 of the Bank Credit Agreement and Section 10.03 of the 2014 Notes Indenture shall have been satisfied.

“Soft Costs” means:

(a) with respect to the Phase I Project, the Project Costs set forth in the Phase I Project Budget under the following Line Items or Line Item Categories:

- (i) Capitalized Interest and Commitment Fees;
- (ii) Pre-Opening Expense;
- (iii) Transaction Fees and Expenses;
- (iv) Design and Engineering Fees;
- (v) Working Capital Requirements at Opening;
- (vi) Entertainment Production;
- (vii) Insurance/Utilities/Security;
- (viii) Property Taxes;
- (ix) Government Approvals and Permits; and
- (x) Miscellaneous Operating Costs.

(b) with respect to the Phase II Project, the Line Items and Line Item Categories set forth in the Phase II Project Budget delivered by the Company pursuant to Section 3.4.2 and designated by the Company to be associated with Soft Costs (which designation shall be reasonably acceptable to the Disbursement Agent and the Construction Consultant and substantially similar to those designated as Soft Costs for the Phase I Project under clause (a) above).



“Stop Funding Notice” has the meaning given in Section 2.3.2(b) of the Disbursement Agreement.

“Stop Funding Request” has the meaning given in Section 2.3.3(b) of the Disbursement Agreement.

“Subcontract” means any subcontract or purchase order entered into with any Subcontractor.

“Subcontractor” means any direct or indirect subcontractor of any tier under any Contract.

“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 directors, managers or trustees of such corporation, partnership, limited liability company 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. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Disbursement Agreement shall refer to a Subsidiary or Subsidiaries of the Company.

“Summary Anticipated Cost Reports” means, collectively, the Phase I Summary Anticipated Cost Report and, from and after the Phase II Approval Date, the Phase II Summary Anticipated Cost Report.

“Tax” means any federal, state, local, foreign or other tax, levy, impost, fee, assessment or other government charge, including without limitation income, estimated income, business, occupation, franchise, property, payroll, personal property, sales, transfer, use, employment, commercial rent, occupancy, franchise or withholding taxes, and any premium, including without limitation interest, penalties and additions in connection therewith.

“Termination Date” means:

(a) if the Phase II Approval Date shall have not occurred on or prior to the Phase II Revolving Commitment Sunset Date, the later of (i) the Final Completion Date of the Phase I Project and (ii) the Phase II Revolving Commitment Sunset Date; and

(b) if the Phase II Approval Date shall have occurred on or prior to the Phase II Revolving Commitment Sunset Date, the later of (i) the Final Completion Date of the Phase I Project and (ii) the Final Completion Date of the Phase II Project.

“Third Party Claims” has the meaning given in Section 10.3 of the Disbursement Agreement.

“Title Insurer” means Commonwealth Land Title Company.

“Title Policies” means, collectively, the policies of title insurance issued by Title Insurer as of the Closing Date, as provided in Section 3.1.26 of the Disbursement Agreement, including all amendments thereto, endorsements thereof and substitutions or replacements therefor.

“2014 Noteholders” means the holders of the 2014 Notes from time to time.

“2014 Notes” means, collectively, (i) the 6-5/8% First Mortgage Notes Due 2014 in the aggregate principal amount of \$1.3 billion and (ii) any Additional Notes, in each case, including any exchange notes relating thereto and, in each case, issued by the Company and Capital Corp., as co-issuers, pursuant to the 2014 Notes Indenture.

“2014 Notes Environmental Indemnity Agreements” means those certain Indemnity Agreements dated as of December 14, 2004 and made by each of the Company, Wynn Golf and Wynn Sunrise for the benefit of the 2014 Notes Indenture Trustee and certain other indemnified parties.

“2014 Notes Indenture” means that certain First Mortgage Notes Indenture, dated as of December 14, 2004, among the Company, Capital Corp., the guarantors signatory thereto, and the 2014 Notes Indenture Trustee, as amended by that certain First Supplemental Indenture, dated as of June 29, 2005, and as further amended, amended and restated, supplemented or otherwise modified from time to time.

“2014 Notes Indenture Trustee” means U.S. Bank National Association, in its capacity as the initial trustee under the 2014 Notes Indenture, and its successors in such capacity.

“2014 Notes Proceeds” means, collectively, (a) the amounts deposited in the 2014 Notes Proceeds Account on the Closing Date and (b) the net proceeds of any Additional Notes deposited in the Additional Notes Sub-Account on the date of issuance of such Additional Notes.

“2014 Notes Proceeds Account” means the account referenced in Section 2.2 of the Disbursement Agreement and established pursuant to the Company Disbursement Collateral Account Agreement and any sub-account thereof, including the Additional Notes Sub-Account.

“Unincorporated Materials” has the meaning given in Section 3.2.19 of the Disbursement Agreement.

“Water Access Easement” means that certain Access Easement Agreement, dated as of December 14, 2004, by Wynn Golf, as grantor, and the Company, as grantee.

“Wynn Golf” means Wynn Golf, LLC, a Nevada limited liability company.

“Wynn Golf Deed of Trust” means that certain Deed of Trust, dated as of December 14, 2004, between Wynn Golf, as trustor, and Nevada Title Company, as trustee, for the benefit of the Collateral Agent, as beneficiary.

“Wynn Golf Permitted Encumbrances” has the meaning given in Section 3.1.26 of the Disbursement Agreement.

“Wynn Home Site” means the approximately two acre tract of land located on the Golf Course where Stephen A. Wynn’s personal residence may be built after release of the Wynn Home Site in accordance with Section 7.5 of the Bank Credit Agreement and Section 10.03 of the 2014 Notes Indenture.

“Wynn Las Vegas Deed of Trust” means that certain Deed of Trust, dated as of December 14, 2004, between the Company, as trustor, and Nevada Title Company, as trustee, for the benefit of the Collateral Agent, as beneficiary.

“Wynn Las Vegas Permitted Encumbrances” has the meaning given in Section 3.1.26 of the Disbursement Agreement.

“Wynn Resorts” means Wynn Resorts, Limited, a Nevada corporation.

“Wynn Show Performers” means Wynn Show Performers, LLC, a Nevada limited liability company.

“Wynn Sunrise” means Wynn Sunrise, LLC, a Nevada limited liability company.

“Wynn Sunrise Deed of Trust” means that certain Deed of Trust, dated as of December 14, 2004, between Wynn Sunrise, as trustor, and Nevada Title Company, as trustee, for the benefit of the Collateral Agent, as beneficiary.

“Wynn Sunrise Land” means the land owned by Wynn Sunrise, as more particularly described in Part B of Exhibit Q-3 to the Disbursement Agreement.

“Wynn Sunrise Land Easements” means the easements appurtenant, easements in gross, license agreements and other rights running for the benefit of the Company or Wynn Sunrise and/or appurtenant to the Wynn Sunrise Land, including, without limitation, those certain easements and licenses described in the Title Policy.

“Wynn Sunrise Permitted Encumbrances” has the meaning given in Section 3.1.26 of the Disbursement Agreement.

## **RULES OF INTERPRETATION**

The following rules of interpretation shall apply to the Disbursement Agreement and this Exhibit A unless otherwise required by the context or as specifically provided:

1. Words in the singular include the plural and words in the plural include the singular.

2. The word “or” is not exclusive.

3. A reference to a Legal Requirement includes any amendment or modification of such Legal Requirement, and all regulations, rulings and other Legal Requirements promulgated under such Legal Requirement unless, in any case, otherwise provided in such statute or the Disbursement Agreement.

4. A reference to a Person includes its permitted successors and permitted assigns.

5. Accounting terms have the meanings assigned to them by generally accepted accounting principles in the United States of America, as in effect from time to time, as applied by the accounting entity to which they refer.

6. A reference to “including” means including without limiting the generality of any description preceding such term.

7. A reference in the Disbursement Agreement to an article, section, exhibit, schedule, annex, part, clause, paragraph, appendix or other attachment is to the article, section, exhibit, schedule, annex, part, clause, paragraph, appendix or other attachment of such document unless otherwise indicated in such document.

8. References to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean, unless specifically indicated, such document, instrument or agreement as in effect on the date hereof, notwithstanding any termination, expiration or amendment of such agreement unless all of the parties to the Disbursement Agreement are signatories to such amendment or unless the signatories of such amendment have the right to amend the Disbursement Agreement without the consent of the other parties to the Disbursement Agreement, in which case any references shall be to such agreement as so amended.

9. The words “hereof,” “herein” and “hereunder” and words of similar import when used in the Disbursement Agreement shall refer to such document as a whole and not to any particular provision of such document.

10. References to “days” shall mean calendar days, unless the term “Banking Days” shall be used.

11. The Financing Agreements are the result of negotiations among, and have been reviewed by, the Company, the Company's subsidiaries, the Funding Agents, the Lenders and the Disbursement Agent. Accordingly, the Financing Agreements shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against any such Person.

12. Words referring to a gender include any gender.

13. The headings, subheadings and tables of contents are solely for convenience of reference and shall not constitute a part of any such document nor shall they affect the meaning, construction or effect of any provision thereof nor shall they modify, define, expand or limit any of the terms or provisions thereof.

14. A reference to a particular section, paragraph or other part of a particular statute shall be deemed to be a reference to any other section, paragraph or other part substituted therefor from time to time unless otherwise specified.

15. If a capitalized term describes, or shall be defined by reference to, a document, instrument, or agreement that has not as of any particular date been executed and delivered and such document, instrument or agreement is attached as an exhibit to the Disbursement Agreement, such reference shall be deemed to be to such form and, following such execution and delivery and subject to paragraph 8 above, to the document, instrument or agreement as so executed and delivered.

## AGREEMENT

This agreement (this "Agreement") is made and entered into as of the 4th day of March, 2006 by and among Wynn Resorts, Limited, a corporation organized and existing under the laws of the State of Nevada ("WRL"), Wynn Resorts (Macau) SA, a corporation organized and existing under the laws of the Macau Special Administrative Region ("Wynn Macau"), and Publishing and Broadcasting, Ltd., a corporation organized and existing under the laws of Australia ("PBL"). WRL, Wynn Macau and PBL are sometimes referred to individually as a "Party" and collectively as "Parties".

### RECITALS

A. Wynn Macau is a wholly owned indirect subsidiary of WRL.

B. Wynn Macau is the concessionaire under that certain Concession Contract for the Operation of Games of Chance or Other Games in Casinos in the Macau Special Administrative Region dated June 24, 2002 (as amended from time to time) for the operation of Games of Fortune or Chance or other Casino Games in register no. 337 and 338 of the Notarial Division of the Macau Director of Finance Department, a copy of which is attached hereto (the "Concession Agreement"). The Concession Agreement was granted by the Macau Special Administrative Region (together with all applicable governmental agencies and authorities having jurisdiction over any transactions contemplated by this Agreement or the Subconcession (as defined herein), the "Macau Government").

C. Pursuant to Article 75 of the Concession Agreement and subject to Macau Government authorization and approval, Wynn Macau is permitted to grant to third parties subconcessions which, with respect to this Agreement, shall be a binding agreement entered into by Wynn Macau (as concessionaire under the Concession Agreement), a limited liability company to be incorporated in Macau by and wholly owned by PBL ("PBL Macau") and the Macau Government comprising a set of instruments from which PBL Macau will derive certain rights and take on certain duties and obligations, pursuant to which PBL Macau shall be entitled to operate casinos, Games of Fortune or Chance and other Casino Games in the Macau SAR as an autonomous subconcessionaire (collectively, a "Subconcession").

D. This Agreement sets out the agreement of WRL to cause Wynn Macau to grant or to take all action necessary in accordance with the terms of this Agreement to cause the Macau Government to grant a Subconcession to PBL Macau, and for PBL or PBL Macau to pay or procure the payment to Wynn Macau of the Purchase Price (as defined below) and to cause PBL Macau to take the grant of the Subconcession, on the further terms and subject to conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties hereto, intending to be legally bound hereby, agree that the foregoing recitals are true and correct and as follows:

## ARTICLE I

### DEFINITIONS

In addition to other terms defined elsewhere in this Agreement, the following terms will be defined as follows:

1.1 "City of Dreams" means the project for a hotel, casino and gaming lounge in Cotai, Macau being development by an affiliate of PBL, Melco Hotels and Resorts (Macau) Limited.

1.2 "Closing" means the consummation of the transactions contemplated by this Agreement.

1.3 "Closing Date" means the date upon which the Closing occurs as set forth in Section 3.1.

1.4 "Control" and "Controlled" mean, in relation to a corporation, the ability, directly or indirectly, to direct or cause the direction of the management and policies of such corporation, whether through the ownership of a majority of securities of that corporation or otherwise.

1.5 "Crown Macau" means the hotel with a casino and gaming lounge being built by Great Wonders Investments Limited in Taipa, Macau SAR.

1.6 "Deposit" means the sum of One Hundred Million Dollars (\$100,000,000), which shall be applied to the Purchase Price as set forth herein.

1.7 "Dollars" or "\$" means United States dollars.

1.8 "Escrow Account" means the account at Bank of America (Hong Kong) or a financial institution to be mutually agreed between the Parties where the Deposit will be held in accordance with the terms of an escrow agreement consistent with the terms of this Agreement to be entered into by Wynn Macau, WRL, PBL and the financial institution acting as escrow agent.

1.9 "Group Companies" means any corporation Controlled by WRL.

1.10 "Purchase Price" means Nine Hundred Million Dollars (\$900,000,000).

## ARTICLE II

### PURCHASE AND SALE

2.1 Purchase and Sale. Upon and subject to the terms and conditions set forth in this Agreement, WRL and Wynn Macau agree to use commercially reasonable efforts on behalf of PBL to cause the Macau Government to issue all necessary authorizations and approvals for Wynn Macau and the Macau Government to grant the Subconcession to PBL Macau and subject to such authorizations and approvals, to cause, Wynn Macau and the Macau Government to enter into and execute all documentation necessary to evidence the grant of the Subconcession and for the same to come into force and legal effect. PBL agrees to pay to Wynn Macau, or its designee, the Purchase Price as set forth in Section 2.2 at the Closing.

2.2 Purchase Price. The Purchase Price is payable by PBL as follows:

(a) Payment of Deposit. On or before March 13, 2006, PBL shall pay the Deposit into the Escrow Account for the benefit of Wynn Macau (save that interest shall be paid to PBL at Closing other than as provided in Section 6.2).

(b) Payment of Balance of the Purchase Price. At Closing, the Deposit shall be released to Wynn Macau, or its designee, and the remaining sums due, Eight Hundred Million Dollars (\$800,000,000), shall be paid to Wynn Macau in payment of the Purchase Price, by wire transfer in immediately available funds to an account designated by Wynn Macau. For the avoidance of doubt, Wynn Macau shall receive no less than Nine Hundred Million Dollars (\$900,000,000) at Closing. Upon Closing, PBL shall be entitled to all interest earned on the Deposit through the Closing Date.

**ARTICLE III**

**CLOSING**

3.1 Closing. Subject to the terms and conditions of this Agreement, the Closing shall be at 10:00 am at the offices of Wynn Macau in the Macau SAR, or such other location as the Parties may mutually agree, within one business day after (a) the Subconcession is issued by either Wynn Macau or the Macau Government and any consents, approvals, confirmations, notifications or other actions of the Macau Government required to bring the Subconcession into force and legal effect have been received or done, and (b) all conditions to Closing set forth in Article V have been satisfied or waived by mutual agreement. The Parties agree to use all reasonable efforts to expedite the required Macau Government approvals and authorizations so that the Closing Date may occur as soon as practicable after the date of this Agreement.

3.2 Deliveries at Closing. At Closing, each of the Parties shall make the deliveries set forth in this Section 3.2.

(a) Wynn Macau shall deliver to PBL:

(i) evidence in writing from the Macau Government that Wynn Macau has obtained all necessary approvals and authorizations from the Macau Government required to permit grant of the Subconcession to PBL; and

(ii) a certificate or other document evidencing the issue of the Subconcession, together with all such other deeds, endorsements, assignments and other instruments and agreements that are reasonably necessary to evidence the Subconcession is in force and legal effect and consummation of the transaction contemplated by this Agreement.

