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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**AMENDMENT NO. 6**  
**to**  
**FORM S-1**  
**REGISTRATION STATEMENT**  
**Under**  
**THE SECURITIES ACT OF 1933**

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**Wynn Las Vegas, LLC**

(Exact name of Registrant as specified in its charter)

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

**7990**  
(Primary Standard Industrial  
Classification Code Number)

**88-0494878**  
(I.R.S. Employer  
Identification Number)

**Wynn Las Vegas Capital Corp.**

(Exact name of Registrant as specified in its charter)

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

**7990**  
(Primary Standard Industrial  
Classification Code Number)

**46-0484992**  
(I.R.S. Employer  
Identification Number)

**and Other Registrants**

(See Table of Other Registrants Listed Below)

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**3145 Las Vegas Boulevard South**  
**Las Vegas, Nevada 89109**  
**(702) 733-4444**

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

**Ronald J. Kramer**  
**Wynn Resorts, Limited**  
**President**  
**3145 Las Vegas Boulevard South**  
**Las Vegas, Nevada 89109**  
**(702) 733-4444**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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**Copies to:**

**C. Kevin McGeehan, Esq.**  
**Ashok W. Mukhey, Esq.**  
**Irell & Manella LLP**  
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**633 West Fifth Street, Suite 4000**  
**Los Angeles, CA 90071-2007**  
**(213) 485-1234**

**Approximate date of commencement of proposed sale to the public:**  
**As soon as practicable after this registration statement becomes effective.**

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If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.  \_\_\_\_\_

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.  \_\_\_\_\_

If delivery of the prospectus is expected to be made pursuant to Rule 434 under the Securities Act, check the following box.

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**CALCULATION OF REGISTRATION FEE**

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**Title of Each Class of  
Securities to be Registered**

**Proposed  
Maximum  
Aggregate**

**Amount of  
Registration  
Fee(2)**

	Offering Price(1)	
% Second Mortgage Notes due 2010	\$340,000,000	\$31,280
Guarantees of % Second Mortgage Notes due 2010	None	\$0

(1) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(o) under the Securities Act.  
(2) Fee previously paid. Pursuant to Rule 457(n) under the Securities Act, no separate fee is payable for the guarantees.

The Registrants hereby amend this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrants shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to such Section 8(a), may determine.

#### Other Registrants

Exact Name of Registrant as Specified in its Charter	State or Other Jurisdiction of Incorporation or Organization	I.R.S. Employer Identification Number
Desert Inn Water Company, LLC	Nevada	88-0460932
Palo, LLC	Delaware	88-0464820
Valvino Lamore, LLC	Nevada	88-0459742
Wynn Design & Development, LLC	Nevada	88-0462235
Wynn Resorts Holdings, LLC	Nevada	88-0460933
World Travel, LLC	Nevada	47-0846667
Las Vegas Jet, LLC	Nevada	88-0460935

## PART II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### Item 13. Other Expenses of Issuance and Distribution

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, payable by the Registrant in connection with the sale and distribution of the second mortgage notes being registered. All amounts shown are estimates except for the Securities and Exchange Commission registration fee and the National Securities Dealers, Inc. filing fee.

	Amount
Registration fee—Securities and Exchange Commission	\$ 31,280
Filing fee—National Association of Securities Dealers, Inc.	30,500
Printing and engraving expenses	237,500
Legal fees and expenses	3,000,000
Accounting fees and expenses	250,000
Blue sky fees and expenses	12,000
Transfer agent and registrar fees and expenses	10,000
Miscellaneous	250,000
<b>Total</b>	<b>\$ 3,821,280</b>

#### Item 14. Indemnification of Directors and Officers

The Nevada Revised Statutes provide that a corporation may indemnify its officers and directors against expenses actually and reasonably incurred in the event an officer or director is made a party or threatened to be made a party to an action (other than an action brought by or on behalf of the corporation as discussed below) by reason of his or her official position with the corporation provided the director or officer (1) is not liable for the breach of any fiduciary duties as a director or officer involving intentional misconduct, fraud or a knowing violation of the law or (2) acted in good faith and in a manner he or she reasonably believed to be in the best interests of the corporation and, with respect to any criminal actions, had no reasonable cause to believe his or her conduct was unlawful. A corporation may indemnify its officers and directors against expenses, including amounts paid in settlement, actually and reasonably incurred in the event an officer or director is made a party or threatened to be made a party to an action by or on behalf of the corporation by reason of his or her official position with the corporation provided the director or officer (1) is not liable for the breach of any fiduciary duties as a director or officer involving intentional misconduct, fraud or a knowing violation of the laws or (2) acted in good faith and in a manner he or she reasonably believed to be in the best interests of the corporation. The Nevada Revised Statutes further provides that a corporation generally may not indemnify an officer or director if it is determined by a court that such officer or director is liable to the corporation or responsible for any amounts paid to the corporation as a settlement, unless a court also determines that the officer or director is entitled to indemnification in light of all of the relevant facts and circumstances. The Nevada Revised Statutes require a corporation to indemnify an officer or director to the extent he or she is successful on the merits or otherwise successfully defends the action.

The Nevada Revised Statutes also provide that a limited liability company may indemnify its managers, members, employees and agents against expenses actually and reasonably incurred in the event a manager, member, employee or agent is made a party or threatened to be made a party to an action (other than an action brought by or on behalf of the company as

discussed below) by reason of his or her position with the company provided he or she acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the company and, with respect to any criminal actions, had no reasonable cause to believe his or her conduct was unlawful. A limited liability company may indemnify its managers, members, employees and agent against expenses actually and reasonably incurred in the event a manager, member, employee or agent is made a party or threatened to be made a party to an action by or on behalf of the company by reason of his or her position with the company provided he or she acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the company. The Nevada Revised Statutes further provide that a limited liability company generally may not indemnify any manager, member, employee or agent if it is determined by a court that he or she is liable to the company or responsible for any amounts paid to the company as a settlement, unless a court also determines that he or she is entitled to indemnification in light of all of the relevant facts and circumstances. The Nevada Revised Statutes require a limited liability company to indemnify a manager, member, employee or agent to the extent he or she is successful on the merits or otherwise successfully defends the action.

Wynn Capital's bylaws provide that it will indemnify its directors and officers to the maximum extent permitted by Nevada law, including in circumstances in which indemnification is otherwise discretionary under Nevada law. These indemnification provisions and the indemnification agreements may be sufficiently broad to permit indemnification of Wynn Capital's officers and directors for liabilities, including reimbursement of expenses incurred, arising under the Securities Act of 1933, as amended, which we refer to as the Securities Act. We have been advised that, in the opinion of the Securities and Exchange Commission, indemnification of directors or officers for liabilities arising under the Securities Act of 1933, as amended, is against public policy and, therefore, such indemnification provisions may be unenforceable.

Wynn Las Vegas' and operating agreement, attached as Exhibit 3.2 hereto, provide that it shall indemnify its members to the maximum extent permitted by Nevada law.

The Underwriting Agreement, attached as Exhibit 1.1 hereto, provides for indemnification by the Underwriters of Wynn Resorts and its officers and directors for certain liabilities, including matters arising under the Securities Act.

#### **Item 15. Recent Sales of Unregistered Securities**

The following is a summary of the transactions by the Registrants during the past three years involving sales of the Registrants' securities that were not registered under the Securities Act:

(a) In April 2000, Stephen A. Wynn formed Valvino Lamore, LLC, known as Valvino, as its single member. Between April and September 2000, Mr. Wynn made equity contributions in an aggregate amount of \$220.7 million. Until immediately prior to the consummation of this offering, our assets and operations were held and conducted by Valvino and its subsidiaries.

(b) In October 2000, Aruze USA, Inc., a Nevada corporation, contributed \$260 million in cash to Valvino in exchange for 100,000 common shares, which represented a 50% interest in the profits and losses of Valvino, and was admitted as a member of Valvino. In connection with such contribution by Aruze USA, Valvino also issued 100,000 common shares, representing a 50% interest in Valvino's profits and losses, to Mr. Wynn to evidence his ownership interest in the limited liability company.

(c) In April 2001, Baron Asset Fund, a Massachusetts business trust, contributed \$20.8 million in cash to Valvino in exchange for 7,692.31 common shares, which represented approximately a 3.70% interest in the profits and losses of Valvino, and was admitted as a member of Valvino.

(d) In April 2002, (1) Baron Asset Fund contributed an additional approximately \$20.3 million in cash to Valvino, (2) Aruze USA contributed an additional \$120 million in cash to Valvino, (3) Mr. Wynn contributed an additional approximately \$32 million in cash to Valvino and (4) Mr. Wynn contributed his interest in Wynn Resorts (Macau) S.A., which was valued at approximately \$56 million by the parties in the negotiation of Mr. Wynn's contribution of his interest, to Valvino. As a result of these capital contributions, Baron Asset Fund was issued an additional 2,834.01 common shares and its interest in Valvino's profits and losses increased to 5%. Aruze USA and Mr. Wynn received no additional shares as a result of the April 2002 capital contributions. Immediately following these capital contributions, each of Mr. Wynn and Aruze USA held a 47.5% interest in Valvino's profits and losses.

(e) In June 2002, the Kenneth R. Wynn Family Trust contributed \$1.2 million in cash to Valvino in exchange for 307.38 common shares, which represented approximately a 0.146% interest in the profits and losses of Valvino, and was admitted as a member of Valvino.

(f) In May 2002, Wynn Las Vegas Capital Corp., referred to as Wynn Capital, issued one share to Wynn Las Vegas, LLC in connection with the formation of Wynn Capital.

(g) Each of the other guarantor Registrants has engaged in various formation issuances of limited liability company membership interests.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions, or any public offering, and the Registrant believes that each transaction was exempt from the registration requirements of the Securities Act by virtue of Section 4(2) thereof and, or Regulation D promulgated thereunder or Rule 701 pursuant to compensatory benefit plans and contracts relating to compensation as provided under Rule 701.

#### **Item 16. Exhibits and Financial Statement Schedules**

**(a) Exhibits**

Exhibit No.	Description	Footnote No.
1.1	Form of Underwriting Agreement.	(13)
3.1	First Amended and Restated Articles of Organization of Wynn Las Vegas, LLC.	(11)
3.2	Form of First Amended and Restated Operating Agreement of Wynn Las Vegas, LLC.	(11)
3.3	First Amended and Restated Articles of Incorporation of the Wynn Las Vegas Capital Corp.	(11)
3.4	First Amended and Restated Bylaws of the Wynn Las Vegas Capital Corp.	(11)
3.5	First Amended and Restated Articles of Organization of Desert Inn Water Company, LLC.	(11)
3.6	Form of First Amended and Restated Operating Agreement Desert Inn Water Company, LLC.	(11)
3.7	First Amended and Restated Articles of Organization of Valvino Lamore, LLC, as amended.	(11)

II-3

3.8	Form of Second Amended and Restated Operating Agreement of Valvino Lamore, LLC, as amended.	(11)
3.9	First Amended and Restated Articles of Organization of Wynn Design & Development, LLC.	(11)
3.10	Form of First Amended and Restated Operating Agreement of Wynn Design & Development, LLC.	(11)
3.11	First Amended and Restated Articles of Organization of Wynn Resorts Holdings, LLC.	(11)
3.12	Form of Second Amended and Restated Operating Agreement of Wynn Resorts Holdings, LLC.	(11)
3.13	First Amended and Restated Articles of Organization of World Travel, LLC.	(11)
3.14	Form of First Amended and Restated Operating Agreement of World Travel, LLC.	(11)
3.15	First Amended and Restated Articles of Organization of Las Vegas Jet, LLC.	(11)
3.16	Form of First Amended and Restated Operating Agreement of Las Vegas Jet, LLC.	(11)
3.17	Form of First Amended and Restated Operating Agreement of Palo, LLC.	(11)
3.18	Form of Certificate of Formation of Palo, LLC, as amended.	(11)
4.1	Form of Indenture, dated _____, 2002, governing the % 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 and Wells Fargo Bank, National Association, as trustee.	(9)
4.2	Form of Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing in favor of Wells Fargo Bank, National Association, as trustee under the Indenture.	(9)
4.3	Form of Guarantee and Collateral Agreement, dated as of _____, 2002, among Valvino Lamore, LLC, Wynn Las Vegas Capital Corp., Palo, LLC, Wynn Resorts Holdings, LLC, Desert Inn Water Company, LLC, World Travel LLC, Las Vegas Jet, LLC, Wynn Las Vegas, LLC and the other Grantors from to time party thereto in favor of Wells Fargo Bank, National Association, as trustee.	(13)
5.1	Opinion of Irell & Manella LLP.	(11)
10.1	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.	(1)
10.2	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.	(1)
10.3	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.	(1)

II-4

10.4	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.	(1)
10.5	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.	(1)
10.6	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.	(1)
10.7	Agreement, dated January 25, 2001, by and between Wynn Resorts Holdings, LLC and Calitri Services and Licensing Limited Liability Company.	(4)
10.8	Lease Agreement, dated November 1, 2001, by and between Valvino Lamore, LLC and Wynn Resorts Holdings, LLC.	(1)
10.9	Art Rental and Licensing Agreement, dated November 1, 2001, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.	(1)
10.10	Stockholders Agreement, dated as of April 11, 2002, by and among Stephen A. Wynn, Baron Asset Fund and Aruze USA, Inc.	(1)
10.11	Agreement for Guaranteed Maximum Price Construction Services between Wynn Las Vegas, LLC and Marnell Corrao Associates, Inc. for Le Rêve.	(1)
10.12	Continuing Guaranty, dated June 4, 2002, by Austi, Inc. in favor of Wynn Las Vegas, LLC.	(1)

10.13	Design/Build Agreement, dated June 6, 2002, by and between Wynn Las Vegas, LLC and Bomel Construction Company, Inc.	(1)
10.14	2002 Stock Incentive Plan	(4)
10.15	Form of Indemnity Agreement	(8)
10.16	Employment Agreement, dated April 1, 2002, by and between Wynn Resorts Holdings, LLC and Ronald J. Kramer.	(2)
10.17	Contribution Agreement, dated as of June 11, 2002 by and among Stephen A. Wynn, Aruze USA, Inc., Baron Asset Fund, the Kenneth R. Wynn Family Trust dated February 1985 and Wynn Resorts, Limited.	(2)
10.18	Amended and Restated Business Loan Agreement, dated as of May 30, 2002, between Bank of America, N.A. and World Travel, LLC.	(8)
10.19	Continuing Guaranty, dated May 30, 2002, by Valvino Lamore, LLC in favor of Bank of America, N.A.	(2)
10.20	Agreement, dated as of June 13, 2002, by and between Stephen A. Wynn and Wynn Resorts, Limited.	(2)
10.21	Purchase Agreement, dated May 30, 2002, between Stephen A. Wynn and Valvino Lamore, LLC.	(2)
10.22	Agreement, dated as of _____, between Wynn Design and Development, LLC and Butler/Ashworth Architects, Inc.	(6)
10.23	Employment Agreement, dated as of May 31, 2002, by and between Valvino Lamore, LLC and Matt Maddox.	(2)

II-5

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10.24	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).	(2)
10.25	Amended and Restated Commitment Letter Agreement, dated June 14, 2002, among Deutsche Bank Trust Company Americas, Deutsche Bank Securities Inc., Bank of America, N.A., Banc of America Securities LLC, Bear Stearns Corporate Lending, Inc., Bear Stearns & Co. Inc., Wynn Resorts Holdings, LLC and Wynn Las Vegas, LLC.	(2)
10.26	Agreement for Guarantee Maximum Price Construction Services Change Order, dated as of August 12, 2002 between Marnell Corrao Associates, Inc. and Wynn Las Vegas, LLC.	(2)
10.27	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).	(4)
10.28	Amended and Restated Art Rental and Licensing Agreement, dated August 19, 2002, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.	(6)
10.29	Professional Design Services Agreement, effective as of October 5, 2001, between Wynn Design Development, LLC and A.A. Marnell II, Chtd.	(4)
10.30	General Conditions to the Professional Design Services Agreement.	(4)
10.31	Trademark/Service Mark Purchase Agreement, dated June 7, 2001, between Wynn Resorts and The STAD Trust.	(4)
10.32	Purchase Agreement, dated as of April 1, 2001, between Stephen A. Wynn and Valvino Lamore, LLC.	(4)
10.33	Amended and Restated Operating Agreement of Valvino Lamore, LLC.	(4)
10.34	First Amendment to Amended and Restated Operating Agreement of Valvino Lamore, LLC.	(4)
10.35	Second Amendment to Amended and Restated Operating Agreement.	(4)
10.36	Third Amendment to Amended and Restated Operating Agreement of Valvino Lamore, LLC.	(4)
10.37	Fourth Amendment to Amended and Restated Operating Agreement of Valvino Lamore, LLC.	(4)
10.38	Employment Agreement, dated as of July 7, 2000, by and between Wynn Design & Development, LLC and William Todd Nisbet.	(4)
10.39	Employment Agreement, dated as of September 6, 2002, by and between Wynn Resorts, Limited and Marc H. Rubinstein.	(4)
10.40	Employment Agreement, dated as of September 9, 2002, by and between Wynn Resorts, Limited and John Strzemp.	(4)
10.41	Second Amended and Restated Art Rental and Licensing Agreement, dated September 18, 2002, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.	(6)
10.42	Employment Agreement, dated as of September 18, 2002, by and between Wynn Design & Development, LLC and Kenneth R. Wynn.	(6)

II-6

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10.43	Tax Indemnification Agreement, effective as of September 24, 2002, by and among Stephen A. Wynn, Aruze USA, Inc., Baron Asset Fund 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.	(6)
10.44	Employment Agreement, dated as of September 26, 2002, by and between Wynn Design & Development, LLC and DeRuyter O. Butler.	(6)
10.45	Employment Agreement, dated as of October 4th, 2002, by and between Wynn Resorts, Limited and Stephen A. Wynn.	(6)
10.46	Letter of Intent, dated May 24, 2002, by and between Valvino Lamore, LLC and Ferrari North America, Inc.	(8)
10.47	First Amendment to Letter of Intent, dated as of October 4, 2002, by and between Valvino Lamore, LLC and Ferrari North America, Inc.	(8)

10.48	Letter of Intent, dated May 24, 2002, by and between Valvino Lamore, LLC and Maserati North America, Inc.	(8)
10.49	First Amendment to Letter of Intent, dated as of October 4, 2002, by and between Valvino Lamore, LLC and Maserati North America, Inc.	(8)
10.50	Employment Agreement, dated as of October 4, 2002, by and between Wynn Resorts, Limited and Marc D. Schorr.	(8)
10.51	Distribution Agreement and Assignment, effective as of October 17, 2002, by and between Wynn Resorts, Limited and Valvino Lamore, LLC.	(8)
10.52	Form of Master Disbursement Agreement by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., Wynn Design & Development, LLC, Deutsche Bank Trust Company Americas and Wells Fargo Bank, National Association.	(9)
10.53	Form of Lease Agreement by and between Valvino Lamore, LLC and Wynn Las Vegas, LLC.	(8)
10.54	Form of Golf Course Lease by and between Wynn Resorts Holdings, LLC and Wynn Las Vegas, LLC.	(8)
10.55	Form of Driving Range Lease by and between Valvino Lamore, LLC and Wynn Las Vegas, LLC.	(8)
10.56	Form of Parking Facility Lease by and between Valvino Lamore, LLC and Wynn Las Vegas, LLC.	(8)
10.57	Share Subscription and Shareholders' Agreement, made and entered into as of October 15, 2002, by and among S.H.W. & Co. Limited, SKKG Limited, L'Arc de Triomphe Limited, Classic Wave Limited, Yany Kwan Yan Chi, Li Tai Foon, Kwan Yan Ming, Wong Chi Seng, Wynn Resorts International, Ltd., and Wynn Resorts (Macau) Holdings, Ltd.	(8)
10.58	Shareholders' Agreement, made and entered into as of October 15, 2002, by and among Wong Chi Seng, Wynn Resorts International, Ltd., Wynn Resorts (Macau), Limited and Wynn Resorts (Macau), S.A.	(8)
10.59	Mortgage, Security Agreement and Assignment, dated as of February 28, 2002, between World Travel, LLC and Bank of America, N.A.	(8)
10.60	Form of Registration Rights Agreement, dated October , 2002, by and between Wynn Resorts, Limited and Stephen A. Wynn.	(10)
10.61	Form of Management Agreement, made as of , 2002, by and among Wynn Las Vegas, LLC and the subsidiaries and affiliates listed on Exhibit A thereto and Wynn Resorts, Limited.	(10)
10.62	Form of Credit Agreement, dated as of October , 2002, among Wynn Las Vegas, LLC and the several lenders from time to time parties thereto.	(13)

II-7

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10.63	Form of Loan Agreement, dated as of October , 2002, by and among Wynn Las Vegas, LLC, Wells Fargo Bank Nevada, N.A. and the lenders listed therein.	(13)
10.64	FF&E Facility Commitment Letter, dated October 3, 2002, from Deutsche Bank Trust Company Americas, Bank of America, N.A. and Bear Stearns Corporate Lending, Inc. to Bank of America, National Association.	(12)
10.65	FF&E Facility Commitment Letter, dated September 16, 2002, from Bank of America, N.A. to Bank of America, National Association.	(12)
10.66	FF&E Facility Commitment Letter, dated August 22, 2002, from The CIT Group/Equipment Financing, Inc. to Bank of America, National Association.	(12)
10.67	FF&E Facility Commitment Letter, dated October 18, 2002, from General Electric Capital Corporation to Bank of America, National Association.	(12)
10.68	FF&E Facility Commitment Letter, dated September 13, 2002, from SG Cowen Securities and Societe Generale to Deutsche Bank Securities Inc.	(12)
10.69	FF&E Facility Commitment Letter, dated October 22, 2002, from GMAC Commercial Mortgage Corporation to Bank of America, National Association.	(12)
10.70	Form of Underwriting Agreement by and among Wynn Resorts, Limited and the several underwriters listed in Schedule I thereto.	(12)
10.71	Form of Wynn Resorts Agreement, dated as of , 2002.	(12)
10.72	Form of Borrower Security Agreement, dated as of October , 2002, by Wynn Las Vegas, LLC, in favor of Wells Fargo Bank Nevada, National Association. (included in Exhibit 10.63)	(13)
10.73	Form of Promissory Note made by Wynn Las Vegas, LLC (included in Exhibit 10.63).	(13)
10.74	Form of Aircraft Security Agreement, dated as of October , 2002, by Wells Fargo Bank Northwest, National Association. (included in Exhibit 10.63)	(13)
10.75	Form of Assignment and Assumption Agreement, dated as of October , 2002, between Wynn Las Vegas, LLC and Wells Fargo Bank Nevada, National Association (included in Exhibit 10.63).	(13)
10.76	Form of Completion Guaranty, dated as of October , 2002, by Wynn Completion Guarantor, LLC in favor of Deutsche Bank Trust Company Americas, as the Bank Agent, and Wells Fargo Bank, National Association, as Trustee.	(13)
10.77	Intentionally deleted.	
10.78	Form of Project Lenders Intercreditor Agreement by and among Deutsche Bank Trust Company Americas and Wells Fargo Bank, National Association.	(13)
10.79	Form of FF&E Intercreditor Agreement by and among Deutsche Bank Trust Company Americas, Wells Fargo Bank, National Association and Wells Fargo Bank Nevada, National Association.	(13)
10.80	Form of Guarantee and Collateral Agreement, dated as of , 2002 among Valvino Lamore, LLC, Wynn Las Vegas Capital Corp., Palo, LLC, Wynn Resorts Holdings, LLC, Desert Inn Water Company, LLC, World Travel LLC, Las Vegas Jet, LLC, Wynn Las Vegas, LLC and the Grantors from time to time party thereto in favor of Deutsche Bank Trust Company Americas, as administrative agent.	(13)
12.1	Computation of Ratio of Earnings to Fixed Charges.	(7)
21.1	Subsidiaries of Wynn Las Vegas, LLC.	(7)
21.2	Subsidiaries of Wynn Las Vegas Capital Corp.	(7)
21.3	Subsidiaries of Desert Inn Water Company, LLC.	(7)

21.5	Subsidiaries of Valvino Lamore, LLC.	(7)
21.6	Subsidiaries of Wynn Design & Development, LLC.	(7)
21.7	Subsidiaries of Wynn Resorts Holdings, LLC.	(7)
21.8	Subsidiaries of World Travel, LLC.	(7)
21.9	Subsidiaries of Las Vegas Jet, LLC.	(7)
23.1	Consent of Irell & Manella LLP (included in Exhibit 5.1).	(11)
23.2	Consent of Deloitte & Touche LLP.	(11)
23.3	Consents of Persons Named to Become Directors.	(11)
24.1	Powers of Attorney of officer and directors of Wynn Las Vegas Capital Corp.	(3)
24.2	Powers of Attorney of officers of Valvino Lamore, LLC re: of Desert Inn Water Company, LLC.	(3)
24.3	Powers of Attorney of officers of Valvino Lamore, LLC re: of Palo, LLC.	(3)
24.4	Powers of Attorney of officers of Valvino Lamore, LLC.	(3)
24.5	Powers of Attorney of officers of Valvino Lamore, LLC re: of Wynn Design & Development, LLC.	(3)
24.6	Powers of Attorney of officers of Valvino Lamore, LLC re: of Wynn Resorts Holdings, LLC.	(3)
24.7	Powers of Attorney of officers of Valvino Lamore, LLC re: of World Travel, LLC.	(3)
24.8	Powers of Attorney of officers of Valvino Lamore, LLC re: of Las Vegas Jet, LLC.	(3)
24.9	Powers of Attorney of officers of Valvino Lamore, LLC re: of Wynn Las Vegas, LLC.	(3)
25.1	Form of T-1 Statement of Eligibility and Qualification of Trustee.	(9)

- (1) Incorporated by reference to the Registration Statement on Form S-1 of Wynn Resorts, Limited filed June 17, 2002 (Registration No. 333-90600).
- (2) Incorporated by reference to Amendment No. 1 to the Registration Statement on Form S-1 of Wynn Resorts, Limited filed August 20, 2002 (Registration No. 333-90600).
- (3) Previously filed with the Form S-1 filed by the Registrants on August 20, 2002.
- (4) Incorporated by reference to Amendment No. 3 to the Registration Statement on Form S-1 of Wynn Resorts, Limited filed September 18, 2002 (Registration No. 333-90600).
- (5) Previously filed with Amendment No. 2 to the Form S-1 filed by the Registrants on September 18, 2002.
- (6) Incorporated by reference to Amendment No. 4 to the Registration Statement on Form S-1 of Wynn Resorts, Limited filed October 7, 2002 (Registration No. 333-90600).
- (7) Previously filed with Amendment No. 3 to the Form S-1 filed by the Registrants on October 7, 2002.
- (8) Incorporated by reference to Amendment No. 5 to the Registration Statement on Form S-1 of Wynn Resorts, Limited filed October 21, 2002 (Registration No. 333-90600).
- (9) Previously filed with Amendment No. 4 to the Form S-1 filed by the Registrants on October 21, 2002.
- (10) Incorporated by reference to Amendment No. 6 to the Registration Statement on Form S-1 of Wynn Resorts, Limited filed October 22, 2002 (Registration No. 333-90600).
- (11) Previously filed with Amendment No. 5 to the Form S-1 filed by the Registrants on October 22, 2002.
- (12) Incorporated by reference to Amendment No. 7 to the Registration Statement on Form S-1 of Wynn Resorts, Limited filed October 23, 2002 (Registration No. 333-90600).
- (13) Filed herewith.

## (b) Financial Statement Schedules:

	Page
Schedule II—Valuation and Qualifying Accounts	*

\* Previously filed with Amendment No. 5 to the Form S-1 filed by the Registrants on October 22, 2002.

Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

## Item 17. Undertakings

Insofar as indemnification by the Registrant for liabilities arising under the Securities Act, may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions referenced in Item 14 of this Registration Statement or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act, and is, therefore, unenforceable. If a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer, or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by a director, officer or controlling person in connection with the securities being registered hereunder, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act, and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of Prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of Prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of Prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Amendment No. 6 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Las Vegas, Nevada, on the 22nd day of October, 2002.

VALVINO LAMORE, LLC

By: WYNN RESORTS, LIMITED, its member

By:                   /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn  
Title: Chairman of the Board & Chief Executive Officer

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ STEPHEN A. WYNN</u> Stephen A. Wynn	Chief Executive Officer of Wynn Resorts, Limited (Principal Executive Officer)	October 22, 2002
<u>/s/ JOHN STRZEMP</u> John Strzemp	Executive Vice President and Chief Financial Officer of Wynn Resorts, Limited (Principal Financial Officer and Principal Accounting Officer)	October 22, 2002

S-1

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Amendment No. 6 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Las Vegas, Nevada, on the 22nd day of October, 2002.

WORLD TRAVEL, LLC

By: Wynn Las Vegas, LLC, its member

By: Wynn Resorts Holdings, LLC, its member

By: VALVINO LAMORE, LLC, its member

By: WYNN RESORTS, LIMITED, its member

By:                   /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn  
Title: Chairman of the Board & Chief Executive Officer

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ STEPHEN A. WYNN</u> Stephen A. Wynn	Chief Executive Officer of Wynn Resorts, Limited (Principal Executive Officer)	October 22, 2002
<u>/s/ JOHN STRZEMP</u> John Strzemp	Executive Vice President and Chief Financial Officer of Wynn Resorts, Limited (Principal Financial Officer and Principal Accounting Officer)	October 22, 2002



**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Amendment No. 6 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Las Vegas, Nevada, on the 22nd day of October, 2002.

LAS VEGAS JET, LLC

By: Wynn Las Vegas, LLC, its member

By: Wynn Resorts Holdings, LLC, its member

By: VALVINO LAMORE, LLC, its member

By: WYNN RESORTS, LIMITED, its member

By:                     /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn  
Title: Chairman of the Board & Chief Executive Officer

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

Signature	Title	Date
<u>                    /s/ STEPHEN A. WYNN</u> Stephen A. Wynn	Chief Executive Officer of Wynn Resorts, Limited (Principal Executive Officer)	October 22, 2002
<u>                    /s/ JOHN STRZEMP</u> John Strzemp	Executive Vice President and Chief Financial Officer of Wynn Resorts, Limited (Principal Financial Officer and Principal Accounting Officer)	October 22, 2002

S-3

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Amendment No. 6 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Las Vegas, Nevada, on the 22nd day of October, 2002.

WYNN DESIGN & DEVELOPMENT LLC

By: VALVINO LAMORE, LLC, its member

By: WYNN RESORTS, LIMITED, its member

By:                     /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn  
Title: Chairman of the Board & Chief Executive Officer

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

Signature	Title	Date
<u>                    /s/ STEPHEN A. WYNN</u> Stephen A. Wynn	Chief Executive Officer of Wynn Resorts, Limited (Principal Executive Officer)	October 22, 2002
<u>                    /s/ JOHN STRZEMP</u>	Executive Vice President and Chief Financial Officer of	October 22, 2002

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Amendment No. 6 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Las Vegas, Nevada, on the 22nd day of October, 2002.

DESERT INN WATER COMPANY, LLC

By: VALVINO LAMORE, LLC, its member

By: WYNN RESORTS, LIMITED, its member

By:                     /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn  
Title: Chairman of the Board & Chief Executive  
Officer

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

Signature	Title	Date
<u>                    /s/ STEPHEN A. WYNN</u> Stephen A. Wynn	Chief Executive Officer of Wynn Resorts, Limited (Principal Executive Officer)	October 22, 2002
<u>                    /s/ JOHN STRZEMP</u> John Strzemp	Executive Vice President and Chief Financial Officer of Wynn Resorts, Limited (Principal Financial Officer and Principal Accounting Officer)	October 22, 2002

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Amendment No. 6 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Las Vegas, Nevada, on the 22nd day of October, 2002.

WYNN RESORTS HOLDINGS, LLC

By: VALVINO LAMORE, LLC, its member

By: WYNN RESORTS, LIMITED, its member

By:                     /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn  
Title: Chairman of the Board & Chief Executive  
Officer

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

Signature	Title	Date
<u>                    /s/ STEPHEN A. WYNN</u> Stephen A. Wynn	Chief Executive Officer of Wynn Resorts, Limited (Principal Executive Officer)	October 22, 2002
<u>                    /s/ JOHN STRZEMP</u>	Executive Vice President and Chief Financial Officer of	October 22, 2002

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Amendment No. 6 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Las Vegas, Nevada, on the 22nd day of October, 2002.

PALO, LLC

By: WYNN RESORTS HOLDINGS, LLC, its member

By: VALVINO LAMORE, LLC, its member

By: WYNN RESORTS, LIMITED, its member

By:                   /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn  
Title: Chairman of the Board & Chief Executive  
Officer

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

Signature	Title	Date
<u>                  /s/ STEPHEN A. WYNN</u> Stephen A. Wynn	Chief Executive Officer of Wynn Resorts, Limited (Principal Executive Officer)	October 22, 2002
<u>                  /s/ JOHN STRZEMP</u> John Strzemp	Executive Vice President and Chief Financial Officer of Wynn Resorts, Limited (Principal Financial Officer and Principal Accounting Officer)	October 22, 2002

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Amendment No. 6 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Las Vegas, Nevada, on the 22nd day of October, 2002.

WYNN LAS VEGAS, LLC

By: WYNN RESORTS HOLDINGS, LLC, its member

By: VALVINO LAMORE, LLC, its member

By: WYNN RESORTS, LIMITED, its member

By:                   /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn  
Title: Chairman of the Board & Chief Executive  
Officer

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

Signature	Title	Date
<u>                  /s/ STEPHEN A. WYNN</u>	Chief Executive Officer of Wynn Resorts, Limited	October 22, 2002

/s/ JOHN STRZEMP

October 22, 2002

John Strzemp

Executive Vice President and  
Chief Financial Officer of  
Wynn Resorts, Limited  
(Principal Financial Officer and Principal  
Accounting Officer)

S-8

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Amendment No. 6 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Las Vegas, Nevada, on the 22nd day of October, 2002.