(b) PBL shall deliver to Wynn Macau or its designee:

(i) the Purchase Price, including the Deposit, from the Escrow Account to Wynn Macau or its designee, as set forth in Section 2.2(b);

(ii) evidence in writing from the Macau Government that PBL Macau has obtained all necessary approvals and authorizations from the Macau Government required to permit PBL Macau to be a subconcessionaire; and

(iii) all such other deeds, endorsements, assignments and other instruments and agreements that are reasonably necessary to evidence the consummation of the transaction contemplated by this Agreement.

3.3 Closing Costs. Each Party shall pay and be solely responsible for its own transaction fees and attorneys' fees and expenses incurred in connection with the transactions contemplated hereby.

**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES**

4.1 WRL and Wynn Macau Representations and Warranties. WRL and Wynn Macau hereby represent and warrant to PBL that the following statements are true and correct as of the date of this Agreement and shall be true and correct as of the Closing Date:

(a) WRL is a corporation duly organized, validly existing and in good standing in the State of Nevada. Wynn Macau is a corporation duly organized, validly existing and in good standing under the laws of Macau.



(b) This Agreement and all documents executed by WRL and Wynn Macau pursuant to this Agreement (i) are duly authorized, executed and delivered and (ii) are legal, valid and binding obligations of WRL or Wynn Macau, as applicable, enforceable against WRL or Wynn Macau in accordance with their terms, except as the enforceability hereof and thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and general principles of equity. WRL has received the approval of its board of directors for the execution, delivery and performance of this Agreement.

(c) There is no agreement to which either WRL or Wynn Macau is a party or binding on WRL or Wynn Macau which is in conflict with this Agreement, or which challenges or impairs the ability of WRL or Wynn Macau to execute or perform its obligations under this Agreement.

(d) Neither WRL nor Wynn Macau has made a general assignment for the benefit of creditors nor has any voluntary or involuntary bankruptcy been filed by or against them.

(e) There is no litigation or any other proceeding pending against WRL or Wynn Macau which, if decided adversely to either WRL or Wynn Macau, would prevent WRL or Wynn Macau from executing this Agreement or consummating the transactions contemplated hereby.

(f) There is no litigation or any other proceeding pending against or with respect to the Concession.

(g) WRL and Wynn Macau have made or ordered no payment, taken no action, and have 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").

(h) The Concession Agreement is in full force and effect, and Wynn Macau is in compliance with all of its terms.

(i) To its knowledge, there is no investigation pending or threatened against Wynn Macau by the Government of Macau, other than in the ordinary course of the government's regulatory powers.

4.2 PBL's Representations and Warranties. PBL hereby represents and warrants to WRL and Wynn Macau that the following statements are true and correct as of the date of this Agreement and shall be true and correct as of Closing Date:

(a) PBL is a corporation duly organized, validly existing and in good standing under the laws of Australia. Upon formation, PBL Macau will be a corporation duly organized, validly existing and in good standing under the laws of Macau, wholly owned by PBL to the Closing Date;

(b) This Agreement and all documents executed by PBL pursuant to this Agreement (i) are duly authorized, executed and delivered by PBL; and (ii) are legal, valid and binding obligations of PBL, enforceable against PBL in accordance with their terms, except as the enforceability hereof and thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and general principles of equity. PBL has obtained the approval of its board of directors to the terms of this Agreement and, other than as specifically provided herein, does not need the consent or approval of any person to fulfill its obligations under this Agreement.

(c) There is no agreement to which PBL is a party or binding on PBL which is in conflict with this Agreement, or which challenges or impairs PBL's ability to execute or perform its obligations under this Agreement.

(d) PBL 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 FCPA.

## **ARTICLE V**

### **CONDITIONS**

5.1 Conditions to Closing for WRL and Wynn Macau. In addition to other conditions precedent set forth herein, the obligation of WRL and Wynn Macau to proceed to Closing are expressly conditioned on the satisfaction of each of the following:

(a) this Agreement shall not have been terminated in accordance with the terms hereof;

(b) all representations and warranties of PBL are true and correct; and

(c) the Macau Government has issued the Subconcession and all necessary approvals and authorizations required for Wynn Macau's grant of the Subconcession to PBL Macau.

5.2 PBL's Conditions. In addition to the other conditions precedent set forth in herein, the obligation of PBL to proceed to Closing is conditioned on the satisfaction of each of the following:

(a) this Agreement shall not have been terminated in accordance with the terms hereof;

(b) all representations and warranties of WRL and Wynn Macau are true and correct; and

(c) the Macau Government has issued the Subconcession and all necessary approvals and authorizations required for PBL Macau to be a subconcessionaire in Macau SAR.

## **ARTICLE VI**

### **TERMINATION**

6.1 Termination. The transactions contemplated in this Agreement may be terminated or abandoned at any time prior to the Closing Date:

(a) upon the mutual written consent of the Parties;

(b) by PBL if WRL or Wynn Macau shall have breached in any material respect any of their representations, warranties or other agreements contained in this Agreement, which breach cannot be or has not been cured within 10 days after the giving of notice by PBL specifying such breach; and

(c) by WRL or Wynn Macau if PBL shall have breached in any material respect any of its representations, warranties or other agreements contained in this Agreement, which breach cannot be or has not been cured within 10 days after the giving of notice by WRL or Wynn Macau specifying such breach.

6.2 Effect of Termination. If this Agreement is terminated by WRL or Wynn Macau pursuant to Section 6.1(c) for a material breach by PBL or PBL Macau, Wynn Macau shall be entitled to retain the Deposit as its sole remedy against PBL (its officers, directors, or employees) or PBL Macau for such breach. If this Agreement is terminated pursuant to Section 6.1 (a) or (b), the Deposit shall be returned to PBL. Upon any termination hereunder no Party shall have any further rights or obligations to each other or under this Agreement.

6.3 Willful Default by WRL or Wynn Macau. If WRL or Wynn Macau willfully defaults hereunder, PBL shall have the right to pursue other equitable relief or mandatory order of judicial authority to enforce the obligations of WRL and Wynn Macau hereunder; provided, however, that under no circumstances will WRL or Wynn Macau be liable for any punitive or exemplary damages, whether by statute, in court or otherwise.

## ARTICLE VII

### SUBCONCESSION PROVISIONS

7.1 Formation of a Macau SA Company. As soon as practicable, PBL agrees to form PBL Macau, a limited liability company organized under the laws of the Macau SAR to be the subconcessionaire pursuant to the Subconcession. PBL shall maintain 100% ownership in PBL Macau until the Closing Date.

7.2 Subconcession Provisions. The Parties agree that the Subconcession shall be substantially in the form of the Concession Agreement and shall specifically include the following provisions:

(a) Any breach or default by PBL, its successors or assigns under the Subconcession shall specifically not constitute a breach or default or any cause for termination under the Concession.

(b) Wynn Macau shall not be responsible for any payments due to the Macau Government by PBL, its successors or assigns under the Subconcession.

(c) Any breach or default by Wynn Macau under the Concession shall specifically not constitute a breach or default or any cause for termination under the Subconcession.

(d) PBL shall not be responsible for any payments due to the Macau Government by Wynn Macau under the Concession.

(e) The Subconcession shall license PBL Macau to conduct all forms of Games of Fortune or Chance or other Casino Games in the Macau SAR, as specified in the third paragraph of Article 3 of the law No. 16/2001 of the laws of Macau and other form of games licensed in accordance with the fifth paragraph of that article and gaming as prescribed by the laws of Macau on any electric or mechanical gaming machines, including slot machines, at the Crown Macau and the City of Dreams and at such other places in Macau as agreed by the Government of Macau from time to time and provide PBL Macau with rights and benefits substantially similar to those enjoyed by Wynn Macau under the Concession to the extent that Wynn Macau may lawfully grant the same under the Concession; provided that if the Subconcession does not permit further subconcessions or management by PBL Macau of casinos owned by others (excluding PBL and its current partners), it shall nevertheless be deemed acceptable to PBL and PBL Macau.

(f) The Subconcession shall be governed by the laws and regulations of the Macau Government and PBL Macau shall submit thereunder to the supervision and control of the Macau Government, its Gaming Inspection and Coordination Bureau and Finance Department and other regulatory or administrative bodies.

(g) The Subconcession shall be for a period from grant equal to the remaining term of the Concession, that is until 26 June 2022.

(h) The Subconcession will be prepared by or on behalf of PBL Macau and will contain representations, covenants, obligations, undertakings and indemnities to be given by PBL Macau to the Macau Government which are substantially similar to the representations, obligations, undertakings and indemnities of Wynn Macau under the Concession, or contain equivalent terms, usual for similar subconcessions and reasonably acceptable to PBL and PBL Macau in their reasonable commercial judgment and not materially adverse to the interests of Wynn Macau under the Concession; provided that any terms similar to those agreed by Wynn Macau in the Concession shall be deemed reasonable.

(i) The terms of the Subconcession in relation to investment plans, premiums, contributions, taxes, deposits, guarantees and other financial obligations of PBL Macau shall be as required by the Macau Government and reasonably agreed by PBL Macau in its reasonable commercial judgment; provided that any terms similar to those agreed by Wynn Macau in the Concession shall be deemed reasonable.

7.4 Cooperation. Each Party shall take all reasonable action necessary to cause the Macau Government to issue the Subconcession on the terms set forth herein at the earliest date practicable, PBL on behalf of PBL Macau specifically agrees to satisfy all conditions relating to probity, share capital and qualification set forth in the Concession Agreement necessary to qualify as a subconcessionaire in Macau.

7.5 Concession. Neither of WRL nor Wynn Macau shall be required to make any payment to effect the issuance of the Subconcession or agree to any adverse change or modification in the Concession to fulfill its obligations under this Agreement.

## ARTICLE VIII

### GENERAL PROVISIONS

8.1 Exclusivity. From the date of this Agreement until the Closing or earlier termination of this Agreement as provided herein (the "Exclusivity Period"), WRL and Wynn Macau shall not (and shall ensure that their Group Companies do not, directly or indirectly): (a) enter into, continue or participate in discussion or negotiations with anyone other than PBL, PBL Macau and the Macau Government, in relation to a subconcession other than the one contemplated hereby; (b) solicit any negotiations for the foregoing; or (c) do anything which is, or may be, inconsistent with the grant of the Subconcession contemplated hereby. WRL and Wynn Macau will ensure that their respective directors, officers, and employees comply with the terms of this Section 8.1.

8.2 Announcement and Confidentiality. Immediately following execution and delivery of this Agreement, WRL, Wynn Macau and PBL shall make all notifications required by their respective stock exchanges and regulatory bodies in respect of the matters dealt with in this Agreement. The Parties shall agree on the substance and timing of press releases announcing the terms of this Agreement. The Parties also agree to cooperate with respect to all separate public announcements, including to the extent possible, giving each other prior notice of any future announcements.

Each Party acknowledges that, during the course of negotiation, it may receive confidential information relating to the other or its business or plans. Each party agrees to keep (a) such information (other than information in the public domain or known to the other party at the time of disclosure), (b) the existence and terms of this Agreement, and (c) their discussion on the matters specified in this Agreement confidential and will not disclose the same to any third party without the prior written consent of the other, unless such disclosure (i) is compelled by law or any competent authority (in which case the disclosing party will use its best endeavors to advise the other party of the proposed disclosure before making it), or (ii) is to its advisors and partners on a need to know basis (in which case the party will obtain from such employees or

advisors or partners a confidentiality undertaking similar in terms to this clause). Notwithstanding the foregoing, the Parties acknowledge that, as a public company, WRL has obligations to file notification and a copy of this Agreement with the Securities and Exchange Commission. In addition, the Parties agree that Steve Wynn shall notify the Chief Executive of the Macau Government and that Wynn Macau will comply with all notifications required by the Concession Agreement.

8.3 Attorneys' Fees. In any action between the Parties hereto seeking enforcement of any of the terms and provisions of this Agreement, or in connection with the transaction contemplated by this Agreement, the prevailing Party in those actions shall be awarded, in addition to costs, damages, injunctive or other relief, its actual costs and expenses incurred in that action including, but not limited to, its reasonable attorneys' fees.

8.4 Notices. All notices, demands, and other communications required or permitted under this Agreement (each, a "Notice") will be in writing and, at the option of the notifying Party, will be either (a) personally delivered, (b) transmitted by certified or registered mail or reputable international courier, postage prepaid, return receipt requested or (c) transmitted by telefax, answerback requested, to the appropriate Party, to the address set out under such Party's name and signature on the last page of this Agreement. The effective date of any Notice will be deemed to be (i) upon receipt, if delivered personally, (ii) the date of receipt, if mailed or sent by courier, or (iii) twenty-four (24) hours after transmission by telefax with confirmed answerback.

8.5 Purchase and Sale. The Parties hereto intend the transactions contemplated by this Agreement to be a purchase and sale of the Subconcession by Wynn Macau to PBL Macau. Upon termination of the Subconcession in accordance with its terms or otherwise, property associated therewith that reverts to the Grantor (to be defined in the Subconcession as the Macau Special Administrative Region) shall revert to the Macau Government. If required to achieve purchase and sale treatment, the parties agree to modify the terms of this Agreement as reasonably necessary, provided that the basic economic terms shall remain unchanged.

8.6 Assignment; Successors. No Party hereto shall assign its rights under this Agreement without the prior written consent of the other Parties, which consent may be withheld in any Party's sole and absolute discretion. Subject to the foregoing, this Agreement shall be binding upon the Parties and their respective heirs, representatives and permitted assigns.

8.7 No Third Party Beneficiaries. No Party other than the Parties to this Agreement and PBL Macau shall have or acquire any rights under this Agreement or any provision hereof by virtue of the Parties' entering into this Agreement.

8.8 Entire Agreement; Amendment. This Agreement contains all of the agreements of the Parties with respect to the subject matter hereof. All prior or contemporaneous agreements or understandings, oral or written, are merged into this Agreement and shall not be effective for any purpose. No provision of this Agreement may be amended or modified except by an agreement, in writing, signed by the Parties or their respective successors-in-interest and expressly stating that it is an amendment of this Agreement.

8.9 Drafting Presumption. This Agreement will be construed fairly as to each party regardless of which party drafted it.

8.10 Further Assurances. Each of the Parties to this Agreement agrees to execute and deliver such other documents and to take such other action as may be necessary or convenient to consummate the purpose and subject matter hereof.

8.11 Headings. The headings in this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement.

8.12 Severability. If any paragraph, section, sentence, clause or phrase contained in this Agreement becomes or is held by any court of competent jurisdiction to be null or void or against public policy, the remaining paragraphs, sections, sentences, clauses or phrases contained in this Agreement shall not be affected thereby.

8.13 Governing Law. This Agreement is executed in and shall be governed by the laws of Hong Kong without giving effect to the principles of conflicts of law thereof.

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

8.15 Waiver. The waiver by any Party of the performance or time for performance of any obligation required to be performed under this Agreement shall not be considered a waiver of any other obligation or time for performance thereof.

8.16 Exclusive Jurisdiction and Venue. Each of PBL, WRL and Wynn Macau hereby agree that exclusive venue for actions commenced under this Agreement shall be the federal courts in Clark County, Nevada and each Party agrees to submit to personal jurisdiction in Clark County, Nevada in any action or proceeding arising out of this Agreement and, in furtherance of such agreement, each Party hereby agrees and consents that, such venue and jurisdiction are proper, without limiting other methods of obtaining jurisdiction, personal jurisdiction over each Party in any such action or proceeding may be obtained within or without the jurisdiction of any court located in Nevada and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon each Party by registered or certified mail to or by personal service at the last known address of each Party, whether such address be within or without the jurisdiction of any such court.

8.17 TRIAL BY JURY WAIVER. TO THE EXTENT PERMITTED BY LAW, WRL, WYNN MACAU AND PBL EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF WRL, WYNN MACAU AND PBL WITH RESPECT TO THIS AGREEMENT, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, WRL, WYNN MACAU, AND PBL HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY.