WYNN LAS VEGAS CAPITAL CORP.

By: /s/ STEPHEN A. WYNN

Name: Stephen A. Wynn  
Title: President (Principal Executive Officer)

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

Signature	Title	Date
/s/ STEPHEN A. WYNN  Stephen A. Wynn	Director and President	October 22, 2002
/s/ JOHN STRZEMP  John Strzemp	Treasurer (Principal Financial Officer and Principal Accounting Officer)	October 22, 2002

S-9

**EXHIBIT INDEX**

Exhibit No.	Description	Footnote No.
1.1	Form of Underwriting Agreement.	(13)
3.1	First Amended and Restated Articles of Organization of Wynn Las Vegas, LLC.	(11)
3.2	Form of First Amended and Restated Operating Agreement of Wynn Las Vegas, LLC.	(11)
3.3	First Amended and Restated Articles of Incorporation of the Wynn Las Vegas Capital Corp.	(11)
3.4	First Amended and Restated Bylaws of the Wynn Las Vegas Capital Corp.	(11)
3.5	First Amended and Restated Articles of Organization of Desert Inn Water Company, LLC.	(11)
3.6	Form of First Amended and Restated Operating Agreement Desert Inn Water Company, LLC.	(11)
3.7	First Amended and Restated Articles of Organization of Valvino Lamore, LLC, as amended.	(11)
3.8	Form of Second Amended and Restated Operating Agreement of Valvino Lamore, LLC, as amended.	(11)
3.9	First Amended and Restated Articles of Organization of Wynn Design & Development, LLC.	(11)
3.10	Form of First Amended and Restated Operating Agreement of Wynn Design & Development, LLC.	(11)
3.11	First Amended and Restated Articles of Organization of Wynn Resorts Holdings, LLC.	(11)
3.12	Form of Second Amended and Restated Operating Agreement of Wynn Resorts Holdings, LLC.	(11)
3.13	First Amended and Restated Articles of Organization of World Travel, LLC.	(11)
3.14	Form of First Amended and Restated Operating Agreement of World Travel, LLC.	(11)
3.15	First Amended and Restated Articles of Organization of Las Vegas Jet, LLC.	(11)
3.16	Form of First Amended and Restated Operating Agreement of Las Vegas Jet, LLC.	(11)
3.17	Form of First Amended and Restated Operating Agreement of Palo, LLC.	(11)
3.18	Form of Certificate of Formation of Palo, LLC, as amended.	(11)
4.1	Form of Indenture, dated _____, 2002, governing the % 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 and Wells Fargo Bank, National Association, as trustee.	(9)
4.2	Form of Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing in favor of Wells Fargo Bank, National Association, as trustee under the Indenture.	(9)
4.3	Form of Guarantee and Collateral Agreement, dated as of _____, 2002, among Valvino Lamore, LLC, Wynn Las Vegas Capital Corp., Palo, LLC, Wynn Resorts Holdings, LLC, Desert Inn	(13)

	Water Company, LLC, World Travel LLC, Las Vegas Jet, LLC, Wynn Las Vegas, LLC and the other Grantors from to time party thereto in favor of Wells Fargo Bank, National Association, as trustee.	(11)
5.1	Opinion of Irell & Manella LLP.	(11)
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10.1	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.	(1)
10.2	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.	(1)
10.3	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.	(1)
10.4	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.	(1)
10.5	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.	(1)
10.6	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.	(1)
10.7	Agreement, dated January 25, 2001, by and between Wynn Resorts Holdings, LLC and Calitri Services and Licensing Limited Liability Company.	(4)
10.8	Lease Agreement, dated November 1, 2001, by and between Valvino Lamore, LLC and Wynn Resorts Holdings, LLC.	(1)
10.9	Art Rental and Licensing Agreement, dated November 1, 2001, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.	(1)
10.10	Stockholders Agreement, dated as of April 11, 2002, by and among Stephen A. Wynn, Baron Asset Fund and Aruze USA, Inc.	(1)
10.11	Agreement for Guaranteed Maximum Price Construction Services between Wynn Las Vegas, LLC and Marnell Corrao Associates, Inc. for Le Rêve.	(1)
10.12	Continuing Guaranty, dated June 4, 2002, by Austi, Inc. in favor of Wynn Las Vegas, LLC.	(1)
10.13	Design/Build Agreement, dated June 6, 2002, by and between Wynn Las Vegas, LLC and Bomel Construction Company, Inc.	(1)
10.14	2002 Stock Incentive Plan	(4)
10.15	Form of Indemnity Agreement	(8)
10.16	Employment Agreement, dated April 1, 2002, by and between Wynn Resorts Holdings, LLC and Ronald J. Kramer.	(2)
10.17	Contribution Agreement, dated as of June 11, 2002 by and among Stephen A. Wynn, Aruze USA, Inc., Baron Asset Fund, the Kenneth R. Wynn Family Trust dated February 1985 and Wynn Resorts, Limited.	(2)
10.18	Amended and Restated Business Loan Agreement, dated as of May 30, 2002, between Bank of America, N.A. and World Travel, LLC.	(8)
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10.19	Continuing Guaranty, dated May 30, 2002, by Valvino Lamore, LLC in favor of Bank of America, N.A.	(2)
10.20	Agreement, dated as of June 13, 2002, by and between Stephen A. Wynn and Wynn Resorts, Limited.	(2)
10.21	Purchase Agreement, dated May 30, 2002, between Stephen A. Wynn and Valvino Lamore, LLC.	(2)
10.22	Agreement, dated as of _____, between Wynn Design and Development, LLC and Butler/Ashworth Architects, Inc.	(6)
10.23	Employment Agreement, dated as of May 31, 2002, by and between Valvino Lamore, LLC and Matt Maddox.	(2)
10.24	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).	(2)
10.25	Amended and Restated Commitment Letter Agreement, dated June 14, 2002, among Deutsche Bank Trust Company Americas, Deutsche Bank Securities Inc., Bank of America, N.A., Banc of America Securities LLC, Bear Stearns Corporate Lending, Inc., Bear Stearns & Co. Inc., Wynn Resorts Holdings, LLC and Wynn Las Vegas, LLC.	(2)
10.26	Agreement for Guarantee Maximum Price Construction Services Change Order, dated as of August 12, 2002 between Marnell Corrao Associates, Inc. and Wynn Las Vegas, LLC.	(2)
10.27	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).	(4)
10.28	Amended and Restated Art Rental and Licensing Agreement, dated August 19, 2002, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.	(6)
10.29	Professional Design Services Agreement, effective as of October 5, 2001, between Wynn Design Development, LLC and A.A. Marnell II, Chtd.	(4)
10.30	General Conditions to the Professional Design Services Agreement.	(4)

10.31	Trademark/Service Mark Purchase Agreement, dated June 7, 2001, between Wynn Resorts and The STAD Trust.	(4)
10.32	Purchase Agreement, dated as of April 1, 2001, between Stephen A. Wynn and Valvino Lamore, LLC.	(4)
10.33	Amended and Restated Operating Agreement of Valvino Lamore, LLC.	(4)
10.34	First Amendment to Amended and Restated Operating Agreement of Valvino Lamore, LLC.	(4)
10.35	Second Amendment to Amended and Restated Operating Agreement.	(4)
10.36	Third Amendment to Amended and Restated Operating Agreement of Valvino Lamore, LLC.	(4)
10.37	Fourth Amendment to Amended and Restated Operating Agreement of Valvino Lamore, LLC.	(4)
10.38	Employment Agreement, dated as of July 7, 2000, by and between Wynn Design & Development, LLC and William Todd Nisbet.	(4)
10.39	Employment Agreement, dated as of September 6, 2002, by and between Wynn Resorts, Limited and Marc H. Rubinstein.	(4)
10.40	Employment Agreement, dated as of September 9, 2002, by and between Wynn Resorts, Limited and John Strzemp.	(4)
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10.41	Second Amended and Restated Art Rental and Licensing Agreement, dated September 18, 2002, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.	(6)
10.42	Employment Agreement, dated as of September 18, 2002, by and between Wynn Design & Development, LLC and Kenneth R. Wynn.	(6)
10.43	Tax Indemnification Agreement, effective as of September 24, 2002, by and among Stephen A. Wynn, Aruze USA, Inc., Baron Asset Fund 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.	(6)
10.44	Employment Agreement, dated as of September 26, 2002, by and between Wynn Design & Development, LLC and DeRuyter O. Butler.	(6)
10.45	Employment Agreement, dated as of October 4th, 2002, by and between Wynn Resorts, Limited and Stephen A. Wynn.	(6)
10.46	Letter of Intent, dated May 24, 2002, by and between Valvino Lamore, LLC and Ferrari North America, Inc.	(8)
10.47	First Amendment to Letter of Intent, dated as of October 4, 2002, by and between Valvino Lamore, LLC and Ferrari North America, Inc.	(8)
10.48	Letter of Intent, dated May 24, 2002, by and between Valvino Lamore, LLC and Maserati North America, Inc.	(8)
10.49	First Amendment to Letter of Intent, dated as of October 4, 2002, by and between Valvino Lamore, LLC and Maserati North America, Inc.	(8)
10.50	Employment Agreement, dated as of October 4, 2002, by and between Wynn Resorts, Limited and Marc D. Schorr.	(8)
10.51	Distribution Agreement and Assignment, effective as of October 17, 2002, by and between Wynn Resorts, Limited and Valvino Lamore, LLC.	(8)
10.52	Form of Master Disbursement Agreement by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., Wynn Design & Development, LLC, Deutsche Bank Trust Company Americas and Wells Fargo Bank, National Association.	(9)
10.53	Form of Lease Agreement by and between Valvino Lamore, LLC and Wynn Las Vegas, LLC.	(8)
10.54	Form of Golf Course Lease by and between Wynn Resorts Holdings, LLC and Wynn Las Vegas, LLC.	(8)
10.55	Form of Driving Range Lease by and between Valvino Lamore, LLC and Wynn Las Vegas, LLC.	(8)
10.56	Form of Parking Facility Lease by and between Valvino Lamore, LLC and Wynn Las Vegas, LLC.	(8)
10.57	Share Subscription and Shareholders' Agreement, made and entered into as of October 15, 2002, by and among S.H.W. & Co. Limited, SKKG Limited, L'Arc de Triomphe Limited, Classic Wave Limited, Yany Kwan Yan Chi, Li Tai Foon, Kwan Yan Ming, Wong Chi Seng, Wynn Resorts International, Ltd., and Wynn Resorts (Macau) Holdings, Ltd.	(8)
10.58	Shareholders' Agreement, made and entered into as of October 15, 2002, by and among Wong Chi Seng, Wynn Resorts International, Ltd., Wynn Resorts (Macau), Limited and Wynn Resorts (Macau), S.A.	(8)
10.59	Mortgage, Security Agreement and Assignment, dated as of February 28, 2002, between World Travel, LLC and Bank of America, N.A.	(8)
10.60	Form of Registration Rights Agreement, dated October , 2002, by and between Wynn Resorts, Limited and Stephen A. Wynn.	(10)
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10.61	Form of Management Agreement, made as of , 2002, by and among Wynn Las Vegas, LLC and the subsidiaries and affiliates listed on Exhibit A thereto and Wynn Resorts, Limited.	(10)
10.62	Form of Credit Agreement, dated as of October , 2002, among Wynn Las Vegas, LLC and the several lenders from time to time parties thereto.	(13)
10.63	Form of Loan Agreement, dated as of October , 2002, by and among Wynn Las Vegas, LLC, Wells Fargo Bank Nevada, N.A. and the lenders listed therein.	(13)
10.64	FF&E Facility Commitment Letter, dated October 3, 2002, from Deutsche Bank Trust Company Americas, Bank of America, N.A. and Bear Stearns Corporate Lending, Inc. to Bank of America, National Association.	(12)
10.65	FF&E Facility Commitment Letter, dated September 16, 2002, from Bank of America, N.A. to Bank of America, National Association.	(12)
10.66	FF&E Facility Commitment Letter, dated August 22, 2002, from The CIT Group/Equipment Financing, Inc. to Bank of America, National Association.	(12)
10.67	FF&E Facility Commitment Letter, dated October 18, 2002, from General Electric Capital Corporation to Bank of America, National Association.	(12)
10.68	FF&E Facility Commitment Letter, dated September 13, 2002, from SG Cowen Securities and	(12)

	Societe Generale to Deutsche Bank Securities Inc.	
10.69	FF&E Facility Commitment Letter, dated October 22, 2002, from GMAC Commercial Mortgage Corporation to Bank of America, National Association.	(12)
10.70	Form of Underwriting Agreement by and among Wynn Resorts, Limited and the several underwriters listed in Schedule I thereto.	(12)
10.71	Form of Wynn Resorts Agreement, dated as of _____, 2002.	(12)
10.72	Form of Borrower Security Agreement, dated as of October _____, 2002, by Wynn Las Vegas, LLC, in favor of Wells Fargo Bank Nevada, National Association (included in Exhibit 10.63).	(13)
10.73	Form of Promissory Note made by Wynn Las Vegas, LLC (included in Exhibit 10.63).	(13)
10.74	Form of Aircraft Security Agreement, dated as of October _____, 2002, by Wells Fargo Bank Northwest, National Association. (included in Exhibit 10.63)	(13)
10.75	Form of Assignment and Assumption Agreement, dated as of October _____, 2002, between Wynn Las Vegas, LLC and Wells Fargo Bank Nevada, National Association (included in Exhibit 10.63).	(13)
10.76	Form of Completion Guaranty, dated as of October _____, 2002, by Wynn Completion Guarantor, LLC in favor of Deutsche Bank Trust Company Americas, as the Bank Agent, and Wells Fargo Bank, National Association, as Trustee.	(13)
10.77	Intentionally deleted.	
10.78	Form of Project Lenders Intercreditor Agreement by and among Deutsche Bank Trust Company Americas and Wells Fargo Bank, National Association.	(13)
10.79	Form of FF&E Intercreditor Agreement by and among Deutsche Bank Trust Company Americas, Wells Fargo Bank, National Association and Wells Fargo Bank Nevada, National Association.	(13)
10.80	Form of Guarantee and Collateral Agreement, dated as of _____, 2002 among Valvino Lamore, LLC, Wynn Las Vegas Capital Corp., Palo, LLC, Wynn Resorts Holdings, LLC, Desert Inn Water Company, LLC, World Travel LLC, Las Vegas Jet, LLC, Wynn Las Vegas, LLC and the Grantors from time to time party thereto in favor of Deutsche Bank Trust Company Americas, as administrative agent.	(13)
12.1	Computation of Ratio of Earnings to Fixed Charges.	(7)

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21.1	Subsidiaries of Wynn Las Vegas, LLC.	(7)
21.2	Subsidiaries of Wynn Las Vegas Capital Corp.	(7)
21.3	Subsidiaries of Desert Inn Water Company, LLC.	(7)
21.4	Subsidiaries of Palo, LLC.	(7)
21.5	Subsidiaries of Valvino Lamore, LLC.	(7)
21.6	Subsidiaries of Wynn Design & Development, LLC.	(7)
21.7	Subsidiaries of Wynn Resorts Holdings, LLC.	(7)
21.8	Subsidiaries of World Travel, LLC.	(7)
21.9	Subsidiaries of Las Vegas Jet, LLC.	(7)
23.1	Consent of Irell & Manella LLP (included in Exhibit 5.1).	(11)
23.2	Consent of Deloitte & Touche LLP.	(11)
23.3	Consents of Persons Named to Become Directors.	(11)
24.1	Powers of Attorney of officer and directors of Wynn Las Vegas Capital Corp.	(3)
24.2	Powers of Attorney of officers of Valvino Lamore, LLC re: of Desert Inn Water Company, LLC.	(3)
24.3	Powers of Attorney of officers of Valvino Lamore, LLC re: of Palo, LLC.	(3)
24.4	Powers of Attorney of officers of Valvino Lamore, LLC.	(3)
24.5	Powers of Attorney of officers of Valvino Lamore, LLC re: of Wynn Design & Development, LLC.	(3)
24.6	Powers of Attorney of officers of Valvino Lamore, LLC re: of Wynn Resorts Holdings, LLC.	(3)
24.7	Powers of Attorney of officers of Valvino Lamore, LLC re: of World Travel, LLC.	(3)
24.8	Powers of Attorney of officers of Valvino Lamore, LLC re: of Las Vegas Jet, LLC.	(3)
24.9	Powers of Attorney of officers of Valvino Lamore, LLC re: of Wynn Las Vegas, LLC.	(3)
25.1	Form of T-1 Statement of Eligibility and Qualification of Trustee.	(9)

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- (1) Incorporated by reference to the Registration Statement on Form S-1 of Wynn Resorts, Limited filed June 17, 2002 (Registration No. 333-90600).
  - (2) Incorporated by reference to Amendment No. 1 to the Registration Statement on Form S-1 of Wynn Resorts, Limited filed August 20, 2002 (Registration No. 333-90600).
  - (3) Previously filed with the Form S-1 filed by the Registrants on August 20, 2002.
  - (4) Incorporated by reference to Amendment No. 3 to the Registration Statement on Form S-1 of Wynn Resorts, Limited filed September 18, 2002 (Registration No. 333-90600).
  - (5) Previously filed with Amendment No. 2 to the Form S-1 filed by the Registrants on September 18, 2002.
  - (6) Incorporated by reference to Amendment No. 4 to the Registration Statement on Form S-1 of Wynn Resorts, Limited filed October 7, 2002 (Registration No. 333-90600).
  - (7) Previously filed with Amendment No. 3 to the Form S-1 filed by the Registrants on October 7, 2002.
  - (8) Incorporated by reference to Amendment No. 5 to the Registration Statement on Form S-1 of Wynn Resorts, Limited filed October 21, 2002 (Registration No. 333-90600).
  - (9) Previously filed with Amendment No. 4 to the Form S-1 filed by the Registrants on October 21, 2002.
  - (10) Incorporated by reference to Amendment No. 6 to the Registration Statement on Form S-1 of Wynn Resorts, Limited filed October 22, 2002 (Registration No. 333-90600).
  - (11) Previously filed with Amendment No. 5 to the Form S-1 filed by the Registrants on October 22, 2002.
  - (12) Incorporated by reference to Amendment No. 7 to the Registration Statement on Form S-1 of Wynn Resorts, Limited filed October 23, 2002 (Registration No. 333-90600).
  - (13) Filed herewith.
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## QuickLinks

[Other Registrants](#)

[PART II INFORMATION NOT REQUIRED IN PROSPECTUS](#)





**FORM OF**  
**WYNN LAS VEGAS, LLC**  
**WYNN LAS VEGAS CAPITAL CORP.**  
  
**\$340,000,000**  
  
**% Second Mortgage Notes due 2010**  
  
**UNDERWRITING AGREEMENT**

October           , 2002

Deutsche Bank Securities Inc.  
Banc of America Securities LLC  
Bear, Stearns & Co. Inc.  
Dresdner Kleinwort Wasserstein—Grantchester, Inc.  
As Representatives of the  
Several Underwriters

c/o Deutsche Bank Securities Inc.  
31 West 52<sup>nd</sup> Street  
New York, New York 10019

Ladies and Gentlemen:

Wynn Las Vegas, LLC, a Nevada limited liability company (the "Company"), and Wynn Las Vegas Capital Corp., a Nevada corporation ("Capital Corp.," and together with the Company, the "Issuers"), propose to issue and sell to the several underwriters (the "Underwriters") named in *Schedule I* hereto for whom you are acting as representatives (the "Representatives") an aggregate of \$340,000,000 principal amount of their Second Mortgage Notes due 2010 (the "Notes") having the terms identified on *Schedule II* hereto. The Notes will be guaranteed (the "Guarantees") by each of the entities listed on *Schedule III* hereto (each, a "Guarantor" and collectively, the "Guarantors" and, together with the Issuers, the "Wynn Parties"). The Notes are to be issued pursuant to the terms of an indenture to be dated as of October   , 2002 (the "Indenture") among the Issuers, the Guarantors and Wells Fargo Bank, National Association, as trustee (the "Trustee").

As the Representatives, you have advised the Issuers (a) that you are authorized to enter into this Agreement on behalf of the several Underwriters, and (b) that the several Underwriters are willing, acting severally and not jointly, to purchase the aggregate principal amount of Notes set forth opposite their respective names in *Schedule I*.

The term "Executed Transaction Documents" shall mean the documents set forth on *Schedule IV* hereto. The term "Closing Transaction Documents" shall mean the documents set forth on *Schedule V* hereto, each of which shall be executed and dated as of the Closing Date (as defined below). Capitalized terms used but not defined herein shall have the meanings given to such terms in the Preliminary Prospectus (as defined herein) included in Amendment No. 5 to the Registration Statement under the section entitled "Description of the Second Mortgage Notes—Certain Definitions."

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In consideration of the mutual agreements contained herein and of the interests of the parties in the transactions contemplated hereby, the parties hereto agree as follows:

1. *Representations and Warranties of the Wynn Parties.*

Each of the Wynn Parties jointly and severally represent and warrant to each of the Underwriters as follows:

(a) A registration statement on Form S-1 (File No. 333-98369) with respect to the Notes has been prepared by the Issuers in conformity in all material respects with the requirements of the Securities Act of 1933, as amended (the "Act"), and the rules and regulations (the "Rules and Regulations") of the Securities and Exchange Commission (the "Commission") thereunder, and the Trust Indenture Act of 1939, as amended, and the Rules and Regulations of the Commission thereunder (the "Trust Indenture Act"), and has been filed with the Commission. Copies of such registration statement, including any amendments thereto, the preliminary prospectuses contained therein and the exhibits, financial statements and schedules, as finally amended and revised, have heretofore been delivered by the Issuers to you. Such registration statement, as amended when it was declared effective by the Commission under the Act and the Rules and Regulations, including the financial statements and schedules thereto and any information omitted therefrom in reliance upon Rule 430A and contained in the Prospectus referred to below and together with any registration statement filed by the Issuers that is effective upon filing with the Commission pursuant to Rule 462(b) of the Act, is referred to herein as the "Registration Statement." The Registration Statement has become effective under the Act and no post-effective amendment to the Registration Statement has been filed as of the date of this Agreement. "Prospectus" means the form of prospectus first filed with the Commission pursuant to Rule 424(b). Each preliminary prospectus included in the Registration Statement prior to the time it becomes effective is herein referred to as a "Preliminary Prospectus."

(b) Each of the Wynn Parties has been duly organized and is validly existing as a corporation or limited liability company in good standing under the laws of the state of its organization, with corporate or limited liability company power and authority to own or lease and operate its properties and conduct its business as

described in the Registration Statement and to enter into and to perform its obligations under this Agreement. Each of the subsidiaries of any of the Wynn Parties listed on Exhibits 21.1 through 21.9 to the Registration Statement that is not also a Wynn Party (collectively, the "Subsidiaries") has been duly organized and is validly existing as a corporation or limited liability company in good standing under the laws of the jurisdiction of its organization, with corporate or limited liability company power and authority to own or lease and operate its properties and conduct its business as described in the Registration Statement. None of the Wynn Parties owns or controls, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed on Exhibits 21.1 through 21.9 to the Registration Statement. Each of the Wynn Parties and each of the Subsidiaries is duly qualified to transact business in all jurisdictions in which the conduct of its business requires such qualification, except for such jurisdictions where the failure to so qualify would not, individually or in the aggregate, reasonably be expected to (i) result in any material adverse change in the business, properties, assets, operations, condition (financial or otherwise) or prospects of, (A) the Wynn Entities taken as a whole or (B) the Issuers, Wynn Travel, LLC and Las Vegas Jet, LLC, taken as a whole, or (ii) result in or adversely affect the validity, enforceability or priority of the Liens purported to be created by the Collateral Documents, in each case whether or not occurring in the ordinary course of business (any such change, a "Material Adverse Change"). The outstanding membership interests and shares of capital stock of each of the subsidiaries listed on Exhibits 21.1 through 21.9 to the Registration Statement have been duly authorized and validly issued, the shares of capital stock of such subsidiaries are fully paid and non-assessable and, except as set forth on *Schedule 1(b)*, all such interests and shares are owned by such Wynn Party free and clear of all liens, encumbrances and equities and claims, except for any lien, encumbrance, equity or claim granted or

2

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agreed to be granted pursuant to an Executed Transaction Document or a Closing Transaction Document; and, except as accurately described in all material respects in the Registration Statement or the Prospectus or as set forth on *Schedule 1(b)*, there are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of any of the Wynn Parties or any of the Subsidiaries.

(c) All issued and outstanding shares of capital stock of each of the Wynn Parties have been duly authorized and validly issued and are fully paid and non-assessable and have been issued in compliance with federal and state securities laws. None of the outstanding shares of capital stock of the Wynn Parties was issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of any such Wynn Party. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Wynn Parties, or Desert Inn Improvement Co. ("DIIC" and, together with the Wynn Parties and the Completion Guarantor, the "Wynn Group Members") other than those accurately described in all material respects in the Registration Statement or the Prospectus. The description of Wynn Resorts, Limited's stock option, stock incentive and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the Registration Statement or the Prospectus fairly presents and accurately presents, in all material respects, the information required to be shown with respect to such plans, arrangements, options and rights.

(d) The table relating to the capitalization of the Wynn Entities under the heading "Capitalization" in the Prospectus, including the footnotes thereto, (i) with respect to the actual capitalization of the Wynn Entities as of June 30, 2002 presents fairly the information contained therein and (ii) with respect to the expected capitalization of the Wynn Entities as of June 30, 2002 on a pro forma basis giving effect to the sale of the Notes and the expected contribution by Wynn Resorts, Limited to the Company of proceeds from the concurrent initial public offering of common stock of Wynn Resorts, Limited, presents fairly the information contained therein, and with respect to the expected capitalization of the Wynn Entities as of June 30, 2002 on a pro forma, as adjusted basis giving effect to the sale of the Notes, the expected contribution by Wynn Resorts, Limited to the Company of proceeds from the concurrent initial public offering of common stock of Wynn Resorts, Limited and borrowings expected to be necessary to construct the Le Rêve Casino Resort, was prepared in good faith by the Issuers, and represents the best estimates and assumptions of the Issuers with respect to the information contained therein.

(e) The Notes have been duly authorized by the Issuers and when issued, authenticated and delivered to and paid for by the Underwriters in accordance with this Agreement and the Indenture, will have been duly executed, issued and delivered by the Issuers and, assuming the due authentication, execution and delivery of the Notes by the Trustee, will constitute valid and legally binding obligations of each of the Issuers, entitled to the benefits provided by the Indenture, under which they are to be issued, subject, as to enforcement, to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or to general equitable principles. The Indenture has been duly authorized by the Issuers and the Guarantors and when executed and delivered by the Issuers and the Guarantors, and assuming the due authorization, execution and delivery thereof by the Trustee, will constitute a valid and legally binding instrument of each of the Issuers and the Guarantors, enforceable against the Issuers and the Guarantors in accordance with its terms, subject, as to enforcement, to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or to general equitable principles. The Notes and the Indenture will conform in all material respects to the descriptions thereof in the Registration Statement and the Prospectus.

3

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(f) The Guarantees have been duly authorized by the Guarantors, and when executed and delivered in accordance with the terms of the Indenture and when the Notes and Guarantees are duly issued, authenticated and delivered in accordance with the terms of the Indenture and the Notes and delivered to and paid for by the Underwriters in accordance with the terms of this Agreement and the Indenture, will constitute the valid and legally binding obligations of the Guarantors, enforceable against the Guarantors in accordance with their terms, subject, as to enforcement, to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or to general equitable principles. The Guarantees will conform in all material respects to the descriptions thereof in the Registration Statement and the Prospectus.

(g) The Commission has not issued an order preventing or suspending the use of any Prospectus relating to the proposed offering of the Notes nor, to the knowledge of the Wynn Parties, instituted proceedings for that purpose. The Registration Statement, at the time that it became effective and at all subsequent times up to and including the time of closing on the Closing Date (the "Closing Time"), complied, and the Prospectus and any amendments or supplements thereto, as of their respective dates and at all subsequent times up to and including the Closing Time, will comply, in all material respects with the requirements of the Act and the Rules and Regulations. At the time it became effective and at all subsequent times up to and including the Closing Time, the Registration Statement did not contain, and will not contain, any untrue statement of a material fact and did not omit, and will not omit, to state any material fact required to be stated therein or necessary to make the statements therein not misleading. As of its date and at all subsequent times up to and including the Closing Time, the Prospectus, as amended or supplemented by any amendments and supplements thereto (including any Prospectus wrapper for use with offers in Canada) does not contain, and will not contain, any untrue statement of material fact and does not omit, and will not omit, to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that the Wynn Parties

make no representations or warranties as to information contained in or omitted from the Registration Statement or the Prospectus, or any such amendment or supplement, in reliance upon, and in conformity with, written information furnished to the Wynn Parties by or on behalf of any Underwriter through the Representatives, specifically for use in the preparation thereof. There are no contracts or other documents required to be described in the Prospectus or to be filed as exhibits to the Registration Statement which have not been described or filed as required.

(h) The consolidated financial statements of Valvino Lamore, LLC ("Valvino") and its subsidiaries (together, "Valvino Lamore") and of the Company, in each case together with related notes and schedules as set forth in the Registration Statement and included in the Prospectus, present fairly the consolidated financial position and the results of operations and cash flows of Valvino Lamore and the Company, as applicable, at the indicated dates and for the indicated periods. Such financial statements and related schedules have been prepared in accordance with generally accepted principles of accounting as applied in the United States, consistently applied throughout the periods involved, except as disclosed therein, and all adjustments necessary for a fair presentation of results for such periods have been made. The financial and statistical data included in the Registration Statement and the Prospectus, including such data set forth under the captions "Capitalization" and "Selected Consolidated Financial Data," presents fairly the information shown therein and such data has been compiled on a basis consistent with the financial statements presented therein and the books and records of Valvino Lamore and the Company, as applicable. The pro forma financial information included in the Registration Statement and the Prospectus present fairly the information shown therein, have been properly compiled on the pro forma bases described therein, and, in the opinion of the Issuers, the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions or circumstances referred to therein. No other financial statements or supporting schedules are required to be included in the Registration Statement, and there are no pro forma or as adjusted financial statements which are required to be included in the

4

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Registration Statement or Prospectus in accordance with Regulation S-X which have not been included as so required.

(i) Deloitte & Touche LLP, which has certified certain of the financial statements (which term as used in this Agreement includes the related notes thereto) filed with the Commission as part of the Registration Statement and included in the Prospectus, is an independent public accountant as required by the Act and the Rules and Regulations.

(j) There is no action, suit, claim or proceeding pending or, to the knowledge of the Wynn Parties, threatened (i) against any of the Wynn Group Members or (ii) which has as the subject thereof any officer or director of, or property owned or leased by or to, any of the Wynn Group Members, in each case, before any court or administrative agency or otherwise where, in any such case, (A) there is a reasonable possibility of such action, suit or proceeding being determined adversely to such Wynn Party or such Subsidiary and (B) any such action, suit, claim or proceeding, if so determined adversely, would reasonably be expected to result in a Material Adverse Change, or prevent, adversely affect, hinder or delay the (1) consummation of the transactions contemplated by this Agreement or the performance by any of the Wynn Group Members of their obligations hereunder or (2) the performance by any of the Wynn Group Members of their obligations under any of the Executed Transaction Documents or the Closing Transaction Documents, except, in each case, as otherwise disclosed in the Registration Statement or the Prospectus or, in the case of (2) above, as would not reasonably be expected to result in a Material Adverse Change. Except as otherwise disclosed in the Registration Statement or the Prospectus, none of the Wynn Group Members is involved in any material labor dispute with the employees of any of the Wynn Group Members or any of their predecessors, or with the employees of any principal supplier, contractor or sub-contractor of any of the Wynn Group Members and, to the best of the Wynn Parties' knowledge, no such dispute is threatened or imminent.

(k) Except as disclosed in the Registration Statement or the Prospectus, the Wynn Group Members have good and marketable title in fee simple to all real property and good title to all personal property owned by them or reflected as owned by them in the Registration Statement or the Prospectus, subject to no lien, mortgage, pledge, charge or encumbrance of any kind except those reflected in the consolidated financial statements described in Section 1(h) above or which do not, individually or in the aggregate, materially and adversely affect the value of such property and do not, individually or in the aggregate, materially interfere with the use made or proposed to be made of such property by the Wynn Group Members. Except as disclosed in the Registration Statement or Prospectus, the real property, improvements, equipment and personal property held under lease by the Wynn Group Members are held under valid and enforceable leases, with such exceptions as are not material and do not materially interfere with the use made or proposed to be made of such leased real property, improvements, equipment or personal property by such Wynn Group Members.

(l) The Wynn Group Members have timely filed all federal, state, local and foreign tax returns which have been required to be filed, all of which tax returns are true, correct and complete in all material respects, and have timely paid all taxes due and payable, except (i) as may be being contested in good faith and by appropriate proceedings and for which the applicable Wynn Group Member has established reserves that are adequate for the payment thereof and are in conformity with generally accepted accounting principles as applied in the United States or (ii) to the extent that the failure to timely file any such tax returns or to timely pay such taxes has not resulted in, and would not reasonably be expected to result in, a Material Adverse Change. All taxes of the Wynn Group Members not yet due and payable have been provided for in the consolidated financial statements described in Section 1(h) above in conformity with generally accepted accounting principles as applied in the United States, and the Wynn Parties do not know of any actual or proposed additional material tax assessment against any Wynn Group Member.

5

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(m) Except as disclosed in the Registration Statement or the Prospectus, since the respective dates as of which information is given in the Registration Statement or the Prospectus, as it may be amended or supplemented, (i) there has not been any Material Adverse Change or any development that would reasonably be expected to result in a Material Adverse Change and (ii) the Wynn Group Members, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, not in the ordinary course of business nor entered into any material transaction or agreement not in the ordinary course of business.