*The remainder of this page intentionally left blank. Signatures follow on next page.*

Wynn Resorts, Limited

By: /s/ Stephen A. Wynn  
Name: Stephen A. Wynn  
Its: Chief Executive Officer

Address: 3131 Las Vegas Boulevard South  
Las Vegas, NV 89109  
Attention: President, with a copy to General Counsel

Wynn Resorts (Macau) SA

By: /s/ Stephen A. Wynn  
Name: Stephen A. Wynn  
Its: Chairman

Address: 335-341 Alameda Dr. Carlos d'Assumpcao  
9<sup>th</sup> Floor, Hotline Center  
Macau SAR  
Attention: President

Publishing and Broadcasting, Ltd.

By: /s/ James D. Packer  
Name: James D. Packer  
Its: Chairman

Address: Level 2, 54 Park Street  
Sydney NSW 2000  
Australia  
Attention: General Counsel





**CONCESSION CONTRACT FOR THE OPERATION  
OF GAMES OF CHANCE OR OTHER GAMES IN CASINOS  
IN THE MACAU SPECIAL ADMINISTRATIVE REGION**

On the 24th of June of the year 2002 in Macau and at the Seat of the Government of the Macau Special Administrative Region, at Avenida da Praia Grande, before me, Chu lek Chong, licensed, 2<sup>nd</sup> class technician of the Juridical Advisory Nucleus of the Finance Services Bureau, as alternate private notary of this Bureau in the absence of the head of this office, having been appointed by Dispatch number 216/2000 of the Head of the Executive, of 8 November, before me appeared as Parties:

**FIRST PARTY: The Macau Special Administrative Region**, represented by the Chief Executive, Ho Hau Wah, married, with professional address in Macau, at the Government House of the Macau Special Administrative Region, located at Avenida da Praia Grande, with the capacity and powers conferred for the present act by Article 45 of the Basic Law of the Macau Special Administrative Region.

**SECOND PARTY: Wynn Resorts (Macau), S.A.** with head office in Macau, at Avenida da Amizade, number 918, “World Trade Centre” building, 8<sup>th</sup> floor “C”, registered at the Commercial and Automobile Central Registry Office under the number 14917, represented in this present act by its director Stephen Alan Wynn, married and residing at One Shadow Creek Drive, Las Vegas North, State of Nevada, United States of America, the capacity and powers of whom I have verified by certificate issued by the above mentioned Central Registry Office, which I have filed.

I verified the identity of the Parties by Passport No. 055142925, issued on 20<sup>th</sup> of January of 1998, by the San Francisco Passport Agency of United States of America. And for the first party, with the indicated capacity and powers, the following was stated:

A public tender was opened by Dispatch number 217/2001 of the Chief Executive, for the granting of 3 (three) concessions for the operation of games of chance or other games in casinos;

The public tender for the granting of 3 concessions for the operation of games of chance or other games in casinos had, as a first stage, the opening of the proposals for awarding, that was divided into two phases – the opening of the outward wrappings which were marked on the exterior with the indication “Documentos” and

the opening of the outward wrappings which were marked on the exterior the indication “Propostas”, which was followed by a phase of consultations for the presentation and analysis of the proposals for awarding, and ended with the preparation of a Documented Report, based on which the Chief Executive provisionally awarded the concessions for the operation of games of chance in casinos which were put up for tender;

“Wynn Resorts (Macau), S.A.” hereinafter designated as the concessionaire, was provisionally awarded by Dispatch number 26/2002 of the Chief Executive, one of the concessions for the operation of games of chance or other games in casinos, that were the subject of the tender;

The concessionaire deposited a bank guarantee to guarantee the fulfilment of its legal or contractual obligations, as per article 84, number 1, of Administrative Rule number 26/2001.

Evidence was produced by the concessionaire to the Commission of the first public tender for the granting of concessions for the operation of games of chance in casinos that its capital stock, amounting to not less than MOP 200,000,000.00 (two hundred million patacas), is totally paid up in money and deposited in a local credit institution or in a branch or subsidiary of a credit institution authorized to operate in the Macau Special Administrative Region, under the terms of article 82, number 5, of Administrative Rule number 26/2001;

The minutes of the present concession contract for the operation of games of chance or other games in casinos in the Macau Special Administrative Region was approved by the concessionaire;

The concessionaire, the shareholders holding 5% or more of its capital stock and its directors have been submitted to a suitability verification process, which led to the preparation of a report stating their suitability;

The concessionaire was submitted to verification process of its financial capacity to undertake a concession for the operation of games of chance or other games in casinos, which led to the preparation of a report stating that it has an adequate financial capacity;

By Dispatch number 142/2002 of the Chief Executive, “Wynn Resorts (Macau), S.A.” was awarded one of the concessions for the operation of games of chance or other games in casinos that were the subject of tender.

And both Parties in their respective capacities said that the present administrative concession contract for the operation of games of chance or other games in casinos is mutually accepted and reciprocally agreed, being ruled by the conditions hereinafter described.

**CHAPTER I**  
**Object, type and term of the concession**

**Clause One**  
**Object of the concession**

ONE – The object of the concession awarded by the present concession contract is the operation of games of chance or other games in casinos in the Macau Special Administrative Region of the People’s Republic of China, hereafter designated as the Macau Special Administrative Region or the grantee.

TWO – The concession does not cover the operation of:

- 1) Mutual betting;
- 2) Operations offered to the public except as provided for in number 7 of article 3 of Law number 16/2001;
- 3) Interactive games;
- 4) Games of chance or any other type of gaming, betting or operations on board ship or aircraft, except as established in paragraph 1) of number 3 and number 4 of article 5 of Law number 16/2001.

**Clause Two**  
**Objectives of the concession**

The concessionaire is committed to:

- 1) Ensure the adequate operation and management of games of chance or other games in casinos;
- 2) Employ in the management and operation of games of chance or other games in casinos, solely persons suitable for those functions and for assuming those responsibilities;
- 3) Manage and operate the games of chance or other games in casinos in a fair and honest manner, free of criminal influence; and
- 4) Safeguard and protect the interests of the Macau Special Administrative Region in the receiving of taxes resultant from the operation of their casinos and other gaming areas.

**Clause Three**  
**Applicable Law and proper jurisdiction**

ONE – The present concession contract is exclusively governed by the law of the Macau Special Administrative Region.

TWO – The concessionaire renounces litigation in any other jurisdiction outside of the Macau Special Administrative Region, as it recognizes and submits to the exclusive jurisdiction of the courts of the Macau Special Administrative Region to decide any litigation or conflicts of interests that may arise.

**Clause Four**

**Compliance with the legislation of the Macau Special Administrative Region**

The concessionaire shall comply with the applicable legislation applicable in the Macau Special Administrative Region, and shall renounce to invoke legislation from outside the Macau Special Administrative Region, namely in order to be considered exempt from fulfilling the obligations or the conduct to which it is committed.

**Clause Five**

**Participation in the operation of games of chance or any other games in casinos in other jurisdictions**

ONE – If the Concessionaire engages in any licensing process or contract to operate casino gaming or other forms of gaming in any other jurisdictions, including the participation in operation merely through a management contract, it shall inform the Government of such engagement or contract. If the Concessionaire is aware that any of its directors, any of its controlling shareholders, including the ultimate controlling shareholder, or if any one who directly or indirectly holds 10% or over 10% of the company capital of the Concessionaire has the aforesaid engagement or contract, it shall also inform the Government immediately.

TWO – For the purposes of the above the Concessionaire should submit to and inform the Government, or make due diligence to obtain, any documents, information or data that the Government may require as long such documents, information and data are not subject to confidentiality under the laws of the respective jurisdiction.

**Clause Six**

**Concession system**

The concession system is included in the legal framework, which comprises the juridical system for the operation of games of chance or other games in casinos, approved by Law number 16/2001, Administrative Rule number 26/2001, the rules for the operation of games of chance, namely those foreseen under article 55 of Law number 16/2001, and further complementary regulations of the referred Law number 16/2001, as well as the present concession contract.

**Clause Seven**  
**Operation of the concession**

The concessionaire shall operate the concession under the terms and conditions established in the present concession contract.

**Clause Eight**  
**Term of the concession**

ONE – The term of the concession granted under the present contract is of twenty years, beginning on 27<sup>th</sup> day of June of the year two thousand and two and terminating on 26<sup>th</sup> day of June of the year two thousand and twenty two.

TWO – The provisions of the previous article do not inhibit the applicability of the clauses of the present concession contract that may last beyond the term of the concession.

**CHAPTER II**  
**Locations for the operation and functioning of the casinos and other gaming areas**

**Clause Nine**  
**Locations for the operation of the concession**

ONE – In carrying out its activity, the concessionaire may only operate games of chance or other games, in casinos and other gaming areas previously authorized and classified by the Government.

TWO – The allocation of any other premises to the operation of the concession requires the authorization of the Government.

**Clause Ten**  
**Types of games, gaming tables and electric or mechanic gaming machines**

ONE – The concessionaire is authorized to operate all types of gaming established under number 3 of article 3 of Law number 16/2001, as well as other types of games authorized under the terms of numbers 4 and 5 of the same article. The concessionaire is furthermore authorized to operate any electrical or mechanical gaming machines, including “*slot machines*”, under the terms of the law.

TWO – The concessionaire shall annually submit, during the month of December, to the Games Supervision and Coordination Bureau, (Direcção de Inspeção e Coordenação de Jogos) hereinafter designated as DICJ, a list which shall specify the number of gaming tables and electrical or mechanical machines, including “*slot*”

*machines*”, that it intends to operate during the following year, as well as their respective location.

THREE – The number of gaming tables and of electrical or mechanical machines, including “*slot machines*” to be operated by the concessionaire may be altered by means of prior communication to DICJ.

**Clause Eleven**  
**Continuous functioning of the casinos**

ONE – The concessionaire shall open the casinos every day of each year.

TWO – Without prejudice of the provisions of the previous article the concessionaire may establish a daily period of opening to the public of the casinos and the activities they integrate.

THREE – The schedule of the daily period of opening to the public of the casinos and the activities they integrate, shall be submitted in advance to the Government, and affixed at the entrance to the casinos.

FOUR – The alteration to the daily period in which casinos and the activities they integrate are open to the public shall be submitted to the Government with a minimum advance of three days.

**Clause Twelve**  
**Suspension of operations of the casino and other gaming areas**

ONE – The concessionaire shall request from the Government, with a minimum advance of three days, by means of a documented petition, authorization to suspend the operations of one or more casinos and other gaming areas for a period of one or more days.

TWO – The authorization referred to in the previous article is waived in emergency situations or in cases of *force majeure*, namely those resulting from serious accident, catastrophe or natural calamity, that may entail serious risk to the safety of persons, in which case the concessionaire shall inform the Government as soon as possible, of the suspension of operation of the casino or other gaming areas.

**Clause Thirteen**  
**Electronic equipment for surveillance and control**

ONE – The concessionaire shall install, in the casinos and other gaming areas, electronic equipment for surveillance and control of high international quality and approved by DICJ. To that effect, the concessionaire shall submit a written request to the same Bureau, identifying the equipment it intends to install, enclosing the

technical specifications thereof. However, the DICJ may, at any moment, request the presentation of specimens or samples of the referred equipment.

TWO – The concessionaire is further committed to install electronic equipment for surveillance and control approved by the DICJ, in other areas attached to the casinos and other gaming areas or in access and connecting areas, whenever so requested by the same Bureau.

THREE – The concessionaire shall promote the installation of new electronic equipment for surveillance and control, approved by DICJ, whenever a substantiated request is made by the same Bureau namely in order to maintain the high international quality referred in number ONE.

FOUR – The concessionaire shall inform the proper authorities as soon as possible, of any acts or facts which constitute crime or administrative infraction of which it has knowledge, as well as any other illegal acts or facts that it may consider as serious.

**CHAPTER III**  
**Concessionaire Company**  
**Clause Fourteen**

**Corporate purpose, head office and form of company**

ONE – The concessionaire is committed to have, as an exclusive corporate purpose, the operation of games of chance or other games in casinos.

TWO – The corporate purpose of the concessionaire may, depending on Government authorization, include activities related to the operation of games of chance or other games in casinos.

THREE – The concessionaire shall maintain its head office within the Macau Special Administrative Region under the form of Limited Liability Company.

**Clause Fifteen**  
**Capital stock and shares**

ONE – The concessionaire shall maintain a capital stock amounting to not less than MOP 200,000,000.00 (two hundred million patacas).

TWO – The total capital stock of the concessionaire is represented exclusively by registered nominative shares.

THREE – An increase of the concessionaire's capital through public subscription requires authorization by the Government.

FOUR – The issuing of preferential shares by the concessionaire requires authorization by the Government.

FIVE – Without prejudice of the established in the previous article, the creation or the issuing of types or series of shares representing the concessionaire’s capital stock, as well as their conversion of one type of shares into another, requires Government authorization.

SIX – The concessionaire shall make all efforts, to have the total capital stock of the concessionaire’s shareholders who are corporate bodies, and the total capital stock of the holders of capital shares who are corporate bodies, and so on, up to the ultimate holders of capital shares, whether these are individual or corporate bodies, be exclusively represented by registered nominative shares, except in relation to corporate bodies that are quoted on the stock exchange in what refers to the transacted shares.

**Clause Sixteen**  
**Transfer and encumbering of shares**

ONE – The transfer or encumbering, for any reason, of the property or other rights on registered shares representing the concessionaire’s capital stock or the carrying out of any other act that may involve the granting of voting rights or other social rights to a person other than the holder, requires government authorization.

TWO – In the case referred to in the previous article, the concessionaire shall always refuse the registry and shall not recognize as shareholder any entity that may acquire or possess shares representing its capital stock in violation of the provisions of the present concession contract or the law, and shall not carry out any action by which it, implicitly or explicitly recognises the transfer among living or encumbering as referred to in the previous article.

THREE – The transfer *mortis causa* of the property or other rights on shares representing the concessionaire’s capital stock must be communicated to the Government, as soon as possible; the concessionaire shall, at the same time, make all efforts to have the transfer registered in its Shares Registration Book.

FOUR – Once obtained the authorization referred in number ONE, the holder of the property or other right on shares representing the concessionaire’s capital stock, when transferring or encumbering or carrying out an act which involves the transfer to another party of the voting right or other social rights, shall immediately inform the concessionaire, who shall inform the DICJ, within thirty days of the register in the Shares Registration Book of the concessionaire or equivalent formality, and shall send copy of the documents that formalize that juridical transaction and furnish detailed information on any established terms and conditions.



FIVE – The concessionaire shall make all efforts to submit for Government approval any transfer between living parties, for whatever reason, of the property or other right on the capital shares of the holders representing the capital stock of the concessionaire, be they individual or corporate bodies and the capital stock of the holders of capital shares that are corporate bodies, whether these holders are individual or corporate bodies, and so on, up to the ultimate holders of capital shares, whether they are individual or corporate bodies, except for corporate bodies that are quoted on the exchange market in what refers to the shares therein traded, when this capital share directly or indirectly corresponds to a value of 5% or more of the concessionaire's capital stock.

SIX – The transfer *mortis causa* of the property or other right on the capital share of holders of 5% or more of capital shares representative the capital stock of the concessionaire's shareholders, whether individual or corporate bodies, and of the capital stock of the holders of 5% or more of capital shares of those that are corporate bodies, whether those holders are individual or corporate bodies, and so on, up to the ultimate holders of capital shares, whether these are individual or corporate bodies, should be submitted by the concessionaire to the Government, as soon as possible after the fact is known.

SEVEN – The concessionaire shall, furthermore, inform the Government, as soon as the fact is known, of the encumbering, for any reason, of the capital share representing the capital stock of its shareholders and of the capital shares held by holders of the capital stock of these shareholders, and so on, up to the capital share of the ultimate holders when the same capital share indirectly corresponds to 5% or more of the concessionaire's capital stock except for the corporate bodies that are quoted on the stock exchange in what concerns the shares therein traded.