(n) None of the Wynn Group Members is or with the giving of notice or lapse of time or both, will be, in violation of or in default under (i) its charter, by-laws, operating agreement or other organizational document or shareholders' agreement or (ii) the terms of any Executed Transaction Document to which any of the Wynn Group Members is a party or any other security issued by it or any agreement, lease, loan, mortgage, contract, indenture or other instrument or obligation to which it is a party or by which it, or any of its properties, is bound (collectively, including the Executed Transaction Documents, the "Agreements and Instruments") and, solely with respect to this clause (ii), which violation or default would reasonably be expected to result in a Material Adverse Change. The execution, delivery and performance of this Agreement, the Executed Transaction Documents to which any Wynn Party or any of the Subsidiaries is a party, the Closing Transaction Documents to which any Wynn Party or any of the Subsidiaries will be a party and any other material agreement or instrument entered into

or issued or to be entered into or issued by any Wynn Party or any of the Subsidiaries in connection with the transactions contemplated hereby or thereby and compliance by any Wynn Party and the Subsidiaries with their obligations hereunder or thereunder have been duly authorized by all necessary action the execution, delivery and performance of this Agreement, the Closing Transaction Documents to which any of the Wynn Group Members will be a party and any other material agreement or instrument entered into or issued or to be entered into or issued by any of the Wynn Group Members in connection with the transactions contemplated hereby or thereby and compliance by the Wynn Group Members with their obligations hereunder or thereunder and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or a Repayment Event (as defined below) under, or, except with respect to the transactions contemplated by the Registration Statement, result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of any Wynn Group Members pursuant to, or require the consent of any other party to, the Agreements and Instruments except for such conflicts, breaches or defaults or liens, charges or encumbrances that, singly or in the aggregate, would not reasonably be expected to result in a Material Adverse Change, nor will such execution, delivery, performance or compliance result in any violation of (i) the provisions of the charter, by-laws or any other organizational document of any Wynn Group Members, as applicable, or (ii) any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over it or any of its assets or properties and, solely with respect to this clause (ii), which violation would reasonably be expected to result in a Material Adverse Change. As used herein, a "Repayment Event" means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by any Wynn Group Members.

(o) The execution and delivery of, and the performance by the Wynn Parties of their obligations under, this Agreement have been duly and validly authorized by all necessary corporate or limited liability company action on the part of each of the Wynn Parties, and this Agreement has been duly executed and delivered by each of the Wynn Parties.

(p) Each of the Executed Transaction Documents to which any Wynn Group Members is a party has been duly authorized, executed and delivered by each of the Wynn Group Members that is a party thereto and (except for the Equity Underwriting Agreement, as defined in Schedule IV) constitutes a

6

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valid and binding agreement of each such party, enforceable against each such party in accordance with its terms except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles. At the Closing Date, each of the Executed Transaction Documents that is described in the Registration Statement will conform in all material respects to the description thereof contained in the Registration Statement.

(q) Each of the Closing Transaction Documents to which any of the Wynn Group Members is a party has been duly authorized by each of the Wynn Group Members that is a party thereto and, at the Closing Date, will have been duly executed and delivered by each such party and will constitute a valid and binding agreement of each such party, enforceable against each such party in accordance with its terms except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles. At the Closing Date, each of the Closing Transaction Documents that is described in the Registration Statement will conform in all material respects to the description thereof contained in the Registration Statement.

(r) Each approval, consent, order, authorization, designation, declaration or filing by or with any regulatory, administrative or other governmental body (including, without limitation, the Nevada Gaming Commission, the Nevada State Gaming Control Board, the Clark County Liquor and Gaming Licensing Board, the Public Utilities Commission of Nevada and the Nevada State Engineers Office) (together, the "Consents") necessary in connection with the execution and delivery by the Wynn Parties of this Agreement and the consummation of the proposed offering of the Notes (except such additional steps as may be required by the Commission or the National Association of Securities Dealers, Inc. (the "NASD") or such additional steps as may be necessary to qualify the Notes for public offering by the Underwriters under state securities or Blue Sky laws) has been obtained or made and is in full force and effect. Except as disclosed in the Registration Statement or Prospectus or as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, each Consent necessary in connection with the consummation of the transactions described in the Registration Statement and Prospectus (except such additional steps as may be required by the Commission or the National Association of Securities Dealers, Inc. (the "NASD") or such additional steps as may be necessary to qualify the Notes for public offering by the Underwriters under state securities or Blue Sky laws) (i) has been obtained or made and is in full force and effect or (ii) to the extent any such Consent has not yet been obtained or made, none of the Wynn Parties has any reason to believe that such Consent will not be timely obtained or made in accordance with the plans for the Le Rêve Casino Resort that have been prepared to date.

(s) Except as disclosed in the Registration Statement or Prospectus or as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, (i) each of the Wynn Group Members has obtained and holds all franchises, licenses, leases, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, variances, qualifications, easements, rights of way, liens and other rights, privileges and approvals (including with respect to environmental laws) required under any federal, state, local or foreign law or governmental authority ("Permits") for the ownership, operation or intended use as described in the Registration Statement or the Prospectus of all real property owned or leased by any such Wynn Group Member and for any other property otherwise operated by or on behalf of, or for the benefit of, such entity and for the operation of each of its businesses as presently conducted, (ii) all such Permits are in full force and effect, and each of the Wynn Group Members has performed and observed all requirements of such Permits, (iii) no event has occurred which allows or results in, or after notice or lapse of time would allow or result in, revocation or termination by the issuer thereof or in any other impairment of the rights of the holder of any such Permit, (iv) no such Permits contain any restrictions, either individually or in the aggregate, that interfere with the ownership, operation or intended use by any of the Wynn

7

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Group Members, or to the operation of any of their businesses or any property owned, leased or otherwise operated by such entity, (v) each of the Wynn Group Members reasonably believes that each of its Permits will be timely renewed and complied with, without material expense, and that any additional Permits that may be required of such entity in order to conduct its business as proposed to be conducted will be timely obtained and complied with, without material expense, and (vi) none of the Wynn Group Members has any knowledge or any reason to believe that any governmental authority is considering limiting, suspending, revoking or renewing any such Permits or terms materially more burdensome than the terms of such Permit as in effect on the date hereof.

(t) Except as otherwise disclosed in the Registration Statement or the Prospectus or as would not reasonably be expected to result in a Material Adverse Change, (i) none of the Wynn Group Members is or has in the past been in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance,

code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products (collectively, "Hazardous Materials") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "Environmental Laws"); (ii) none of the Wynn Group Members or, to the knowledge of any Wynn Party, any third party, has used, released, discharged, generated, manufactured, produced, stored, or disposed of in, on, under, or about the real property owned or leased by any of the Wynn Group Members or any improvements thereon (the "Sites") or transported thereto or therefrom, any Hazardous Materials that would reasonably be expected to subject any of the Wynn Group Members to any liability under any Environmental Law; (iii) there are no underground tanks and no Hazardous Materials used, stored or present at, on or near the Sites; (iv) to the knowledge of any of the Wynn Parties after due inquiry, there is or has been no condition, circumstance, action, activity or event that could reasonably form the basis of any violation of, or any liability to any of the Wynn Group Members under, any Environmental Law; (v) there is no pending or, to the knowledge of any of the Wynn Parties, threatened, action, proceeding, investigation or inquiry by any regulatory or governmental body or any non-governmental third party with respect to the presence or release of Hazardous Materials, on, from or to the Sites; (vi) none of the Wynn Parties has any knowledge of any past or existing violations of any Environmental Laws by any person relating in any way to the Sites; and (vii) none of the Wynn Group Members has received any complaint, order, directive, citation or notice from any governmental body with respect to any Environmental Law.

(u) Except as otherwise disclosed in the Registration Statement or the Prospectus, (i) the Wynn Group Members each own or possess the valid right to use all patents, patent rights, trademarks, trade names, service marks, domain names and copyrights (together with the applications for registrations and registrations therefor), license rights, know-how (including trade secrets and other unpatented and unpatentable proprietary or confidential information, materials, systems or procedures), technologies, inventions, and other intellectual property or proprietary rights (collectively, "Intellectual Property") material to their businesses or necessary to carry on their businesses as presently intended; (ii) neither the Intellectual Property owned or used by, nor the conduct or operation of the businesses (as presently and proposed to be conducted or operated) of, the Wynn Group Members has infringed upon, misappropriated or violated, or, if the businesses are conducted or operated as presently intended, will infringe upon, misappropriate or violate, any Intellectual Property or other right of any other person or entity; (iii) none of the Intellectual Property employed by the Wynn Parties or any of the Subsidiaries has been obtained or is being used by any such Wynn Group Member in violation of any contractual obligation binding on such Wynn Group Member or any of their respective officers, directors or employees or otherwise in violation of the rights of any persons, except as would not reasonably be expected to result in a Material Adverse Change; (iv) none of the Wynn Group Members

8

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has received any written communications, nor is any action or proceeding pending, alleging that any such Wynn Group Member has violated, infringed upon or misappropriated, or, by conducting its business as set forth in the Registration Statement and the Prospectus, would violate, infringe upon or misappropriate, any of the Intellectual Property of any other person or entity; and (v) none of the Wynn Parties knows of any infringement by others of Intellectual Property owned by or licensed to any of the Wynn Group Members.

The Wynn Group Members have taken all reasonable steps necessary to secure their interests in, and protect the secrecy, confidentiality and value of, such Intellectual Property, including without limitation entering into written confidentiality agreements with their employees and contractors. There are no outstanding options, licenses or agreements of any kind relating to the Intellectual Property of the Wynn Group Members that are required to be described in the Prospectus and are not described therein in all material respects. None of the Wynn Group Members is a party to or bound by any options, licenses or agreements with respect to the Intellectual Property of any other person or entity that are required to be set forth in the Prospectus and are not described therein in all material respects.

(v) None of the Wynn Group Members, or to the knowledge of any of the Wynn Parties, any of their affiliates, has taken or may take, directly or indirectly, any action designed to cause or result in, or which has constituted or which could reasonably be expected to constitute, the stabilization or manipulation of the price of any security of either of the Issuers. The Issuers acknowledge that the Underwriters may engage in passive market making transactions in the Notes in accordance with Regulation M under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

(w) None of the Wynn Group Members, or to any of the Wynn Parties' knowledge, any of their affiliates, has distributed or will distribute, prior to the completion of the Underwriters' distribution of the Notes, any offering material in connection with the offering and sale of the Notes other than a Preliminary Prospectus, the Prospectus or the Registration Statement.

(x) None of the Wynn Group Members is (i) or (after giving effect to the offering and sale of the Notes contemplated hereunder and the application of the net proceeds from such sale as described in the Prospectus) will be an "investment company" within the meaning of such term under the Investment Company Act of 1940, as amended (the "1940 Act"), and the rules and regulations of the Commission thereunder, (ii) a "holding company," a "subsidiary company" of a "holding company," or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company," as such terms are defined in the Public Utilities Holding Company Act of 1935, as amended (the "Public Utilities Act"), (iii) a "public utility," as such term is defined in the Federal Power Act, as amended (the "Federal Power Act"), or (iv) subject to regulation under any federal or state statute or regulation limiting or conditioning its ability to incur or guarantee indebtedness.

(y) None of the Wynn Parties or any agent thereof acting on the behalf of them has taken, and none of them will take, any action that might cause this Agreement or the issuance or sale of the Notes to violate Regulation T (12 C.F.R. Part 220), Regulation U (12 C.F.R. Part 221) or Regulation X (12 C.F.R. Part 224) of the Board of Governors of the Federal Reserve System.

(z) Each of the Wynn Group Members maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles as applied in the United States and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

9

(aa) Each of the Wynn Parties and DIIC carry, or are covered by, insurance with insurers of recognized financial responsibility in such amounts, with such deductibles and covering such risks as is commercially reasonable and as the Wynn Parties and DIIC deem adequate and prudent for the conduct of their respective businesses (including the construction of the Le Rêve Casino Resort) and the value of their respective properties and as is customary for companies engaged in similar businesses including, but not limited to, policies covering real and personal property owned or leased by the Wynn Parties and DIIC against theft, damage, destruction, acts of vandalism and earthquakes. Such insurance coverage (including deductibles, retentions and self-insurance amounts) complies with the insurance coverage required at the Closing Date under the Master Disbursement Agreement by and among the Company, Capital Corp. Wynn Design & Development, LLC, Deutsche Bank Trust Company Americas and Wells Fargo Bank, National Association (the "Master Disbursement Agreement"). The Wynn Parties have no reason to believe that such insurance coverage cannot be renewed as and when such coverage expires or that similar coverage could not be obtained from similar insurers at a cost that would not reasonably be expected to cause a Material Adverse Change (other than as a result of general market conditions).

(bb) Except for matters which would not reasonably be expected to result in a Material Adverse Change, each of the Wynn Group Members is in compliance with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("ERISA"). No "reportable event" (as defined in ERISA) has occurred with respect to any "pension plan" (as defined in ERISA) for which any Wynn Group Members would have any liability. None of the Wynn Group Members has incurred or expects to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan" or (ii) Section 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the "Code"). Except for matters which would not reasonably be expected to result in a Material Adverse Change, each "pension plan" for which any Wynn Group Members would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

(cc) The Underwriters, or Inspection & Valuation International, Inc., in their capacity as a consultant of the Underwriters, have been furnished with a copy of the plans and specifications for the construction of the Le Rêve Casino Resort that have been prepared to date, which plans and specifications are consistent in all material respects with the description thereof contained in the Registration Statement or the Prospectus. The anticipated cost as of the Closing Date of such construction (including interest, legal, architectural, engineering, planning, zoning, pre-opening and other similar costs) does not exceed the amounts allocated for such costs as set forth under the caption "Use of Proceeds" in the Prospectus. In addition, the other amounts set forth under the caption "Use of Proceeds" in the Prospectus are based upon reasonable assumptions as to all matters material to the estimates set forth therein and are not expected by the Wynn Parties to exceed the amounts set forth for such items.

(dd) The Project Budget (as defined in the Master Disbursement Agreement), as of the Closing Date, (i) is, to the knowledge of the Wynn Parties, based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein, (ii) is consistent with the provisions of the Operative Documents (as defined in the Master Disbursement Agreement) in all material respects, (iii) has been and will be prepared in good faith and with due care, (iv) sets forth, for each Line Item Category (as defined in the Master Disbursement Agreement), the total costs anticipated to be incurred through Final Completion (as defined in the Master Disbursement Agreement), (v) fairly represents the Wynn Parties' expectation as to the matters covered thereby as of its date and (vi) sets forth a total amount of costs incurred or expected to be incurred in connection with the development, design, engineering, procurement, installation, construction and opening of the Le Rêve Casino Resort

10

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(as described in the Prospectus), including contingencies, which is equal to the Available Funds (as defined in the Master Disbursement Agreement).

(ee) To the knowledge of the Wynn Parties and except as set forth on *Schedule 1(ee)* hereto, there are no affiliations or associations between any member of the NASD and any of the Wynn Parties' officers, directors or securityholders. There are no business relationships or related-party transactions involving any of the Wynn Group Members or any other person required to be described in the Prospectus which have not been described as required.

(ff) None of the Wynn Group Members or, to the best of the knowledge of the Wynn Parties, any director, officer, agent, employee or other person associated with or acting on behalf of any of the Wynn Group Members or any beneficial owner of 10 percent or more of the capital stock of any of the Wynn Parties has, with respect to any of the Wynn Group Members, (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any unlawful payment to any foreign or domestic government official or employee from corporate funds, (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended, or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

(gg) The Indenture has been qualified under the Trust Indenture Act.

(hh) Each of the Wynn Parties is, and on the Closing Date and after giving effect to the incurrence of all indebtedness (including the Notes and the Guarantees) and obligations being incurred in connection with the Closing Transaction Documents as described in the Registration Statement and the Prospectus will be and will continue to be, Solvent. For purposes of this Agreement, "Solvent" means, when used with respect to any Person, as of any date of determination, (i) the amount of the "present fair saleable value" of the assets of such Person will, as of such date, exceed the amount of all "liabilities of such Person, contingent or otherwise", as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (ii) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (iii) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, (iv) such Person will be able to pay its debts as they mature, and (v) such Person is not insolvent within the meaning of any applicable federal and state laws governing determinations of the insolvency of debtors. For purposes of this definition, (A) "debt" means liability on a "claim", and (B) "claim" means any (1) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (2) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

(ii) No Deed of Trust encumbers improved real property which is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968.

(jj) Subject to Section 6(kk) with respect to real property Collateral and Section 6(ll) with respect to intellectual property Collateral, each of the Collateral Documents is effective to create in favor of the Trustee, for the benefit of the holders of the Notes, a legal, valid and enforceable security interest in the Collateral described therein and proceeds and products thereof. In the case of the Pledged Stock (as defined in the applicable Collateral Document), when any stock or other

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filed as contemplated by the Collateral Documents (which financing statements have been duly completed and delivered to the Trustee), the Collateral Documents shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the applicable Wynn Parties in such Collateral and the proceeds and products thereof, as security for the Obligations of the applicable Wynn Parties, in each case prior and superior in right to any other Person (except Permitted Liens).

(kk) Each of the Deeds of Trust is effective to create in favor of the Trustee, for the benefit of the holders of the Notes, a legal, valid and enforceable Lien on, and security interest in, the Collateral described therein and proceeds and products thereof, and when the Deeds of Trust are filed in the appropriate real property records, each such Deed of Trust shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the applicable Wynn Parties in the Collateral described therein and the proceeds and products thereof, as security for the Obligations of the applicable Wynn Parties, in each case prior and superior in right to any other Person (except Permitted Liens).

(ll) Each Intellectual Property Security Agreement is effective to create in favor of the Trustee, for the benefit of the holders of the Notes, a legal, valid and enforceable security interest in the Collateral described therein and proceeds and products thereof. Upon the filing of (i) each Intellectual Property Security Agreement in the appropriate indexes of the United States Patent and Trademark Office relative to patents and trademarks (within three (3) months after the Closing Date), and the United States Copyright Office relative to copyrights (within thirty (30) days after the Closing Date), together with provision for payment of all requisite fees, and (ii) financing statements in appropriate form for filing as contemplated by the Intellectual Property Security Agreements (which financing statements have been duly completed and delivered to the Trustee) each Intellectual Property Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the applicable Wynn Parties in the Collateral specified therein and the proceeds and products thereof, as security for the Obligations of the applicable Wynn Parties, in each case prior and superior in right to any other Person (except Permitted Liens).

(mm) Upon execution and delivery of the Collateral Documents and completion of the filings and recordings described in Sections 6(jj), (kk), and (ll), the security interests created in favor of the Trustee for the benefit of the holders of the Notes pursuant to the Collateral Documents will constitute valid, perfected first priority security interests (subject to Permitted Liens) in the Collateral subject thereto.

Any certificate signed by an officer of any of the Wynn Parties and delivered to the Representatives, Deutsche Bank or to counsel for the Underwriters shall be deemed to be a representation and warranty by such Wynn Party to each Underwriter as to the matters set forth therein.

The Wynn Parties acknowledge that the Underwriters and, for purposes of the opinions to be delivered pursuant to Section 6 hereof, counsel to the Wynn Parties and counsel to the Underwriters, will rely upon the accuracy and truthfulness of the foregoing representations and hereby consents to such reliance.

## 2. *Purchase, Sale and Delivery of the Notes.*

(a) On the basis of the representations, warranties and covenants herein contained, and subject to the conditions herein set forth, the Issuers agree to sell to the Underwriters and each Underwriter agrees, severally and not jointly, to purchase, at the purchase price set forth on *Schedule II* hereto (the "Purchase Price"), the principal amount of Notes set forth opposite the name of each Underwriter in *Schedule I* hereto.

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(b) The Notes shall be registered by the Trustee in the name of the nominee of the Depository Trust Company ("DTC"), Cede & Co. ("Cede & Co."), and credited to the accounts of such of its participants as the Representatives shall request, upon notice to the Company at least 48 hours prior to the Closing Date, with any transfer taxes payable in connection with the transfer of the Notes to the Underwriters duly paid, and deposited with the Trustee as custodian for DTC on the Closing Date, against payment by or on behalf of the Underwriters to the account of the Company of the aggregate Purchase Price therefor by wire transfer in immediately available funds.

(c) Such payment and delivery are to be made through the facilities of DTC, New York, New York at 10:00 a.m., New York time, on the fifth business day after the date of this Agreement or at such other time and date not later than five business days thereafter as you and the Company shall agree upon, such time and date being herein referred to as the "Closing Date." (As used herein, "business day" means a day on which the New York Stock Exchange is open for trading and on which banks in New York, New York are open for business and are not permitted by law or executive order to be closed.) Time shall be of the essence, and delivery at the time and place specified in this Agreement is a further condition to the obligations of the Underwriters.

## 3. *Offering by the Underwriters.*

It is understood that the several Underwriters are to make a public offering of the Notes as soon after this Agreement has been executed as the Representatives, in their sole judgment, deem it advisable to do so. The Notes are to be initially offered to the public as set forth in the Prospectus. The Representatives may from time to time thereafter change the public offering price and other selling terms; provided, however, that nothing in this Section 3 shall affect the Underwriters obligations pursuant to Section 2 hereof.

It is further understood that you will act as the Representatives for the Underwriters in the offering and sale of the Notes in accordance with a Master Agreement Among Underwriters entered into by you and the several other Underwriters.

## 4. *Covenants of the Issuers.*

The Issuers covenant and agree with the several Underwriters that:

(a) The Issuers shall (i) use their best efforts to cause the Registration Statement to become effective or, if the procedure in Rule 430A of the Rules and Regulations is followed, to prepare and timely file with the Commission under Rule 424(b) of the Rules and Regulations a Prospectus in a form approved by the Representatives containing information previously omitted at the time of effectiveness of the Registration Statement in reliance on Rule 430A of the Rules and

Regulations and (ii) not file any amendment to the Registration Statement or supplement to the Prospectus of which the Representatives shall not previously have been advised and furnished with a copy or to which the Representatives shall have reasonably objected in writing or which is not in compliance with the Rules and Regulations.

(b) The Issuers shall advise the Representatives promptly (i) when the Registration Statement or any post-effective amendment thereto shall have become effective, (ii) of receipt of any comments from the Commission, (iii) of any request of the Commission for amendment of the Registration Statement or for supplement to the Prospectus or for any additional information, and (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto or of any order preventing or suspending the use of any preliminary prospectus or the Prospectus, or of the threatening or initiation of any proceedings for any of such purposes. The Issuers shall make every reasonable effort to prevent the issuance of any such stop order preventing or suspending the use of the Prospectus and to obtain as soon as possible the lifting thereof, if issued.

13

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(c) The Issuers shall cooperate with the Representatives and counsel for the Underwriters to qualify the Notes for sale under (or obtain exemptions from the application of the qualification requirements of) the securities laws of such jurisdictions as the Representatives may reasonably have designated and shall make such applications, file such documents, and furnish such information as may be reasonably required for that purpose, provided the Issuers shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction where it is not now so qualified or required to file such a consent. The Issuers shall, from time to time, prepare and file such statements, reports, and other documents, as are or may be required to continue such qualifications in effect for so long a period as the Representatives may reasonably request for distribution of the Notes. The Issuers shall advise the Representatives promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Notes for offering, sale or trading in any jurisdiction or any initiation of threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, the Issuers shall use their best efforts to obtain the withdrawal thereof at the earliest possible moment.

(d) The Issuers shall deliver to, or upon the order of, the Representatives, from time to time, as many copies of any Preliminary Prospectus as the Representatives may reasonably request. The Issuers shall deliver to, or upon the order of, the Representatives during the period when delivery of a Prospectus is required under the Act, as many copies of the Prospectus in final form, or as thereafter amended or supplemented, as the Representatives may reasonably request. The Issuers shall deliver to the Representatives at or before the Closing Date, four signed copies of the Registration Statement and all amendments thereto including all exhibits filed therewith, and shall deliver to the Representatives such number of copies of the Registration Statement (including such number of copies of the exhibits filed therewith that may reasonably be requested) and of all amendments thereto, as the Representatives may reasonably request.

(e) The Issuers shall comply with the Act and the Rules and Regulations, the Exchange Act, and the rules and regulations of the Commission thereunder, and the Trust Indenture Act, so as to permit the completion of the distribution of the Notes as contemplated in this Agreement and the Prospectus. If during the period in which a prospectus is required by law to be delivered by an Underwriter or dealer, any event shall occur as a result of which, in the judgment of the Company or in the reasonable opinion of the Underwriters, it becomes necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances existing at the time the Prospectus is delivered to a purchaser, not misleading, or, if it is necessary at any time to amend or supplement the Prospectus to comply with any law, the Issuers promptly shall prepare and file with the Commission an appropriate amendment to the Registration Statement or supplement to the Prospectus so that the Prospectus as so amended or supplemented shall not, in the light of the circumstances when it is so delivered, be misleading, or so that the Prospectus shall comply with the law.

(f) Each of the Wynn Parties shall make generally available to their security holders and to the Representatives, as soon as it is practicable to do so, but in any event not later than 15 months after the effective date of the Registration Statement, an earnings statement (which need not be audited) in reasonable detail, covering a period of at least 12 consecutive months beginning after the effective date of the Registration Statement, which earnings statement shall satisfy the requirements of Section 11(a) of the Act and Rule 158 of the Rules and Regulations and shall advise you in writing when such statement has been so made available.

(g) Prior to the Closing Date, the Issuers shall furnish to the Underwriters, as soon as they have been prepared by or are available to the Issuers, a copy of any unaudited interim financial statements of any of the Wynn Group Members for any period subsequent to the period covered by the most recent financial statements appearing in the Registration Statement and the Prospectus.

14

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(h) So long as any of the Notes are outstanding, the Issuers will furnish to the several Underwriters, promptly upon their becoming available, copies of all reports and other communications (financial or otherwise) furnished by the Issuers or the Guarantors to the Trustee of the holders of the Notes and copies of any reports or financial statements furnished to or filed by the Issuers or the Guarantors with the Commission.

(i) Each of the officers, directors and stockholders of Wynn Resorts, Limited, (excluding Baron Asset Fund) and Aruze Corp. shall have executed, and the Issuers shall have furnished to you, on or prior to the date of this Agreement, a letter or letters, in substantially the form of *Exhibit A* hereto ("Lockup Agreements").

(j) The Issuers shall apply the net proceeds of its sale of the Notes as set forth in the Prospectus under the caption "Use of Proceeds" and shall file such reports with the Commission with respect to the sale of the Notes and the application of the proceeds therefrom as may be required in accordance with Rule 463 under the Act.

(k) The Issuers shall not invest, or otherwise use the proceeds received by the Issuers from its sale of the Notes in such a manner as would require any of the Wynn Group Members to register as an investment company under the 1940 Act.

(l) The Wynn Parties will not voluntarily claim, and will resist actively all attempts to claim, the benefit of any usury laws against any holder of Notes.

(m) None of the Wynn Parties will publicly announce any intention to, or will itself, without the prior written consent of the Representatives, on behalf of the Underwriters, (i) offer, pledge, sell, offer to sell, contract to sell, sell any option or contract to purchase, purchase any option to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any debt securities issued or guaranteed by any of the Wynn Parties (other than the



Notes and the notes issued under the Credit Agreement and the FF&E Facility) or any securities exercisable or exchangeable for debt securities issued or guaranteed by any of the Wynn Parties, for a period beginning from the date hereof and continuing to and including the date which is 180 days after the date hereof.

(n) None of the Wynn Parties shall take, directly or indirectly, any action designed to cause or result in, or that has constituted or could reasonably be expected to constitute, the stabilization or manipulation of the price of any securities of any of the Wynn Parties.

#### 5. *Costs and Expenses.*

The Company shall pay all costs, expenses and fees incident to the performance of the obligations of the Wynn Parties under this Agreement, including, without limiting the generality of the foregoing, the following: accounting fees of the Wynn Parties; the fees and disbursements of counsel for the Wynn Parties; the cost of printing and delivering to, or as requested by, the Underwriters copies of the Registration Statement, Preliminary Prospectuses, the Prospectus, the Underwriters' Selling Memorandum, the Underwriters' Invitation Letter, the Blue Sky Survey and any supplements or amendments thereto; the filing fees of the Commission; the filing fees and expenses (including reasonable legal fees and disbursements) incident to securing any required review by the NASD of the terms of the sale of the Notes; and expenses, including the reasonable fees and disbursements of counsel for the Underwriters, to the extent incurred in connection with the qualification of the Notes under state securities or Blue Sky laws or the provincial securities laws of Canada. The Company shall not, however, be required to pay for any of the Underwriters other expenses including (a) the fees and expenses of their counsel (other than those related to qualification under NASD regulation and state securities or Blue Sky laws), (b) other professional fees (excluding the fees and expenses of Inspection & Valuation International, Inc.), (c) the customary costs and expenses of the roadshow and any other meetings with prospective investors, (d) the costs and expenses of travel of the

15

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Representatives and the other Underwriters (e) the costs and expenses of any other consultants and experts specifically retained by the Representatives (other than Inspection & Valuation International, Inc.) and (f) all arrangements relating to the preparation, issuance and delivery of any certificates evidencing the Notes, including the fees of any trustee or similar entity, except in all cases that, if the sale of the Notes pursuant to Section 2 hereof shall not be consummated because the conditions in Section 6 hereof are not satisfied, because this Agreement is terminated by the Representatives pursuant to Section 10 hereof, or by reason of any failure, refusal or inability on the part of any of the Wynn Parties to perform any undertaking or satisfy any condition of this Agreement or to comply with any of the terms hereof on its part to be performed, unless such failure, refusal or inability is due primarily to any default or omission of any Underwriter, the Company shall reimburse the several Underwriters for reasonable out-of-pocket expenses, including fees and disbursements of counsel, reasonably incurred in connection with investigating, marketing and proposing to market the Notes or in contemplation of performing their obligations hereunder; provided, however, that the Company shall not in any event be liable to any of the several Underwriters for damages on account of loss of anticipated profits from the sale by them of the Notes.

#### 6. *Conditions of Obligations of the Underwriters.*

The several obligations of the Underwriters to purchase the Notes on the Closing Date are subject to the accuracy, as of the Closing Date of the representations and warranties of the Wynn Parties contained herein, and to the performance by the Wynn Parties of their covenants and obligations hereunder and to the following additional conditions:

(a) The Registration Statement and all post-effective amendments thereto shall have become effective and any and all filings required by Rule 424 and Rule 430A of the Act shall have been made within the applicable time period prescribed by, and in compliance with, the Rules and Regulations, and any request of the Commission for additional information (to be included in the Registration Statement or otherwise) shall have been disclosed to the Representatives and complied with. No stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been taken or, to the knowledge of the Issuers, shall be contemplated or threatened by the Commission and no injunction, restraining order or order of any nature by a federal, state or foreign court of competent jurisdiction shall have been issued as of the Closing Date which would prevent the issuance of the Notes. The NASD shall have raised no objections to the fairness and reasonableness of the underwriting terms and arrangements.

(b) The Representatives shall have received on the Closing Date the opinion of Irell & Manella LLP, counsel for the Wynn Parties, dated the Closing Date, addressed to the Underwriters in form and substance satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit B* hereto.

(c) The Representatives shall have received on the Closing Date the opinion of Schreck Brignone, special Nevada counsel for the Wynn Parties, dated the Closing Date, addressed to the Underwriters in form and substance satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit C* hereto.

(d) The Representatives shall have received on the Closing Date the opinion of Manuel Alexandre de Oliveira Correia da Silva, special Macau counsel for Wynn Resorts (Macau) S.A., dated the Closing Date addressed to the Underwriters in form and substance satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit D* hereto.

(e) The Representatives shall have received on the Closing Date the opinion of Fulbright & Jaworski, special regional counsel for Wynn Resorts (Macau) S.A., dated the Closing Date addressed to the Underwriters in form and substance satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit E* hereto.

16

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(f) The Representatives shall have received on the Closing Date or an Option Closing Date, as the case may be, the opinion of Lionel Sawyer & Collins, counsel for Aruze USA, Inc. ("Aruze USA"), dated the Closing Date or the Option Closing Date, as the case may be, addressed to the Underwriters in form and substance satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit H* hereto.

(g) The Representatives shall have received on the Closing Date or an Option Closing Date, as the case may be, the opinion of Nagashima Ohno & Tsunematsu, counsel for Aruze Corp. and Mr. Kazuo Okada, dated the Closing Date or the Option Closing Date, as the case may be, addressed to the Underwriters in form and substance satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit I* hereto.

(h) The Representatives shall have received on the Closing Date the opinion of Lionel Sawyer & Collins, counsel for Aruze USA, dated the Closing Date, addressed to the Underwriters in form and substance satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit F* hereto.

(i) The Representatives shall have received on the Closing Date the opinion of Nagashima Ohno & Tsunematsu, counsel for Aruze Corporation and Mr. Kazuo Okada, dated the Closing Date, addressed to the Underwriters in form and substance satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit G* hereto.

(j) The Representatives shall have received on the Closing Date the opinion of Hale Lane, Nevada public utilities counsel for the Wynn Parties, dated the Closing Date addressed to the Underwriters in form and substance satisfactory to counsel to the Underwriters, substantially in the form of *Exhibit H* hereto.

(k) The Representatives shall have received from Latham & Watkins, counsel for the Underwriters, an opinion dated the Closing Date, in form and substance reasonably satisfactory to the Representatives.

(l) The Representatives shall have received at or prior to the Closing Date from Latham & Watkins a memorandum or summary, in form and substance satisfactory to the Representatives, with respect to the qualification for offering and sale by the Underwriters of the Notes under the state securities or Blue Sky laws of such jurisdictions as the Representatives may reasonably have designated to the Issuers.

(m) You shall have received, on each of the date hereof and the Closing Date, a letter dated the date hereof or the Closing Date, as the case may be, in form and substance satisfactory to you, of Deloitte & Touche LLP confirming that they are independent public accountants within the meaning of the Act and the applicable published Rules and Regulations thereunder and stating that in their opinion the financial statements and schedules examined by them and included in the Registration Statement and the Prospectus comply in form in all material respects with the applicable accounting requirements of the Act and the related published Rules and Regulations; and containing such other statements and information as is ordinarily included in accountants' "comfort letters" to Underwriters, delivered pursuant to Statement of Accounting Standards No. 72 (or any successor bulletin), with respect to the financial statements and certain financial and statistical information contained in the Registration Statement and Prospectus.