EIGHT – The previous article is equally applicable to the implementation of any acts that involve the granting of voting rights or other social rights to a person other than its holder, except as to corporate bodies that are quoted on the stock market in what refers to the shares therein traded.

NINE – The provisions of number FOUR are applicable to the transfer, under any title, of the property or other right on the capital shares referred to in number FIVE, with the appropriate adaptations.

TEN – In the case of a dominant shareholder of the concessionaire not wishing to continue to be a shareholder of the same, by virtue of having received written instructions to that end from an agency charged with the regulation of the activity of operation of games of chance or other games in casinos of another jurisdiction in which it is a concessionaire or is licensed to operate games of chance in casinos or

in which it is the dominant partner of the concessionaire or company licensed to operate games of chance in casinos, the Government, if it considers that such written instructions result from acts not of the responsibility of the concessionaire or the referred dominant partner, authorizes that the dominant partner transfer the ownership of the capital stock it holds in the concessionaire, without prejudice of the necessity of authorization of the Government as to the acquisition of said capital stock by a third party.

**Clause Seventeen**  
**Issue of bonds**

The issue of bonds by the concessionaire requires Government authorization.

**Clause Eighteen**  
**Quoted on the stock exchange**

ONE – The concessionaire or a company of which it is the dominant partner may not be quoted on the stock exchange, without prior Government authorization.

TWO – The concessionaire shall also make all efforts so that the corporate bodies that are its dominant partners and whose principal activity consists on the execution, directly or indirectly, of projects referred to in the Investment Plan attached to the present concession contract, do not request or proceed to be quoted on the stock exchange without previously informing the Government.

THREE – The request for authorization referred in number ONE, and the advance information of the Government referred in the previous number must be, respectively, formulated or effected by the concessionaire and documented with all the necessary data, without prejudice of the Government requesting additional documents, data or information.

**Clause Nineteen**  
**Share and capital stock structure**

ONE – The concessionaire shall submit to the Government annually, during the month of December, its share structure as well as the structure of the capital stock of the corporate bodies, *maxime* companies, holders of 5% or more of the concessionaire's capital stock, as well as the structure of the capital stock of the corporate bodies who are holders of 5% or more of the capital stock, and so on up to the individual or corporate bodies who are the ultimate shareholders, except in relation to corporate bodies that are quoted on the stock exchange in what refers to

the shares therein traded, or submit a declaration attesting that these did not suffer any alteration.

TWO – The concessionaire shall also endeavour to obtain and deliver to the Government, together with the update or the declaration referred to in the previous paragraph, a declaration signed by each of its shareholders and the persons referred to in the previous number, duly authenticated, attesting that they are holders of the number of shares declared, and that these are registered nominative shares, accompanied by a copy of the shares representing the respective equity.

**Clause Twenty**  
**Prohibition to concentrate positions in governing bodies**

ONE – The concessionaire shall not appoint to the Board of Directors, the Board of the General Meeting, the Audit Board or any other governing body, any person who holds a position in a governing body of another concessionaire, sub-concessionaire or concessionaire’s management company, operating in the Macau Special Administrative Region.

TWO – The concessionaire shall inform the government, in the shortest possible period of time, of the appointment of any person to assume a position in the Board of Directors, the Board of the General Meeting, the Audit Board or any other governing body of the concessionaire.

THREE – The Government shall inform the concessionaire of the appointment of any person to assume a position on the Board of Directors, the Board of the General Meeting, the Audit Board or any other governing body of other concessionaires, sub-concessionaires or concessionaire’s management companies, operating in the Macau Special Administrative Region.

**Clause Twenty One**  
**Management**

ONE – The delegation of the management of the concessionaire, including the appointment of the Executive-Director, the scope of his powers and the term of the delegation, as well as any alteration, namely when involving replacement, temporary or definitive of the Executive-Director, is subject to Government authorization. For that purpose, the concessionaire shall send to the Government a draft of the resolution of its Board of Directors, containing the proposal for the delegation of the management of the concessionaire, including the identification of the Executive-Director, the scope of his powers and the term of the delegation, references relative to replacement in situations of impediment, as well as any deliberation relative to

replacement, temporary or definitive, of the Executive-Director. A delegation of the management of the concessionaire does not have any effect, in any form, without the authorization of the Government in relation to every element.

TWO – If the Government does not approve any or some of the terms of the delegation referred in the previous paragraph, the concessionaire is bound to send to the Government, within fifteen days from the day the concessionaire receives the notification of non-acceptance, a new resolution draft, and in case the person appointed as Executive Director is not accepted by the Government, a new Annex II of the Administrative Rule number 26/2001 should be submitted by the new Executive Director.

THREE – The concessionaire shall ensure that no powers of attorney granting, based on a stable relation, powers that are conferred on the Board of Directors, to carry out any business in relation to the operation of the company on behalf of the concessionaire, with the exception of acts of the mere running of current business, namely with public offices and services, except with the authorization of the Government.

**Clause Twenty Two**  
**Articles of Association and shareholders agreements**

ONE – Any change to the concessionaire's articles of association requires the approval of the Government.

TWO – The project for the change of the concessionaire's articles of association shall be sent, for approval, to the Government, with a minimum advance of thirty days in relation to the date of the Shareholders General Assembly in which the change will be discussed.

THREE – The concessionaire shall deliver to the Government an authenticated copy of the change to its articles of association, within thirty days after the execution.

FOUR – The concessionaire shall inform the Government of any shareholders agreement of which it gains knowledge. To that effect, and without prejudice of other courses of action it can or shall take, the concessionaire is bound to enquire from its shareholders, in the 15 days preceding any shareholder's General Assembly, or in the course of a General Assembly if it was not called, on the existence of shareholders agreements namely in relation to the exercise of voting rights or other social rights, and to inform the Government of the result of such enquiries.

FIVE – The government must, within sixty days, notify the concessionaire of the approval of the change of the Articles of Association and of the shareholders agreements.

**Clause Twenty Three**  
**Duty to inform**

ONE – Without prejudice of other obligations to inform established in the system of concessions referred to in clause six, the concessionaire shall:

- 1) Inform the Government, with the shortest possible delay, of any circumstances that may affect its normal functioning, such as those that may be related to its liquidity or solvency, the existence of any law proceedings against it or any one of its directors, shareholders with 5% or more of its capital stock and main employees with positions of relevance in the casino, any act or fact that takes place in the casinos and other gaming areas that may be considered a crime or administrative infraction that may come to its notice and any adverse attitude directed at the concessionaire or members of its governing bodies, by a responsible member of an entity or a worker of the Public Administration of the Macau Special Administrative Region, including agents of the Security Forces and Services.
- 2) Inform the Government, with the shortest possible delay, of any and every event that injure, hinder or substantially increase the financial burden or the difficulty in fully complying with the obligations resulting from the present concession contract, or that may cause the termination of the concession contract under the terms established in chapter XIX;
- 3) Inform the Government, with the shortest possible delay, as to any of the following facts or occurrences:
  1. Regular or incidental, periodical or extraordinary remuneration of its directors, financiers and main employees with positions of relevance in the casino, whether these are received as salaries, wages, remunerations or other, and well as any mechanism for their participation in profits;
  2. Existing benefits or benefits to be created, including share in the profits;
  3. Contracts for management and services, existing or to be proposed.
- 4) Deliver to the Government, with the shortest possible delay, authenticated copies of:
  1. Contracts or other instruments that refer or describe any remuneration mentioned in number 1 of the previous paragraph;
  2. Contracts or other instruments that refer or describe any benefits or forms of distribution of profits, existing or to be created;

3. Contracts for management and services, existing or to be proposed.
- 5) Inform the Government, with the shortest possible delay as to any serious alteration, imminent or foreseeable, to its economic and financial situation, as well as to the economic and financial situation:
  1. Of its dominant partners;
  2. Of entities closely associated, namely those that have taken any commitment or pledged any guarantee towards the financing of the investments and obligations that the concessionaire must carry out or accept by reasons of the contract; and
  3. Of the shareholders that hold 5% or more of its capital stock who, in accordance with the terms of paragraph 2) of number 1 of article 18 of Law number 16/2001, have assumed the commitment or pledged a guarantee for the financing of the investments and obligations that the concessionaire must carry out or accept by reasons of contract.
- 6) Inform the Government, with the shortest possible delay, when the average annual turnover with a third party has reached MOP 250,000,000.00 (two hundred and fifty million patacas) or more;
- 7) To annually submit to DICJ, during the month of January, a document referring to all its bank accounts and respective balance;
- 8) To deliver, in the shortest possible period of time, any complementary or additional information requested by the Government;
- 9) To deliver to DICJ and to the Financial Services Bureau, hereinafter designated as DSF, with the shortest possible delay, all elements and information that these entities may require for the complete fulfilment of their functions.

TWO – The Government may determine that the obligations foreseen in 3) and 4) of the previous paragraph be fulfilled annually.

**CHAPTER IV**  
**Management Company**  
**Clause 24**

**Requirement to inform in advance and request Government authorization**

ONE – The concessionaire shall inform the Government, with a minimum prior notice of ninety days, of its intention to enter into a contract with a management company.

TWO – The concessionaire shall request authorization from the Government whenever it intends to sign a management contract with a management company by which the mentioned company will assume its managing powers.

THREE – For the purposes of the previous paragraph, the concessionaire shall submit, together with the request for authorization, an authenticated copy of the articles of association of the management company or equivalent document and the draft of the respective management contract.

**CHAPTER V**  
**Suitability**  
**Clause Twenty Five**  
**Suitability of the concessionaire**

ONE – The concessionaire shall keep its suitability qualifications for the term of the concession, in accordance to legal terms.

TWO – For the purposes of the previous paragraph, the concessionaire is subject to on-going and permanent monitoring and supervision by the Government, in accordance with legal terms.

THREE – The concessionaire undertakes to defray, as soon as possible, the costs incurred with the verification of its suitability; for that purpose, the DICJ shall issue a document, which will specify those costs that shall constitute sufficient evidence of same.

**Clause Twenty Six**  
**Suitability of the shareholders, directors and main employees of the**  
**concessionaire and management companies**

ONE – The concessionaire's shareholders who hold 5% or more of its capital stock, its directors and its main employees with relevant positions in the casino must retain their suitability qualifications for the term of the concession, in accordance with legal terms.

TWO – For the purposes of the previous paragraph, the concessionaire's shareholders who hold 5% or more of its capital stock, its directors and its main employees with relevant positions in the casino, are subject to a continuous and permanent monitoring and supervision by the Government, in accordance with legal terms.

THREE – The concessionaire shall make all efforts for the shareholders that hold 5% or more of its capital stock, its directors and main employees with relevant positions in the casino, to retain their suitability qualifications during the term of

the concession, considering that their good name reflects on the good name of the concessionaire.

FOUR – The concessionaire shall request its shareholders who hold 5% or more of its capital stock, its directors and its main employees with relevant positions in the casino, to inform the Government with the shortest possible delay, of any and every factor that may be relevant to the good repute of the concessionaire or their own.

FIVE – For the purposes of the previous paragraph, the concessionaire shall enquire, every six months, from the shareholders who hold 5% or more of its capital stock, its directors and its main employees with relevant positions in the casino, whether they have knowledge of any fact that may relate to the good repute of the concessionaire or their own, although the concessionaire, having knowledge of any relevant fact, is bound to inform the Government with the shortest possible delay.

SIX – The concessionaire shall inform the Government, with the shortest possible delay upon gaining knowledge of any and every fact that may relate to the good repute of its shareholders who hold 5% or more of its capital stock, its directors and its main employees with relevant positions in the casino.

SEVEN – The concessionaire shall make all efforts for the managing companies it may contract, as well as holders of 5% or more of its capital stock, its directors and main employees with relevant positions in the casino, to retain their good name reflect on the good name of the concessionaire.

EIGHT – The regulations in number THREE of the previous clause are applicable to the process of verification of suitability of the concessionaire's shareholders and the managing companies that hold 5% or more of its capital stock, its directors and main employees with relevant positions in the concessionaire's casino, and of the managing companies with whom it may establish contracts.

**Clause Twenty Seven**  
**Special duty to cooperate**

Without prejudice of the general duty to cooperate established in clause sixty seven, the concessionaire shall immediately submit to the Government any document, information or data that the Government may deem necessary to verify its continued suitability.



**Clause Twenty Eight**  
**Special duty to inform**

ONE – The concessionaire shall inform the Government, with the shortest possible delay after obtaining knowledge, of the cessation of a licence or concession for the operation of games of chance or other games in casinos in any jurisdiction of any shareholder who holds 5% or more of its capital stock.

TWO – The concessionaire shall inform the Government, with the shortest possible delay after obtaining knowledge, of any investigation related to a fact that could lead an agency that governs the activity of the operation of games of chance or other games in casinos in another jurisdiction to punish, suspend or in any way affect the licence or concession for the operation of games of chance or other games in casinos that any shareholder who holds 5% or more of its capital stock may have in that jurisdiction.

**CHAPTER VI**  
**Financial and financing capacity**  
**Clause Twenty Nine**  
**Financial capacity of the concessionaire**

ONE – The concessionaire shall maintain its financial capacity to operate the concession and to fulfil timely and totally the obligations pertaining to any aspect of its activity, investments and obligations committed by contract or under the terms of the present concession contract, especially as to the Investment Plan attached to the present concession contract.

TWO – For the purposes established in the previous paragraph the concessionaire and the shareholders holding 5% or more of its capital stock are subject to continuous and permanent monitoring and supervision by the Government, in accordance with legal terms.

THREE – The concessionaire undertakes to defray, as soon as possible, the costs incurred with the verification of its financial capacity and that of the shareholders holding 5% or more of its capital stock; for that purpose, the DICJ shall issue a document, which will specify those costs that shall constitute sufficient evidence of same.

**Clause Thirty**  
**Loans or similar contracts**

ONE – The concessionaire shall inform the Government of any loan granted or similar contract signed with a third party, for an amount of more than MOP 30,000,000.00 (thirty million patacas).

TWO – The concessionaire shall not grant any loan or sign any similar contract with its directors, shareholders or main employees with relevant positions in the casino, without the authorization of the Government.

THREE – The concessionaire shall not sign any contract with a commercial businessman by which he may assume management powers or the possibility of intervening in the management of the concessionaire, namely through “*step in rights*”, without the authorization of the Government.

**Clause Thirty One  
Assumption of risk**

ONE – The concessionaire is committed to all the obligations and shall be fully and exclusively responsible for all risks inherent to the concession in what concerns its financial capacity and its financing, without prejudice of the provisions of clauses forty and seventy five.

DOIS – The grantee shall not be subject to any obligation, and does not assume any responsibility or risk, in what concerns the financing of the concessionaire.

**Clause Thirty Two  
Obtaining Financing**

ONE – The concessionaire shall obtain the necessary financing for the timely and complete fulfilment of the obligations related to any aspect of its activity, investments and obligations to which it is contractually bound or that it may assume under the terms of the present concession contract, especially of the Investment Plan attached to the present concession contract.

TWO – The grantee shall not be held liable for any exceptions or means of defence that may result from contractual relationships established by the concessionaire with third parties, including financing entities and shareholders of the concessionaire, in order to obtain the financing referred in the previous paragraph.

**Clause Thirty Three  
Legal reserves**

The concessionaire shall maintain the reserves legally required.

**Clause Thirty Four  
Special duty to cooperate**

ONE – Without prejudice of the general duty to cooperate established in clause sixty seven, the concessionaire shall immediately submit to the Government any

document, information or data that the Government may deem necessary to verify its continued financial capacity.

TWO – The concessionaire shall inform the Government, with the shortest possible delay, of any loans, mortgages, declarations of debt, guarantees or any other obligation contracted or to be contracted to finance any aspect of its activity, in the amount of MOP 8,000,000.00 (eight million patacas) or more.