(n) The Representatives shall have received on the Closing Date a certificate or certificates of the Chief Executive Officer or President and the Chief Financial Officer of each of the Wynn Parties to the effect that, as of the Closing Date, each of them severally represents as follows:

(i) the Registration Statement has become effective under the Act and no stop order suspending the effectiveness of the Registration Statement has been issued, and no proceedings for

17

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such purpose have been taken or are, to his or her knowledge, contemplated or threatened by the Commission;

(ii) the representations and warranties of such Wynn Party contained in Section 1 hereof are true and correct as of the Closing Date;

(iii) he or she has carefully examined the Registration Statement and the Prospectus and, in his or her opinion, as of the effective date of the Registration Statement, the information contained in the Registration Statement, including the financial statements and other financial information included therein, was true, complete and correct, and such Registration Statement and Prospectus did not omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading;

(iv) such Wynn Party has complied with all the agreements hereunder and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date; and

(v) since the respective dates as of which information is given in the Registration Statement and Prospectus and prior to the Closing Date, there has not occurred any Material Adverse Change or any development that would reasonably be expected to result in a Material Adverse Change.

(o) The Wynn Parties shall have furnished to the Representatives such further certificates and documents confirming the representations and warranties, covenants and conditions contained herein and related matters as the Representatives may reasonably have requested.

(p) For the period from and after the date of this Agreement and prior to the Closing Date, in the judgment of the Representatives there shall not have occurred any Material Adverse Change.

(q) The Lockup Agreements described in Section 4(i) are in full force and effect and on or before the date of this Agreement the Company shall have delivered fully executed copies of the Lockup Agreements to the Representatives.

(r) All fees and expenses which any of the Wynn Parties, Wynn Resorts, Limited or the Completion Guarantor has agreed to pay pursuant to the Amended and Restated Engagement Letter dated as of June 14, 2002 between Valvino, Holdings, the Company and the Representatives (other than Dresdner Kleinwort Wasserstein—Grantchester, Inc.) and which, pursuant to such engagement letter, are required to be paid at or prior to Closing, shall have been paid.

(s) Subsequent to the execution and delivery of this Agreement (i) no downgrading shall have occurred in the rating accorded the Issuers' debt securities by any "nationally recognized statistical rating organization", as that term is defined by the Commission for purposes of Rule 436(g)(2) of the rules and regulations pursuant to the Act and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Issuers' debt securities.

(t) All of the Executed Transaction Documents and Closing Transaction Documents shall have been executed and shall be in full force and effect and the Representatives shall have received fully executed copies thereof, and none of the Wynn Group Members or Wynn Resorts, Limited shall be in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of the Executed Transaction Documents and the Closing Transaction Documents, and no condition shall exist that, with the giving of notice or the lapse of time, or both, would constitute such a default, except in each case where the consequences of such default or defaults, if any, would not reasonably be expected to result in a Material Adverse Change.

(u) No Wynn Group Member shall have any knowledge that any party shall have failed at or prior to the Closing Date to perform or comply with any of the agreements contained in any of the Executed

Transaction Documents or Closing Transaction Documents and required to be performed or complied with by such party at or prior to the Closing Date unless such failure would not reasonably be expected to result in a Material Adverse Change.

(v) The Wynn Parties shall have delivered to the Trustee on behalf of the holders of the Notes, a lender's A.L.T.A. policy of title insurance, or a commitment irrevocably agreeing to issue such policy, in the amount of \$340,000,000. Each such policy or commitment shall (i) include such endorsements as are required by the Representatives, (ii) be reinsured by such reinsurance as is satisfactory to the Representatives, (iii) be issued by the title insurer in form and substance, and subject to only such exceptions, satisfactory to the Representatives.

(w) The Representatives shall have received the Phase I environmental assessment for the Site and the Site Easements dated August 14, 2002 (the "Phase I Report"), the Phase II Environmental Site Assessment for the Golf Course Land and the Golf Course Land easements (the "Phase II Report") conducted by Terracon and dated September 11, 2002 and that certain reliance letter from Terracon dated October [ ], 2002.

(x) The Representatives shall have received the results of a recent lien, tax lien, judgment and litigation search in each of the jurisdictions or offices (including, without limitation, in the United States Patent and Trademark Office and the United States Copyright Office) in which Uniform Commercial Code financing statements or other filings or recordings should be made to evidence or perfect (with the priority required under the Collateral Documents) security interests in all assets and property of the Wynn Parties, and such search shall reveal no Liens on any of the assets of the Wynn Parties except for Permitted Liens.

(y) Each document (including, without limitation, any Uniform Commercial Code financing statement) required by the Collateral Documents or under law or reasonably requested by the Trustee to be filed, registered or recorded in order to create in favor of the Trustee, for the benefit of the holders of the Notes, a perfected Lien on, and security interest in, the Collateral described therein, prior and superior in right to any Lien of any other Person (other than Permitted Liens), shall have been delivered to the Trustee in proper form for filing, registration or recordation.

(z) On the Closing Date, Wynn Resorts, Limited, shall have consummated the initial public offering and sale of shares of its common stock, shall have received the proceeds therefrom of approximately \$ million after deducting underwriting discounts and commissions and shall have contributed approximately \$375 million of the net proceeds therefrom to the Company.

The opinions and certificates mentioned in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in all material respects satisfactory to the Representatives and to Latham & Watkins, counsel for the Underwriters.

If any of the conditions hereinabove provided for in this Section 6 shall not have been fulfilled when and as required by this Agreement to be fulfilled, the obligations of the Underwriters hereunder may be terminated by the Representatives by notifying the Company of such termination in writing at or prior to the Closing Date.

In such event, the Wynn Parties and the Underwriters shall not be under any obligation to each other (except to the extent provided in Sections 5 and 8 hereof).

## 7. Indemnification.

(a) Each of the Wynn Parties, jointly and severally, agree:

(i) to indemnify and hold harmless each Underwriter and its affiliates, and each person, if any, who controls any Underwriter within the meaning of either Section 15 of the Act or Section 20 of the Exchange Act, against any losses, claims, damages or liabilities to which such

Underwriter, affiliate or any such controlling person may become subject under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of or are based upon (A) any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement or any amendment or supplement thereto or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (B) any untrue statement or alleged untrue statement of any material fact contained in any Preliminary Prospectus or the Prospectus or any amendment or supplement thereto (including any Prospectus wrapper for use with offers in Canada) or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading or (C) any act or failure to act, or any alleged act or failure to act by any Underwriter in connection with, or relating in any manner to, the Notes or the offering contemplated hereby, and which is included as part of or referred to in any loss, claim, damage, liability or action arising out of or based upon matters covered by clause (A) or (B) above (provided, that the Wynn Parties shall not be liable under this clause (C) to the extent that it is determined in a final judgment by a court of competent jurisdiction that such loss, claim, damage, liability or action resulted directly from any such acts or failures to act undertaken or omitted to be taken by such Underwriter through its gross negligence or willful misconduct); *provided, however*, that the Wynn Parties will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement, or omission or alleged omission made in the Registration Statement, any Preliminary Prospectus, the Prospectus, or such amendment or supplement, in reliance upon and in conformity with written information furnished to the Wynn Parties by or through the Representatives specifically for use in the preparation thereof; and *provided, further*, that the Wynn Parties will not be liable to any Underwriter with respect to any such untrue statement or alleged untrue statement or omission or alleged omission made in any Preliminary Prospectus to the extent that (1) such loss, claim, damage, or liability results from an untrue statement of a material fact or an omission of a material fact contained in the Preliminary Prospectus, which untrue statement or omission was corrected in the final Prospectus, (2) the Wynn Parties had previously furnished sufficient quantities of the final Prospectus to such Underwriter within a reasonable amount of time prior to such sale, and (3) such Underwriter failed to deliver the final Prospectus, if required by law to have so delivered it, and such delivery would have been a complete defense against the person asserting such loss, claim, liability, expense or damage; and

(ii) to reimburse each Underwriter and each such affiliate or controlling person upon demand for any legal or other out-of-pocket expenses reasonably incurred by such Underwriter, affiliate or such controlling person in connection with investigating or defending any such loss, claim, damage or liability, action or proceeding or in responding to a subpoena or governmental inquiry related to the offering of the Notes, whether or not such

Underwriter, affiliate or controlling person is a party to any action or proceeding. In the event that it is finally judicially determined that the Underwriters were not entitled to receive payments for legal and other expenses pursuant to this subparagraph, the Underwriters will promptly return all sums that had been advanced pursuant hereto. The indemnity obligations under this Section 7(a) will be in addition to any liability which each such Wynn Party may otherwise have.

(b) Each Underwriter severally and not jointly agrees to indemnify and hold harmless the Wynn Parties, each of their directors, each of their officers who have signed the Registration Statement, and each person, if any, who controls the Wynn Parties within the meaning of the Act, against any losses, claims, damages or liabilities to which the Wynn Parties or any such director, officer or controlling person may become subject under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement or

20

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any amendment or supplement thereto or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) any untrue statement or alleged untrue statement of any material fact contained in any Preliminary Prospectus or the Prospectus or any amendment or supplement thereto or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, and will reimburse any legal or other expenses reasonably incurred by the Wynn Parties or any such director, officer or controlling person in connection with investigating, defending against or appearing as a third party witness in connection with any such loss, claim, damage, liability, action or proceeding or in responding to a subpoena or governmental inquiry related to the offering of the Notes, whether or not the Wynn Parties or such director, officer or controlling person is a party to any action of proceeding; *provided, however*, that each Underwriter will be liable in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission has been made in the Registration Statement, any Preliminary Prospectus, the Prospectus or such amendment or supplement, in reliance upon and in conformity with written information furnished to the Wynn Parties by or through the Representatives specifically for use in the preparation thereof. This indemnity agreement will be in addition to any liability which such Underwriter may otherwise have.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to this Section 7, such person (the "indemnified party") shall promptly notify the person against whom such indemnity may be sought (the "indemnifying party") in writing. No indemnification provided for in Section 7(a) or (b) shall be available to any party who shall fail to give notice as provided in this Section 7(c) if the party to whom notice was not given was unaware of the proceeding to which such notice would have related and was materially prejudiced by the failure to give such notice, and the failure to give such notice shall not relieve the indemnifying party or parties from any liability which it or they may have to the indemnified party for contribution or otherwise than on account of the provisions of Section 7(a) or (b). In case any such proceeding shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party and shall pay as incurred the reasonable fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel at its own expense. Notwithstanding the foregoing, the indemnifying party shall pay as incurred (or within 30 days of presentation) the reasonable fees and expenses of the counsel retained by the indemnified party in the event (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel, (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party, and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such proceeding or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party or (iii) the indemnifying party shall have failed to assume the defense and employ counsel reasonably acceptable to the indemnified party within a reasonable period of time after notice of commencement of the action. It is understood that the indemnifying party shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees and expenses of more than one separate firm for all such indemnified parties. Such firm shall be designated in writing by you in the case of parties indemnified pursuant to Section 7(a) and by the Wynn Parties in the case of parties indemnified pursuant to Section 7(b). The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement

21

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or judgment. In addition, the indemnifying party will not, without the prior written consent of the indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding of which indemnification may be sought hereunder (whether or not any indemnified party is an actual or potential party to such claim, action or proceeding) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action or proceeding.

(d) To the extent the indemnification provided for in this Section 7 is unavailable to or insufficient to hold harmless an indemnified party under Section 7(a) or (b) above in respect of any losses, claims, damages or liabilities (or actions or proceedings in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Wynn Parties on the one hand and the Underwriters on the other from the offering of the Notes. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Wynn Parties on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions or proceedings in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Wynn Parties on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Wynn Parties bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Wynn Parties on the one hand or the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Wynn Parties and the Underwriters agree that it would not be just and equitable if contributions pursuant to this Section 7(d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or

liabilities (or actions or proceedings in respect thereof) referred to above in this Section 7(d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), (i) no Underwriter shall be required to contribute any amount in excess of the underwriting discounts and commissions applicable to the Notes purchased by such Underwriter and (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this Section 7(d) to contribute are several in proportion to their respective underwriting obligations and not joint.

(e) Any losses, claims, damages, liabilities or expenses for which an indemnified party is entitled to indemnification or contribution under this Section 7 shall be paid by the indemnifying party to the indemnified party as such losses, claims, damages, liabilities or expenses are incurred. The indemnity and contribution agreements contained in this Section 7 and the representations and warranties of the Wynn Parties set forth in this Agreement shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any Underwriter or any person controlling any Underwriter, the Wynn Parties, their directors or officers or any persons controlling the Wynn Parties,

22

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(ii) acceptance of any Notes and payment therefore hereunder and (iii) any termination of this Agreement. A successor to any Underwriter, or any person controlling any Underwriter, or to the Wynn Parties, their directors or officers, or any person controlling the Wynn Parties, shall be entitled to the benefits of the indemnity, contribution and reimbursement agreements contained in this Section 7.

#### 8. *Default by Underwriters.*

If on the Closing Date any Underwriter shall fail to purchase and pay for the portion of the Notes which such Underwriter has agreed to purchase and pay for on such date (otherwise than by reason of any default on the part of the Wynn Parties), you, as Representatives of the Underwriters, shall use your reasonable efforts to procure within 36 hours thereafter one or more of the other Underwriters, or any others, to purchase from the Issuers such amounts as may be agreed upon and upon the terms set forth herein, the Notes which the defaulting Underwriter or Underwriters failed to purchase. If during such 36 hours you, as such Representatives, shall not have procured such other Underwriters, or any others, to purchase the Notes agreed to be purchased by the defaulting Underwriter or Underwriters, then (a) if the aggregate principal amount of Notes with respect to which such default shall occur does not exceed 10% of the aggregate principal amount of Notes to be purchased on the Closing Date, the other Underwriters shall be obligated, severally, in the proportions that the principal amount of Notes set forth opposite their respective names in Schedule I hereto bears to the aggregate principal amount of Notes set forth opposite the names of all such non-defaulting Underwriters, or in such other proportions as the Representatives may specify, to purchase the Notes which such defaulting Underwriter or Underwriters agreed but failed to purchase on such date, or (b) if the aggregate principal amount of Notes with respect to which such default shall occur exceeds 10% of the aggregate principal amount of Notes to be purchased on the Closing Date, the Wynn Parties or you as the Representatives of the Underwriters shall have the right, by written notice given within the next 36-hour period to the parties to this Agreement, to terminate this Agreement without liability on the part of the non-defaulting Underwriters or of the Wynn Parties except to the extent provided in Sections 5 and 8 hereof. In the event of a default by any Underwriter or Underwriters, as set forth in this Section 8, the Closing Date may be postponed for such period, not exceeding seven days, as you, as Representatives, may determine in order that the required changes in the Registration Statement or in the Prospectus or in any other documents or arrangements may be effected. As used in this Agreement, the term "Underwriter" includes any person substituted for a defaulting Underwriter. Any action taken under this Section 8 shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

#### 9. *Notices.*

All communications hereunder shall be in writing and, except as otherwise provided herein, shall be mailed, delivered, telecopied or telegraphed and confirmed as follows: if to the Underwriters, to Deutsche Bank Securities Inc., 31 West 52<sup>nd</sup> Street New York, New York 10019; Attention: Syndicate Manager and General Counsel; if to the Wynn Parties, to [Wynn Resorts, Limited, 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109; Attention: General Counsel].

#### 10. *Termination.* This Agreement may be terminated by you:

(a) by notice to the Company at any time prior to the Closing Date if any of the following has occurred: (i) since the respective dates as of which information is given in the Registration Statement and the Prospectus, in the judgment of the Representatives, any Material Adverse Change or any development that would reasonably be expected to result in a Material Adverse Change, (ii) any attack on, or any outbreak or escalation of hostilities or acts of terrorism involving, the United States or declaration of war or national emergency or other national or international calamity or crisis or change in economic or political conditions if the effect of such attack, outbreak, escalation, acts, declaration,

23

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emergency, calamity, crisis or change would, in the Representatives' judgment, make it impracticable or inadvisable to market the Notes in the manner and on the terms described in the Prospectus or to enforce contracts for the sale of the Notes, (iii) the suspension or material limitation of trading in securities generally or other instruments on the New York Stock Exchange, the American Stock Exchange or the Nasdaq National Market or other exchange or limitation on prices for securities or other instruments on the New York Stock Exchange, the American Stock Exchange or the Nasdaq National Market, (iv) the enactment, publication, decree or other promulgation of any statute, regulation, rule or order of any court or other governmental authority which in your opinion materially and adversely affects or may materially and adversely affect the business or operations of the Wynn Parties, (v) the declaration of a banking moratorium by United States or New York or Nevada state authorities, (vi) any downgrading, or placement on any watch list for possible downgrading, in the rating of any of the Wynn Parties' debt securities by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Exchange Act), (vii) the suspension of trading of any securities of any of the Wynn Parties or of Wynn Resorts, Limited by any exchange, the Nasdaq National Market, the Commission, or any other governmental authority (viii) the enactment, publication, decree or other promulgation of any statute, regulation, rule or order of any court or other governmental authority which in your opinion materially and adversely affects, or will materially and adversely affect, the business, prospects, financial condition or results of operations of the Wynn Group Members, taken as a whole or (ix) the Wynn Parties shall have sustained a loss by strike, fire, flood, earthquake, accident or other calamity of such character as in the judgment of the Representatives may interfere materially with the conduct of the business and operations of the Wynn Parties regardless of whether or not such loss shall have been insured; or

(b) as provided in Sections 6 and 8 of this Agreement.

11. *Successors.*

This Agreement has been and is made solely for the benefit of the Underwriters and the Wynn Parties and their respective successors, executors, administrators, heirs and assigns, and the officers, directors, employees and controlling persons referred to herein, and no other person will have any right or obligation hereunder. No purchaser of any of the Notes from any Underwriter shall be deemed a successor or assign merely because of such purchase.

12. *Information Provided by Underwriters.*

The Wynn Parties and the Underwriters acknowledge and agree that the only information furnished or to be furnished by any Underwriter to the Wynn Parties for inclusion in any Prospectus or the Registration Statement consists of the information set forth in the third, and sixth through twelfth paragraphs under the caption "Underwriting" in the Prospectus.

13. *Partial Enforceability.*

The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable and to effect the original intent of the parties hereto.

14. *Choice of Law; Consent to Jurisdiction.*

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. To the fullest extent permitted by applicable law, you hereby irrevocably submit to the nonexclusive jurisdiction of the courts of the State of New

24

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York located in the Borough of Manhattan and the United States District Court for the Southern District of New York in respect of any suit, action or proceeding arising out of or relating to the provisions of this Agreement and irrevocably agree that all claims in respect of any such suit, action or proceeding may be heard and determined in any such court. The parties hereto hereby waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the laying of venue of any such suit, action or proceeding brought in any such court, and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

15. *Miscellaneous.*

The reimbursement, indemnification and contribution agreements contained in this Agreement and the representations, warranties and covenants in this Agreement shall remain in full force and effect regardless of (a) any termination of this Agreement, (b) any investigation made by or on behalf of any Underwriter or controlling person thereof, or by or on behalf of the Wynn Parties or their directors or officers and (c) delivery of and payment for the Notes under this Agreement.

This Agreement may be executed in two or more counterparts (including by facsimile), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

If the foregoing letter is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicates hereof, whereupon it will become a binding agreement among the Wynn Parties and the several Underwriters in accordance with its terms.

*(Signature pages to follow)*

25

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Very truly yours,

**ISSUERS:**

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

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

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

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

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Name:  
Title:

**WYNN LAS VEGAS CAPITAL CORP.,**  
a Nevada corporation,

By:

\_\_\_\_\_  
Name:  
Title:

S-1

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**GUARANTORS:**

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

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

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

\_\_\_\_\_  
Name:  
Title:

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

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

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

\_\_\_\_\_  
Name:  
Title:

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

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

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

\_\_\_\_\_  
Name:  
Title:

S-2

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

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

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

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

By: Wynn Resorts, Limited, a

Nevada corporation, its sole member

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Name:

Title:

**WORLD TRAVEL, LLC,**  
a Nevada limited liability company,

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

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

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

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

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Name:

Title:

S-3

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**PALO, LLC,**  
a Delaware limited liability company,

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

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

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

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Name:

Title:

**VALVINO LAMORE, LLC,**  
a Nevada limited liability company,

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

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Name:

Title:

S-4

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The foregoing Underwriting Agreement  
is hereby confirmed and accepted as  
of the date first above written.

DEUTSCHE BANK SECURITIES INC.  
BANC OF AMERICA SECURITIES LLC  
BEAR, STEARNS & CO. INC.  
DRESDNER KLEINWORT WASSERSTEIN—GRANTCHESTER, INC.

As Representatives of the several  
Underwriters listed on *Schedule I*

By: DEUTSCHE BANK SECURITIES INC.



**SCHEDULE I**

**SCHEDULE OF UNDERWRITERS**

Underwriter	Principal Amount of Notes to be Purchased
Deutsche Bank Securities Inc.	
Banc of America Securities LLC	
Bear, Stearns & Co. Inc.	
Dresdner Kleinwort Wasserstein—Grantchester, Inc.	
Fleet Securities, Inc.	
Scotia Capital (USA) Inc.	
SG Cowen Securities Corporation	
Jefferies & Company, Inc.	
<b>Total</b>	

Schedule I

**SCHEDULE II**

**TERMS OF NOTES**

Schedule II

**SCHEDULE III**

**GUARANTORS**

Desert Inn Water Company, LLC, a Nevada limited liability company  
 Valvino Lamore, LLC, a Nevada limited liability company  
 Wynn Design & Development, LLC, a Nevada limited liability company  
 Wynn Resorts Holdings, LLC, a Nevada limited liability company  
 Las Vegas Jet, LLC, a Nevada limited liability company

World Travel, LLC, a Nevada limited liability company  
 Palo, LLC, a Delaware limited liability company

Schedule III

**SCHEDULE IV**

**EXECUTED TRANSACTION DOCUMENTS**

***Construction and Other Third Party Project Agreements***

(a) Agreement for Guaranteed Maximum Price Construction Services, dated as of June 4, 2002, between the Company and Marnell Corrao Associates, Inc. for Le Rêve (the "Marnell Agreement");

(b) Continuing Guaranty, dated as of June 4, 2002, by Austi, Inc. in favor of the Company, as amended;

(c) Design Build Agreement, effective as of June 6, 2002, by and between the Company and Bomel Construction Company, Inc.;

(d) [Standard Form of Agreement between Owner and Architect with Addendum between the Company and Butler: Ashworth—Architects LTD];

(e) Professional Design Services Agreement, effective as of October 5, 2001, between Wynn Design & Development ("Wynn Design") as "Contractor" and Marnell Architect (fka A.A. Marnell II, Ltd.);

(f) Professional Design Services Agreement, dated \_\_\_\_\_, between Wynn Design and Lochsa Engineering;

- (g) Professional Design Services Agreement, dated \_\_\_\_\_, between Wynn Design and Carter & Burgess (Civil Engineer);
- (h) Professional Design Services Agreement, dated \_\_\_\_\_, between Wynn Design and Martin & Peltyn, Inc.;
- (i) Professional Design Services Agreement, dated \_\_\_\_\_, between Wynn Design and Fazio Golf Course Designs (Golf Course Architect);
- (j) Professional Design Services Agreement, dated \_\_\_\_\_, between Wynn Design and TJF Golf, Inc.;
- (k) Professional Design Services Agreement, dated \_\_\_\_\_, between Wynn Design and JBA Consulting Engineers;
- (l) Agreement, dated January 25, 2001, between Wynn Resorts Holdings, LLC ("Holdings") and Calitri Services and Licensing Limited Liability Company;
- (m) Amendment to the Water Show Entertainment and Production Agreement [depending on when amended, may be moved to closing docs];
- (n) Trademark/Service Mark Purchase Agreement, dated June 7, 2001, between Wynn Resorts, Limited and The STAD Trust;

#### ***Affiliate Project Agreements***

- (o) Second Amended and Restated Art Rental and Licensing Agreement, dated September 18, 2002, by and between Mr. Stephen A. Wynn and Holdings [update if amended again; may be moved to Closing Documents];
- (p) Art Gallery Lease Agreement, dated November 1, 2001, by and between Valvino Lamore, LLC ("Valvino") and Holdings;
- (q) Employment Agreement, dated as of October 4, 2002, by and between Stephen A. Wynn and the Wynn Resorts, Limited;

#### Schedule IV-1

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#### ***Equity Agreements***

- (r) Stockholders Agreement, dated as of April 11, 2002, among Mr. Stephen A. Wynn, Baron Asset Fund ("Baron") and Aruze USA, Inc. ("Aruze USA") (the "Stockholders Agreement");
- (s) Share Purchase Agreement, dated as of April 16, 2001, by and between Valvino and Baron;
- (t) Contribution Agreement and Assignment of Membership Interest, dated April 1, 2001, between Mr. Stephen A. Wynn and Valvino;
- (u) Purchase Agreement, made as of May 30, 2002, between Mr. Stephen A. Wynn and Valvino;
- (v) Purchase Agreement, made as of April 1, 2001, between Mr. Stephen A. Wynn and Valvino;
- (w) Share Purchase Agreement, dated as of June 10, 2002, by and between Valvino and Kenneth R. Wynn Family Trust dated February 20, 1985 (the "Kenneth R. Wynn Family Trust");
- (x) Contribution Agreement, made as of June 10, 2002, by and among Mr. Stephen A. Wynn, Aruze USA, Baron (on behalf of each of the Baron Asset Fund Series and the Baron Growth Fund Series), the Kenneth R. Wynn Family Trust and Wynn Resorts, Limited;
- (y) Buy-Sell Agreement, dated as of June 13, 2002, by and among Mr. Stephen A. Wynn, Mr. Kazuo Okada, Aruze USA and Aruze Corp. (the "Buy-Sell Agreement");
- (z) Agreement, dated as of June 13, 2002, by and between Mr. Stephen A. Wynn and Wynn Resorts, Limited (the "Wynn Put Agreement");
- (aa) [Purchase Agreement, dated \_\_\_\_\_, 2002, by and among Wynn Resorts, Limited and the purchasers named therein (the "Purchase Agreement");]
- (bb) Underwriting Agreement, dated as of the date hereof, by and among Deutsche Bank Securities Inc., Bear, Stearns & Co. Inc., Banc of America Securities LLC and Wynn Resorts, Limited with respect to the initial public offering of common stock (the "Shares") of Wynn Resorts, Limited (the "Equity Underwriting Agreement");

#### ***Governing Documents***

- (cc) Second Amended and Restated Articles of Incorporation of Wynn Resorts, Limited, as amended through the date of this Agreement or the Closing Date, as applicable;
- (dd) Articles of Organization of the Company, as amended through the date of this Agreement or the Closing Date, as applicable;
- (ee) Articles of Organization of Holdings, as amended through the date of this Agreement or the Closing Date, as applicable;
- (ff) Articles of Organization of Valvino Lamore, LLC, as amended through the date of this Agreement or the Closing Date, as applicable;
- (gg) Articles of Organization of Wynn Design, as amended through the date of this Agreement or the Closing Date, as applicable;
- (hh) Articles of Organization of World Travel, LLC, as amended through the date of this Agreement or the Closing Date, as applicable;

(ii) Articles of Organization of Las Vegas Jet, LLC, as amended through the date of this Agreement or the Closing Date, as applicable;

(jj) Articles of Incorporation of Desert Inn Improvement Co. ("DI Improvement Co."), as amended through the date of this Agreement or the Closing Date, as applicable;

Schedule IV-2

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(kk) Articles of Organization of Desert Inn Water Company, LLC, as amended through the date of this Agreement or the Closing Date, as applicable;

(ll) Articles of Organization of Palo, LLC ("Palo"), as amended through the date of this Agreement or the Closing Date, as applicable;

(mm) Articles of Incorporation of Capital Corp., as amended through the date of this Agreement or the Closing Date, as applicable;

(nn) Articles of Organization of Wynn Completion Guarantor, LLC (the "Completion Guarantor"), as amended through the date of this Agreement or the Closing Date, as applicable; and

**Macau Agreements**

(oo) 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. (the "Concession Contract").

Schedule IV-3

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**SCHEDULE V**

**CLOSING TRANSACTION DOCUMENTS**

**Credit Agreement Documents**

(a) Credit Agreement among the Company, the several banks and other financial institutions or entities from time to time parties thereto, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Deutsche Bank Trust Company Americas, as administrative agent (the "Administrative Agent") and swing line lender, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, and Dresdner Bank AG, New York Branch, as arranger and joint documentation agent (the "Credit Agreement");

(b) Guarantee and Collateral Agreement by and between the Company and each other Loan Party (as defined in the Master Disbursement Agreement) in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement;

(c) Local Bank Collateral Account Agreement by and between the Company, Capital Corp., Wynn Design, the Administrative Agent and [ ], as custodian and securities intermediary;

(d) Bank Company Collateral Agreement by and between the Company, Capital Corp., Wynn Design, the Administrative Agent and Deutsche Bank Trust Company Americas, as custodian and securities intermediary ("Securities Intermediary");

(e) Bank Completion Guaranty Collateral Account Agreement by and between Wynn Completion Guarantor, LLC, the Administrative Agent and the Securities Intermediary;

(f) Collateral Agency Agreement by and between the Administrative Agent, the Indenture Trustee and Bank of America, N.A. as Collateral Agent for the benefit of the Administrative Agent and the Indenture Trustee;

(g) [Intellectual Property Security Agreement]

(h) Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Palo in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement;

(i) Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by the Company in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement;

(j) Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Holdings in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement;

(k) Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Valvino in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement;

(l) [Bank Water Company Deed of Trust and Environmental Indemnity Agreement]

(m) Indemnity Agreement executed by Palo in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement regarding environmental indemnity;

(n) Indemnity Agreement executed by the Company in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement regarding environmental indemnity;

- (o) Indemnity Agreement executed by Holdings in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement regarding environmental indemnity;
- (p) Indemnity Agreement executed by Valvino in favor of the Administrative Agent on behalf of the lenders under the Credit Agreement regarding environmental indemnity;
- (q) Wynn Resorts Agreement by Wynn Resorts, Limited in favor of the Administrative Agent;
- (r) Notes issued to the lenders under the Credit Agreement;
- (s) UCC Financing Statement of the Company in favor of Administrative Agent;
- (t) UCC Financing Statement of Valvino Lamore, LLC, in favor of Administrative Agent;
- (u) UCC Financing Statement of Capital Corp, in favor of Administrative Agent;
- (v) UCC Financing Statement of Palo, LLC, in favor of Administrative Agent;
- (w) UCC Financing Statement of Holdings, LLC, in favor of Administrative Agent;
- (x) UCC Financing Statement of Desert Inn Water Company, LLC, in favor of Administrative Agent;
- (y) UCC Financing Statement of Wynn Design in favor of Administrative Agent;
- (z) UCC Financing Statement of World Travel, LLC, in favor of Administrative Agent;
- (aa) UCC Financing Statement of Las Vegas Jet, LLC, in favor of Administrative Agent;
- (bb) UCC Financing Statement of Wynn Completion Guarantor, LLC in favor of Administrative Agent;
- (cc) UCC-1 Fixture Filing of Valvino in favor of Administration Agent;
- (dd) UCC-1 Fixture Filing of the Company in favor of Administration Agent;
- (ee) UCC-1 Fixture Filing of Palo, LLC in favor of Administration Agent;
- (ff) UCC-1 Fixture Filing of Holdings in favor of Administration Agent.