THREE – The concessionaire shall send to the Government, with the shortest possible delay, authenticated copies of documents relating to any loans, mortgages, declarations of debt, guarantees or any other obligation contracted or to be contracted for the financing of any aspect of its activity.

FOUR – The concessionaire shall endeavour to obtain and submit to the Government a declaration subscribed by each one of its dominant partners, including its determinant and ultimate partner, in which they accept to comply with this special duty to cooperate and shall present any documents and supply any information, data, authorizations or proof that they may be asked for to that effect.

**CHAPTER VII**  
**Investment Plan**  
**Clause Thirty Five**  
**Investment Plan**

ONE – The concessionaire shall carry out the Investment Plan attached to the present concession contract in the terms therein presented.

TWO – The concessionaire shall namely:

- 1) Use skilled labour for all projects;
- 2) Give preference, when contracting firms and workers for the execution of the projects referred to in the Investment Plan attached to the present concession contract, to those that permanently conduct business or are residents of the Macau Special Administrative Region;
- 3) Respect, in the execution of the construction projects related to the projects referred to in the Investment Plan attached to the present concession contract, the technical norms and regulations in practice in the Macau Special Administrative Region, namely the Regulation on Foundations, approved by Decree-Law number 47/96/M of 26 August, and the Regulation for Safety and Work in the Structure of Buildings and Bridges, approved by Decree-Law number 56/96/M, of 16 September, as well as the specifications and homologation documents of official entities and the instructions of manufacturers or holders of patents;

- 4) Document the projects referred to in the Investment Plan attached to the present concession contract, for the approval of the Direção dos Serviços de Solos, Obras Públicas e Transportes, hereinafter designated as DSSOPT, with a quality control handbook, prepared by an entity with proven experience in similar services and of the same type, whose technical competence is recognized and approved by this Direction, with a work plan and respective financial and execution chronograms, with samples of the most significant materials and the curricula of those responsible for each speciality, apart from all other documents foreseen in the legislation in force, namely Decree-Law number 79/85/M of August 21; and if the quality control handbook is not submitted or not approved, the concessionaire shall be committed to follow the quality control handbook prepared in the meantime by experts designated by the DSSOPT;
- 5) Carry out the work in perfect conformity with the approved projects, in accordance with legal and regulatory norms in force and in accordance with internationally recognized standards for construction and supply of the same type, as well as in accordance with art rules;
- 6) Respect deadlines in the construction and opening to the public of the projects referred to in the Investment Plan attached to the present concession contract;
- 7) Use, for the carrying out of the plans referred in the Investment Plan attached to the present concession contract, materials, systems and equipment certified and approved by recognized entities and in accordance with international standards, generally accepted as having high international quality;
- 8) Maintain the quality of all the plans referred to in the Investment Plan attached to the present concession contract, in accordance with high international standards of quality.
- 9) Ensure that commercial businesses comprised in their premises have high international quality standards;
- 10) Maintain a modern, efficient and high quality management, in accordance with high international quality standards;
- 11) Inform the Government, with the shortest delay possible, of any and every situation that significantly alters or may alter, both in the construction phase of its premises and in the operation phase of any aspect of its activity, the normal progress of work, as well as of any structural or other anomaly in their premises, by means of a detailed and documented report of these situations,

possibly comprising any contribution from outside sources of recognized competence and repute, also indicating any measures taken or to be taken in order to solve those situations.

THREE – The concessionaire is responsible towards the grantee and third parties for any damage caused by deficiencies, errors or serious omissions in the conception and dimension of the plans, the execution of construction work and maintenance inherent to the Investment Plan attached to the present concession contract that may be attributed to it.

FOUR – The Government may authorize the alteration of the deadlines referred to in paragraph 6) of number TWO, without the need to revise the present concession contract.

FIVE – The grantee shall facilitate the direct or indirect execution of the plans referred to in the Investment Plan attached to the present concession contract, by the concessionaire, in accordance with the terms of the law.

**Clause Thirty Six**  
**Alteration to the projects comprised in the Investment Plan**

ONE – In the execution of the Investment Plan attached to the present concession contract, the Government may request any documentation or make alterations to the execution of these plans, to guarantee the fulfilment of the technical norms and regulations in force and the required quality standards.

TWO – The Government shall not make any alterations to the referred plans that would imply an increase in the global amount referred to in clause thirty nine.

**Clause Thirty Seven**  
**Inspection**

ONE – The Government, namely through DSSOPT, shall oversee and inspect the construction work, namely the compliance with the work plan and the quality of materials, systems and equipment, in accordance with applicable legislation in regard to the requirements of the Investment Plan attached to the present concession contract.

TWO – The concessionaire shall be notified by this Direction on the appointment of the DSSOPT representatives to oversee and inspect the construction work; when the overseeing and inspection of the construction work is to be carried out by more than one representative, one will be appointed to be in charge.

THREE – The concessionaire shall deliver, for the purposes of number ONE, detailed monthly reports, in writing, showing the progress of the Investment Plan

attached to the present concession contract. The said monthly reports shall include, at least:

- 1) The most relevant events, number of employees, quantities of materials, systems and equipment involved;
- 2) The work progress in relation to the work programme (progress control);
- 3) Updates to the financial and execution chronograms;
- 4) The requirements for plans, supplies, means to be used, materials, systems and equipment;
- 5) The main measures taken to guarantee compliance with the work programme;
- 6) Action to be taken to correct deviations.

FOUR – The concessionaire shall submit extraordinary reports, detailed and in writing, whenever deemed necessary, namely when the normal work progress related to the execution of the Investment Plan attached to the present concession contract may be jeopardized.

FIVE – The concessionaire shall submit, upon the request of the Government, within the established deadline, any documents, namely written and drawn relating to the Investment Plan attached to the present concession contract.

SIX – The concessionaire shall furthermore supply in addition to the documents mentioned in the previous paragraph, any clarification and information that may be requested.

SEVEN – If the Government has any doubts as to the quality of the work, it may require that tests be carried out, apart from those foreseen by the concessionaire, consulting the latter, if necessary, as to the rules of decision to be adopted.

EIGHT – The expenses incurred with the tests referred to in the previous paragraph and the correction of detected deficiencies will be paid by the concessionaire.

NINE – The orders and notifications related with technical aspects of the work may be addressed, by the Government, namely through DSSOPT, directly to the technical director of the site.

TEN – The technical director of the site must follow the work closely and be present at the site whenever so required.

ELEVEN – The Government, namely through DSSOPT, may suspend and embargo, under the terms of law, the work in progress whenever there is evidence of nonconformity with the plans approved, or violation of the legal rules and regulations applicable by law and by virtue of any contract.

TWELVE – The powers of inspection on the compliance with the requirements resulting from the present concession contract do not involve any responsibility on

the part of the grantee for the execution of the construction work: the concessionaire is exclusively responsible for any defect or fault in the conception, execution or operation of the said works, except for those that may have resulted from a decision of the grantee.

**Clause Thirty Eight**  
**Contracting and subcontracting**

Contracting and subcontracting of third parties does not exempt the concessionaire from its legal or contractual obligations.

**Clause Thirty Nine**  
**Allocation of the remaining value of the investments included in the**  
**Investment Plan**

If, on completion of the work of the Investments Plan attached to the present concession contract, the total value of the concessionaire's direct or indirect expenses, is inferior to the global amount anticipated of MOP 4,000,000,000.00 (four thousand million patacas) for the investments described in the awarding proposal submitted by the concessionaire as bidder to the first public tender for the awarding of three concessions for the operation of games of chance or other games in casinos and included in the above mentioned Investments Plan, the concessionaire shall spend the remainder in projects related to its activity, to be indicated by the concessionaire and accepted by the Government, or in projects of relevant public interest for the Macau Special Administrative Region, to be indicated by the Government.

**Clause Forty**  
**Insurance**

ONE – The concessionaire shall establish and keep up to date the insurance contracts that will guarantee an effective and comprehensive coverage of the risks inherent to the activities integrated in the concession. These insurance policies shall be contracted with authorized insurance companies operating in the Macau Special Administrative Region or if not feasible or too expensive for the concessionaire, with the Government's authorization, with outside insurers,

TWO – The concessionaire shall, specifically, ensure that the following insurance contracts exist and are maintained in force:

- 1) Insurance for work related accidents and professional illnesses;
- 2) Third party liability insurance for all its vehicles;

- 3) Third party liability insurance for ships, aircraft or other flying engines that are the property of the concessionaire or being used under the leasing system;
- 4) Third party liability insurance for the posting of advertising materials;
- 5) General third party liability insurance related to the operation of games of chance or other games in casinos in the Macau Special Administrative Region, as well as the development of other activities integrated in the concession and that are not covered by any other insurance policy;
- 6) Insurance against damage to buildings, furniture, equipment and other goods allocated to the activities integrated in the concession;
- 7) Insurance of buildings (all risks, including third party liability) covering any construction work of, or on, buildings related to the activities integrated in the concession;

THREE – The insurance coverage mentioned in 6) of the previous paragraph is to be of the multi-risk type, and shall cover at least, the following:

- 1) Fire, lightning or explosion (whatever the nature);
- 2) Rupture of pipes, spillage or overflowing of tanks, boilers, plumbing, tanks, toilettes or equipment for the transport of water;
- 3) Floods, typhoons, tropical storms, volcanic eruptions, earthquakes or other convulsions of nature;
- 4) Fall or clashing of aircraft or other flying engines or objects fallen or thrown from them;
- 5) Vehicle crashes;
- 6) Larceny or theft;
- 7) Strikes, assaults, riots, disturbances of public order or other facts of a similar nature.

FOUR – The capital or the minimum limit to be insured, with reference to the insurance mentioned in TWO is the following:

- 1) In accordance with legislation in force for the insurance foreseen in items 1) to 4);
- 2) An amount to be determined by the Government for the insurance in item 5), taking into account, among other factors, the turnover of activities integrated in the concession and the accident rate of the previous year,
- 3) Equal to the net value of the goods to be covered by the insurance under item 6), net value meaning the gross value minus accumulated depreciation;
- 4) The value of the construction work for the insurance referred in item 7).

FIVE – the concessionaire shall further ensure that the entities they may contract have valid insurance against work related accidents and professional illnesses.



SIX – The concessionaire shall make proof, before the Government, of the existence and full validity of the insurance contracts, by submitting a copy of these at the time they are contracted and upon renovation.

SEVEN – The concessionaire shall not start any construction or work without previously submitting to the Government the copies referred to in the previous paragraph.

EIGHT – Except by Government authorization, the concessionaire may not cancel, suspend, modify or substitute any insurance contracts, except in the case of a mere change of insurance company, in which case the concessionaire shall inform the Government of the fact as soon as possible.

NINE – The Government may, at the concessionaire's expense, and resorting to the bail deposited to guarantee the legal or contractual obligations of the concessionaire, directly pay the insurance, if the concessionaire has not done so.

## **CHAPTER VIII**

### **ASSETS**

#### **Clause Forty One**

##### **Assets of the Macau Special Administrative Region**

ONE – The concessionaire shall ensure the maintenance or replacement, in accordance to instructions of the DICJ, of the property/goods of the Macau Special Administrative Region that may be allocated to the operation of the concession through the temporary transfer of its use, fruition and utilization.

TWO – The concessionaire shall ensure the maintenance of the land, grounds or natural resources, whose management is the responsibility of the Government, under the terms of article 7 of the Basic Law of the Macau Special Administrative Region, and that have been or may be allocated to the operation of the concession, either by rental or by concession.

#### **Clause Forty Two**

##### **Other assets**

ONE – The casinos, as well as the equipment and all utensils pertaining to the games, must be located in the concessionaire's premises, and no expenses or encumbering may fall on the casinos, equipment and utensils, except with the Government's authorization.

TWO – In spite of the authorization referred to in the previous paragraph, the concessionaire shall ensure that the casinos, as well as the equipment and utensils

pertaining to the games, even if located outside these, are free of any expense or onus at the time the concession terminates.

THREE – Except by Government authorization, the casinos may not be located in buildings, the use and fruition of which are entitled by leasing contracts, whatever their nature, or any other type of contract that does not confer to the concessionaire total property rights, even if atypical; the said authorization may namely impose the condition, in order to allow the reversal of the casinos to the Macau Special Administrative Region, that the concessionaire acquire the independent units where the casinos are located, up until one hundred and eighty days before the date foreseen in number ONE of clause forty three, except if the concession becomes extinct before that date, in which the acquisition must take place in the shortest possible period of time.

FOUR – When duly authorized, the concessionaire shall submit to the Government, a copy of the contracts referred to in the previous paragraph, as well as all the alterations and changes, even if retroactive.

FIVE – The concessionaire shall locate all its casinos in buildings or groups of buildings, even though they may constitute a single economic and functional unit, established as horizontal property, so that they are integrated in one or more independent units, with areas perfectly identified and defined.

SIX – For purposes of the previous paragraph, the concessionaire shall submit to the government, with the shortest possible delay, a certificate of the real estate registry in relation to the constitution of horizontal property, which shall include the specifications of all independent units, together with a blueprint where the respective areas are defined and marked.

SEVEN – The concessionaire shall register any alteration to the constitution deed for the horizontal property, submitting to the Government, through the DSF, as soon as possible, the respective real estate registry certificate.

EIGHT – The concessionaire shall furthermore submit for the approval of the Government the regulation of the condominium relating to the horizontal property.

**Clause Forty Three**  
**Reversal of the casinos and equipment and utensils allocated to the games**

ONE – On the 26<sup>th</sup> day of June two thousand and twenty two, except if the concession becomes extinct before that date, the casinos, as well as the equipment and utensils pertaining to the games, even though they may be placed outside these, shall revert cost-free and automatically to the grantee, and the concessionaire shall surrender them in perfect working order, without prejudice of the normal wear and

tear resulting from the operation of the present concession contract, and free of any onus or charge.

TWO – The concessionaire shall immediately deliver the property referred to in the previous paragraph.

THREE – If the concessionaire does not immediately surrender the property referred to in ONE, the Government shall take immediate administrative possession of same, the expenses being paid for out of the bail to guarantee the compliance with the legal or contractual obligations of the concessionaire.

FOUR – When the concession terminates, the Government shall inspect the property referred to in clauses Forty One and Forty Two, in the presence of the representatives of the concessionaire, in order to ascertain the condition and maintenance of the mentioned property and a report shall be prepared.

FIVE – Should the dissolution or liquidation of the concessionaire occur, the distribution of its estate cannot be effected until the Government certifies, through the mandatory inventory mentioned in the next clause, that the property to be reverted is in perfect order and working condition, or until there is assurance, by means of a guarantee accepted by the Government, of payment of any amounts due to the grantee, by way of indemnity or any other title.

SIX – The ruling in the last part of number ONE does not preclude the normal renovation of equipment and utensils pertaining to the games.

**Clause Forty Four**  
**Inventory of property allocated to the concession**

ONE – The concessionaire shall prepare, in triplicate, and maintain updated, the inventory of all goods and rights pertaining to the Macau Special Administrative Region for the use of the concession, as well as all property that shall revert to the Macau Special Administrative Region, and shall annually and prior to the thirty first of May, update the maps corresponding to alterations that have taken place and send them to the DICJ and the DSF.

TWO – In the year of the final term of the concession, it is mandatory that the above-described inventory be prepared sixty days before termination.

THREE – In other cases of extinction of the concession, the inventory referred in ONE shall take place at a date and time determined by the Government.

**Clause Forty Five  
Improvements**

The improvements that, for any reason, are done to the property referred to in clause Forty One, as well as to the property reverting to the grantee, do not entitle the concessionaire to any compensation or indemnity.

**Clause Forty Six  
Granting of land for the use of the concessionaire**

ONE – The system of granting of land for the use of the concessionaire, namely for the operation of the concession, is established in the respective land granting contract.

TWO – The clauses of the land granting contract to be signed by the Government and the concessionaire are subject to the conditions of the present concession contract, in what is applicable.