**Second Mortgage Note Documents**

- (gg) Indenture among the Company, Capital Corp., the Restricted Entities (as defined therein) and Wells Fargo Bank, National Association, as trustee (the "Indenture Trustee"), with respect to the Notes (the "Indenture");
- (hh) Guarantees of the Notes by the Guarantors;
- (ii) Second Mortgage Notes due 2010 issued pursuant to the Indenture;
- (jj) Guarantee and Collateral Agreement by and between [the Company and each other Loan Party (as defined in the Master Disbursement Agreement) in favor of the Indenture Trustee on behalf of the second mortgage noteholders under the Indenture];
- (kk) Local Second Mortgage Notes Collateral Account Agreement by and between the Company, Capital Corp., Wynn Design, the Indenture Trustee and [ ], as custodian and securities intermediary;
- (ll) Second Mortgage Notes Company Collateral Account Agreement by and between the Company, Capital Corp., Wynn Design, the Indenture Trustee and the Securities Intermediary;
- (mm) Second Mortgage Notes Completion Guaranty Collateral Account Agreement by and between Wynn Completion Guarantor, LLC, the Indenture Trustee and the Securities Intermediary;

- (nn) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Palo in favor of the Indenture Trustee;
- (oo) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by the Company in favor of the Indenture Trustee;
- (pp) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Holdings in favor of the Indenture Trustee;
- (qq) Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filings by Valvino in favor of the Indenture Trustee;

- (rr) Indemnity Agreement executed by Palo in favor of the Indenture Trustee regarding environmental indemnity;
- (ss) [Bond Water Company Deed of Trust and Environmental Indemnity Agreement]
- (tt) Indemnity Agreement executed by the Company in favor of the Indenture Trustee regarding environmental indemnity;
- (uu) Indemnity Agreement executed by Holdings in favor of the Indenture Trustee regarding environmental indemnity;
- (vv) Indemnity Agreement executed by Valvino in favor of the Indenture Trustee regarding environmental indemnity;
- (ww) Wynn Resorts Agreement by Wynn Resorts, Limited in favor of the Indenture Trustee;
- (xx) UCC Financing Statement of the Company in favor of Indenture Trustee;
- (yy) UCC Financing Statement of Valvino in favor of Indenture Trustee;
- (zz) UCC Financing Statement of Capital Corp. in favor of Indenture Trustee;
- (aaa) UCC Financing Statement of Palo in favor of Indenture Trustee;
- (bbb) UCC Financing Statement of Holdings in favor of Indenture Trustee;
- (ccc) UCC Financing Statement of Desert Inn Water Company, LLC, in favor of Indenture Trustee;
- (ddd) UCC Financing Statement of Wynn Design in favor of Indenture Trustee;
- (eee) UCC Financing Statement of World Travel, LLC, in favor of Indenture Trustee;
- (fff) UCC Financing Statement of Las Vegas Jet, LLC, in favor of Indenture Trustee;
- (ggg) UCC Financing Statement of Wynn Completion Guarantor, LLC in favor of Indenture Trustee;
- (hhh) UCC-1 Fixture Filing of Valvino in favor of Indenture Trustee;
- (iii) UCC-1 Fixture Filing of the Company in favor of Indenture Trustee;
- (jjj) UCC-1 Fixture Filing of Palo, LLC in favor of Indenture Trustee;
- (kkk) UCC-1 Fixture Filing of Holdings in favor of Indenture;

***FF&E Facility Documents***

(lll) FF&E Loan Agreement (the "Loan Agreement") by and among the Company, Wells Fargo Bank Nevada, as collateral agent ("Collateral Agent") and the FF&E lenders party thereto (the "FF&E Facility");

Schedule V-3

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- (mmm) Borrower Security Agreement by and among the Company and the Collateral Agent for the lenders under the Loan Agreement;
- (nnn) Notes issued to the lenders under the FF&E Facility;
- (ooo) Guaranty Agreement by and among Valvino, Capital Corp., Palo, LLC, Wynn Resorts, Desert Inn Water Company, LLC, Wynn Design, World Travel LLC, Las Vegas Jet, LLC and the other guarantors from time to time party thereto;
- (ppp) Aircraft Security Agreement by and among [Wells Fargo Northwest, National Association] as Trustee of that certain Trust created under the Trust Agreement ("Aircraft Trustee"), in favor of the Company;
- (qqq) Assignment and Assumption Agreement by and among the Company and the Collateral Agent;
- (rrr) Amended and Restated Operating Agreement by and among the Aircraft Trustee and World Travel, LLC;
- (sss) [UCC's to be added];
- (ttt) [FF&E Collateral Account Agreement];
- (uuu) [Lien Release of Existing Aircraft];
- (vvv) [other FF&E Collateral Documents—to come];

***Multi-Creditor Documents***

(www) Intercreditor Agreement by and among the Trustee under the Indenture and the Administrative Agent on behalf of the lenders under the Credit Agreement;

(xxx) Intercreditor Agreement by and among the Trustee under the Indenture, the Administrative Agent on behalf of the lenders under the Credit Agreement, and the Collateral Agent acting on behalf of the FF&E lenders pursuant to the FF&E Facility;

(yyy) Master Disbursement Agreement by and among the Company, Capital Corp., Wynn Design, the Administrative Agent, Deutsche Bank Trust Company Americas, as the Disbursement Agent, the Indenture Trustee and the Collateral Agent (the "Master Disbursement Agreement");

(zzz) Completion Guaranty by Wynn Completion Guarantor, LLC for the benefit of the Administrative Agent and the Indenture Trustee;

(aaa) Management Fees Subordination Agreement by and among the Company, Capital Corp. and Wynn Resorts, Limited, in favor of the Trustee under the Indenture, the Administrative Agent on behalf of the lenders under the Credit Agreement and the agent on behalf of the lenders under the FF&E Facility;

#### **Project Agreements**

(bbb) Lease Agreement by and between Valvino and the Company, with respect to the lease of the parking lot structure for use by the Company's employees;

(ccc) Lease Agreement by and between Holdings and the Company, with respect to the lease of the land on which the golf course is to be located;

(ddd) Lease Agreement by and between Valvino and the Company, with respect to the lease of the land on which the driving range for the golf course is to be located;

#### Schedule V-4

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(eee) Lease Agreement by and between Valvino and the Company, with respect to the lease of space in the building on the 20-acre parcel located next to the Le Rêve Site;

(fff) Easement Agreement by and among Holdings, Valvino and the Company;

(ggg) License Agreement between Desert Inn Improvement Co., Wynn Las Vegas and Wynn Resorts, Limited with respect to the use of the golf course land;

(hhh) Management Agreement by and between the Company and Wynn Resorts, Limited;

(iii) Dealership Lease Agreement 2002, by and between the Company and Kevyn, LLC; and

(jjj) Water Supply Agreement between DI Improvement Co. and the Company.

#### Schedule V-5

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### **SCHEDULE 1(b)**

#### **SUBSIDIARY OWNERSHIP AND CERTAIN RIGHTS**

#### Schedule 1(b)

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### **SCHEDULE 1(ee)**

#### **NASD AFFILIATIONS**

1. From July 1999 to October 2001, Ronald Kramer served as a managing director at Dresdner Kleinwort Wasserstein, Inc. and its predecessor ("Dresdner"). In November 2001, shortly after Mr. Kramer's departure from Dresdner, Dresdner and Mr. Kramer entered into an arrangement providing that if a certain investment banking client with whom Mr. Kramer had developed a relationship while at Dresdner (the "Unrelated Client") consummated a financing, Mr. Kramer would receive a percentage of any net fees the Unrelated Client paid to Dresdner. In exchange, Mr. Kramer agreed to provide certain financial consulting and advisory services to the Unrelated Client. Dresdner also agreed to reimburse Mr. Kramer for any out-of-pocket expenses incurred in the provision of such services. Approximately six months after leaving Dresdner, Mr. Kramer became Director and President of Wynn Resorts, Limited. Neither Wynn Resorts, Limited nor the offering of the Notes has any relation to or connection with the Unrelated Client or the arrangement between Dresdner and Mr. Kramer. On September 23, 2002, the Unrelated Client, with Dresdner acting as initial purchaser, priced a \$153 million private placement of 14.5% senior notes due 2009. The private placement closed on October 8, 2002. Mr. Kramer will receive no more than \$375,000 pursuant to the consulting arrangement, to be paid by January 8, 2003 (approximately 90 days after closing).

2. Baron Asset Fund, which owned a 4.992% interest in Wynn Resorts, Limited as of June 30, 2002, is an affiliate of Baron Capital, Inc., an NASD Member.

#### Schedule 1(ee)

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## QuickLinks

[Exhibit 1.1](#)

[SCHEDULE I SCHEDULE OF UNDERWRITERS](#)

[SCHEDULE II TERMS OF NOTES](#)

[SCHEDULE III GUARANTORS](#)

[SCHEDULE IV EXECUTED TRANSACTION DOCUMENTS](#)

[SCHEDULE V CLOSING TRANSACTION DOCUMENTS](#)

[SCHEDULE 1\(b\) SUBSIDIARY OWNERSHIP AND CERTAIN RIGHTS](#)

[SCHEDULE 1\(ee\) NASD AFFILIATIONS](#)

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**FORM OF GUARANTEE AND COLLATERAL AGREEMENT**

made by

**VALVINO LAMORE, LLC,**

**WYNN LAS VEGAS CAPITAL CORP.,**

**PALO, LLC,**

**WYNN RESORTS HOLDINGS, LLC,**

**DESERT INN WATER COMPANY, LLC,**

**WYNN DESIGN & DEVELOPMENT, LLC,**

**WORLD TRAVEL LLC,**

**LAS VEGAS JET, LLC,**

**WYNN LAS VEGAS, LLC**

and

**THE OTHER GRANTORS FROM TIME TO TIME PARTY HERETO**

in favor of

**WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Mortgage Notes Indenture Trustee**

Dated as of \_\_\_\_\_, 2002

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**TABLE OF CONTENTS**

	<u>Page</u>
SECTION 1. DEFINED TERMS	1
1.1. <u>Definitions</u>	1
1.2. <u>Other Definitional Provisions</u>	6
SECTION 2. GUARANTEE	6
2.1. <u>Guarantee</u>	6
2.2. <u>Rights of Reimbursement, Contribution and Subrogation</u>	7
2.3. <u>Amendments, etc. with respect to the Issuer Obligations</u>	10
2.4. <u>Guarantee Absolute and Unconditional</u>	10
2.5. <u>Reinstatement</u>	11
2.6. <u>Payments</u>	11
SECTION 3. GRANT OF SECURITY INTEREST	11
SECTION 4. REPRESENTATIONS AND WARRANTIES	12
4.1. <u>Title; No Other Liens</u>	12
4.2. <u>Perfected Liens</u>	12
4.3. <u>Name; Jurisdiction of Organization, etc</u>	13
4.4. <u>Inventory, Equipment and Books and Records</u>	13
4.5. <u>Farm Products</u>	13
4.6. <u>Investment Property</u>	13
4.7. <u>Receivables</u>	14
4.8. <u>Contracts</u>	14
4.9. <u>Intellectual Property.</u>	15
4.10. <u>Vehicles</u>	17



SECTION 5	COVENANTS	17
5.1.	<u>Delivery and Control of Instruments, Chattel Paper, Investment Property and Deposit Accounts</u>	17
5.2.	<u>Payment of Obligations</u>	18
5.3.	<u>Maintenance of Perfected Security Interest; Further Documentation</u>	18
5.4.	<u>Changes in Locations, Name, Jurisdiction of Incorporation, etc.</u>	18
5.5.	<u>Notices</u>	19
5.6.	<u>Investment Property</u>	19
5.7.	<u>Receivables</u>	20
5.8.	<u>Contracts</u>	20
5.9.	<u>Intellectual Property</u>	21
5.10.	<u>Vehicles</u>	23
5.11.	<u>Leases, Wynn Las Vegas may</u>	23
5.12.	<u>Non-Deliverable Collateral</u>	24

SECTION 6.	REMEDIAL PROVISIONS	24
6.1.	<u>Nevada Gaming Laws and Intercreditor Agreements</u>	24
6.2.	<u>Certain Matters Relating to Receivables</u>	24
6.3.	<u>Communications with Obligors; Grantors Remain Liable</u>	24
6.4.	<u>Pledged Securities</u>	25
6.5.	<u>Proceeds to be Turned Over To Mortgage Notes Indenture Trustee</u>	26
6.6.	<u>Application of Proceeds</u>	26
6.7.	<u>Code and Other Remedies</u>	26
6.8.	<u>Registration Rights</u>	27
6.9.	<u>Waiver; Deficiency</u>	28
SECTION 7.	THE MORTGAGE NOTES INDENTURE TRUSTEE	28
7.1.	<u>Mortgage Notes Indenture Trustee's Appointment as Attorney-in-Fact, etc.</u>	28
7.2.	<u>Duty of Mortgage Notes Indenture Trustee</u>	30
7.3.	<u>Execution of Financing Statements</u>	30
7.4.	<u>Authority of Mortgage Notes Indenture Trustee</u>	31
7.5.	<u>Appointment of Co-Collateral Agents</u>	31
SECTION 8.	MISCELLANEOUS	31
8.1.	<u>Amendments in Writing</u>	31
8.2.	<u>Notices</u>	31
8.3.	<u>No Waiver by Course of Conduct; Cumulative Remedies</u>	31
8.4.	<u>Enforcement Expenses; Indemnification</u>	31
8.5.	<u>Successors and Assigns</u>	32
8.6.	<u>Set-Off</u>	32
8.7.	<u>Counterparts</u>	32
8.8.	<u>Severability</u>	32
8.9.	<u>Section Headings</u>	32
8.10.	<u>Integration</u>	32
8.11.	<b><u>GOVERNING LAW</u></b>	33
8.12.	<u>Submission to Jurisdiction; Waivers</u>	33
8.13.	<u>Acknowledgments</u>	33
8.14.	<u>Additional Grantors</u>	33
8.15.	<u>Releases</u>	33
8.16.	<b><u>WAIVER OF JURY TRIAL</u></b>	34
8.17.	<u>Regulatory Matters</u>	34

## GUARANTEE AND COLLATERAL AGREEMENT

This GUARANTEE AND COLLATERAL AGREEMENT, dated as of \_\_\_\_\_, 2002, is made by each of the signatories hereto (together with any other entity that may become a party hereto as provided herein, the "*Grantors*"), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, in its capacity as the Mortgage Notes Indenture Trustee (in such capacity, the "*Mortgage Notes Indenture Trustee*") for the registered holders (the "*Holder*s") of the \_\_\_\_\_ % Mortgage Notes due 2010 (the "*Notes*") issued by Wynn Las Vegas, LLC, a Nevada limited liability company ("*Wynn Las Vegas*"), and Wynn Las Vegas Capital Corp., a Nevada corporation (together with Wynn Las Vegas, the "*Note Issuers*"), in the aggregate principal amount of \$340,000,000 under that certain Indenture, dated as of even date herewith (as amended, supplemented or otherwise modified from time to time, the "*Indenture*"), among the Note Issuers, the other Grantors and the Mortgage Notes Indenture Trustee.

### RECITALS:

WHEREAS, pursuant to the Indenture, the Holders have agreed to purchase the Notes upon the terms and subject to the conditions set forth therein;

WHEREAS, the Note Issuers are members of an affiliated group of companies that includes each other Grantor;

WHEREAS, the proceeds of the Notes issued under the Indenture will be used in part to enable the Note Issuers to make valuable transfers to one or more of the other Grantors in connection with the operation of their respective businesses;

WHEREAS, the Note Issuers and the other Grantors are engaged in related businesses, and each Grantor will derive substantial direct and indirect benefit from the purchase of the Notes by the Holders under the Indenture; and

WHEREAS, it is a condition precedent to the obligation of the Holders to purchase the Notes under the Indenture that the Grantors shall have executed and delivered this Agreement to the Mortgage Notes Indenture Trustee for the ratable benefit of the Secured Parties;

NOW, THEREFORE, in consideration of the premises and to induce the Mortgage Notes Indenture Trustee and the Holders to enter into the Indenture and purchase the Notes, as the case may be, each Grantor hereby agrees with the Mortgage Notes Indenture Trustee, for the ratable benefit of the Secured Parties, as follows:

## SECTION 1. DEFINED TERMS

1.1. *Definitions.* (a) Any capitalized terms used in this Agreement which are not otherwise defined herein shall have the respective meanings ascribed to such terms in the Disbursement Agreement (as defined below) and, if not defined therein, the respective meanings ascribed to such terms in the Indenture; provided, that (1) any such capitalized terms used in this Agreement which are defined in both the Disbursement Agreement and the Indenture shall have the respective meanings ascribed to such terms in the Disbursement Agreement, and (2) upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement as amended and in effect immediately prior to such termination (provided that, following any such termination of the Disbursement Agreement, such terms and the meanings therefor may be amended or modified in accordance with the Indenture). The following terms which are defined in the Uniform Commercial Code in effect in the State of New York on the date hereof are used herein as so defined: Accounts, Certificated Security, Chattel Paper, Commodity Account, Commodity Contract, Commodity Intermediary, Documents, Entitlement Order, Equipment, Farm Products, Financial Asset, Goods, Instruments, Inventory, Letters of Credit, Letter of Credit Rights, Payment Intangible, Securities Account, Securities Intermediary, Security, Security Entitlement, Supporting Obligation and Uncertificated Security.

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(b) The following terms shall have the following meanings:

*"Agreement"*: this Guarantee and Collateral Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

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

*"Collateral"*: as defined in Section 3.

*"Collateral Account"*: any collateral account established by the Mortgage Notes Indenture Trustee as provided in Section 6.2 or 6.5.

*"Contracts"*: the contracts and agreements listed in *Schedule 7* as the same may be amended, supplemented, replaced or otherwise modified from time to time, including, without limitation, (i) all rights of any Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (ii) all rights of any Grantor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect thereto, (iii) all rights of any Grantor to damages arising thereunder, (iv) all rights of any Grantor to cancel, terminate or suspend such Contracts or the performance of work thereunder, and to perform and compel performance of, such Contracts and to exercise all remedies thereunder and (v) all rights of any Grantor to amend or modify such Contracts and to consent to any sale, assignment or disposition (by operation of law or otherwise) by the counterparty thereto of any part of such counterparty's interest in any such Contract.

*"Copyright Licenses"*: any written agreement naming any Grantor as licensor or licensee (including, without limitation, those listed in *Schedule 6*), granting any right under any Copyright, including, without limitation, the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright.

*"Copyrights"*: (i) all copyrights, whether or not the underlying works of authorship have been published, including, but not limited to, copyrights in software and databases, all Mask Works (as defined in 17 U.S.C. 901 of the U.S. Copyright Act) and all such underlying works of authorship and other intellectual property rights therein, all copyrights of works based on, incorporated in, derived from or relating to works covered by such copyrights, all right, title and interest to make and exploit all derivative works based on or adopted from works covered by such copyrights, and all copyright registrations and copyright applications, and any renewals or extensions thereof, including, without limitation, each registration and application identified in *Schedule 6*, (ii) the rights to print, publish and distribute any of the foregoing, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all Copyright Licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all other rights of any kind whatsoever accruing thereunder or pertaining thereto.

*"Deposit Account"*: as defined in the Uniform Commercial Code of any applicable jurisdiction and, in any event, including, without limitation, any demand, time, savings, passbook or like account maintained with a depository institution.

*"Disbursement Agreement"*: that certain Master Disbursement Agreement dated as of , 2002 among the Note Issuers, the Mortgage Notes Indenture Trustee and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Indenture.

*"Excluded Assets"*: (i) the Aircraft Assets, (ii) the Company Accounts (it being understood that certain of the Company Accounts have been pledged to the Mortgage Notes Indenture Trustee pursuant to the Company Collateral Account Agreements), (iii) any assets the acquisition of which was financed by Indebtedness permitted by Section 4.09(b)(7) of the Indenture, to the extent that the terms of such Indebtedness prohibit additional Liens on such assets (but only to the extent and so long as so prohibited) and (iv) any Contract that prohibits the creation of a security interest therein or requires consent to such security interest (other than to the extent that any such prohibition or consent requirement would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the New York UCC); provided, however, that the security interest shall attach immediately at such time as the restriction prohibiting assignment shall be removed or any condition thereto shall be satisfied.

*"General Intangibles"*: all "general intangibles" as such term is defined in Section 9-102(a)(42) of the Uniform Commercial Code in effect in the State of New York on the date hereof and, in any event, including, without limitation, with respect to any Grantor, all rights and interests in, to and under contracts, agreements, instruments and indentures, including, without limitation, the Contracts, and all licenses, permits, concessions, franchises and authorizations issued by Governmental Authorities in any form, and portions thereof, to which such Grantor is a party or under which such Grantor has any right, title or interest or to which such Grantor or any property of such Grantor is subject, as the same may from time to time be amended, supplemented, replaced or otherwise modified, including, without limitation, (i) all rights of such Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (ii) all rights of such Grantor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect thereto, (iii) all rights of such Grantor to damages arising thereunder, (iv) all rights of such Grantor to receive any tax refunds, and (v) all rights of such Grantor to terminate and to perform, compel performance and to exercise all remedies thereunder.

*"Governmental Authority"*: 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 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.

*"Guarantor Obligations"*: with respect to any Guarantor, all obligations and liabilities of such Guarantor which may arise under or in connection with this Agreement (including, without limitation, Section 2), any other Collateral Document, the Indenture or other agreement associated with the Indenture to which such Guarantor is a party, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to any Secured Party that are required to be paid by such Guarantor pursuant to the terms of this Agreement, the Indenture or any other Collateral Document).

*"Guarantors"*: the collective reference to the Grantors other than the Note Issuers.

*"Intellectual Property"*: the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets and the Trade Secret Licenses, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

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*"Intercompany Note"*: any promissory note evidencing loans made by any Grantor to either Note Issuer or any of the other Grantors, other than the Aircraft Note.

*"Investment Property"*: the collective reference to (i) all "investment property" as such term is defined in Section 9-102(a)(49) of the Uniform Commercial Code in effect in the State of New York on the date hereof including, without limitation, all Certificated Securities and Uncertificated Securities, all Security Entitlements, all Securities Accounts, all Commodity Contracts and all Commodity Accounts, (ii) security entitlements, in the case of any United States Treasury book-entry securities, as defined in 31 C.F.R. section 357.2, or, in the case of any United States federal agency book-entry securities, as defined in the corresponding United States federal regulations governing such book-entry securities, and (iii) whether or not constituting "investment property" as defined in the Uniform Commercial Code in effect in the State of New York on the date hereof, all Pledged Notes, all Pledged Stock, all Pledged Security Entitlements, all Pledged Debt Securities and all Pledged Commodity Contracts.

*"Issuer Obligations"*: with respect to each Note Issuer, the collective reference to the payment and performance by such Note Issuer of each covenant and agreement of such Issuer contained in the Mortgage Notes Indenture, the Notes, each Collateral Document to which such Note Issuer is a party and each other document related thereto to which such Issuer is a party.

*"Issuers"*: the collective reference to each issuer of a Pledged Security.

*"Material Adverse Effect"*: 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 Issuers and the other Grantors taken as a whole, (b) the Project, (c) the validity or enforceability of this Agreement, the Indenture or any of the other Collateral Documents, (d) the validity, enforceability or priority of the Liens purported to be created by the Collateral Documents, or (e) the rights or remedies of any Secured Party hereunder, under the Indenture or under any of the other Collateral Documents.

*"New York UCC"*: the Uniform Commercial Code as from time to time in effect in the State of New York.

*"Non-Deliverable Collateral"*: as defined in Section 4.7(b).

*"Obligations"*: (i) in the case of each of the Note Issuers, the Issuer Obligations, and (ii) in the case of each Guarantor, its Guarantor Obligations.

*"Patent License"*: all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to manufacture, use or sell any invention covered in whole or in part by a Patent, including, without limitation, any of the foregoing referred to in *Schedule 6*.

*"Patents"*: (i) all patents, patent applications and patentable inventions, including, without limitation, each issued patent and patent application identified in *Schedule 6*, all certificates of invention or similar industrial property rights, (ii) all inventions and improvements described and claimed

therein, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all Patent Licenses entered into in connection therewith, and damages and payments for past, present or future infringement thereof), and (v) all reissues, divisions, continuations, continuations-in-part, substitutes, renewals, and extensions thereof, all improvements thereon and all other rights of any kind whatsoever accruing thereunder or pertaining thereto.

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*"Phase II Land Building"*: the building existing on the Phase II Land as of the date of the Indenture that is subject to the Office Building Lease.

*"Pledged Commodity Contracts"*: all commodity contracts listed on *Schedule 2* and all other commodity contracts to which any Grantor is party from time to time.

*"Pledged Debt Securities"*: the debt securities listed on *Schedule 2*, together with any other certificates, options, rights or security entitlements of any nature whatsoever in respect of the debt securities of any Person that may be issued or granted to, or held by, any Grantor while this Agreement is in effect.

*"Pledged Notes"*: all promissory notes listed on *Schedule 2*, all Intercompany Notes at any time issued to any Grantor and all other promissory notes issued to or held by any Grantor.

*"Pledged Securities"*: the collective reference to the Pledged Debt Securities, the Pledged Notes and the Pledged Stock.

*"Pledged Security Entitlements"*: all security entitlements with respect to the financial assets listed on *Schedule 2* and all other security entitlements of any Grantor.

*"Pledged Stock"*: the shares of Capital Stock listed on *Schedule 2*, together with any other shares, stock certificates, options, rights or security entitlements of any nature whatsoever in respect of the Capital Stock of any Person that may be issued or granted to, or held by, any Grantor while this Agreement is in effect.

*"Proceeds"*: all "proceeds" as such term is defined in Section 9-102(a)(64) of the Uniform Commercial Code in effect in the State of New York on the date hereof and, in any event, shall include, without limitation, all dividends or other income from the Pledged Securities, collections thereon or distributions or payments with respect thereto.

*"Receivable"*: any right to payment for goods or other property sold, leased, licensed or otherwise disposed of or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including, without limitation, any Account or Payment Intangible). References herein to a Receivable shall include any Supporting Obligation or collateral securing such Receivable.

*"Requirement of Law"*: as to any Person, the governing documents or other constituent documents of such Person, and any law, treaty, order, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

*"Secured Parties"*: collectively, the Mortgage Notes Indenture Trustee and the Holders.

*"Securities Act"*: the Securities Act of 1933, as amended.

*"Trademark License"*: any agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trademark, including, without limitation, any of the foregoing referred to in *Schedule 6*.

*"Trademarks"*: (i) all trademarks, service marks, trade names, corporate names, company names, business names, trade dress, trade styles, logos, or other indicia of origin or source identification, internet domain names, trademark and service mark registrations, and applications for trademark or service mark registrations and any renewals thereof, including, without limitation, each registration and application identified in *Schedule 6*, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all

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income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all Trademark Licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, each of the above.

*"Trade Secret License"*: any agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trade Secret, including, without limitation, any of the foregoing referred to in *Schedule 6*.

*"Trade Secrets"*: (i) all trade secrets and all confidential and proprietary information, including know-how, manufacturing and production processes and techniques, inventions, research and development information, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, and customer and supplier lists and information, including, without limitation, any of the foregoing referred to in *Schedule 6*, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of any Grantor accruing thereunder or pertaining thereto.

"Vehicles": all cars, trucks, trailers, construction and earth moving equipment and other vehicles covered by a certificate of title law of any jurisdiction and, in any event including, without limitation, the vehicles listed on *Schedule 8* and all tires and other appurtenances to any of the foregoing; provided, that the term "Vehicles" shall not include the Aircraft Assets.

1.2. *Other Definitional Provisions.* (a) The words "hereof", "herein", "hereto" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor's Collateral or the relevant part thereof.

(d) The expressions "payment in full," "paid in full" and any other similar terms or phrases when used herein with respect to the Issuer Obligations or the Guarantor Obligations shall mean the unconditional, final and irrevocable payment in full, in immediately available funds, of all of the Issuer Obligations or the Guarantor Obligations, as the case may be.

## SECTION 2. GUARANTEE

### 2.1. *Guarantee.*

(a) Each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Mortgage Notes Indenture Trustee, for the ratable benefit of the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by each of the Note Issuers when due (whether at the stated maturity, by acceleration or otherwise) of the Issuer Obligations.

(b) Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Obligations of such Guarantor under this Section 2 not constitute

6

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a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any such Obligation. If and to the extent required in order for the Obligations of any Guarantor to be enforceable under applicable federal, state and other laws relating to the insolvency of debtors, the maximum liability of such Guarantor hereunder shall be limited to the greatest amount which can lawfully be guaranteed by such Guarantor under such laws, after giving effect to any rights of contribution, reimbursement and subrogation arising under Section 2.2. Each Guarantor acknowledges and agrees that, to the extent not prohibited by applicable law, (i) such Guarantor (as opposed to its creditors, representatives of creditors or bankruptcy trustee, including such Guarantor in its capacity as debtor in possession exercising any powers of a bankruptcy trustee) has no personal right under such laws to reduce, or request any judicial relief that has the effect of reducing, the amount of its liability under this Agreement, (ii) such Guarantor (as opposed to its creditors, representatives of creditors or bankruptcy trustee, including such Guarantor in its capacity as debtor in possession exercising any powers of a bankruptcy trustee) has no personal right to enforce the limitation set forth in this Section 2.1(b) or to reduce, or request judicial relief reducing, the amount of its liability under this Agreement, and (iii) the limitation set forth in this Section 2.1(b) may be enforced only to the extent required under such laws in order for the obligations of such Guarantor under this Agreement to be enforceable under such laws and only by or for the benefit of a creditor, representative of creditors or bankruptcy trustee of such Guarantor or other Person entitled, under such laws, to enforce the provisions thereof.

(c) Each Guarantor agrees that the Issuer Obligations may at any time and from time to time be incurred or permitted in an amount exceeding the maximum liability of such Guarantor under Section 2.1(b) without impairing the guarantee contained in this Section 2 or affecting the rights and remedies of any Secured Party hereunder.

(d) The guarantee contained in this Section 2 shall remain in full force and effect until payment in full of all Obligations, notwithstanding that from time to time during the term of the Indenture the Note Issuers may be free from any Issuer Obligations.

(e) No payment made by either of the Note Issuers, any of the Guarantors, any other guarantor or any other Person or received or collected by any Secured Party from either of the Note Issuers, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Issuer Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Issuer Obligations or any payment received or collected from such Guarantor in respect of the Issuer Obligations), remain liable for the Issuer Obligations up to the maximum liability of such Guarantor hereunder until the Issuer Obligations are paid in full.

2.2. *Rights of Reimbursement, Contribution and Subrogation.* In case any payment is made on account of the Obligations by any Grantor or is received or collected on account of the Obligations from any Grantor or its property:

(a) If such payment is made by either of the Note Issuers or from their property, then, if and to the extent such payment is made on account of Obligations arising from or relating to a Note issued by the Note Issuers, neither of the Note Issuers shall be entitled (A) to demand or enforce reimbursement or contribution in respect of such payment from any other Grantor or (B) to be subrogated to any claim, interest, right or remedy of any Secured Party against any other Person, including any other Grantor or its property; and

(b) If such payment is made by a Guarantor or from its property, such Guarantor shall be entitled, subject to and upon payment in full of the Obligations, (A) to demand and enforce

7

reimbursement for the full amount of such payment from the Note Issuers and (B) to demand and enforce contribution in respect of such payment from each other Guarantor which has not paid its fair share of such payment, as necessary to ensure that (after giving effect to any enforcement of reimbursement rights provided hereby) each Guarantor pays its fair share of the unreimbursed portion of such payment. For this purpose, the fair share of each Guarantor as to any unreimbursed payment shall be determined based on an equitable apportionment of such unreimbursed payment among all Guarantors based on the relative value of their assets and any other equitable considerations deemed appropriate by the court.

(c) If and whenever (after payment in full of the Obligations) any right of reimbursement or contribution becomes enforceable by any Grantor against any other Grantor under Sections 2.2(a) and 2.2(b), such Grantor shall be entitled, subject to and upon payment in full of the Obligations, to be subrogated (equally and ratably with all other Grantors entitled to reimbursement or contribution from any other Grantor as set forth in this Section 2.2) to any security interest that may then be held by the Mortgage Notes Indenture Trustee upon any Collateral granted to it in this Agreement. Such right of subrogation shall be enforceable solely against the Grantors, and not against the Secured Parties, and neither the Mortgage Notes Indenture Trustee nor any other Secured Party shall have any duty whatsoever to warrant, ensure or protect any such right of subrogation or to obtain, perfect, maintain, hold, enforce or retain any Collateral for any purpose related to any such right of subrogation. If subrogation is demanded by any Grantor, then (after payment in full of the Obligations) the Mortgage Notes Indenture Trustee shall deliver to the Grantors making such demand, or to a representative of such Grantors or of the Grantors generally, an instrument satisfactory to the Mortgage Notes Indenture Trustee transferring, on a quitclaim basis without any recourse, representation, warranty or obligation whatsoever, whatever security interest the Mortgage Notes Indenture Trustee then may hold in whatever Collateral may then exist that was not previously released or disposed of by the Mortgage Notes Indenture Trustee.

(d) All rights and claims arising under this Section 2.2 or based upon or relating to any other right of reimbursement, indemnification, contribution or subrogation that may at any time arise or exist in favor of any Grantor as to any payment on account of the Obligations made by it or received or collected from its property shall be fully subordinated in all respects to the prior payment in full of all of the Obligations. Until payment in full of the Obligations, no Grantor shall demand or receive any collateral security, payment or distribution whatsoever (whether in cash, property or securities or otherwise) on account of any such right or claim. If any such payment or distribution is made or becomes available to any Grantor in any bankruptcy case or receivership, insolvency or liquidation proceeding, such payment or distribution shall be delivered by the person making such payment or distribution directly to the Mortgage Notes Indenture Trustee, for application to the payment of the Obligations. If any such payment or distribution is received by any Grantor, it shall be held by such Grantor in trust, as trustee of an express trust for the benefit of the Secured Parties, and shall forthwith be transferred and delivered by such Grantor to the Mortgage Notes Indenture Trustee, in the exact form received and, if necessary, duly endorsed.

(e) The obligations of the Grantors under the Indenture and the Collateral Documents, including their liability for the Obligations and the enforceability of the security interests granted thereby, are not contingent upon the validity, legality, enforceability, collectibility or sufficiency of any right of reimbursement, contribution or subrogation arising under this Section 2.2. The invalidity, insufficiency, unenforceability or uncollectibility of any such right shall not in any respect diminish, affect or impair any such obligation or any other claim, interest, right or remedy at any time held by any Secured Party against any Guarantor or its property. The Secured Parties make no representations or warranties in respect of any such right and shall have no duty to assure, protect, enforce or ensure any such right or otherwise relating to any such right.

8

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(f) Each Grantor reserves any and all other rights of reimbursement, contribution or subrogation at any time available to it as against any other Grantor, but (i) the exercise and enforcement of such rights shall be subject to Section 2.2(d) and (ii) neither the Mortgage Notes Indenture Trustee nor any other Secured Party shall ever have any duty or liability whatsoever in respect of any such right, except as provided in Section 2.2(c).

(g) Each Guarantor waives any right or claims of right to cause a marshalling of the Note Issuers' or another Guarantor's assets or to proceed against any Guarantor, the Note Issuers or any other guarantor or any of the Note Issuers' obligations in any particular order, including, but not limited to, any right arising out of Nevada Revised Statutes 40.430.

2.3. *Amendments, etc. with respect to the Issuer Obligations.* Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Issuer Obligations made by any Secured Party may be rescinded by such Secured Party and any of the Issuer Obligations continued, and the Issuer Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, increased, extended, amended, modified, accelerated, compromised, waived, surrendered or released by any Secured Party, and the Indenture and the Collateral Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Mortgage Notes Indenture Trustee (or the requisite Holders under the Indenture or all Holders, as the case may be) may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by any Secured Party for the payment of the Issuer Obligations may be sold, exchanged, waived, surrendered or released. No Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Issuer Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

2.4. *Guarantee Absolute and Unconditional.* Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Issuer Obligations and notice of or proof of reliance by any Secured Party upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; the Issuer Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 2; and all dealings between the Note Issuers and any of the Guarantors, on the one hand, and the Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Each Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon either of the Note Issuers or any of the Guarantors with respect to the Issuer Obligations. Each Guarantor understands and agrees that the guarantee contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment and performance without regard to (a) the validity or enforceability of the Indenture or any Collateral Document, any of the Issuer Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by any Secured Party, (b) any defense, set-off or counterclaim (other than a defense of payment or performance hereunder) which may at any time be available to or be asserted by either of the Note Issuers or any other Person against any Secured Party, or (c) any other circumstance whatsoever (with or without notice to or knowledge of either of the Note Issuers or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of either of the Note Issuers for the Issuer Obligations, or of such Guarantor under the guarantee contained in this Section 2, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, any Secured Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against either of the Note Issuers, any

9

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other Guarantor or any other Person or against any collateral security or guarantee for the Issuer Obligations or any right of offset with respect thereto, and any failure by any Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from either of the Note Issuers, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of either of the Note Issuers, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of any Secured Party against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

2.5. *Reinstatement.* The guarantee contained in this Section 2 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Issuer Obligations is rescinded or must otherwise be restored or returned by any Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of either of the Note Issuers or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, either of the Note Issuers or any Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

2.6. *Payments.* Each Guarantor hereby guarantees that payments hereunder will be paid to the Mortgage Notes Indenture Trustee without set-off or counterclaim in Dollars in immediately available funds at the Corporate Trust Office of the Trustee.