**CHAPTER IX  
Premium  
Clause Forty Seven  
Premium**

ONE – The concessionaire shall pay the Macau Special Administrative Region an annual premium, for the term of the concession, as payment for the awarding of a concession for the operation of games of chance or other games in casinos.

TWO – The amount of the annual premium to be paid by the concessionaire is composed of a fixed and a variable portion.

THREE – The amount of the fixed portion of the premium to be paid by the concessionaire is, under the terms of Dispatch number 215/2001 of the Chief Executive, of MOP 30,000,000.00 (thirty million patacas) per year.

FOUR – The amount of the variable part of the premium to be paid annually by the concessionaire shall be calculated based on the number of gaming tables and electric or mechanical machines, including “*slot machines*”, operated by same.

FIVE – For the purposes of the previous number:

- 1) For each gaming table reserved for particular games and players, namely operated in a special area or room, the concessionaire shall pay, per year, MOP 300,000,00 (three hundred thousand patacas).
- 2) For each gaming table non-reserved for particular games and players, the concessionaire shall pay, per year, MOP 150,000,00 (one hundred and fifty thousand patacas);

- 3) For each electric or mechanic gaming machine, including “*slot machines*”, operated by the concessionaire, the concessionaire shall pay, per year, MOP 1,000.00 (one thousand patacas).

SIX – Apart from the number of gaming tables that the concessionaire operates at a given time, the amount of the variable portion of the premium cannot be less than the amount that would result from the permanent operation of 100 (one hundred) gaming tables reserved for particular games and players, namely operated in gaming rooms or special areas, and 100 (one hundred) gaming tables non-reserved for particular games and players.

SEVEN – The concessionaire shall pay the amount of the fixed portion of the premium, up until the tenth day of the month of January of the year to which it refers: payment in monthly instalments is possible at the discretion of the Government.

EIGHT – The concessionaire shall pay monthly, up until the tenth day of the month following that to which it refers, the amount of the variable portion of the premium referring to the gaming tables, electric or mechanic gaming machines, including “*slot machines*” that it operated during the previous month.

NINE – For purposes of the calculation of the amount of the variable part of the premium referred in the previous number, consideration is given to the number of days that in a given month each gaming table and each electric or mechanic gaming machine, including “*slot machines*”, was operated by the concessionaire.

TEN – The payment of the premium is carried out by submitting the respective payment invoice in the Receiving section of the Finance Department of the Macau Special Administrative Region.

**Chapter X**  
**Contributions under paragraphs 7) and 8) of article 22 of Law number 16/2001**  
**Clause Forty Eight**  
**Contribution under paragraph 7) of article 22 of Law number 16/2001**

ONE – The concessionaire shall pay to the grantee a contribution corresponding to 1.6% (one point six percent) of the gross revenues of the gaming operation, that will be made available to a public foundation for the promotion, development and study of social, cultural, economic, educational, scientific, academic and charity activities, to be indicated by the Government.

TWO – The contribution referred above is paid monthly by the concessionaire, prior to the tenth day of the month following that to which it relates, by submission of the respective payment invoice in the Receiving section of the Finance Department of the Macau Special Administrative Region.

THREE – The contribution referred in number ONE will be the object of a special budget record by the grantee.

**Clause Forty Nine**  
**Contribution under item 8) of article 22 of Law number 16/2001**

ONE – The concessionaire undertakes to pay the grantee a contribution corresponding to 2.4% (two point four percent) of the gross revenues of the gaming operation, to be used for urban development, tourist promotion and the social security of the Macau Special Administrative Region.

TWO – The contribution mentioned in the previous paragraph is paid monthly by the concessionaire until the tenth day of the month following that to which it relates, by submitting the respective payment invoice in the Receiving Section of the Finance Department of the Macau Special Administrative Region.

THREE – The contribution referred to in number ONE will be the subject to a special budget record by the grantee.

FOUR – The Government may appoint one or more projects or one or more entities as beneficiaries of the allocation of part the amounts paid.

FIVE – The Government and the concessionaire may agree to allocate, to one or more entities or one or more projects, funds, up to the maximum amount of 1.2% (one point two) of the gross revenue of the gaming operations, in such case the concessionaire may allocate directly the funds to such entities or projects, in which case the amount of the contribution referred to in ONE to be submitted to the Receiving Section of the Finance Department of the Macau Special Administrative Region, will be reduced accordingly.

**CHAPTER XI**  
**Fiscal obligations and submission of documents**  
**Clause 50**  
**Special gaming tax**

ONE – The concessionaire shall pay the Macau Special Administrative Region the special gaming tax established by law, which shall be paid in duodecimals, by a monthly remittance to the Government up to the tenth day of the month following that to which it refers.

TWO – The payment of the special gaming tax may be effected in patacas or in a currency accepted by the Government.

THREE – The payment of the special gaming tax in patacas is made directly to the Treasury of the Macau Special Administrative Region.

FOUR – The payment of the special gaming tax in currency accepted by the Government is made by means of remittance of that currency to the Macau Monetary Authority who will place the corresponding amount in patacas at the order of the Treasury of the Macau Special Administrative Region.

**Clause Fifty One**  
**Tax withholding**

ONE – The concessionaire shall withhold, on a definitive basis, the legally established tax on commissions and other remunerations paid to game promoters, submitting the respective amounts monthly, up to the tenth day of the month following that to which it refers, to the Receiving section of the Finance Department of the Macau Special Administrative Region.

TWO – The concessionaire shall withhold, on a definitive basis, the legally established income tax for workers, submitting the respective amounts monthly, up to the tenth day of the month following that to which it refers, at the Receiving section of the Finance Department of the Macau Special Administrative Region, in accordance with the law.

**Clause Fifty Two**  
**Payment of other taxes, contributions, rates or emoluments due**

The concessionaire shall pay other taxes, contributions, rates or emoluments due in accordance with the legislation of the Macau Special Administrative Region from which it has not been exempted.

**Clause Fifty Three**  
**Document proving the non-existence of debts to the Treasury of the Macau  
Special Administrative Region**

ONE – The concessionaire shall supply to the Government annually, until the thirty first of March, a certificate issued by the DSF, referred to the previous year, confirming that the concessionaire has no debts to the Treasury of the Macau Special Administrative Region, for contributions and taxes, fines or accruals being including in this concept the interest on deferred payments and the 3% of debts.

TWO – The concessionaire shall furthermore supply to the Government, annually and up to thirty first of March, a document referred to the previous year, describing the fiscal situation of its executive director, the members of its governing bodies and of its shareholders holding 5% or more of its capital stock.

**Clause Fifty Four**  
**Document proving the non-existence of debts to the Social Security of the**  
**Macau Special Administrative Region**

The concessionaire shall supply the Government annually, until the thirty first of March, a certificate issued by the Social Security Fund of the Macau Special Administrative Region confirming that the concessionaire has its payments to the Social Security Fund of the Macau Special Administrative Region in order.

**Clause Fifty Five**  
**Furnishing of information**

ONE – The concessionaire shall submit to the Government every quarter, until the last day of the month following the end of the respective quarter, its trial balance relating to the previous quarter, except for the last quarter of each year that is sent until the last day of the month of February of the following year.

TWO – The concessionaire shall also submit to the Government, until thirty days before the date of the annual general meeting to approve the accounts, the following elements:

- 1) The set of accounting and statistic maps referring to the previous fiscal year;
- 2) The full names, in all possible versions, of those who, during the respective year were part of management and fiscal boards, of the appointed attorneys, as well as of the person responsible for the accounts department; and
- 3) A copy of the annual report of the board of directors, together with the report of the audit board and of the external auditors.

**Clause Fifty Six**  
**Accounting and internal control**

ONE – The concessionaire shall have its own accounting, a sound administrative organization and adequate control procedures, and shall follow, as to these matters, the instructions issued by the government, namely through the DICJ or the DSF.

TWO – In the format and rendering of the accounts, the concessionaire shall solely follow the criteria of the Official Accounting Plan in effect in the Macau Special Administrative Region, without prejudice of the Head of the Executive, by proposal of the director of the DICJ or the director of the DSF, eventually making mandatory the existence of certain books, documents or other accounting elements, as well as determining the criteria to be adopted by the concessionaire in the accounting records of its operations and the observance of special norms in their preparation or presentation.



**Clause Fifty Seven**  
**External audit of annual accounts**

The concessionaire shall carry out an annual audit to its accounts, conducted by an external independent agent of recognized international repute, previously accepted by the DICJ and the DSF, supplying in advance all the necessary documentation, namely that referred in article 34 of Law number 16/2001.

**Clause Fifty Eight**  
**Extraordinary Audits**

The concessionaire shall at any moment, with or without advance notice, accept extraordinary audits, carried out by an external independent agent of recognized international repute or by another entity, as and when the DICJ or the DSF deem it necessary or convenient.

**Clause Fifty Nine**  
**Mandatory publications**

ONE – The concessionaire is committed to annually publishing, until the thirtieth of April, and in relation to the previous fiscal year ended at the thirty first of December, in the Official Gazette of the Macau Special Administrative Region, and in two of the most widely read newspapers of the Macau Special Administrative Region, one being necessarily in the Chinese language and the other in the Portuguese language, the following information:

- 1) Balance sheet, statement of results and attachments;
- 2) Summary of the activity report;
- 3) Report of the fiscal board
- 4) Summary of the external auditors' report
- 5) List of qualified shareholders, holding 5% or more of the capital stock, in any period of the year, with indication of the respective percentage value;  
and
- 6) The names of the members of the governing bodies.

TWO – The concessionaire shall submit to the Government, a copy of all the elements referred in the previous paragraph, and of other elements for publication, which is required by the concession system referred to in clause six, with the minimum advance often days prior to the date of publication.

**Clause Sixty**  
**Special duty of cooperation**

Without prejudice of the general duty to cooperate contemplated in clause sixty seven, the concessionaire shall cooperate with the Government, namely with the DICJ and the DSF as to the supply of elements and information that may be solicited by them, and as to the analysis or inspection of its accounts, holding extraordinary audits and, in general, as to the duties entailed by the concession system referred to in clause six.

**CHAPTER XII**  
**Guarantees**  
**Clause Sixty One**  
**Bail as guarantee of fulfilment of the legal or contractual obligations**  
**of the concessionaire**

ONE – The bail, as guarantee of the fulfilment of the legal or contractual obligations of the concessionaire may be given in any one of the forms legally contemplated, as long as accepted by the Government.

TWO – The concessionaire shall maintain, in favour of the Government, the first demand autonomous bank guarantee, issued by the Banco Nacional Ultramarino, S.A. to guarantee:

- 1) the exact and timely fulfilment of the legal or contractual obligations to which the concessionaire is bound;
- 2) the exact and timely payment of the premium that the concessionaire is committed to pay for Macau Special Administrative Region under clause Forty Seven;
- 3) the payment of fines or other pecuniary penalties that may be levied on the concessionaire by reason of legal ruling or of any clause in the present concession contract;
- 4) the payment of any indemnity resulting from contractual responsibility for damage suffered and failed income due to the total or partial non-compliance of the obligations to which the concessionaire is bound by the present concession contract.

THREE – The concessionaire shall maintain in favour of the Government, the autonomous bank guarantee referred in the previous paragraph in the maximum value of MOP 700,000,000.00 (seven hundred million patacas) from the signing of the present concession contract until the thirty first of March of the year two thousand and seven, and with the maximum value of MOP 300,000,000.00 (three hundred million patacas) from the first of April of the year two thousand and

seven until one hundred and eighty days after the term of the concession contract.

FOUR – The concessionaire shall make every effort to fulfil all necessary obligations to maintain in effect the autonomous guarantee referred in number TWO.

FIVE – The Government may resort to the autonomous bank guarantee referred in number TWO, independent of any prior judicial decision, whenever the concessionaire does not fulfil any of the legal or contractual obligations to which it is bound, does not proceed to effect exact and timely payment of the premiums to which it is bound, does not pay nor contest within the legal time limit the fines or other pecuniary penalties that have been levied by reason of legal ruling or clause of the present concession contract; the Government may also resort to the autonomous bank guarantee referred in number TWO if there is cause for payment of any indemnity resulting from contractual responsibility for suffered damage and failed income resulting from the total or partly non-fulfilment of the obligations to which the concessionaire is bound by the present concession contract.

SIX – Whenever the Government resorts to the autonomous bank guarantee referred in number TWO, the concessionaire shall take all the necessary steps to reinstate its full effect, within 15 days from the date of notification of the fact.

SEVEN – The autonomous bank guarantee referred to in number TWO may only be cancelled by means of Government authorization.

EIGHT – The Government may authorize the alteration of the terms or conditions referred in numbers THREE to SIX, as well as authorize the substitution of the autonomous bank guarantee referred in number TWO by another form legally accepted for the posting of bail as guarantee of fulfilment of the legal or contractual obligations of the concessionaire.

NINE – The costs incurred with the issue, maintaining and cancellation of bail as a guarantee of fulfilment of the legal or contractual obligations of the concessionaire are borne entirely by the concessionaire.

**Clause Sixty Two**  
**Specific bank guarantee for guarantee of the payment of the special gaming tax**

ONE – The concessionaire shall produce, on demand by the Government under number 5 of article 27 of Law number 16/2001, if there is justified concern that the concessionaire may not pay the probable monthly amounts of the special

gaming tax, within the deadline and under the terms, conditions and amounts to be established by the Government, a special autonomous bank guarantee, on first demand, issued in favour of the Government to guarantee the payment of those same amounts.

TWO – The terms and conditions of the autonomous bank guarantee referred to in the previous paragraph may not be altered without Government authorization, the concessionaire being bound to fulfil all the obligations that result or may result from maintaining in effect the guarantee in the exact terms in which it was given.

THREE – The Government may resort to the autonomous bank guarantee referred in number ONE, independently of any previous judicial decision, whenever the concessionaire does not pay the special gaming tax owed to the grantee under the terms of the law and the present concession contract.

FOUR – Whenever the Government resorts to the autonomous bank guarantee referred in number ONE, the concessionaire shall take, within 15 days counting from the date of notification of the fact, all the necessary steps to reinstate its full effect.

FIVE – The autonomous bank guarantee referred to in number ONE may only be cancelled by the concessionaire one hundred and eighty days after the end of the concession and with Government authorization.

SIX – The costs incurred with the issue, maintaining and cancellation of the bail of the autonomous bank guarantee referred in number ONE are borne entirely by the concessionaire.

### **Clause Sixty Three Other Guarantees**

The autonomous bank guarantee referred in number TWO of clause sixty one includes the guarantees established in number 3 of article 20 and in item 2 of article 22 of the Law number 16/2001 and on numbers 1 and 2 of article 84 of the Administrative Rule number 26/2001.

## **CHAPTER XIII Inspection of fulfilment of the concessionaire's obligations Clause Sixty Four Inspection, supervision and monitoring by the Government**

ONE – The power to inspect, supervise and monitor the fulfilment of the obligations of the concessionaire is exercised by the Government, namely through the DICJ and the DSF.

TWO – For all purposes the concessionaire shall, whenever so required by the Government and without need of advance notice, offer the Government, or any other entity appointed by the Government and duly mandated to that effect and identified, free access to any part of its premises, as well as free access to examine its accounting or bookkeeping, including any transactions, books, minutes, accounts and other registers or documents, statistics and registers of management used, supplying the Government or the entity appointed, with photocopies of what they may consider necessary.

THREE – The concessionaire shall abide by and comply with the determinations of the Government issued within the scope of its powers of inspection and verification, namely the instructions of the DICJ, including those relating to an eventual suspension of the operations in casinos and other gaming areas.

FOUR – The operation of the concession is subject to the permanent verification and inspection of the DICJ under the terms of applicable legislation.

**Clause Sixty Five**  
**Daily inspection of the gross revenues of the game operation**

The concessionaire is subject to daily inspection, by the Government, through the DICJ, of its gross revenues from the game operation, in accordance with legal terms.

**CHAPTER XIV**  
**General duty to cooperate**  
**Clause Sixty Six**  
**General duty of the Government to cooperate**

The Government shall cooperate with the concessionaire thus allowing it fulfil its legal and contractual obligations.

**Clause Sixty Seven**  
**General duty of the Concessionaire to cooperate**

For purposes of the provisions of the present concession contract, the concessionaire shall cooperate with the Government, producing any documents and giving any information, data, authorizations or proof that may be solicited.

**CHAPTER XV**  
**Other duties of the concessionaire**  
**Clause Sixty Eight**  
**Operation of the casinos and other premises and annexes**

The concessionaire shall keep in normal operation all areas of the casinos and other premises and annexes that are used for the operation of the concession and for the uses for which they are intended or authorized.

**Clause Sixty Nine**  
**General duties of the concessionaire**

ONE – It is the special obligation of the concessionaire to promote and demand from all entities that may be contracted for the development of activities integrated in the concession, the observance of all rules of good organization and functioning, and the special measures related to the patrons of its casinos and other game zones and of its workers and other persons therein holding working positions.

TWO – The concessionaire undertakes to contract, for the prosecution of the activities integrated in the concession, entities duly licensed and authorized, with the necessary technical and professional qualifications.

**Clause Seventy**  
**Other Government authorizations**

Government authorization is required for the replacement, cancellation or change of proof documents and registers related to the activity of the concessionaire or to the acquisition of equipment and materials for the games.

**Clause Seventy One**  
**Government authorizations and approvals**

The authorizations and approval of the Government, and their possible refusals, do not exonerate the concessionaire from the timely fulfilment of the obligations assumed under the present concession contract, neither do they imply, on the part of the Government, of any responsibilities except when its acts have caused expenses or special and abnormal damage to the concessionaire.

**CHAPTER XVI**  
**Responsibility of the concessionaire**  
**Clause Seventy Two**  
**Civil liability to the grantee**

The concessionaire is responsible towards the grantee for damage resulting from the total or partial non-fulfilment of its contractual obligations, due to facts it may be held responsible for.

**Clause Seventy Three**  
**Exoneration of the grantee in the extra-contractual responsibility of the**  
**concessionaire toward third parties**

ONE – The grantee shall not take or share any responsibility that may arise for the concessionaire from acts carried out by it or at its request that involve or might involve civil liability or any other.

TWO – The concessionaire will furthermore answer, under the general relationship of consigner-commissioner, for damages caused by entities it has contracted for the operation of the activities that integrate the concession.

**CHAPTER XVII**  
**Subjective changes to the concession**  
**Clause Seventy Four**  
**Cession of contractual position, burden, transfer and alienation**

ONE – The concessionaire shall not cede, transfer, alienate or in any way burden, in total or in part, in express or tacit form, formally or informally, the operation of a casino or a gaming area or make any juridical deal that has the same result, except with Government authorization.

TWO – An action carried out in violation of the rulings of the previous paragraph, and without prejudice of other applicable sanctions or penalties, entails the payment to the Macau Special Administrative Region, of the following penal clauses:

- in the case of cession, transfer or alienation, as a whole – MOP 1,000,000,000.00 (one thousand million patacas);
- in the case of cession, transfer or alienation, as a part – MOP 500,000,000.00 (five hundred million patacas);
- in the case of encumbering, in total or in part – MOP 300,000,000.00 (three hundred million patacas).

THREE – The request for authorization referred in number ONE must be supported by all the necessary documents and the indication of all the details of the juridical deal that the concessionaire wishes to effect, without prejudice of the Government soliciting additional documents, data or information.

**Clause Seventy Five**  
**Sub-concession**

ONE – The concessionaire, except with Government authorization, undertakes the obligation not to grant a sub-concession, in all or in part, or make any juridical deal that has the same result.

TWO – An action carried out in violation of the rulings of the previous paragraph, and without prejudice of other applicable sanctions or penalties, entails the payment, to the Macau Special Administrative Region, of the following penal clauses:

- In the case of sub-concession, as whole – MOP 500,000,000.00 (five hundred million patacas);
- In the case of sub-concession, as a part – MOP 300,000,000.00 (three hundred million patacas);

THREE – For the purposes of the authorization referred in number ONE, the concessionaire shall advise the Government of its intention to sub-concede, supplying all details that the Government may deem necessary, including all the correspondence exchanged between the concessionaire and the entity with whom it wishes to contract.

FOUR – The sub-concession does not exonerate the concessionaire from the legal or contractual obligations to which it is bound, except if, and in accordance with the terms of Government authorization, being further subsidiarily responsible before the Macau Special Administrative Region, independent of guilt, for damages resulting from the non-compliance with the total or part of the contractual obligations of the sub-concessionaire, owing to facts that may be attributed to it, benefiting from the “*privilege of exhaustion of remedies*”.

**CHAPTER XVIII**  
**Non-fulfilment of contract**  
**Clause Seventy Six**  
**Non-fulfilment of contract**

ONE – Without prejudice of the rulings in clauses seventy seven and seventy eight, the non-fulfilment attributable to the concessionaire of the duties and obligations resulting from the present concession contract, or from Government determinations, shall subject the concessionaire to the sanctions or penalties legally or contractually foreseen.



TWO – The concessionaire is exonerated from the responsibility referred to in the previous chapter in cases of *force majeure* or other events that clearly cannot be attributed to it, but only if the timely and total fulfilment has in fact been hindered.

THREE – The only cases considered of *force majeure*, with the consequences described in the next paragraph, are the unpredictable and irresistible events, exterior to the concessionaire, the effects of which are independent of the will or the personal circumstances of the concessionaire, namely acts of war, terrorism, disturbances of the public order, epidemics, atomic radiations, fire, lightning, serious flooding, cyclones, tropical storms, earthquakes and other natural cataclysms that directly affect the activities integrated in the concession.

FOUR – The concessionaire shall immediately advise the Government of any case of *force majeure*, and indicate, as soon as possible the obligations resulting from the present concession contract that it cannot fulfil due to the occurrence, and also, if it be the case, the measures it wishes to implement to reduce the impact of the said event and/or normalize the fulfilment of those obligations.

FIVE – In any of the cases referred in number THREE, the concessionaire shall reconstruct and/or restore the damaged property to its previous condition, as soon as possible, reinstating the management and operation of the games of chance or other games in casinos; should the concessionaire have no economic interest in the reconstruction and/or restoring of the referred property, it shall transfer to the grantee the amount of the insurance.

**CHAPTER XIX**  
**Extinction and suspension of the concession**  
**Clause Seventy Seven**  
**Termination by mutual agreement**

ONE – The Government and the concessionaire may, at any moment, terminate the present concession contract of by mutual agreement.

TWO – The concessionaire shall be fully responsible for the cessation of the effects of any contracts of which it is part, and the grantee shall not be responsible for anything in this matter, unless otherwise established.

**Clause Seventy Eight**  
**Redemption**

ONE – Unless otherwise legally established, the Government may, as from the fifteenth year of the concession, redeem it, by notifying the concessionaire by registered letter, with receipt notice, at least one year in advance.

TWO – Through the redemption, the grantee assumes all the rights and obligations of the concessionaire resulting from juridical deals validly contracted by it before the date of the notification referred to in the previous paragraph.

THREE – The obligations contracted by the concessionaire by virtue of the contracts it has signed after the notification referred in number ONE, shall only be assumed by the grantee if those contracts were, prior to their celebration, authorized by the Government.

FOUR – The assumption by the grantee of the obligations contracted by the concessionaire is made without prejudice of the right of regression for the obligations contracted by the concessionaire that exceed the normal management of the concession.

FIVE – Once the concession is redeemed, the concessionaire is entitled to a fair and equitable compensation corresponding to the losses resulting from the redemption of the Resort-Hotel-Casino referred in the Investment Plan annexed to the present contract. The amount of compensation shall be equal to the earnings of the Resort-Hotel-Casino referred in the Investment Plan annexed to the present contract before interest, depreciation and amortization for the fiscal year immediately preceding the date the redemption is declared, multiplied by the number of years remaining on the term of the concession contract.

#### **Clause Seventy Nine Sequestration**

ONE – When the cessation or interruption occur or are imminent, as a whole or in part of the operation of the concession by the concessionaire, not authorized and not due to case of *force majeure*, or if there are serious disturbances or deficiencies in the organization and management of the concessionaire or in the general conditions of the installations and equipment, susceptible of compromising the regular operation of the concession, the Government may replace the concessionaire, directly or by resorting to third parties, ensuring the operation of the concession and promoting the necessary measures to ensure the objective of the present concession contract, for the duration of the cessation or interruption or if the disturbances and deficiencies continue.

TWO – During the sequestration, the expenditures necessary for the maintenance and normalization of the operation of the concession are charged to the concessionaire, and the Government may, to that effect, resort to the bail to fulfil the legal or contractual obligations and to the guarantee posted by the dominant partner of the concessionaire.

THREE – As soon as the reasons for the sequestration are over and the Government judges it appropriate, the concessionaire is notified to resume, within a time limit that will be fixed, the normal operation of the concession.

FOUR – If the concessionaire does not want to or cannot resume the operation of the concession or if, having done so, the serious disturbances or deficiencies in its organization and operation continue to exist, the Government may declare the unilateral rescission for non-fulfilment of the present concession contract.

**Clause Eighty**  
**Unilateral rescission for non-fulfilment**

ONE – The Government may terminate the concession, by means of unilateral rescission for non-fulfilment of the present concession contract, in case of non-fulfilment of the fundamental obligations by which the concessionaire is legally or contractually bound.

TWO – Reasons for unilateral rescission of the present concession contract are, specifically:

- 1) The deviation from the objective of the concession, either by operating non- authorized games, or by carrying out activities that are excluded from the corporate purpose of the concessionaire;
- 2) The abandonment of the operation of the concession or its unjustified suspension for a period of more than 7 consecutive days or 14 interpolate days within one calendar year;
- 3) The transmission, in total or in part of the operation, temporarily or definitively, effected in disrespect of what is established in the concession system as referred to in clause Six;
- 4) The default in payment of taxes, premiums, contributions or other retributions foreseen in the concession system as referred to in clause Six owed to the grantee and not impugned within the legal period;
- 5) The refusal or impossibility of the concessionaire to resume the concession under the terms of number FOUR of the previous clause, or when, having done so, the reasons for the sequestration continue to exist;
- 6) The reiterated opposition to the supervision and inspection or repeated disobedience of the determinations of the Government, namely through the directions of the DICJ;
- 7) The systematic non-observance of fundamental obligations foreseen in the concession system as referred to in clause Six;

- 8) The default on payment or reinforcement of the bails or guarantees foreseen in the present concession contract under the terms and within the deadlines established;
- 9) The bankruptcy or insolvency of the concessionaire;
- 10) The practice of serious fraudulent activity, damaging to the public interest;
- 11) The serious and reiterated violation of the rules of operation for the practice of games of chance or other games in casinos or of the integrity of the games of chance or other games in casinos.

THREE – Without prejudice of the provisions of clause Eighty Three, and in the presence of one of the situations referred to in the previous paragraph or any other that, under the terms of the present clause, may motivate the unilateral rescission for non-fulfilment of the concession contract, the Government shall notify the concessionaire to, within an established deadline, fully comply with its obligations and correct, or repair the consequences of its acts, except if it is the case of a non-reparable violation.

FOUR – If the concessionaire does not fulfil its obligations or does not correct or repair the consequences of its acts, in the terms determined by the Government, the Government may unilaterally rescind the present concession contract by communicating this fact to the concessionaire, and also may notify in writing, the entities who guaranteed the financing of the investments and obligations assumed by the concessionaire, under the terms and for the purposes established in the concession system as referred to in clause Six, relative to financial capacity.

FIVE – The communication to the concessionaire of the decision to rescind referred to in the previous paragraph takes immediate effect, independent of any other formality.

SIX – In the case of well-founded urgency that cannot accommodate the delays of the process of solving the non-fulfilment foreseen in number THREE, the Government may, without prejudice of the observance of that process and the observance of the provisions of number FOUR, proceed immediately with the sequestration of the concession under the terms defined in the previous clause.

SEVEN – The unilateral rescission for non-fulfilment of the present concession contract, under the terms of the present clause, gives rise to a duty to compensate, on the part of the concessionaire, and the compensation shall be calculated in accordance with the general terms of the Law.

EIGHT – The unilateral rescission for non-fulfilment of the present concession contract entails the immediate and gratuitous reversion of its casinos to the grantee, as well as the equipment and utensils pertaining to the games even if located elsewhere.

**Clause Eighty One  
Termination**

ONE – The present concession contract terminates on the date of the final term of the concession foreseen in clause Eight and the contractual relationship between the Parties shall end, without prejudice of the clauses of the present concession contract that shall continue beyond the end of the concession.

TWO – When there is a termination in accordance with the terms of the previous paragraph, the concessionaire shall be fully responsible for the cessation of the effects of any contract of which it is part, and the grantee shall not assume any responsibility in that matter.

**CHAPTER XX  
Revisions and alterations to the contract  
Clause Eighty Two  
Revisions to the concession contract**

ONE – The present concession contract may be revised after negotiations between the Government and the concessionaire, in accordance with the terms of the law.

TWO – The revision of the present concession contract, as well as any addenda to the same, observes the formalities foreseen in article 91 of Administrative Rule number 26/2001.

**CHAPTER XXI  
Pre-contentious phase  
Clause Eight Three  
Consultations in pre-contentious phase**

ONE – The Parties shall effect consultations whenever there is a question or difference of opinion between them as to validity, application, execution, interpretation or integration of rules by which the present concession contract is governed.

TWO – The questions that arise do not exonerate the concessionaire from the timely and total fulfilment of the conditions of the present concession contract and the determinations of the Government that, within its scope, are issued, neither does it permit any interruption of the carrying out of any aspect of its activity, that shall

continue to take place under the conditions established at the time the question is submitted.

THREE – The provisions of the previous paragraph relating to the compliance with Government determinations by the concessionaire is applicable also to successive determinations on the same matter, even if issued after the date of the beginning of consultations, as long as the first of these successive determinations was communicated to the concessionaire prior to that date.

## **CHAPTER XXII**

### **Final provisions**

#### **Clause Eighty Four**

##### **Obtaining licenses, permits or authorizations**

ONE – The present concession contract does not exempt the concessionaire from petitioning, paying costs for and/or make the effort to obtain all the licences or authorizations necessary to carry out any aspect of its activity or fulfilling the obligations foreseen in the present concession contract, as well as observing and fulfilling all the requisites necessary for obtaining and maintaining them valid.

TWO – The concessionaire must immediately inform the Government should any licences or authorizations referred to in the previous paragraph be withdrawn, terminated, suspended or revoked for any reason, or its effect ceased to be operative, indicating at the same time the measures it has taken or will take in order to recover or reactivate such licences, or authorizations.

THREE – No clause of the present concession contract may be considered as a replacement to the need to obtain any license, or authorization legally or contractually foreseen.

#### **Clause Eighty Five**

##### **Rights to industrial and intellectual property**

ONE – The concessionaire shall respect, in the course of its activity, the rights to industrial and intellectual property, in accordance with the terms in force in the Macau Special Administrative Region, and the effects that may result from the violation of these rights shall be of the exclusive responsibility of the concessionaire.

TWO – The licenses or authorizations granted to the concessionaire, namely those relating to compliance with the Investment Plan attached to the present concession contract, presuppose that all rights of industrial and intellectual property have been respected by the concessionaire.

THREE – The concessionaire shall gratuitously cede to the grantee all its studies, projects, plans, blueprints, documents and other materials, of whatever nature that may prove useful to the functions attributed to the latter, under the terms of the present concession contract, or for the exercise of the rights to which it is entitled under the terms of the same.

FOUR – In answer to the grantee’s request, the concessionaire shall prepare any type of document or declaration, to confirm or register the rights referred to in the previous paragraph.

FIVE – Should the concessionaire not solve any dispute existing with third parties in relation to eventual violations of the rights of industrial or intellectual property attributed or to be attributed to the grantee under the terms of the present clause, the grantee may always act in their defence for which the concessionaire shall give all the assistance that may be required.