### SECTION 3. GRANT OF SECURITY INTEREST

Each Grantor, subject to compliance with applicable Gaming Laws, hereby assigns and transfers to the Mortgage Notes Indenture Trustee, and hereby grants to the Mortgage Notes Indenture Trustee, for the ratable benefit of the Secured Parties, a security interest in, all of the personal property of such Grantor, including, without limitation, the following property, in each case, wherever located and now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "*Collateral*"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor's Obligations:

- (a) all Accounts;
- (b) all Chattel Paper;
- (c) all Contracts;
- (d) all Deposit Accounts;
- (e) all Documents;
- (f) all Equipment;
- (g) all General Intangibles (including, without limitation, Payment Intangibles);
- (h) all Instruments;
- (i) all Intellectual Property;
- (j) all Inventory;
- (k) all Investment Property;
- (l) all Letters of Credit and Letter of Credit Rights;
- (m) all money;

10

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- (n) all Vehicles;
  - (o) all Goods and other property not otherwise described above;
  - (p) all bank accounts, all funds held therein and all certificates and instruments, if any, from time to time representing or evidencing such bank accounts;

(q) all books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and other electronic storage media and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.;

(r) all Permits;

(s) all insurance policies and all loss proceeds and other amounts payable thereunder (including, without limitation, Insurance Proceeds) and all eminent domain proceeds; and

(t) to the extent not otherwise included, all Proceeds, accessions and products of any kind and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing (including, without limitation, Supporting Obligations).

Notwithstanding anything to the contrary in this Agreement, the term "Collateral" shall not include (i) any of the Excluded Assets, (ii) any license, permit, or authorization issued by any of the Gaming Authorities or any other Governmental Authority, or any other Collateral, which may not be pledged or in which a security interest may not be granted under Gaming Laws, or other applicable law, or under the terms of any such license, permit, or authorization, or which would require a finding of suitability or other similar approval or procedure by any of the Gaming Authorities or any other Governmental Authority prior to being pledged, hypothecated, or given as collateral security (to the extent such finding or approval has not been obtained), and (iii) any water rights, to the extent that the requisite approvals from the Nevada Public Utility Commission for the granting of security interests therein have not been obtained.

#### SECTION 4. REPRESENTATIONS AND WARRANTIES

To induce the Mortgage Notes Indenture Trustee and the Holders to enter into the Indenture and purchase the Notes, as the case may be, each Grantor hereby represents and warrants to the Secured Parties that:

4.1. *Title; No Other Liens.* Such Grantor owns each item of the Collateral free and clear of any and all Liens or claims, including, without limitation, Liens arising as a result of such Grantor becoming bound (as a result of merger or otherwise) as Grantor under a security agreement entered into by another Person, except for Permitted Liens. No effective financing statement, mortgage or other instrument similar in effect with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed in favor of the Mortgage Notes Indenture Trustee, for the ratable benefit of the Secured Parties, pursuant to this Agreement or as are otherwise permitted by the Indenture.

4.2. *Perfected Liens.* (a) The security interests granted pursuant to this Agreement (i) constitute valid and, subject only to the filing of the financing statements listed on *Schedule 3* hereto, fully perfected security interests in all of the Collateral in favor of the Mortgage Notes Indenture Trustee, for the ratable benefit of the Secured Parties, as collateral security for such Grantor's Obligations, enforceable in accordance with the terms hereof against all creditors of such Grantor and (ii) are subject to no other Liens on the Collateral except for Permitted Liens. Without limiting the foregoing, each Grantor has taken all actions necessary or desirable, including, without limitation, those specified in Section 5.2 to: (i) establish the Mortgage Notes Indenture Trustee's "control" (within the meanings

11

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of Sections 8-106 and 9-106 of the New York UCC) over any portion of the Investment Property constituting Certificated Securities, Uncertificated Securities, Securities Accounts, Securities Entitlements or Commodity Accounts (each as defined in the New York UCC), (ii) establish the Mortgage Notes Indenture Trustee's "control" (within the meaning of Section 9-104 of the New York UCC) over all Deposit Accounts, and (iii) establish the Mortgage Notes Indenture Trustee's "control" (within the meaning of Section 9-107 of the New York UCC) over all Letter of Credit Rights.

(b) No authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body (except those which have been made or obtained) is required for either (i) the pledge or grant by any Grantor of the security interests purported to be created in favor of the Mortgage Notes Indenture Trustee hereunder or (ii) the exercise by the Mortgage Notes Indenture Trustee of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except (A) for filings and actions specified on *Schedule 3* and (B) as may be required, in connection with the disposition of any Investment Property, by laws generally affecting the offering and sale of securities;

4.3. *Name; Jurisdiction of Organization, etc.* On the date hereof, such Grantor's exact legal name (as indicated on the public record of such Grantor's jurisdiction of formation or organization), jurisdiction of organization and the location of such Grantor's chief executive office or sole place of business are specified on *Schedule 4*. Each Grantor is organized solely under the law of the jurisdiction so specified and has not filed any certificates of domestication, transfer or continuance in any other jurisdiction. Except as otherwise indicated on *Schedule 4*, the jurisdiction of each such Grantor's organization of formation is required to maintain a public record showing the Grantor to have been organized or formed. Except as specified on *Schedule 4*, such Grantor has not changed its name, jurisdiction of organization, chief executive office or sole place of business or its corporate structure in any way (e.g. by merger, consolidation, change in corporate form or otherwise) within the previous five year period ending on the date hereof and has not within such period become bound (whether as a result of merger or otherwise) as grantor under a security agreement entered into by another Person, which has not heretofore been terminated.

4.4. *Inventory, Equipment and Books and Records.* On the date hereof, the Inventory and the Equipment (other than mobile goods) and the books and records pertaining to the Collateral are kept at the locations listed on *Schedule 5*. No material Inventory or Equipment (in the aggregate) of such Grantor is in the possession of an issuer of a negotiable document (as defined in Section 7-104 of the UCC) therefor that has not been delivered to the Mortgage Notes Indenture Trustee or is otherwise in the possession of any bailee or warehouseman.

4.5. *Farm Products.* None of the Collateral constitutes, or is the Proceeds of, Farm Products.

4.6. *Investment Property.* (a) The shares of Pledged Stock pledged by such Grantor hereunder constitute all of the issued and outstanding shares of all classes of the Capital Stock of each Issuer owned by such Grantor.

(b) All the shares of the Pledged Stock of such Grantor have been duly and validly issued and are fully paid and nonassessable.

(c) Each limited liability company interest or partnership interest owned by such Grantor and included in the Pledged Stock is certificated (and each Grantor covenants that it will not issue or cause or permit its Subsidiaries to issue any Capital Stock in uncertificated form or seek to convert all or any part of its existing Capital Stock into uncertificated form) and the terms of such certificated limited liability company interests and partnership interests expressly provide that they are securities governed by Article 8 of the Uniform Commercial Code in effect from time to time in the applicable jurisdiction.

(d) Each of the Pledged Notes issued to such Grantor constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms, subject to the

12

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effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.



(e) Such Grantor is the record and beneficial owner of, and has good and marketable title to, the Investment Property pledged by it hereunder, free of any and all Liens or options in favor of, or claims of, any other Person, except Permitted Liens.

(f) Each Issuer that is not a Grantor hereunder but is an Affiliate of any Grantor has executed and delivered to the Mortgage Notes Indenture Trustee an Acknowledgment and Agreement, in substantially the form of *Exhibit A*, to the pledge of the Pledged Securities pursuant to this Agreement.

4.7. *Receivables.* (a) No amount payable to such Grantor under or in connection with any Receivable is evidenced by any Instrument or Chattel Paper which has not been delivered to the Mortgage Notes Indenture Trustee (other than Receivables evidenced by Instruments representing (i) extensions of credit by the Note Issuers to individual customers of its gaming operations in the ordinary course of business and (ii) loans to employees expressly permitted under the Indenture (collectively, the "*Non-Deliverable Collateral*").

(b) None of the obligors on any material Receivables is a Governmental Authority.

(c) The amounts represented by such Grantor to the Secured Parties from time to time as owing to such Grantor in respect of the Receivables will at such times be materially accurate.

4.8. *Contracts.* (a) Except as specified on *Schedule 7*, hereto, no Contract prohibits assignment or requires or purports to require the consent of any party (other than such Grantor) to such Contract in connection with the execution, delivery and performance of this Agreement.

(b) Except, after the Closing Date, as expressly permitted by the Indenture or the Disbursement Agreement, each Contract is in full force and effect and constitutes a valid and legally enforceable obligation of the parties thereto, subject to the effects of bankruptcy, insolvency, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law).

(c) No consent or authorization of, filing with or other act by or in respect of any Governmental Authority is required in connection with the execution, delivery, performance, validity or enforceability of any of the Contracts by any party thereto other than (i) those which have been duly obtained, made or performed, are in full force and effect and do not subject the scope of any such Contract to any material adverse limitation, either specific or general in nature and (ii) with respect to the performance of such Contracts only, filings, Permits or authorizations to be subsequently obtained as contemplated by the Indenture or the Disbursement Agreement.

(d) Neither such Grantor nor (to the best of such Grantor's knowledge) any of the other parties to the Contracts is in default in the performance or observance of any of the terms thereof in any manner that, in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(e) The right, title and interest of such Grantor in, to and under the Contracts are not subject to any defenses, offsets, counterclaims or claims that, in the aggregate, could reasonably be expected to have a Material Adverse Effect.

13

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(f) Such Grantor has delivered to the Mortgage Notes Indenture Trustee a complete and correct copy of each Contract, including all amendments, supplements and other modifications thereto.

(g) No amount payable to such Grantor under or in connection with any Contract is evidenced by any Instrument or Chattel Paper which has not been delivered to the Mortgage Notes Indenture Trustee.

(h) None of the parties to any Contract is a Governmental Authority.

4.9. *Intellectual Property.* (a) *Schedules 6* includes, without limitation, lists all Intellectual Property material to the conduct of such Grantor's Permitted Businesses (which includes, in any case, all Intellectual Property relating to **[DESCRIBE "LE REVE" IP]**) which Intellectual Property is owned by such Grantor in its own name on the date hereof. Except as set forth in *Schedule 6*, such Grantor is the exclusive owner of the entire and unencumbered right, title and interest in and to such Intellectual Property and is otherwise entitled to use all such Intellectual Property, without limitation, subject only to the license terms of the licensing or franchise agreements referred to in paragraph (c) below.

(b) On the date hereof, all material Intellectual Property is valid, subsisting, unexpired and enforceable and has not been abandoned.

(c) Except as set forth in *Schedule 6* and for licenses between Grantors in the ordinary course of business, on the date hereof (i) none of the Intellectual Property is the subject of any licensing or franchise agreement pursuant to which such Grantor is the licensor or franchisor, and (ii) there are no other agreements, obligations, orders or judgments which affect the use of any Intellectual Property.

(d) With respect to \_\_\_\_\_, (i) the rights of \_\_\_\_\_ in or to **[TO DESCRIBE "LE REVE" IP]** do not infringe upon the rights of any third party, which infringement could reasonably be expected to have a material adverse effect on such Grantor's ability to use the "Le Reve" name in its Permitted Businesses as currently used or contemplated to be used, (ii) no claim has been asserted that the use of such Intellectual Property does or may infringe upon the rights of any third party which claim, if determined adversely to \_\_\_\_\_, could reasonably be expected to have a material adverse effect on such Grantor's ability to use such Intellectual Property in \_\_\_\_\_'s Permitted Businesses, (iii) there is currently no infringement or unauthorized use of any item of such Intellectual Property which infringement or unauthorized use could reasonably be expected to have a material adverse effect on \_\_\_\_\_'s ability to use such Intellectual Property in \_\_\_\_\_'s Permitted Businesses and (iv) no holding, decision or judgment has been rendered by any Governmental Authority which could reasonably be expected to have a material adverse effect on \_\_\_\_\_'s ability to use such Intellectual Property in \_\_\_\_\_'s Permitted Businesses.

(e) The rights of such Grantor in or to the Intellectual Property do not infringe upon the rights of any third party, and no claim has been asserted that the use of such Intellectual Property does or may infringe upon the rights of any third party, in either case, which conflict or infringement could reasonably be expected to have a Material Adverse Effect. To such Grantor's knowledge, there is currently no infringement or unauthorized use of any item of Intellectual Property that could reasonably be expected to have a Material Adverse Effect.

(f) No holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity or enforceability of, or such Grantor's rights in, any of such Grantor's Intellectual Property in any respect that could reasonably be expected to have a Material Adverse Effect. Such Grantor is not aware of any uses of any item of its material Intellectual Property that could reasonably be expected to lead to such item becoming invalid or unenforceable.

(g) Except as could not reasonably be expected to have a Material Adverse Effect, no action or proceeding is pending, or, to the knowledge of such Grantor, threatened, on the date hereof (i) seeking to limit, cancel or question the validity of any Intellectual Property or such Grantor's ownership interest

14

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therein, (ii) alleging that any services provided by, processes used by, or products manufactured or sold by such Grantor infringe any patent, trademark, copyright, or any other right of any third party, (iii) alleging that any material Intellectual Property is being licensed, sublicensed or used in violation of any patent, trademark, copyright or any other right of any third party, or (iv) which, if adversely determined, would have a material adverse effect on the value of any Intellectual Property. To the knowledge of such Grantor, no Person is engaging in any activity that infringes upon Grantor's material Intellectual Property or upon the rights of such Grantor therein, except (i) with respect to the Intellectual Property related to or otherwise associated with the Grantor's use of the "Le Reve" name, such claims that, if determined adversely to a Grantor, could not reasonably be expected to have a material adverse effect on such Grantor's ability to use the "Le Reve" name in its Permitted Businesses as currently used or contemplated to be used and (ii) with respect to all other Intellectual Property, as could not reasonably be expected to have a Material Adverse Effect. Except as set forth in Schedule 6 hereto, such Grantor has not granted any material license, or any release, covenant not to sue, non-assertion assurance, or other right to any person with respect to any part of the material Intellectual Property. The consummation of the transactions contemplated by this Agreement will not result in the termination or impairment of any of the Intellectual Property.

(h) With respect to each Copyright License, Trademark License and Patent License, as of the date hereof and with respect to each material Copyright License, material Trademark License and material Patent License after the date hereof: (i) except as could not reasonably be expected to have a Material Adverse Effect, such license is valid and binding and in full force and effect and such license represents the entire agreement between the respective licensor and licensee with respect to the subject matter of such license; (ii) such license will not cease to be valid and binding and in full force and effect on terms identical to those currently in effect as a result of the rights and interests granted herein, nor will the grant of such rights and interests constitute a breach or default under such license or otherwise give the licensor or licensee a right to terminate such license; (iii) such Grantor has not received any notice of termination or cancellation under such license, which notice could reasonably be expected to have a Material Adverse Effect; (iv) such Grantor has not received any notice of a breach or default under such license, which notice could reasonably be expected to have a Material Adverse Effect, which breach or default has not been cured; (v) such Grantor has not granted to any other third party any rights, adverse or otherwise, under such license which could reasonably be expected to have a Material Adverse Effect; and (vi) such Grantor is not in breach or default in any material respect, and no event has occurred that, with notice and/or lapse of time, would constitute such a breach or default or permit termination, modification or acceleration under such license.

(i) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor has performed all acts and has paid all required fees and taxes to maintain each and every item of material Intellectual Property in full force and effect and to protect and maintain its interest therein. Such Grantor has either used proper statutory notice in connection with its use of each material Patent, Trademark and Copyright included in the Intellectual Property, or such Grantor's failure to use proper statutory notice could not reasonably be expected to have a Material Adverse Effect.

(j) To its knowledge, except as could not reasonably be expected to have a Material Adverse Effect, (i) none of the Trade Secrets of such Grantor has been used, divulged, disclosed or appropriated to the detriment of such Grantor for the benefit of any other Person; (ii) no employee, independent contractor or agent of such Grantor has misappropriated any trade secrets of any other Person in the course of the performance of his or her duties as an employee, independent contractor or agent of such Grantor; and (iii) no employee, independent contractor or agent of such Grantor is in default or breach of any term of any employment agreement, non-disclosure agreement, assignment of inventions agreement or similar agreement or contract relating in any way to the protection, ownership, development, use or transfer of such Grantor's material Intellectual Property.

15

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(k) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor has made all filings and recordings necessary to adequately protect its interest in its Intellectual Property including, without limitation, recordation of its interests in the Patents and Trademarks with the United States Patent and Trademark Office and in corresponding national and international patent offices, and recordation of any of its interests in the Copyrights with the United States Copyright Office and in corresponding national and international copyright offices.

(l) Such Grantor has taken all commercially reasonable steps to ensure that all licensed users of any material Intellectual Property use consistent standards of quality which are controlled by such Grantor.

4.10. *Vehicles.* Schedule 8 is a complete and correct list of all Vehicles owned by such Grantor on the date hereof.

## SECTION 5. COVENANTS

Each Grantor covenants and agrees with the Secured Parties that, from and after the date of this Agreement until the Obligations (other than unmatured contingent reimbursement and indemnification Obligations) shall have been paid in full:

5.1. *Delivery and Control of Instruments, Chattel Paper, Investment Property and Deposit Accounts.* (a) If any of the Collateral shall be or become evidenced or represented by any Instrument, Certificated Security, Chattel Paper or Negotiable Document, such Instrument, Certificated Security, Chattel Paper or Negotiable Document shall be promptly delivered to the Mortgage Notes Indenture Trustee, duly endorsed in a manner satisfactory to the Mortgage Notes Indenture Trustee, to be held as Collateral pursuant to this Agreement (other than Non-Deliverable Collateral).

(b) If any of the Collateral shall be or become evidenced or represented by an Uncertificated Security, such Grantor shall cause, or with respect to any Issuer that is not an Affiliate of any Grantor, use commercially reasonable efforts to cause, the Issuer thereof either (i) to register the Mortgage Notes Indenture Trustee as the registered owner of such Uncertificated Security, upon original issue or registration of transfer or (ii) to agree in writing with such Grantor and the Mortgage Notes Indenture Trustee that such Issuer will comply with instructions with respect to such Uncertificated Security originated by the Mortgage Notes Indenture Trustee without further consent of such Grantor, such agreement to be in substantially the form of *Exhibit C*. Notwithstanding the foregoing, each Grantor covenants that (x) the representations and warranties contained in Section 4.6(c) shall at all times be true and correct and (y) it will not issue or cause or permit its Subsidiaries to issue any Capital Stock in uncertificated form or seek to convert all or any part of its existing Capital Stock into uncertificated form.

(c) If any of the Collateral now or hereafter constitutes a Deposit Account or a Securities Account, such Grantor shall cause the financial institution maintaining such account to agree in writing with such Grantor and the Mortgage Notes Indenture Trustee that such financial institution shall comply with all Entitlement Orders and instructions originated or issued by the Mortgage Notes Indenture Trustee with respect to such Deposit Account or Securities Account without further consent of such Grantor, such agreement to be substantially in the form of *Exhibit D* or in such other form as shall be satisfactory to the Mortgage Notes Indenture Trustee.

(d) If any of the Collateral shall be or become evidenced or represented by a Commodity Contract, such Grantor shall cause the Commodity Intermediary with respect to such Commodity Contract to agree in writing with such Grantor and the Mortgage Notes Indenture Trustee that such Commodity Intermediary will apply any value distributed on account of such Commodity Contract as directed by the Mortgage Notes Indenture Trustee without further consent of such Grantor, such

16

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agreement to be in substantially the form of *Exhibit E* or in such other form as may be satisfactory to the Mortgage Notes Indenture Trustee.

(e) If any of the Collateral shall be or become evidenced or represented by or held in a Securities Account or a Commodity Account, such Grantor shall, in the case of a Securities Account, comply with Section 5.1(c) with respect to all Security Entitlements carried in such Securities Account and, in the case of a Commodity Account, comply with Section 5.2(d) with respect to all Commodity Contracts carried in such Commodity Account.

5.2. *Payment of Obligations.* Such Grantor will pay and discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all taxes, assessments and governmental charges or levies imposed upon the Collateral or in respect of income or profits therefrom, as well as all claims of any kind (including, without limitation, claims for labor, materials and supplies) against or with respect to the Collateral, except that no such charge need be paid if the amount or validity thereof is currently being contested in good faith by appropriate proceedings, reserves in conformity with GAAP with respect thereto have been provided on the books of such Grantor and such proceedings could not reasonably be expected to result in the sale, forfeiture or loss of any material portion of the Collateral or any interest therein.

5.3. *Maintenance of Perfected Security Interest; Further Documentation.* (a) Such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.2 and shall defend such security interest against the claims and demands of all Persons whomsoever.

(b) Such Grantor will furnish to the Secured Parties from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the assets and property of such Grantor as the Mortgage Notes Indenture Trustee may reasonably request, all in reasonable detail.

(c) At any time and from time to time, upon the written request of the Mortgage Notes Indenture Trustee, and at the sole expense of such Grantor, such Grantor will promptly and duly authorize, execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Mortgage Notes Indenture Trustee may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, (i) the filing of any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby and (ii) in the case of Investment Property, Deposit Accounts and any other relevant Collateral, taking any actions necessary to enable the Mortgage Notes Indenture Trustee to obtain "control" (within the meaning of the applicable Uniform Commercial Code) with respect thereto, including without limitation, executing and delivering and causing the relevant depository bank or securities intermediary to execute and deliver a Control Agreement in the form attached hereto as *Exhibit D*, or in such other form as may be satisfactory to the Mortgage Notes Indenture Trustee.

5.4. *Changes in Locations, Name, Jurisdiction of Incorporation, etc.* Such Grantor will not, except upon 15 days' prior written notice to the Mortgage Notes Indenture Trustee and delivery to the Mortgage Notes Indenture Trustee of (a) all additional executed financing statements and other documents reasonably requested by the Mortgage Notes Indenture Trustee to maintain the validity, perfection and priority of the security interests provided for herein and (b) if applicable, a written supplement to *Schedule 5* showing any additional location at which Inventory or Equipment (other than mobile goods) or books and records pertaining to the Collateral shall be kept:

(i) permit any of the Inventory or Equipment (other than mobile goods) or books and records pertaining to the Collateral to be kept at a location other than those listed on *Schedule 5*;

17

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(ii) without limiting the prohibitions on mergers involving the Grantors contained in the Indenture, change its legal name, jurisdiction of organization or the location of its chief executive office or sole place of business from that referred to in Section 4.3; or

(iii) change its legal name, identity or structure to such an extent that any financing statement filed by the Mortgage Notes Indenture Trustee in connection with this Agreement would become misleading.

5.5. *Notices.* Such Grantor will advise the Secured Parties promptly, in reasonable detail, of:

(a) any Lien (other than any Permitted Lien) on any of the Collateral which would adversely affect the ability of the Mortgage Notes Indenture Trustee to exercise any of its remedies hereunder; and

(b) of the occurrence of any other event which could reasonably be expected to have a material adverse effect on the aggregate value of the Collateral or on the security interests created hereby.

5.6. *Investment Property.* (a) Subject to compliance with applicable Gaming Laws, if such Grantor shall become entitled to receive or shall receive any stock or other ownership certificate (including, without limitation, any certificate representing a stock dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights in respect of the Capital Stock of any Issuer, whether in addition to, in substitution of, as a conversion of, or in exchange for, any shares of or other ownership interests in the Pledged Stock, or

otherwise in respect thereof, such Grantor shall accept the same as the agent of the Secured Parties, hold the same in trust for the Secured Parties and deliver the same forthwith to the Mortgage Notes Indenture Trustee in the exact form received, duly endorsed by such Grantor to the Mortgage Notes Indenture Trustee, if required, together with an undated stock power covering such certificate duly executed in blank by such Grantor and with, if the Mortgage Notes Indenture Trustee so requests, signature guaranteed, to be held by the Mortgage Notes Indenture Trustee, subject to the terms hereof, as additional collateral security for the Obligations. So long as no Event of Default shall have occurred and be continuing, the Mortgage Notes Indenture Trustee authorizes each Grantor to retain all ordinary cash dividends and distributions paid in the normal course of the business of the Issuer and all scheduled payments of interest. All other dividends and distributions of any type or nature, including, without limitation, any dividends or distributions paid in respect of Pledged Securities upon liquidation or dissolution of any Issuer shall immediately be delivered to the Mortgage Notes Indenture Trustee to be held as additional Collateral hereunder. If any sums of money or property so paid or distributed in respect of the Pledged Securities shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to the Mortgage Notes Indenture Trustee, hold such money or property in trust for the Secured Parties, segregated from other funds of such Grantor, as additional collateral security for the Obligations.

(b) Without the prior written consent of the Mortgage Notes Indenture Trustee (which consent shall not be unreasonably withheld), such Grantor will not (i) vote to enable, or take any other action to permit, any Issuer to issue any stock or other equity securities of any nature or to issue any other securities convertible into or granting the right to purchase or exchange for any stock or other equity securities of any nature of any Issuer (except pursuant to a transaction permitted by the Indenture), (ii) sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, any of the Investment Property or Proceeds thereof or any interest therein (except pursuant to a transaction expressly permitted by the Indenture), (iii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Investment Property or Proceeds thereof, or any interest therein, except for the security interests created by this Agreement and other Permitted Liens or (iv) enter into any agreement or undertaking restricting the right or ability of such Grantor or the Mortgage Notes Indenture Trustee to sell, assign or transfer any of the Investment Property or

18

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Proceeds thereof or any interest therein (except pursuant to a transaction expressly permitted by the Indenture).

(c) In the case of each Grantor which is an Issuer, such Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Pledged Securities issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify the Mortgage Notes Indenture Trustee promptly in writing of the occurrence of any of the events described in Section 5.6(a) with respect to the Pledged Securities issued by it and (iii) the terms of Sections 6.3(c) and 6.7 shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to Section 6.4(c) or 6.8 with respect to the Pledged Securities issued by it. In addition, each Grantor which is either an Issuer or an owner of any Pledged Security hereby consents to the grant by each other Grantor of the security interest hereunder in favor of the Mortgage Notes Indenture Trustee and to the transfer of any Pledged Security to the Mortgage Notes Indenture Trustee or its nominee following an Event of Default and to the substitution of the Mortgage Notes Indenture Trustee or its nominee as a partner, member or shareholder of the Issuer of the related Pledged Security.

5.7. *Receivables.* (a) Other than in the ordinary course of business consistent with customary gaming practices in its Permitted Businesses and so long as no Event of Default shall have occurred and be continuing, such Grantor will not (i) grant any extension of the time of payment of any Receivable, (ii) compromise or settle any Receivable for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Receivable, (iv) allow any credit or discount whatsoever on any Receivable or (v) amend, supplement or modify any Receivable in any manner that could materially adversely affect the value thereof.

(b) Such Grantor will deliver to the Mortgage Notes Indenture Trustee a copy of each material demand, notice or document received by it that questions or calls into doubt the validity or enforceability of more than 5% of the aggregate amount of the then outstanding Receivables.

5.8. *Contracts.* (a) Except to the extent permitted under the Indenture or Disbursement Agreement, such Grantor will perform and comply in all material respects with all its obligations under the Contracts.

(b) Except to the extent the same could not reasonably be expected to have a Material Adverse Effect, such Grantor will not amend, modify, cancel, terminate, waive or fail to enforce any provision of any Contract or suspend such Contract or the performance of work thereunder, or agree to the sale, assignment or disposition by any counterparty to such Contract of any part of its interest therein (all of which powers are rested in the Mortgage Notes Indenture Trustee).

19

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(c) Except to the extent the same could not reasonably be expected to have a Material Adverse Effect, such Grantor will exercise promptly and diligently each and every material right which it may have under each Contract.

(d) Such Grantor will deliver to the Mortgage Notes Indenture Trustee a copy of each material demand, notice or document received by it relating in any way to any Contract that questions the validity or enforceability of such Contract that is material to its business.

(e) In the event that such Grantor enters into any new contract [(i) that would qualify as a Material Project Document (as defined in the Disbursement Agreement)] [or] [(ii) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect (taking into consideration any viable replacements or substitutions therefor at the time such determination is made)], such Grantor shall provide the Mortgage Notes Indenture Trustee promptly with an amended *Schedule 7* hereto and any such new contract shall be deemed for all purposes to be a Contract hereunder.

5.9. *Intellectual Property.* (a) Such Grantor (either itself or through licensees) will (i) continue to use each material Trademark on each and every trademark class of goods in order to maintain such Trademark (in the trademark classes of goods in which it is used) in full force free from any claim of abandonment for non-use, (ii) use such Trademark with the appropriate notice of registration and all other notices and legends required by applicable Requirements of Law, (iii) not adopt or use any mark which is confusingly similar or a colorable imitation of such Trademark unless the Mortgage Notes Indenture Trustee, for the ratable benefit of the Secured Parties, shall obtain a perfected security interest in such mark pursuant to this Agreement and the Intellectual Property Security Agreement, and (iv) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby such Trademark may become invalidated or impaired in any way.

(b) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor (either itself or through licensees) will not do any act, or omit to do any act, whereby any material Patent may become forfeited, abandoned or dedicated to the public.

(c) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor (either itself or through licensees) (i) will employ each material Copyright and (ii) will not (and will not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any material portion of the Copyrights may become invalidated or otherwise impaired. Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor will not (either itself or through licensees) do any act whereby any material Copyright may fall into the public domain.

(d) Such Grantor (either itself or through licensees) will not do any act that knowingly uses any material Intellectual Property to infringe the intellectual property rights of any other Person.

(e) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor (either itself or through licensees) will use proper statutory notice in connection with the use of each material Patent, Trademark and Copyright included in the Intellectual Property.

(f) Such Grantor will notify the Secured Parties promptly if it knows that any application or registration relating to any of its material Intellectual Property may become forfeited, abandoned or dedicated to the public, or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country) regarding such Grantor's ownership of, or the validity of, any material Intellectual Property or such Grantor's right to register the same or to own and maintain the same, unless such forfeiture, abandonment, dedication to the public, or adverse determination or development could not reasonably be expected to have a Material Adverse Effect.

(g) Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Intellectual Property with the United States Patent

20

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and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, such Grantor shall report such filing to the Mortgage Notes Indenture Trustee within five Business Days after the last day of the fiscal quarter in which such filing occurs. Upon request of the Mortgage Notes Indenture Trustee, such Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as the Mortgage Notes Indenture Trustee may request to evidence the Secured Parties' security interest in any Copyright, Patent, Trademark or other Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

(h) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor will take all reasonable and necessary steps, including, without limitation, in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of material Intellectual Property, including, without limitation, the payment of required fees and taxes, the filing of responses to office actions issued by the United States Patent and Trademark Office and the United States Copyright Office, the filing of applications for renewal or extension, the filing of affidavits of use and affidavits of incontestability, the filing of divisional, continuation, continuation-in-part, reissue, and renewal applications or extensions, the payment of maintenance fees, and the participation in interference, reexamination, opposition, cancellation, infringement and misappropriation proceedings.

(i) Such Grantor (either itself or through licensees) will not, without the prior written consent of the Mortgage Notes Indenture Trustee, discontinue use of or otherwise abandon any Intellectual Property, or abandon any application or any right to file an application for letters patent, trademark, or copyright, unless such Grantor shall have previously determined that such use or the pursuit or maintenance of such Intellectual Property is no longer desirable in the conduct of such Grantor's business and that the loss thereof could not reasonably be expected to have a Material Adverse Effect and, in which case, such Grantor shall give prompt notice of any such abandonment of any material Intellectual Property to the Mortgage Notes Indenture Trustee in accordance herewith.

(j) In the event that any material Intellectual Property is infringed, misappropriated or diluted by a third party, such Grantor shall (i) take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is of material economic value, promptly notify the Mortgage Notes Indenture Trustee after it learns thereof and sue for infringement, misappropriation or dilution (as applicable), seek injunctive relief where appropriate and recover any and all damages awarded for any such infringement, misappropriation or dilution (or take other action as such Grantor deems appropriate in the exercise of its prudent business judgment).

(k) Such Grantor agrees that, should it obtain an ownership interest in any item of Intellectual Property which is not now a part of the Intellectual Property Collateral (the "*After-Acquired Intellectual Property*"), (i) the provisions of Section 3 shall automatically apply thereto, (ii) any such After-Acquired Intellectual Property, and in the case of trademarks, the goodwill of the business connected therewith or symbolized thereby, shall automatically become part of the Intellectual Property Collateral, (iii) it shall give prompt (and, in any event within five business days after the last day of the fiscal quarter in which such Grantor acquires such ownership interest in any material Intellectual Property) written notice thereof to the Mortgage Notes Indenture Trustee in accordance herewith, and (iv) it shall provide the Mortgage Notes Indenture Trustee promptly (and, in any event within five business days after the last day of the fiscal quarter in which such Grantor acquires such ownership interest in any material Intellectual Property) with an amended Schedule 6 hereto and take the actions specified in 5.9(m).

(l) Such Grantor agrees to execute an Intellectual Property Security Agreement with respect to its Intellectual Property in substantially the form of *Exhibit B-1* in order to record the security interest

21

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granted herein to the Mortgage Notes Indenture Trustee for the ratable benefit of the Secured Parties with the United States Patent and Trademark Office, the United States Copyright Office, and any other applicable Governmental Authority.

(m) Promptly after filing an application for the registration of any After-Acquired Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office, or any similar office or agency in any other county or any political subdivision thereof, such Grantor agrees to execute an After-Acquired Intellectual Property Security Agreement with respect to such After-Acquired Intellectual Property in substantially the form of *Exhibit B-2* in order to record the security interest granted herein to the Mortgage Notes Indenture Trustee for the ratable benefit of the Secured Parties with the United States Patent and Trademark Office, the United States Copyright Office, or other Governmental Authority (as applicable).

5.10. *Vehicles.* (a) No Vehicle shall be removed from the state which has issued the certificate of title or ownership therefor for a period in excess of the period after which such vehicle would be required to be retitled under applicable state law.

(b) With respect to any Vehicles acquired by such Grantor subsequent to the date hereof, within 30 days after the date of acquisition thereof, all applications for certificates of title or ownership indicating the Mortgage Notes Indenture Trustee's security interest in the Vehicle covered by such certificate, and any other necessary documentation, shall be filed in each office in each jurisdiction which the Mortgage Notes Indenture Trustee shall deem advisable to perfect its security interests in the Vehicles.

5.11. *Leases.* Wynn Las Vegas may

(a) Placeholder

(b) enter into any leases with respect to any space on or within the Project and any subleases with respect to any space in the Phase II Land Building; provided, that (a) no Default or Event of Default shall exist and be continuing at the time of such transaction, lease or sublease or would occur after as a result of entering into such transaction, lease or sublease (or immediately after any renewal or extension thereof at the option of Wynn Las Vegas), (b) such transaction, lease or sublease could not reasonably be expected to materially interfere with, impair or detract from the operation of the business of Wynn Las Vegas or Valvino Lamore, LLC, as the case may be, and will, in the case of leases associated with the casino, hotel and shopping operations, in the reasonable good faith judgment of Wynn Las Vegas enhance the value and operations of the Project, (c) except with respect to the Dealership Lease Agreement and subleases of space in the Phase II Land Building by Wynn Las Vegas, such transaction, lease or sublease is at a fair market rent or value (in light of other similar or comparable prevailing commercial transactions) and contains such other terms such that the lease, taken as a whole, is commercially reasonable and fair to Wynn Las Vegas in light of prevailing or comparable transactions in other casinos, hotels, hotel attractions, shopping venues or similarly situated buildings, as applicable (provided, that each sublease of the Phase II Land Building by Wynn Las Vegas and the Dealership Lease Agreement shall contain such terms such that the transaction, taken as a whole, does not expose Wynn Las Vegas to undue liabilities or obligations in light of prevailing or comparable transactions), (d) no gaming, hotel or casino operations (other than the operation of arcades and games for minors) may be conducted on any space that is subject to such transaction, lease or sublease other than by Wynn Las Vegas, and (e) no lease or sublease may provide that the Wynn Las Vegas or Valvino Lamore, LLC, as the case may be, may subordinate its fee, condominium or leasehold interest to any lessee or any party financing any lessee; provided, that (x) in the event the Mortgage Notes Indenture Trustee on behalf of the Holders shall agree to provide the tenant under any such lease or sublease with a subordination, non-disturbance and attornment agreement and (y) with respect to any such lease having a term of two years or more or aggregate annual rents in excess of \$500,000 (other than leases solely between Grantors), Wynn Las Vegas shall enter into, and cause the tenant under any such lease or sublease to enter into with the Mortgage Notes Indenture Trustee

22

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for the benefit of the Holders, a subordination, non-disturbance and attornment agreement, in each case with terms and conditions that, taken as a whole, are no less favorable than those set forth in any similar agreement entered into between such tenant and Deutsche Bank Trust Company Americas, as administrative agent under the Credit Agreement, or otherwise in form and substance satisfactory to the Mortgage Notes Indenture Trustee. The foregoing restrictions shall not apply to lease transactions to the extent such transactions would constitute Permitted Investments under the Indenture or would be permitted under Section 4.07 of the Indenture as Restricted Payments, under Section 4.10 of the Indenture as Asset Sales, or under Section 4.11 of the Indenture as Affiliate Transactions.

5.12. *Non-Deliverable Collateral.* At no time shall any item of Non-Deliverable Collateral be delivered to or held by any Person (other than the Mortgage Notes Indenture Trustee) as collateral security for any obligation of any Grantor.

## SECTION 6. REMEDIAL PROVISIONS

6.1. *Gaming Laws and Intercreditor Agreements.* Each of the provisions of this Section 6 shall be subject to compliance with (i) applicable Gaming Laws and (ii) applicable provisions of the Intercreditor Agreements.

6.2. *Certain Matters Relating to Receivables.* (a) The Mortgage Notes Indenture Trustee shall have the right to make test verifications of the Receivables in any manner and through any medium that it reasonably considers advisable, and each Grantor shall furnish all such assistance and information as the Mortgage Notes Indenture Trustee may require in connection with such test verifications.

(b) The Mortgage Notes Indenture Trustee hereby authorizes each Grantor to collect such Grantor's Receivables; provided that the Mortgage Notes Indenture Trustee may curtail or terminate said authority at any time after the occurrence and during the continuance of an Event of Default. If required by the Mortgage Notes Indenture Trustee at any time after the occurrence and during the continuance of an Event of Default, any payments of Receivables, when collected by any Grantor, (i) shall be forthwith (and, in any event, within two business days) deposited by such Grantor in the exact form received, duly endorsed by such Grantor to the Mortgage Notes Indenture Trustee if required, in a Collateral Account maintained under the control of the Mortgage Notes Indenture Trustee, subject to withdrawal by the Mortgage Notes Indenture Trustee for the account of the Secured Parties only as provided in Section 6.4, and (ii) until so turned over, shall be held by such Grantor in trust for the Secured Parties, segregated from other funds of such Grantor. Each such deposit of Proceeds of Receivables shall be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(c) At the Mortgage Notes Indenture Trustee's request, each Grantor shall deliver to the Mortgage Notes Indenture Trustee all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to the Receivables, including, without limitation, all original orders, invoices and shipping receipts (other than Non-Deliverable Collateral).

6.3. *Communications with Obligor; Grantors Remain Liable.* (a) The Mortgage Notes Indenture Trustee in its own name or in the name of others may at any time after the occurrence and during the continuance of an Event of Default communicate with obligors under the Receivables and parties to the Contracts to verify with them to the Mortgage Notes Indenture Trustee's satisfaction the existence, amount and terms of any Receivables or Contracts.

(b) Upon the request of the Mortgage Notes Indenture Trustee at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall notify obligors on the Receivables and parties to the Contracts that the Receivables and the Contracts have been assigned to the Mortgage Notes Indenture Trustee for the ratable benefit of the Secured Parties and that payments in respect thereof shall be made directly to the Mortgage Notes Indenture Trustee.

23

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each of the Receivables and Contracts to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. No Secured Party shall have any obligation or liability under any Receivable (or any agreement giving rise thereto) or Contract by reason of or arising out of this Agreement or the receipt by any Secured Party of any payment relating thereto, nor shall any Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Receivable (or any agreement giving rise thereto) or Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

6.4. *Pledged Securities.* (a) Unless an Event of Default shall have occurred and be continuing, each Grantor shall be permitted to receive all cash dividends paid in respect of the Pledged Stock and all payments made in respect of the Pledged Notes, in each case paid in the normal course of business of the relevant Issuer, to the extent permitted in the Indenture, and to exercise all voting and corporate or other ownership rights with respect to the Pledged Securities; *provided, however*, that no vote shall be cast or corporate or other ownership right exercised or other action taken which would impair the Collateral or which would be inconsistent with or result in any violation of any provision of the Indenture, this Agreement or any other Collateral Document.

(b) Subject to applicable provisions of Gaming Laws, if an Event of Default shall occur and be continuing and the Mortgage Notes Indenture Trustee shall give notice of its intent to exercise such rights to the relevant Grantor or Grantors, (i) the Mortgage Notes Indenture Trustee shall have the right to receive any and all cash dividends, payments or other Proceeds paid in respect of the Pledged Securities and make application thereof to the Obligations in the order set forth in Section 6.6, and (ii) any or all of the Pledged Securities shall be registered in the name of the Mortgage Notes Indenture Trustee or its nominee, and the Mortgage Notes Indenture Trustee or its nominee may thereafter exercise (x) all voting, corporate or other ownership and other rights pertaining to such Pledged Securities at any meeting of shareholders or other equity holders of the relevant Issuer or Issuers or otherwise and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Pledged Securities as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of the Pledged Securities upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other structure of any Issuer, or upon the exercise by any Grantor or the Mortgage Notes Indenture Trustee of any right, privilege or option pertaining to such Pledged Securities, and in connection therewith, the right to deposit and deliver any and all of the Pledged Securities with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Mortgage Notes Indenture Trustee may determine), all without liability except to account for property actually received by it, but the Mortgage Notes Indenture Trustee shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Pledged Securities pledged by such Grantor hereunder (i) to comply with any instruction received by it from the Mortgage Notes Indenture Trustee in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) unless otherwise expressly permitted hereby, to pay any dividends or other payments with respect to the Pledged Securities directly to the Mortgage Notes Indenture Trustee.

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6.5. *Proceeds to be Turned Over To Mortgage Notes Indenture Trustee.* In addition to the rights of the Secured Parties specified in Section 6.2, and subject to applicable provisions of Gaming Laws, with respect to payments of Receivables, if an Event of Default shall occur and be continuing, all Proceeds received by any Grantor consisting of cash, Cash Equivalents, checks and other near-cash items shall be held by such Grantor in trust for the Secured Parties, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the Mortgage Notes Indenture Trustee in the exact form received by such Grantor (duly endorsed by such Grantor to the Mortgage Notes Indenture Trustee, if required). All Proceeds received by the Mortgage Notes Indenture Trustee hereunder shall be held by the Mortgage Notes Indenture Trustee in a Collateral Account maintained under its control. All Proceeds while held by the Mortgage Notes Indenture Trustee in a Collateral Account (or by such Grantor in trust for the Secured Parties) shall continue to be held as collateral security for all the Obligations and shall not constitute payment thereof until applied as provided in Section 6.6.

6.6. *Application of Proceeds.* If an Event of Default shall have occurred and be continuing, at any time at the Mortgage Notes Indenture Trustee's election, the Mortgage Notes Indenture Trustee may, notwithstanding any provisions of the Indenture to the contrary, apply all or any part of Proceeds constituting Collateral realized through the exercise by the Mortgage Notes Indenture Trustee of its remedies hereunder, whether or not held in any Collateral Account, and any proceeds of the guarantee set forth in Section 2, in payment of the Obligations in the following order:

*First*, to the Mortgage Notes Indenture Trustee, to pay incurred and unpaid fees and expenses of the Secured Parties under the Indenture and the Collateral Documents;

*Second*, to the Mortgage Notes Indenture Trustee, for application by it towards payment of amounts then due and owing and remaining unpaid in respect of the Obligations, *pro rata* among the Holders according to the amounts of the Obligations then due and owing and remaining unpaid to the Holders;

*Third*, to the Mortgage Notes Indenture Trustee, for application by it towards prepayment of the Obligations, *pro rata* among the Holders according to the amounts of the Obligations then held by the Holders; and

*Fourth*, any balance of such Proceeds remaining after the Obligations (other than unmatured contingent reimbursement and indemnification Obligations) shall have been paid in full shall be paid over to the Note Issuers or to whomsoever may be lawfully entitled to receive the same.

6.7. *Code and Other Remedies.* (a) If an Event of Default shall occur and be continuing, the Mortgage Notes Indenture Trustee, on behalf of the Secured Parties, may exercise (subject to obtaining any required approvals from any Governmental Authorities that may not be waived by the Grantors), in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the New York UCC (whether or not the New York UCC applies to the affected Collateral) or any other applicable law or in equity. Without limiting the generality of the foregoing, the Mortgage Notes Indenture Trustee, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, license, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's

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sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Mortgage Notes Indenture Trustee shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Mortgage Notes Indenture Trustee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Mortgage Notes Indenture Trustee may sell the Collateral without giving any warranties as to the Collateral. The Mortgage Notes Indenture Trustee may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely effect the commercial reasonableness of any sale of the Collateral. Each Grantor agrees that it would not be commercially unreasonable for the Mortgage Notes Indenture Trustee to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Grantor hereby waives any claims against the Mortgage Notes Indenture Trustee arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Mortgage Notes Indenture Trustee accepts the first offer received and does not offer such Collateral to more than one offeree. Each Grantor further agrees, at the Mortgage Notes Indenture Trustee's request, to assemble the Collateral and make it available to the Mortgage Notes Indenture Trustee at places which the Mortgage Notes Indenture Trustee shall reasonably select, whether at such Grantor's premises or elsewhere. The Mortgage Notes Indenture Trustee shall apply the net proceeds of any action taken by it pursuant to this Section 6.7, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Secured Parties hereunder, including, without limitation, reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Obligations, in such order as the Mortgage Notes Indenture Trustee may elect, and only after such application and after the payment by the Mortgage Notes Indenture Trustee of any other amount required by any provision of law, including, without limitation, Section 9-615(a) of the New York UCC, need the Mortgage Notes Indenture Trustee account for the surplus, if any, to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against any Secured Party arising out of the exercise by them of any rights hereunder.

(b) In the event of any sale or transfer of any of the Intellectual Property, the goodwill of the business connected with and symbolized by any Trademarks subject to such sale or transfer shall be included, and the applicable Grantor shall supply the Mortgage Notes Indenture Trustee or its designee with such Grantor's know-how and expertise, and with documents and things embodying the same, relating to the manufacture, distribution, advertising and sale of products or the provision of services relating to any Intellectual Property subject to such sale or transfer, and such Grantor's customer lists and other records and documents relating to such Intellectual Property and to the manufacture, distribution, advertising and sale of such products and services.

6.8. *Registration Rights.* (a) If the Mortgage Notes Indenture Trustee shall determine to exercise its right to sell any or all of the Pledged Stock pursuant to Section 6.7, and if in the opinion of the Mortgage Notes Indenture Trustee it is necessary or advisable to have the Pledged Stock, or that portion thereof to be sold, registered under the provisions of the Securities Act, the relevant Grantor

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will cause, or with respect to any Issuer that is not an Affiliate of any Grantor, use commercially reasonable efforts to cause, the Issuer thereof to (i) execute and deliver, and cause the directors and officers of such Issuer to execute and deliver, all such instruments and documents, and do or cause to be done all such other acts as may be, in the opinion of the Mortgage Notes Indenture Trustee, necessary or advisable to register the Pledged Stock, or that portion thereof to be sold, under the provisions of the Securities Act, (ii) use its best efforts to cause the registration statement relating thereto to become effective and to remain effective for a period of one year from the date of the first public offering of the Pledged Stock, or that portion thereof to be sold, and (iii) make all amendments thereto and/or to the related prospectus which, in the opinion of the Mortgage Notes Indenture Trustee, are necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the SEC applicable thereto. Each Grantor agrees to cause, or with respect to any Issuer that is not an Affiliate of any Grantor, use commercially reasonable efforts to cause, such Issuer to comply with the provisions of the securities or "Blue Sky" laws of any and all jurisdictions which the Mortgage Notes Indenture Trustee shall designate and to make available to its security holders, as soon as practicable, an earnings statement (which need not be audited) which will satisfy the provisions of Section 11(a) of the Securities Act.

(b) Each Grantor recognizes that the Mortgage Notes Indenture Trustee may be unable to effect a public sale of any or all the Pledged Stock or the Pledged Debt Securities, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Mortgage Notes Indenture Trustee shall be under no obligation to delay a sale of any of the Pledged Stock or the Pledged Debt Securities for the period of time necessary to permit the Issuer thereof to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if such Issuer would agree to do so.

(c) Each Grantor agrees to use its best efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Pledged Stock pursuant to this Section 6.8 valid and binding and in compliance with any and all other applicable Requirements of Law. Each Grantor further agrees that a breach of any of the covenants contained in this Section 6.8 will cause irreparable injury to the Secured Parties, that the Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 6.8 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing under the Indenture or a defense of payment.

6.9. *Waiver; Deficiency.* Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Obligations and the fees and disbursements of any attorneys employed by any Secured Party to collect such deficiency.



7.1. *Mortgage Notes Indenture Trustee's Appointment as Attorney-in-Fact, etc.* (a) Subject to compliance with applicable Gaming Laws, each Grantor hereby irrevocably constitutes and appoints the Mortgage Notes Indenture Trustee and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of

27

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such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Mortgage Notes Indenture Trustee the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Receivable or Contract or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Mortgage Notes Indenture Trustee for the purpose of collecting any and all such moneys due under any Receivable or Contract or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as the Mortgage Notes Indenture Trustee may request to evidence the Secured Parties' security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 6.7 or 6.8, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (1) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Mortgage Notes Indenture Trustee or as the Mortgage Notes Indenture Trustee shall direct; (2) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (3) sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (4) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (5) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (6) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Mortgage Notes Indenture Trustee may deem appropriate; (7) assign any Copyright, Patent or Trademark (along with the goodwill of the business to which any such Copyright, Patent or Trademark pertains), throughout the world for such term or terms, on such conditions, and in such manner, as the Mortgage Notes Indenture Trustee shall in its reasonable judgment determine; and (8) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Mortgage Notes Indenture Trustee were the absolute owner thereof for all purposes, and do, at the Mortgage Notes Indenture Trustee's option and such Grantor's expense, at any time, or from time to time, all acts and things which the Mortgage Notes Indenture Trustee deems necessary to protect, preserve or realize upon the Collateral and the Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

28

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Anything in this Section 7.1(a) to the contrary notwithstanding, the Mortgage Notes Indenture Trustee agrees that, except as provided in Section 7.1(b), it will not exercise any rights under the power of attorney provided for in this Section 7.1(a) unless and until an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Mortgage Notes Indenture Trustee, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) The expenses of the Mortgage Notes Indenture Trustee incurred in connection with actions undertaken as provided in this Section 7.1, together with interest thereon at a rate per annum equal to the rate per annum at which interest would then be payable on past due interest pursuant to Section 2.12 of the Indenture, from the date of payment by the Mortgage Notes Indenture Trustee to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to the Mortgage Notes Indenture Trustee on demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

7.2. *Duty of Mortgage Notes Indenture Trustee.* The Mortgage Notes Indenture Trustee's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 or 9-208 of the New York UCC or otherwise, shall be to deal with it in the same manner as the Mortgage Notes Indenture Trustee deals with similar property for its own account. Neither the Mortgage Notes Indenture Trustee, nor any other Secured Party nor any of their respective officers, directors, partners, employees, agents, attorneys and other advisors, attorneys-in-fact or affiliates shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Secured Parties hereunder are solely to protect the Secured Parties' interests in the Collateral and shall not impose any duty upon any Secured Party to exercise any such powers. The Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, partners, employees, agents, attorneys and other advisors, attorneys-in-fact or affiliates shall be responsible to any

Grantor for any act or failure to act hereunder, except to the extent that any such act or failure to act is found by a final and nonappealable decision of a court of competent jurisdiction to have resulted solely and proximately from their own gross negligence or willful misconduct in breach of a duty owed to such Grantor.

7.3 *Execution of Financing Statements.* Each Grantor acknowledges that pursuant to Section 9-509(b) of the New York UCC and any other applicable law, each Grantor authorizes the Mortgage Notes Indenture Trustee is authorized to file or record financing or continuation statements, and amendments thereto, and other filing or recording documents or instruments with respect to the Collateral in such form and in such offices as the Mortgage Notes Indenture Trustee reasonably determines appropriate to perfect or maintain the perfection of the security interests of the Mortgage Notes Indenture Trustee under this Agreement. Each Grantor hereby agrees that such financing statements may describe the collateral in the same manner as described in the Collateral Documents or as "all assets" or "all personal property" of the undersigned, whether now owned or hereafter existing or acquired by the undersigned. If and to the extent permitted by applicable law, a photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction.

29

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7.4 *Authority of Mortgage Notes Indenture Trustee.* Each Grantor acknowledges that the rights and responsibilities of the Mortgage Notes Indenture Trustee under this Agreement with respect to any action taken by the Mortgage Notes Indenture Trustee or the exercise or non-exercise by the Mortgage Notes Indenture Trustee of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Mortgage Notes Indenture Trustee and the other Secured Parties, be governed by the Indenture and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Mortgage Notes Indenture Trustee and the Grantors, the Mortgage Notes Indenture Trustee shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

7.5 *Appointment of Co-Collateral Agents.* At any time or from time to time, in order to comply with any Requirement of Law or otherwise, the Mortgage Notes Indenture Trustee may appoint another bank or trust company or one of more other persons, either to act as bailee, co-agent or agents on behalf of the Secured Parties with such power and authority as may be necessary for the effectual operation of the provisions hereof and which may be specified in the instrument of appointment (which may, in the discretion of the Mortgage Notes Indenture Trustee, include provisions for indemnification and similar protections of such co-agent or separate agent); provided that the Mortgage Notes Indenture Trustee shall give prompt notice of such appointment to all Grantors pursuant to Section 8.2 hereof.

## SECTION 8. MISCELLANEOUS

8.1 *Amendments in Writing.* None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with the terms of the Indenture.

8.2 *Notices.* All notices, requests and demands to or upon the Mortgage Notes Indenture Trustee or any Grantor hereunder shall be effected in the manner provided for in Section 13.02 of the Indenture; *provided* that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on *Schedule 1*.

8.3 *No Waiver by Course of Conduct; Cumulative Remedies.* No Secured Party shall by any act (except by a written instrument pursuant to Section 8.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

8.4 *Enforcement Expenses; Indemnification.* (a) Each Grantor agrees to pay or reimburse each Secured Party for all its costs and expenses incurred in collecting against such Grantor under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Agreement, the Indenture and the other Collateral Documents to which such Grantor is a party, including, without limitation, the fees and disbursements of counsel to each Secured Party and of counsel to the Mortgage Notes Indenture Trustee.

(b) Each Grantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other

30

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taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) Each Grantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Issuers would be required to indemnify the Trustee under Section 7.07 of the Indenture.

(d) The agreements in this Section 8.4 shall survive repayment of the Obligations and all other amounts payable under the Indenture and the Credit Documents.

8.5 *Successors and Assigns.* This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Secured Parties and their successors and assigns; *provided* that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Mortgage Notes Indenture Trustee.

8.6 *Set-Off.* Each Grantor hereby irrevocably authorizes each Secured Party at any time and from time to time while an Event of Default shall have occurred and be continuing, without notice to such Grantor or any other Grantor, any such notice being expressly waived by each Grantor, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Secured Party to or for the credit or the account of such Grantor, or any part thereof in such amounts as such Secured Party may elect, against and on account of the obligations and liabilities of such Grantor to such Secured Party hereunder and claims of every nature and description of such Secured Party against such Grantor, in any currency, whether arising hereunder, under the Indenture, any Collateral Document or otherwise, as such Secured Party may elect, whether or not any Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. Each Secured Party shall notify such Grantor promptly of any such set-off and the application made by such Secured Party of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Secured Party under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Secured Party may have.

8.7 *Counterparts.* This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

8.8 *Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction (including by reason of the application of Gaming Laws or non-approval of the Gaming Authorities as set forth in Section 8.17) shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.9 *Section Headings.* The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

8.10 *Integration.* This Agreement, the Indenture and the Collateral Documents represent the agreement of the Grantors, the Mortgage Notes Indenture Trustee and the other Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Secured Party relative to subject matter hereof and thereof not expressly set forth or referred to herein, in the Indenture or in the Collateral Documents.

31

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8.11 **GOVERNING LAW. SUBJECT TO COMPLIANCE WITH APPLICABLE GAMING LAWS AND MANDATORY PROVISIONS OF NEW YORK LAW WHICH MAY REQUIRE APPLICATION OF NEVADA OR DELAWARE LAW AS TO CERTAIN ISSUES OF PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION, AND THE PRIORITY OF SECURITY INTERESTS, THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

8.12 *Submission to Jurisdiction; Waivers.* Each Grantor hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement, the Indenture and the Collateral Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Grantor at its address referred to in Section 8.2 or at such other address of which the Mortgage Notes Indenture Trustee shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

8.13 *Acknowledgments.* Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement, the Indenture and the Collateral Documents to which it is a party;

(b) no Secured Party has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement, the Indenture or the Collateral Documents, and the relationship between the Grantors, on the one hand, and the Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the the Indenture or the Collateral Documents or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Grantors and the Secured Parties.

8.14 *Additional Grantors.* Each Subsidiary of Valvino Lamore, LLC that is required to become a party to this Agreement pursuant to Section 4.31 of the Indenture shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of an Assumption Agreement in the form of Annex 1 hereto.

8.15 *Releases.* (a) At such time as the Notes and the other Obligations (other than unmatured contingent reimbursement and indemnification Obligations) shall have been paid in full, the Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly

stated to survive such termination) of the Mortgage Notes Indenture Trustee and each Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Grantors. At the request and sole expense

of any Grantor following any such termination, the Mortgage Notes Indenture Trustee shall deliver to such Grantor any of such Grantor's Collateral held by the Mortgage Notes Indenture Trustee hereunder, and execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be transferred or sold by any Grantor in a transaction not prohibited by the Indenture, then the Mortgage Notes Indenture Trustee, at the request and sole expense of such Grantor, shall execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral. At the request and sole expense of either Note Issuer, a Guarantor shall be released from its obligations hereunder in the event that all the Capital Stock of such Guarantor shall be transferred or sold in a transaction not prohibited by the Indenture; provided that the Note Issuers shall have delivered to the Mortgage Notes Indenture Trustee, at least ten business days prior to the date of the proposed release, a written request for release identifying the relevant Guarantor and the terms of such sale or transfer in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by each Note Issuer stating that such transaction is in compliance with the Indenture and the Collateral Documents and that the Proceeds of such sale or transfer will be applied in accordance therewith.

(c) Each Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement originally filed in connection herewith without the prior written consent of the Mortgage Notes Indenture Trustee subject to such Grantor's rights under Section 9-509(d)(2) of the New York UCC.

**8.16 WAIVER OF JURY TRIAL. EACH GRANTOR AND THE MORTGAGE NOTES INDENTURE TRUSTEE HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, THE INDENTURE OR ANY COLLATERAL DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.**

**8.17 Regulatory Matters.** The Mortgage Notes Indenture Trustee, on behalf of the Lenders, acknowledges and agrees that:

(a) At such time as any Grantor becomes subject to the jurisdiction of the Gaming Authorities as a licensee or registered company under the Gaming Laws (or prior to such time in furtherance of any Grantor's application to become a licensee or registered company under the Gaming Laws), the pledge of any Pledged Stock or other equity securities issued by such Grantor ("*Pledged Gaming Stock*") under this Agreement will require the approval of the Gaming Authorities in order to remain effective.

(b) In the event that a Secured Party exercises a remedy set forth in this Agreement with respect to any Pledged Gaming Stock, that is a foreclosure, transfer of a possessory security interest in such Collateral, the exercise of voting and consensual rights with respect thereto afforded hereunder and/or re-registration of such Collateral, such exercise of remedies would be deemed a separate transfer of such Collateral and would require the separate and prior approval of the Gaming Authorities pursuant to applicable Gaming Laws as in effect on the date hereof and the licensing of such Secured Party or other transferee, unless such licensing requirement is waived by the Gaming Authorities.

(c) In the event that after a Secured Party exercises a remedy set forth in this Agreement with respect to Collateral consisting of gaming devices, cashless wagering systems and associated equipment (as those terms are defined in the Gaming Laws) a transfer, sale, distribution, or other disposition of such Collateral occurs (separate from any foreclosure action by a Secured Party unless such Secured Party utilizes such Collateral for gaming purposes), such transfer, sale, distribution, or other disposition of such Collateral would require the separate and prior approval of the Gaming Authorities pursuant to applicable Gaming Laws as in effect on the date hereof or the licensing of such Secured Party or other transferee.

(d) The approval by the applicable Gaming Authorities of this Agreement shall not act or be construed as the approval, either express or implied, for a Secured Party to take any actions or steps provided for in this Agreement for which prior approval of the Gaming Authorities is required, without first obtaining such prior and separate approval of the applicable Gaming Authorities to the extent then required applicable Gaming Laws.

(e) The physical location of all certificates evidencing Pledged Gaming Stock shall at all times remain within the territory of the State of Nevada at a location designated to the Gaming Authorities, and each of such certificates shall be made available for inspection by agents of the Gaming Authorities immediately upon request during normal business hours. Neither the Mortgage Notes Indenture Trustee nor any agent of the Mortgage Notes Indenture Trustee shall surrender possession of the Pledged Gaming Stock to any Person other than the Grantor pledging such Pledged Gaming Stock without the prior approval of the Gaming Authorities or as otherwise permitted by applicable Gaming Laws.

(f) It shall cooperate with the Gaming Authorities in connection with the administration of their regulatory jurisdiction over certain of the Grantors, including, without limitation, through the provision of such documents or other information as may be requested by the Gaming Authorities relating to the Mortgage Notes Indenture Trustee, the Holders or such Grantors.

(g) The Mortgage Notes Indenture Trustee, the Holders and their respective assignees are subject to being called forward by the Gaming Authorities, in their discretion, for licensing or a finding of suitability in order to remain entitled to the benefits of this Agreement as it relates to Pledged Gaming Stock.

IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee and Collateral Agreement to be duly executed and delivered as of the date first above written.

WYNN LAS VEGAS, LLC,  
a Nevada limited liability company

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

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

VALVINO LAMORE, LLC,  
a Nevada limited liability company,

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WYNN LAS VEGAS CAPITAL CORP.,  
a Nevada corporation,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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PALO, LLC,  
a Delaware limited liability company,

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

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WORLD TRAVEL, LLC,  
a Nevada limited liability company,

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

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

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

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

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

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Mortgage Notes Indenture Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NOTICE ADDRESSES OF GUARANTORS

DESCRIPTION OF PLEDGED INVESTMENT PROPERTY

Pledged Stock:

Issuer	Issuer's Jurisdiction Under New York UCC Section 9- 305(a)(2)	Class of Stock or other equity interest	Stock or Membership Interest Certificate No.	Percentage of Shares	No. of Shares
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Pledged Notes:

Issuer	Payee	Principal Amount
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**Pledged Debt Securities:**

<u>Issuer</u>	<u>Issuer's Jurisdiction Under New York UCC Section 9-305(a)(2)</u>	<u>Payee</u>	<u>Principal Amount</u>
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**Pledged Security Entitlements:**

<u>Issuer of Financial Asset</u>	<u>Description of Financial Asset</u>	<u>Securities Intermediary (Name and Address)</u>	<u>Securities Account (Number and Location)</u>	<u>Securities Intermediary's Jurisdiction Under New York UCC Section 9-305(a)(3)</u>
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**Pledged Commodity Contracts:**

<u>Description of Commodity Contract</u>	<u>Commodity Intermediary (Name and Address)</u>	<u>Commodity Account (Number and Location)</u>	<u>Commodity Intermediary's Jurisdiction Under New York UCC Section 9-305(a)(4)</u>
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2-1

Schedule 3

**FILINGS AND OTHER ACTIONS  
REQUIRED TO PERFECT SECURITY INTERESTS**

Uniform Commercial Code Filings

[List each office where a financing statement is to be filed]

Copyright, Patent and Trademark Filings

[List all filings]

Actions with respect to Investment Property

[Describe all actions required to obtain "control" of Investment Property]

Other Actions

[Describe other actions to be taken]

3-1

Schedule 4

**EXACT LEGAL NAME, LOCATION OF JURISDICTION OF ORGANIZATION AND CHIEF EXECUTIVE OFFICE**

<u>Grantor</u>	<u>Location</u>
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4-1

Schedule 5

**LOCATION OF INVENTORY AND EQUIPMENT**

<u>Grantor</u>	<u>Locations</u>
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5-1



**COPYRIGHTS**

**PATENTS**

**TRADEMARKS**

**TRADE SECRETS**

**INTELLECTUAL PROPERTY LICENSES**

**OTHER INTELLECTUAL PROPERTY**

6-1

**CONTRACTS**

7-1

**VEHICLES**

8-1

**FORM OF ACKNOWLEDGMENT AND CONSENT**

The undersigned hereby acknowledges receipt of a copy of the Guarantee and Collateral Agreement dated as of \_\_\_\_\_, 2002 (the "*Agreement*"), made by the Grantors parties thereto for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgage Notes Indenture Trustee (in such capacity the "*Mortgage Notes Indenture Trustee*"); capitalized terms used but not defined herein have the meanings given such terms therein. The undersigned agrees for the benefit of the Mortgage Notes Indenture Trustee and the Secured Parties as follows:

1. The undersigned will be bound by the terms of the Agreement and will comply with such terms insofar as such terms are applicable to the undersigned.
2. The undersigned confirms the statements made in the Agreement with respect to the undersigned including, without limitation, in Section 4.6 and Schedule 2.
3. The undersigned will notify the Mortgage Notes Indenture Trustee promptly in writing of the occurrence of any of the events described in Section 5.6(a) of the Agreement.
4. The terms of Sections 6.4(c) and 6.8 of the Agreement shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to Section 6.4(c) or 6.8 of the Agreement.

[NAME OF ISSUER]

By \_\_\_\_\_

Name:  
Title:

Address for Notices:  
\_\_\_\_\_  
\_\_\_\_\_

Fax: \_\_\_\_\_

A-1

## FORM OF INTELLECTUAL PROPERTY SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT, dated as of \_\_\_\_\_, 2002 (as amended, supplemented or otherwise modified from time to time, the "*Intellectual Property Security Agreement*"), is made by each of the signatories hereto (collectively, the "*Grantors*") in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgage Notes Indenture Trustee (in such capacity, the "*Mortgage Notes Indenture Trustee*") for the Secured Parties (as defined in the Guarantee and Collateral Agreement referred to below).

WHEREAS, Wynn Las Vegas, LLC, a Nevada limited liability company, and Wynn Las Vegas Capital Corp., a Nevada corporation (together with Wynn Las Vegas, LLC, the "*Note Issuers*"), have entered into an Indenture, dated as of \_\_\_\_\_, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Indenture*"), with the Mortgage Notes Indenture Trustee and the Restricted Entities (as defined in the Indenture).