**Clause Eighty Six**  
**Notifications, communications, notices, authorizations and approvals**

ONE – the notifications, communications, notices, authorizations and approvals referred to in the present concession contract, unless otherwise determined, will be made in writing and be forwarded:

- 1) by hand, as long as covered by register;
- 2) by telefax, as long as covered by transmission receipt;
- 3) by mail, registered and with receipt notice.

TWO – Authorizations to be granted by the Government must always be in advance, and may establish conditions.

THREE – The lack of answer to a request for authorization and approval, or any other solicitation, expressed by the concessionaire, has the effect of refusal.

FOUR – For the purposes of the present concession contract, the following addresses and telefax numbers shall be considered as the permanent addresses the Parties:

Government of the Macau Special Administrative Region:

Direcção de Inspeção e Coordenação de Jogos

Avenida da Praia Grande, numbers 762-804, “China Plaza” building, 21<sup>st</sup> floor,

Macau

Fax: 370296

Concessionaire: Wynn Resorts (Macau), S.A.,

Head Office: Avenida da Amizade, number 918,

“World Trade Centre” building, 8<sup>th</sup> floor, “C”, Macau.

Fax: 336057

FIVE – The Parties may alter the addresses and telefax reception numbers indicated in the previous number by means of advance communication addressed to the other Party.

**Clause Eighty Seven**  
**Prohibition of practices restrictive of competition**

ONE – The concessionaire shall carry out its activities in loyal and healthy competition, respecting the principles applying to a market economy.

TWO – The concessionaire undertakes not to enter into agreements or combined deals, in whatever form, together with other concessionaires, sub-concessionaires or management companies of concessionaires that operate in the Macau Special Administrative Region, or with companies belonging to the respective groups, that are liable to impede, restrict or distort competition.

THREE – The concessionaire undertakes not to exploit abusively a dominant position in the market, or a substantial part of it that could impede, restrict or distort competition.

**Clause Eighty Eight**  
**Games Promoters**

For the Government, the concessionaire is responsible for the activity exercised in the casinos and other gaming areas by its registered games promoters, as well as its directors and collaborators and should therefore supervise their activity.

**Clause Eighty Nine**  
**Promotion of the concessionaire's business**

ONE – The concessionaire shall promote, within the Macau Special Administrative Region and abroad, advertising and marketing campaigns for its business, namely its casinos.

TWO – The Government and the concessionaire shall combine their events and advertising and marketing campaigns with the events and campaigns aimed at promoting Macau abroad.

THREE – The concessionaire shall not allow, without the authorization of the Government, the use of images or long written references about its casinos and other premises and annexes allocated to the operation of the concession, in sites and *internet* pages, or any other place that aims at promoting interactive games.



**Clause Ninety**  
**Elements integrated in the concession contract**

The tender for adjudication entered by the concessionaire as an entrant for the first public tender for the attribution of three concessions for the operation of games of chance or other games in casinos, is considered to be integrated in the present concession contract for all purposes that are not explicitly or implicitly contrary to it.

**Clause Ninety One**  
**Chips to be used in the operation of the concession**

ONE – The concessionaire shall comply with the instructions of the Government as to the issue and circulation of chips, independent of their type or nature.

TWO – Notwithstanding the possibility for the Government to determine the maximum amount of chips to be put into circulation, the quantity chips to be put into circulation is not subject to the consent of the Government.

THREE – The concessionaire has the obligation to guarantee the reimbursement, in cash or through cheque or equivalent credit document, of the chips that have been put into circulation.

FOUR – The concessionaire shall maintain a ratio of solvency, and constitute provisions and other rules of prudence to be indicated at each moment by the Government as to the total number of chips to be placed in circulation, in cash or through high level liquidity bonds in order to ensure the immediate payment of same.

**Clause Ninety Two**  
**Confidentiality**

ONE – The documents produced by the Government or by the concessionaire, in keeping with the conditions of law or the present concession contract, have a confidential character, and can only be made available to third parties with the authorization of the other Party.

TWO – The Government and the concessionaire take all the necessary steps to ensure that, respectively, the workers of the Public Administration of the Macau Special Administrative Region, and the workers of the concessionaire are bound by the duty of secrecy.

THREE – The Government and the concessionaire undertake to enforce the duty of secrecy on other persons who have had or who might have access to confidential documents, namely through consulting, services and other contracts.

**Clause Ninety Three**  
**Claims register**

ONE – The concessionaire shall keep and maintain at the disposal of visitors of the casinos and other gaming areas, a claims register, specific for claims related to the operation of games of chance or other games in casinos.

TWO – The concessionaire shall affix in the casinos and other gaming areas, in a visible manner, a notice indicating the existence of a claims register.

THREE – The concessionaire undertakes to remit to the Government, within 48 hours, copy of the claims registered in the claims register, together with the concessionaire's report about the same.

**CHAPTER XXIII**  
**Transitory dispositions**  
**Clause Ninety Four**  
**Professional Training Plan**

ONE – The concessionaire shall prepare plans regarding professional training for employees who come to occupy positions in the activities integrated in the concession, within a time limit established by the Government.

TWO – The concessionaire shall submit to the Government, within the time limit established, any other documents or additional information relative to the plans referred to in the previous paragraph.

**Clause Ninety Five**  
**Appointed Executive-Director**

ONE – The Government shall inform the concessionaire, within fifteen days from the signing of the present concession contract whether it authorizes that the person indicated in Attachment I of the Administration Rule number 26/2001, submitted by the concessionaire as bidder for the first public tender for the awarding of three concessions for the operation of games of chance or other games in casinos, to be the Executive Director for the concessionaire.

TWO – The provisions of numbers ONE and TWO of clause Twenty One are applicable to the first delegation of management by the concessionaire on an Executive Director after the awarding of the present concession contract.

**Clause Ninety Six**  
**Bank accounts**

The concessionaire shall submit to the Government within seven days from the signing of the present concession contract, a document stating all its bank accounts and respective balances.

**Clause Ninety Seven**  
**Declaration relating to the duty to cooperate**

The concessionaire shall endeavour to obtain and submit to the Government, within fifteen days from the signing of the present concession contract, a declaration subscribed by each of its shareholders holding 5% or more of its capital stock, its directors and main employees with relevant positions in the casino, as well as its dominant partners, including the ultimate dominant partner, by which they accept to be subject to a special duty to cooperate with the Government and to produce any documents and supply whatever information, data, authorizations or proof that may be requested for that purpose.

**Clause Ninety Eight**  
**Fixed part and variable part of the premium**

ONE – The payment of the fixed part of the yearly premium foreseen in clause 47, in the respective proportion, is due only from the 26th day of June of the year two thousand and five, except if, before that date, the concessionaire begins the operation of a casino or gaming area in the Resort – Hotel – Casino complex, foreseen in the Investment Plan annex to the present concession contract, in which case payment becomes due at once.

TWO – The payment of the variable part of the yearly premium foreseen in clause 47 is only due from the date of starting of operation of the games of chance or other games in casinos, whether the starting of operations takes place in temporary installations or in the Resort-Hotel-Casino above mentioned. For the purpose of calculation of the variable part of the premium the concessionaire shall submit to the Government, up to ten days prior to the opening of its first casino or gaming area, whether it be in temporary installations or in the complex referred in the previous number, a list with the number of gaming tables and electric or mechanic machine, including “*slot machines*”, that it intends to operate in that year, as well as their respective location.

THREE – In case the concessionaire opens its first casino or gaming area in temporary installations, the amount of the variable portion of the premium cannot be less than the amount that would result from the permanent operation of 20 (twenty) gaming tables reserved for particular games and players, namely operated in gaming

rooms or special areas, and 20 (twenty) gaming tables non-reserved for particular games and players, until the beginning of operation of a casino or gaming area in the resort complex referred in number ONE.

FOUR – The amounts relative to the variable part of the yearly premium referred in number FIVE of clause 47 will be subject to revision by the Parties as from the third year of the awarding of the present concession contract.

**Clause Ninety nine**  
**Approval of the articles of association and shareholders agreements**

The Government shall notify the concessionaire, within sixty days of the signing of the present concession contract, as to whether it approves its articles of association as well as its shareholders agreements.

**Clause One Hundred**  
**Mandates or Power of Attorney**

The concessionaire shall inform the Government within fifteen days from the signing of the present concession contract, of each and every mandate or power of attorney existing on the date of the awarding of the present concession contract, verifying, based on a stable relationship, the powers inherent to the board of directors to conduct business relating to the operation of the company in the name of the concessionaire, with the exception of the powers for carrying out everyday current business, namely at public offices or services, for the purpose of authorization, or to submit, within the same timing, a declaration of non-existence of same.

**Clause One Hundred and One**  
**Actual participation in the operation of games of chance or other games in casinos under other jurisdictions**

The concessionaire shall inform the Government within fifteen days from the signing of the present concession contract, of the actual participation of any one of its administrators, of the dominant partner, including the ultimate dominant partner or any holder of capital share when corresponding, directly or indirectly, to an amount of 10% or more of its capital stock, in the operation of games of chance or other games in casinos, even if only through a management contract, in any other jurisdiction.

**Clause One Hundred and Two**  
**Composition of the governing bodies of the concessionaire**

The concessionaire shall inform the Government within seven days from the signing of the present concession contract as to the composition, at the time of awarding of the present concession contract, of the board of directors, the annual general meeting, the audit board and other governing bodies of the concessionaire.

**Clause One Hundred and Three**  
**Structure of shareholders and capital stock**

ONE – The concessionaire shall submit to the Government, within seven days from the signing of the present concession contract, the shareholder structure of the concessionaire on the date of the awarding of the present concession contract.

TWO – The concessionaire shall submit to the Government, within seven days from the signing of the present concession contract, the structure of the capital stock of corporate bodies, *maxime* companies, holding 5% or more of the capital stock of the concessionaire, as well as the structure of the capital stock of corporate bodies that hold 5% or more of the capital stock of same, and so on up to the individual or corporate bodies who are ultimate partners, on the date of the awarding of the present concession contract.

THREE – The concessionaire shall submit to the Government, within fifteen days from the signing of the present concession contract, the declarations referred to in number TWO of clause Nineteen, relative to the year two thousand and two.

**Clause One Hundred and Four**  
**Limit to the number of concessions**

ONE – The grantee shall not award, until the first of April of the year two thousand and nine, concessions for the operation of games of chance or other games in casinos, so that, at any given time, there are not more than three, as per provisions of the law.

TWO – Should the grantee, after the date referred to in the previous paragraph, award new concessions for the operation of games of chance or other games in casinos, the conditions of which are, in global terms, more favourable than those foreseen in the present concession contract, the Government shall extend them to the concessionaire by altering the present concession contract.

**Clause One Hundred and Five**  
**Revision of the percentage of contributions**

The percentages of the contributions referred to in clauses Forty Eight and Forty Nine shall be the object of revision by the Parties during the year two thousand and ten.

**Clause One Hundred and Six**  
**Effective Date**

The present concession contract, written in both official languages, will come into effect as from 27<sup>th</sup> day of June of year 2002.

Thus it was granted

The Stamp Duty due, as per articles 17 and 24 of Stamp Duty Regulation, on the amount of MOP 115, 00 (one hundred and fifty patacas) and the Notary Fees Due, as per article 4 number 1 and 2 of the Notary Regulation, on the amount of MOP 708,600.00 (seven hundred and eighth thousand six hundred patacas) were paid by the Second Party and the proof of payment was filed.

All the documents mentioned in the concession contract are filed with the Notary Division of the Macau Finance Department under number 17039.

This deed has been read to the parties and its contents were explained out loud to all those present, and the representative of the second party had access to a translation into the English language as he does not understand either of the official languages.

INVESTMENT PLAN

Without prejudice of the provisions of Clause thirty nine of the present concession contract, the concessionaire must build:

- A Resort-Hotel-Casino that must be concluded and open to the public on December 2006.
- Total Investment – 4,000,000,000.00 (four thousand million patacas), which must be expended within 7 years upon the signing of this concession contract.



**AMERICAN EMBASSY LISBON**

*Av. Das Forças Armadas*

*1600-081 Lisboa, Portugal*

*Tel: 21-770-2499*

*Fax: 21-727-2354*

**Republic of Portugal** )  
**Providence of Estremadura** )  
**City of Lisbon** )  
**Embassy of the United States** )  
**Of America** )

I, Victoria Perestrello , being duly sworn, do hereby declare that I am thoroughly acquainted with the Portuguese and English languages, that I am accustomed to make translations in these languages, and that the annexed translation(s) was (were) made by me and it is a (are) true and correct translation (s).

This document consists of 166 pages, each initialed by the translator.

*/s/ Victoria Perestrello*

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**Subscribed and sworn to before me this 29<sup>th</sup> day of July 2002.**

*/s/ Daniel Bazan*

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**Daniel Bazan**

**Consul**



## SUBSIDIARIES OF WYNN RESORTS, LIMITED

Rambas, LLC

Wynn International Marketing, LLC (an Isle of Man limited liability company)

Toasty, LLC (a Delaware limited liability company)

B/W Clothiers, LLC (a 50% owned joint venture)

Valvino Lamore, LLC

Wynn Gallery, LLC (f.k.a. World Travel BBJ, LLC)

World Travel G-IV, LLC

Worldwide Wynn, LLC

Wynn Design & Development, LLC

Wynn Resorts Hotel Marketing & Sales (Asia), LLC (f.k.a. WDD-Asia, LLC)

Wynn Group Asia, Inc.

Wynn Resorts, International, Ltd. (an Isle of Man corporation)

Wynn Resorts (Macau) Holdings, Ltd. (an Isle of Man corporation)

Wynn Resorts (Macau), Ltd. (1)

Wynn Resorts (Macau), S.A. (2)

Wynn Macau Development Company, LLC

Wynn Coati Holding Company, Ltd. (an Isle of Man corporation)

Wynn Resorts Funding, LLC

Wynn Resorts Holdings, LLC

Wynn Las Vegas, LLC

Las Vegas Jet, LLC

World Travel, LLC

Wynn Completion Guarantor, LLC

Wynn Golf, LLC

Wynn Las Vegas Capital Corp.

Wynn Show Performers, LLC

Wynn Sunrise, LLC

Kevyn, LLC

PW Automotive, LLC (a Delaware Limited Liability Company and 50% owned joint venture)

**All subsidiaries are formed in the State of Nevada and wholly-owned unless otherwise specifically identified.**

- (1) A company organized and existing under the laws of Hong Kong Special Administrative Region of the People's Republic of China
- (2) A company organized and existing under the laws of Macau Special Administrative Region of the People's Republic of China

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statement No. 333-100891 on Form S-8 and Registration Statement No. 333-111064 on Form S-3 of our reports dated March 15, 2006 relating to the consolidated financial statements and financial statement schedule of Wynn Resorts, Limited (which report express an unqualified opinion and includes an explanatory paragraph relating to the restatement of the 2003 and 2004 consolidated financial statements), and related to management's report on the effectiveness of internal control over financial reporting (which report expresses an adverse opinion on the effectiveness of the Company's internal control over financial reporting because of a material weakness) appearing in this Annual Report on Form 10-K.

/s/ Deloitte & Touche LLP  
Las Vegas, Nevada  
March 15, 2006

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

I, Stephen A. Wynn, certify that:

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

Date: March 16, 2006

/s/ STEPHEN A. WYNN

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

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

I, John Strzemp, certify that:

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

Date: March 16, 2006

/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, as Adopted Pursuant to  
Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Annual Report on Form 10-K of Wynn Resorts, Limited (the "Company") for the year ended December 31, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Stephen A. Wynn, as Chief Executive Officer of the Company, and John Strzemp, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

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

/s/ STEPHEN A. WYNN

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Name: Stephen A. Wynn  
Title: Chairman and Chief Executive Officer  
(Principal Executive Officer)  
Date: March 16, 2006

/s/ JOHN STRZEMP

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Name: John Strzemp  
Title: Executive Vice President,  
Chief Financial Officer and Treasurer  
Date: March 16, 2006

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.