WHEREAS, it is a condition precedent to the obligation of the Holders to purchase the \_\_\_\_\_ % Mortgage Notes due 2010 issued by the Note Issuers, in the aggregate principal amount of \$340,000,000 under the Indenture that the Grantors shall have executed and delivered that certain Guarantee and Collateral Agreement, dated as of \_\_\_\_\_, 2002, in favor of the Mortgage Notes Indenture Trustee (as amended, supplemented, replaced or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*"). Capitalized terms used and not defined herein have the meanings given such terms in the Guarantee and Collateral Agreement or the Indenture, as the case may be.

WHEREAS, under the terms of the Guarantee and Collateral Agreement, the Grantors have granted a security interest in certain Property, including, without limitation, certain Intellectual Property of the Grantors, to the Mortgage Notes Indenture Trustee for the ratable benefit of the Secured Parties, and have agreed as a condition thereof to execute an Intellectual Property Security Agreement for recording with the United States Patent and Trademark Office, the United States Copyright Office, and other applicable Governmental Authorities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantors agree as follows:

SECTION 1. *Grant of Security.* Subject to compliance with applicable Gaming Laws, each Grantor hereby grants to the Mortgage Notes Indenture Trustee for the ratable benefit of the Holders a security interest in and to all of such Grantor's right, title and interest in and to the following (the "*Intellectual Property Collateral*"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor's Obligations:

(a)(i) all trademarks, service marks, trade names, corporate names, company names, business names, trade dress, trade styles, logos, or other indicia of origin or source identification, internet domain names, trademark and service mark registrations, and applications for trademark or service mark registrations and any new renewals thereof, including, without limitation, each registration and application identified in Schedule 1, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, each of the above (collectively, the "*Trademarks*");

B-1-1

(b)(i) all patents, patent applications and patentable inventions, including, without limitation, each issued patent and patent application identified in Schedule 1, all certificates of invention or similar industrial property rights, (ii) all inventions and improvements described and claimed therein, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all reissues, divisions, continuations, continuations-in-part, substitutes, renewals, and extensions thereof, all improvements thereon and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "*Patents*");

(c)(i) all copyrights, whether or not the underlying works of authorship have been published, including but not limited to copyrights in software and databases, all Mask Works (as defined in 17 U.S.C. 901 of the U.S. Copyright Act) and all such underlying works of authorship and other intellectual property rights therein, all copyrights of works based on, incorporated in, derived from or relating to works covered by such copyrights, all right, title and interest to make and exploit all derivative works based on or adopted from works covered by such copyrights, and all copyright registrations and copyright applications, and any renewals or extensions thereof, including, without limitation, each registration and application identified in Schedule 1, (ii) the rights to print, publish and distribute any of the foregoing, (iv) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto ("*Copyrights*");

(d)(i) all trade secrets and all confidential and proprietary information, including know-how, manufacturing and production processes and techniques, inventions, research and development information, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, and customer and supplier lists and information, including, without limitation, any of the foregoing identified in Schedule 1, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "*Trade Secrets*");

(e)(i) all licenses or agreements, whether written or oral, providing for the grant by or to any Grantor of: (A) any right to use any Trademark or Trade Secret, (B) any right to manufacture, use or sell any invention covered in whole or in part by a Patent, and (C) any right under any Copyright including, without limitation, the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright including, without limitation, any of the foregoing identified in Schedule 1, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations of any of the foregoing, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto; and

(f) any and all proceeds of the foregoing.

SECTION 2. *Recordation.* Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner of Patents and Trademarks and any other applicable government officer record this Intellectual Property Security Agreement.

SECTION 3. *Execution in Counterparts.* This Agreement may be executed in any number of counterparts (including by telecopy), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 4. *Governing Law.* Subject to compliance with applicable Gaming Laws, this Intellectual Property Security Agreement shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

SECTION 5. *Conflict Provision.* This Intellectual Property Security Agreement has been entered into in conjunction with the provisions of the Guarantee and Collateral Agreement and the Indenture. The rights and remedies of each party hereto with respect to the security interest granted herein are without prejudice to, and are in addition to those set forth in the Guarantee and Collateral Agreement and the Indenture, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this Intellectual Property Security Agreement are in conflict with the Guarantee and Collateral Agreement or the Indenture, the provisions of the Guarantee and Collateral Agreement or the Indenture shall govern.

IN WITNESS WHEREOF, each of the undersigned has caused this Intellectual Property Security Agreement to be duly executed and delivered as of the date first above written.

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

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

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

VALVINO LAMORE, LLC,  
a Nevada limited liability company,

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WYNN LAS VEGAS CAPITAL CORP.,  
a Nevada corporation,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PALO, LLC,  
a Delaware limited liability company,

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

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

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

By:

Name:

Title:

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

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

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

By:

Name:

Title:

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

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

B-1-5

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

By:

Name:

Title:

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

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

By: Wynn Resorts, Limited,

a Nevada corporation,  
its sole member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WORLD TRAVEL, LLC,  
a Nevada limited liability company,

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

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

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

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

B-1-6

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By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

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

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

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

B-1-7

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FORM OF AFTER-ACQUIRED INTELLECTUAL PROPERTY SECURITY AGREEMENT  
(FIRST SUPPLEMENTAL FILING)

This INTELLECTUAL PROPERTY SECURITY AGREEMENT (FIRST SUPPLEMENTAL FILING), dated as of \_\_\_\_\_, 200 (as amended, supplemented or otherwise modified from time to time, the "*First Supplemental Intellectual Property Security Agreement*"), is made by each of the signatories hereto (collectively, the "*Grantors*") in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgage Notes Indenture Trustee (in such capacity, the "*Mortgage Notes Indenture Trustee*") for the Secured Parties (as defined in the Guarantee and Collateral Agreement referred to below).

WHEREAS, Wynn Las Vegas, LLC, a Nevada limited liability company, and Wynn Las Vegas Capital Corp., a Nevada corporation (together with Wynn Las Vegas, LLC, the "*Note Issuers*"), have entered into an Indenture, dated as of \_\_\_\_\_, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Indenture*"), with the Mortgage Notes Indenture Trustee and the Restricted Entities (as defined in the Indenture).

WHEREAS, it is a condition precedent to the obligation of the Holders to purchase the \_\_\_\_\_ % Mortgage Notes due 2010 issued by the Note Issuers, in the aggregate principal amount of \$340,000,000 under the Indenture that the Grantors shall have executed and delivered that certain Guarantee and Collateral Agreement, dated as of \_\_\_\_\_, 2002, in favor of the Mortgage Notes Indenture Trustee (as amended, supplemented, replaced or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*"). Capitalized terms used and not defined herein have the meanings given such terms in the Guarantee and Collateral Agreement or the Indenture, as the case may be.

WHEREAS, under the terms of the Guarantee and Collateral Agreement, the Grantors have granted a security interest in certain Property, including, without limitation, certain Intellectual Property of the Grantors, to the Mortgage Notes Indenture Trustee for the ratable benefit of the Secured Parties, and have agreed as a condition thereof to execute an Intellectual Property Security Agreement for recording with the United States Patent and Trademark Office, the United States Copyright Office, and other applicable Governmental Authorities.

WHEREAS, the Intellectual Property Security Agreement was recorded against certain United States Intellectual Property at **[INSERT REEL/FRAME NUMBER] [IF SECOND OR LATER SUPPLEMENTAL, ADD PRIOR REEL/FRAME NUMBERS]**.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantors agree as follows:

SECTION 6. *Grant of Security.* Subject to compliance with applicable Gaming Laws, each Grantor hereby grants to the Mortgage Notes Indenture Trustee for the ratable benefit of the Secured Parties a security interest in and to all of such Grantor's right, title and interest in and to the following (the "*Intellectual Property Collateral*"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor's Obligations:

(a) (i) all trademarks, service marks, trade names, corporate names, company names, business names, trade dress, trade styles, logos, or other indicia of origin or source identification, internet domain names, trademark and service mark registrations, and applications for trademark or service mark registrations and any new renewals thereof, including, without limitation, each registration and application identified in Schedule 1, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties,

B-2-1

damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, each of the above (collectively, the "*Trademarks*");

(b) (i) all patents, patent applications and patentable inventions, including, without limitation, each issued patent and patent application identified in Schedule 1, all certificates of invention or similar industrial property rights, (ii) all inventions and improvements described and claimed therein, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all reissues, divisions, continuations, continuations-in-part, substitutes, renewals, and extensions thereof, all improvements thereon and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "*Patents*");

(c) (i) all copyrights, whether or not the underlying works of authorship have been published, including, but not limited to, copyrights in software and databases, all Mask Works (as defined in 17 U.S.C. 901 of the U.S. Copyright Act) and all such underlying works of authorship and other intellectual property rights therein, all copyrights of works based on, incorporated in, derived from or relating to works covered by such copyrights, all right, title and interest to make and exploit all derivative works based on or adopted from works covered by such copyrights, and all copyright registrations and copyright applications, and any renewals or extensions thereof, including, without limitation, each registration and application identified in Schedule 1, (ii) the rights to print, publish and distribute any of the foregoing, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto ("*Copyrights*");

(d) (i) all trade secrets and all confidential and proprietary information, including know-how, manufacturing and production processes and techniques, inventions, research and development information, technical data, financial, marketing and business data, pricing and cost information,

business and marketing plans, and customer and supplier lists and information, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "Trade Secrets");

(e) (i) all licenses or agreements, whether written or oral, providing for the grant by or to any Grantor of: (A) any right to use any Trademark or Trade Secret, (B) any right under any Patent, and (C) any right under any Copyright, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations of any of the foregoing, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements

B-2-2

thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto; and

(f) any and all proceeds of the foregoing.

SECTION 7. *Recordation.* Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner of Patents and Trademarks and any other applicable government officer record this First Supplemental Intellectual Property Security Agreement.

SECTION 8. *Execution in Counterparts.* This Agreement may be executed in any number of counterparts (including by telecopy), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 9. *Governing Law.* Subject to compliance with applicable Nevada Gaming Laws, this First Supplemental Intellectual Property Security Agreement shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

SECTION 10. *Conflict Provision.* This First Supplemental Intellectual Property Security Agreement has been entered into in conjunction with the provisions of the Guarantee and Collateral Agreement and the Indenture. The rights and remedies of each party hereto with respect to the security interest granted herein are without prejudice to, and are in addition to those set forth in the Guarantee and Collateral Agreement and the Indenture, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this First Supplemental Intellectual Property Security Agreement are in conflict with the Guarantee and Collateral Agreement or the Indenture, the provisions of the Guarantee and Collateral Agreement or the Indenture shall govern.

IN WITNESS WHEREOF, each of the undersigned has caused this Intellectual Property Security Agreement to be duly executed and delivered as of the date first above written.

[NAME OF GRANTOR]

By:

\_\_\_\_\_  
Name:

Title:

B-2-3

**Schedule 1**

**COPYRIGHTS**

**PATENTS**

**TRADEMARKS**

**TRADE SECRETS**

**INTELLECTUAL PROPERTY LICENSES**

**Exhibit C to  
Guarantee and Collateral Agreement**

**FORM OF CONTROL AGREEMENT**

This CONTROL AGREEMENT (as amended, supplemented or otherwise modified from time to time, the "Control Agreement") dated as of \_\_\_\_\_, 200\_\_\_\_, is made by and among \_\_\_\_\_, a \_\_\_\_\_ (the "Grantor"), WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgage Notes Indenture Trustee (in such capacity, the "Mortgage Notes Indenture Trustee") for the Secured Parties (as defined in the Guarantee and Collateral Agreement referred to below), and \_\_\_\_\_, a \_\_\_\_\_ (the "Issuer").

WHEREAS, the Grantor has granted to the Mortgage Notes Indenture Trustee for the benefit of the Secured Parties a security interest in the uncertificated securities of the Issuer owned by the Grantor from time to time (collectively, the "Pledged Securities"), and all additions thereto and substitutions and proceeds thereof (collectively, with the Pledged Securities, the "Collateral") pursuant to a Guarantee and Collateral Agreement, dated as of \_\_\_\_\_, 2002 (as

amended, supplemented, replaced or otherwise modified from time to time, the "Guarantee and Collateral Agreement"), among the Grantor and the other persons party thereto as grantors in favor of the Mortgage Notes Indenture Trustee.

WHEREAS, the following terms which are defined in Articles 8 and 9 of the Uniform Commercial Code in effect in the State of New York on the date hereof (the "UCC") are used herein as so defined: Adverse Claim, Control, Instruction, Proceeds and Uncertificated Security. Capitalized terms used but not defined herein shall have the meanings given such terms in the Guarantee and Collateral Agreement or that certain Indenture (as amended, supplemented, replaced or otherwise modified from time to time, the "Indenture") dated as of \_\_\_\_\_, 2002 among Wynn Las Vegas, LLC, a Nevada limited liability company, Wynn Las Vegas Capital Corp., a Nevada corporation, the Mortgage Notes Indenture Trustee and the Restricted Entities (as defined in the Indenture), as the case may be.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 11. *Notice of Security Interest.* The Grantor, the Mortgage Notes Indenture Trustee and the Issuer are entering into this Control Agreement to perfect, and to confirm the priority of, the Mortgage Notes Indenture Trustee's security interest in the Collateral. The Issuer acknowledges that this Control Agreement constitutes written notification to the Issuer of the Mortgage Notes Indenture Trustee's security interest in the Collateral. The Issuer agrees to promptly make all necessary entries or notations in its books and records to reflect the Mortgage Notes Indenture Trustee's security interest in the Collateral and, upon request by the Mortgage Notes Indenture Trustee, to register the Mortgage Notes Indenture Trustee as the registered owner of any or all of the Pledged Securities. The Issuer acknowledges that the Mortgage Notes Indenture Trustee has control over the Collateral.

SECTION 12. *Collateral.* The Issuer hereby represents and warrants to, and agrees with the Grantor and the Mortgage Notes Indenture Trustee that (i) the terms of any limited liability company interests or partnership interests included in the Collateral from time to time shall expressly provide that they are securities governed by Article 8 of the Uniform Commercial Code in effect from time to time in the State of Nevada and any other applicable jurisdiction, (ii) the Pledged Securities are uncertificated securities, (iii) the issuer's jurisdiction is, and during the term of this Control Agreement shall remain, the State of \_\_\_\_\_, (iv) *Schedule 1* contains a true and complete description of the Pledged Securities as of the date hereof and (v) except for the claims and interests of the Mortgage Notes Indenture Trustee and the Grantor in the Collateral, the Issuer does not know of any claim to or security interest or other interest in the Collateral.

C-1

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SECTION 13. *Control.* The Issuer hereby agrees, upon written direction from the Mortgage Notes Indenture Trustee and without further consent from the Grantor, (a) to comply with all instructions and directions of any kind originated by the Mortgage Notes Indenture Trustee concerning the Collateral, to liquidate or otherwise dispose of the Collateral as and to the extent directed by the Mortgage Notes Indenture Trustee and to pay over to the Mortgage Notes Indenture Trustee all proceeds without any setoff or deduction, and (b) except as otherwise directed by the Mortgage Notes Indenture Trustee, not to comply with the instructions or directions of any kind originated by the Grantor or any other person at any time after the Issuer has received notice from the Mortgage Notes Indenture Trustee that an Event of Default exists and is continuing (and thereafter not until such time as the Mortgage Notes Indenture Trustee sends written notice to the Issuer that such Event of Default has been cured or waived).

SECTION 14. *Other Agreements.* The Issuer shall notify promptly the Mortgage Notes Indenture Trustee and the Grantor if any other person asserts any lien, encumbrance, claim (including any adverse claim) or security interest in or against any of the Collateral. In the event of any conflict between the provisions of this Control Agreement and any other agreement governing the Pledged Securities or the Collateral, the provisions of this Control Agreement shall control.

SECTION 15. *Protection of Issuer.* The Issuer may rely and shall be protected in acting upon any notice, instruction or other communication that it reasonably believes to be genuine and authorized.

SECTION 16. *Termination.* This Control Agreement shall terminate automatically upon receipt by the Issuer of written notice executed by the Mortgage Notes Indenture Trustee that (i) all of the Obligations (excluding unmatured contingent reimbursement and indemnification obligations) secured by the Collateral have been paid in full in immediately available funds, or (ii) all of the Collateral has been released, whichever is sooner, and the Issuer shall thereafter be relieved of all duties and obligations hereunder.

SECTION 17. *Notices.* All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three days after being deposited in the mail and sent by first-class mail, postage prepaid, or, in the case of telecopy notice, when received, to the Grantor's and the Mortgage Notes Indenture Trustee's addresses as set forth in the Guarantee and Collateral Agreement, and to the Issuer's address as set forth below, or to such other address as any party may give to the others in writing for such purpose:

**[Name of Issuer]**  
**[Address of Issuer]**  
Attention:  
Telephone: ( ) -  
Telecopy: ( ) -

SECTION 18. *Amendments in Writing.* None of the terms or provisions of this Control Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the parties hereto.

SECTION 19. *Entire Agreement.* This Control Agreement and the Guarantee and Collateral Agreement constitute the entire agreement and supersede all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

SECTION 20. *Execution in Counterparts.* This Control Agreement may be executed in any number of counterparts (including by telecopy), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

C-2



SECTION 21. *Successors and Assigns.* This Control Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Grantor may not assign, transfer or delegate any of its rights or obligations under this Control Agreement without the prior written consent of the Mortgage Notes Indenture Trustee.

SECTION 22. *Governing Law and Jurisdiction.* This Control Agreement has been delivered to and accepted by the Mortgage Notes Indenture Trustee and will be deemed to be made in the State of New York. **SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS CONTROL AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.** Each of the parties hereto submits for itself and its property in any legal action or proceeding relating to this Control Agreement, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof.

**SECTION 13. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS CONTROL AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.**

IN WITNESS WHEREOF, each of the undersigned has caused this Control Agreement to be duly executed and delivered as of the date first above written.

[NAME OF GRANTOR]

By: \_\_\_\_\_

Name:

Title:

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Mortgage Notes Indenture  
Trustee

By: \_\_\_\_\_

Name:

Title:

[NAME OF ISSUER]

By: \_\_\_\_\_

Name:

Title:

**FORM OF CONTROL AGREEMENT**

This CONTROL AGREEMENT (as amended, supplemented or otherwise modified from time to time, the "*Control Agreement*") dated as of \_\_\_\_\_, 200 , among \_\_\_\_\_ (the "*Grantor*"), WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgage Notes Indenture Trustee (the "*Secured Party*") for the secured parties under the Guarantee and Collateral Agreement (as defined below) and \_\_\_\_\_ in its capacity as a "securities intermediary" (as defined in Section 8-102 of the UCC and a "bank" as defined in Section 9-102 of the UCC (in such capacities, the "*Financial Institution*"). Capitalized terms used but not defined herein shall have the meanings given such terms in the Guarantee and Collateral Agreement (as defined below) or that certain Indenture (as amended, supplemented, replaced or otherwise modified from time to time, the "*Indenture*") dated as of \_\_\_\_\_, 2002 among Wynn Las Vegas, LLC, a Nevada limited liability company, Wynn Las Vegas Capital Corp., a Nevada corporation, the Mortgage Notes Indenture Trustee and the Restricted Entities (as defined in the Indenture), as the case may be. All references herein to the "UCC" shall mean the Uniform Commercial Code as from time to time in effect in the State of New York.

WHEREAS, the Grantor has granted to the Secured Party a security interest in the Pledged Accounts (as hereinafter defined) pursuant to the Guarantee and Collateral Agreement, dated as of \_\_\_\_\_, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*"), among the Grantor and the other persons party thereto as grantors in favor of the Mortgage Notes Indenture Trustee;

WHEREAS, the parties hereto are entering into this agreement to perfect and ensure the priority of such security interest;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. *Establishment and Maintenance of Collateral Accounts.* (a) The Financial Institution hereby represents and warrants that it has established and currently maintains the accounts listed on Schedule 1 hereto and that the Secured Party is its sole customer or entitlement holder with respect to each such account. Each such account and any successor account and all other accounts which the Grantor now or hereafter maintains with the Financial Institution, being referred to herein individually as a "Pledged Account" and collectively as the "Pledged Accounts." The Financial Institution covenants and agrees that it shall not change the name or account number of any Pledged Account without the prior written consent of the Secured Party.

(b) [Each of the parties hereto acknowledges and agrees that the accounts listed on Part A of Schedule 1 hereto are intended to be deposit accounts (as defined in Section 9-102(a)(29) of the UCC) and the accounts listed on Part B of Schedule 1 hereto are intended to be securities accounts (as defined in Section 8-501 of the UCC).] **or** [Each of the parties hereto acknowledges and agrees that all of the Pledged Accounts are intended to be [deposit accounts/securities accounts] (as defined in the UCC)] Notwithstanding such intention, as used herein "Deposit Account" shall mean any Pledged Account (or any part thereof)

which is determined to be a "deposit account" (within the meaning of Section 9-102(a)(29) of the UCC) and "Securities Account" shall mean any Pledged Account (or any part thereof) which is determined to be a "securities account" (within the meaning of Section 8-501 of the UCC).

(c) The Financial Institution covenants and agrees that: (i) all securities or other property underlying any financial assets credited to any Securities Account shall be registered in the name of the Financial Institution, indorsed to the Financial Institution or indorsed in blank or credited to another

D-1

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securities account maintained in the name of the Financial Institution and in no case will any financial asset credited to any Securities Account be registered in the name of the Grantor, payable to the order of the Grantor or specially indorsed to the Grantor except to the extent the foregoing have been specially indorsed to the Financial Institution or in blank; and (ii) all property delivered to the Financial Institution pursuant to the Guarantee and Collateral Agreement will be promptly credited to one of the Pledged Accounts.

SECTION 2. *"Financial Assets" Election.* The Financial Institution hereby agrees that each item of property (including, without limitation, all Permitted Investments and any investment property, financial asset, security, instrument or cash) credited to any Pledged Account that is a Securities Account shall be treated as a "financial asset" within the meaning of Section 8-102(a)(9) of the UCC.

SECTION 3. *Secured Party's Control of the Pledged Accounts.* If at any time the Financial Institution shall receive from the Secured Party an entitlement order (i.e. an order directing transfer or redemption of any financial asset relating to a Pledged Account) or any instruction (within the meaning of Section 9-104 of the UCC) originated by the Secured Party (i.e., an instruction directing the disposition of funds in a Pledged Account), the Financial Institution shall comply with such entitlement order or instruction without further consent by the Grantor or any other person. If the Grantor is otherwise entitled to give any entitlement orders or instructions with respect to the Pledged Account in accordance with Section 3 hereof and such entitlement orders or instructions conflict with instructions of the Secured Party, the Financial Institution shall comply with the entitlement orders and instructions issued by the Secured Party.

SECTION 4. *Grantor's Access to the Account.* If at any time the Secured Party delivers to the Financial Institution a Notice of Sole Control in substantially the form set forth in Exhibit A hereto, the Financial Institution agrees that after receipt of such notice, it will take all directions with respect to the Pledged Accounts solely from the Secured Party and shall not comply with instructions or entitlement orders of the Grantor or any other person.

SECTION 5. *Subordination of Lien; Waiver of Set-Off.* In the event that the Financial Institution has or subsequently obtains by agreement, by operation of law or otherwise a security interest in any Pledged Account or any financial assets, cash or other property credited thereto, the Financial Institution hereby agrees that such security interest shall be subordinate to the security interest of the Secured Party. The financial assets, money and other items credited to any Pledged Account will not be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Secured Party [(except that the Financial Institution may set off (i) all amounts due to the Financial Institution in respect of customary fees and expenses for the routine maintenance and operation of the respective Pledged Account and (ii) the face amount of any checks which have been credited to such Pledged Account but are subsequently returned unpaid because of uncollected or insufficient funds).]

SECTION 6. *Choice of Law.* This Control Agreement shall be governed by the laws of the State of New York. **SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS CONTROL AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.** Regardless of any provision in any other agreement, for purposes of the UCC, with respect to each Pledged Account New York shall be deemed to be the bank's jurisdiction (within the meaning of Section 9-304 of the UCC) and the securities intermediary's jurisdiction (within the meaning of Section 8-110 of the UCC). The Pledged Accounts shall be governed by the laws of the State of New York.

D-2

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SECTION 7. *Conflict with Other Agreements.* The Financial Institution hereby represents, warrants, covenants and agrees that:

(a) There are no other agreements entered into between the Financial Institution and the Grantor with respect to any Pledged Account [except for [identify other agreements] (the "*Account Agreements*")].

(b) It has not entered into, and until the termination of this agreement will not enter into, any agreement with any other person relating the Pledged Accounts and/or any financial assets credited thereto pursuant to which it has agreed to comply with entitlement orders (as defined in Section 8-102(a)(8) of the UCC) or instructions (within the meaning of Section 9-104 of the UCC) of such other person.

(c) It has not entered into, and until the termination of this agreement will not enter into, any agreement with the Grantor purporting to limit or condition the obligation of the Financial Institution to comply with entitlement orders or instructions.

(d) In the event of any conflict between this Control Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into, the terms of this Control Agreement shall prevail.

SECTION 8. *Adverse Claims.* The Financial Institution represents and warrants that, except for the claims and interest of the Secured Party and of the Grantor in the Pledged Accounts, it does not know of any lien on or claim to, or interest in, any Pledged Account or in any "financial asset" (as defined in Section 8-102(a) of the UCC) credited thereto. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Pledged Accounts or in any financial asset carried therein, the Financial Institution will promptly notify the Secured Party and the Grantor thereof.

SECTION 9. *Additional Provisions Regarding Maintenance of Accounts.* The Financial Institution covenants and agrees:

(a) *Statements and Confirmations.* The Financial Institution will promptly send copies of all statements, confirmations and other correspondence concerning (i) any Securities Account and/or any financial assets credited thereto and (ii) any Deposit Account, simultaneously to each of the Grantor and the Secured Party at the address for each set forth in Section 13 of this Agreement.

(b) *Tax Reporting.* All items of income, gain, expense and loss recognized in any Securities Account and all interest, if any, relating to any Deposit Account, shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of the Grantor.

(c) *Voting Rights.* At any time during which the Grantor is entitled to give entitlement orders pursuant to Section 4 hereof, the Grantor shall direct the Financial Institution with respect to the voting of any financial assets credited to the Pledged Accounts.

(d) *Permitted Investments.* At any time during which the Grantor is entitled to give entitlement orders pursuant to Section 4 hereof, the Grantor shall direct the Financial Institution with respect to the selection of investments to be made for any Pledged Account that is a securities account; provided, however, that the Financial Institution shall not honor any instruction to purchase any investments other than investments of a type described on Exhibit A hereto.

SECTION 10. *Additional Representation and Warranty of the Financial Institution.* The Financial Institution represents and warrants that this Control Agreement is the legal, valid, binding and enforceable obligation of the Financial Institution.

D-3

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SECTION 11. *Indemnification of Financial Institution.* The Grantor and the Secured Party hereby agree that (a) the Financial Institution is released from any and all liabilities to the Grantor and the Secured Party arising from the terms of this Control Agreement and the compliance of the Financial Institution with the terms hereof, except to the extent that such liabilities arise from the Financial Institution's gross negligence or willful misconduct and (b) the Grantor, its successors and assigns shall at all times indemnify and save harmless the Financial Institution from and against any and all claims, actions and suits of others arising out of the terms of this Control Agreement or the compliance of the Financial Institution with the terms hereof, except to the extent that such arises from the Financial Institution's negligence, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Control Agreement.

SECTION 12. *Successors; Assignment.* The terms of this Control Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors and assigns, except that the neither the Grantor nor the Financial Institution may delegate their obligations hereunder without the prior written consent of the Secured Party. [Additionally, in the event that the Secured Party is replaced as Mortgage Notes Indenture Trustee under the Guarantee and Collateral Agreement] any entity that succeeds to such role shall be entitled to the benefits of this Control Agreement. The Secured Party agrees to send written notice to the Financial Institution of any such replacement.]

SECTION 13. *Notices.* All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice, when received, to the address as set forth below, or to such other address as any party may give to the others in writing for such purpose:

**[Name of Bank]**

**[Address of Bank]**

Attention:

Telephone: ( )

Telecopy: ( )

Wells Fargo Bank, National Association

MAC N9303-110

Sixth & Marquette

Minneapolis, MN 55479

Attn.: Michael Slade

Telephone: ( )

Telecopy: ( )

**[Name of Grantor]**

**[Address]**

Attention:

Telephone: ( )

Telecopy: ( )

SECTION 14. *Amendment.* No amendment or modification of this Control Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

SECTION 15. *Termination.* The obligations of the Financial Institution to the Secured Party pursuant to this Control Agreement shall continue in effect until the security interests of the Secured

D-4

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Party in each of the Pledged Accounts have been terminated pursuant to the terms of the Guarantee and Collateral Agreement and the Secured Party has notified the Financial Institution of such termination in writing. The Secured Party agrees to provide Notice of Termination in substantially the form of Exhibit B hereto to the Financial Institution upon the request of the Grantor on or after the termination of the Secured Party's security interest in the Pledged Accounts pursuant to the terms of the Guarantee and Collateral Agreement. The termination of this Control Agreement shall not terminate the Pledged Accounts or alter the obligations of the Financial Institution to the Grantor pursuant to any other agreement with respect to the Pledged Accounts.

SECTION 16. *Counterparts.* This Control Agreement may be executed in any number of counterparts (including by telecopy), all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

[NAME OF GRANTOR]

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Mortgage Notes Indenture  
Trustee

By: \_\_\_\_\_

Name:

Title:

NAME OF INSTITUTION SERVING AS  
FINANCIAL INSTITUTION

By: \_\_\_\_\_

Name:

Title:

D-5

**SCHEDULE 1**

Part A List of Existing Deposit Accounts Subject to this Control Agreement

**Exact Name of Account**

**Account Number**

\_\_\_\_\_

\_\_\_\_\_

Part B List of Existing Securities Accounts Subject to this Control Agreement

**Exact Name of Account**

**Account Number**

\_\_\_\_\_

\_\_\_\_\_

D-6

**Exhibit A**

**Permitted Investments**

D-8

**Exhibit B**

**WELLS FARGO BANK, NATIONAL ASSOCIATION  
MAC N9303-110  
Sixth & Marquette  
Minneapolis, MN 55479**

[Date]

[Name and Address of Financial Institution]

Attention:

Re: *Termination of Control Agreement*

You are hereby notified that the Control Agreement between you, the Grantor and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Control Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to account number(s) \_\_\_\_\_ from the Grantor. This notice terminates any obligations you may have to the undersigned with respect to such account, however nothing contained in this notice shall alter any obligations which you may otherwise owe to the Grantor pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to [insert name of Grantor].

Very truly yours,

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Mortgage Notes Indenture  
Trustee

By: \_\_\_\_\_

Name:

Title:

D-9

**Exhibit E to  
Guarantee and Collateral Agreement**

**FORM OF CONTROL AGREEMENT**

This CONTROL AGREEMENT (as amended, supplemented or otherwise modified from time to time, the "*Control Agreement*") dated as of \_\_\_\_\_, 2002, is made by and among \_\_\_\_\_, a \_\_\_\_\_ (the "*Grantor*"), WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgage Notes Indenture Trustee (in such capacity, the "*Mortgage Notes Indenture Trustee*") for the Secured Parties (as defined in the Guarantee and Collateral Agreement referred to below), and \_\_\_\_\_, a \_\_\_\_\_ (the "*Broker*").

WHEREAS, the Broker maintains for the Grantor a commodity account, Account No. \_\_\_\_\_ (the "*Pledged Account*"), in the name of the Grantor.

WHEREAS, the Grantor has granted to the Mortgage Notes Indenture Trustee for the benefit of the Secured Parties a security interest in the Pledged Account, the commodity contracts and any free credit balance carried therein, and all additions thereto and substitutions and proceeds thereof (collectively, the "*Collateral*") pursuant to a Guarantee and Collateral Agreement, dated as of \_\_\_\_\_, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*"), among the Grantor and the other persons party thereto as grantors in favor of the Mortgage Notes Indenture Trustee.

WHEREAS, the following terms which are defined in Articles 8 and 9 of the Uniform Commercial Code in effect in the State of New York on the date hereof (the "*UCC*") are used herein as so defined: Commodity Account, Commodity Contract, Commodity Intermediary's Jurisdiction, Control and Proceeds. Capitalized terms used and not defined herein have the meanings given such terms in the Guarantee and Collateral Agreement or that certain Indenture (as amended, supplemented, replaced or otherwise modified from time to time, the "*Indenture*") dated as of \_\_\_\_\_, 2002 among Wynn Las Vegas, LLC, a Nevada limited liability company, Wynn Las Vegas Capital Corp., a Nevada corporation, the Mortgage Notes Indenture Trustee and the Restricted Entities (as defined in the Indenture), as the case may be.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**SECTION 1. *Notice of Security Interest.*** The Grantor, the Mortgage Notes Indenture Trustee and the Broker are entering into this Control Agreement to perfect, and to confirm the priority of, the Mortgage Notes Indenture Trustee's security interest in the Collateral. The Broker acknowledges that this Control Agreement constitutes written notification to the Broker of the Mortgage Notes Indenture Trustee's security interest in the Collateral. The Broker agrees to promptly make all necessary entries or notations in its books and records to reflect the Mortgage Notes Indenture Trustee's security interest in the Collateral. The Broker acknowledges that the Mortgage Notes Indenture Trustee has control over the Pledged Account and all commodity contracts and any free credit balance carried therein from time to time.

**SECTION 2. *Collateral; Pledged Account.*** (a) The Grantor hereby represents and warrants to, and agrees with the Mortgage Notes Indenture Trustee and the Broker that, all commodity contracts carried by the Broker on its books for the Grantor are and shall be credited to the Pledged Account.

(b) The Broker hereby represents and warrants to, and agrees with the Grantor and the Mortgage Notes Indenture Trustee that (i) the Broker is a commodity intermediary with respect to the Grantor and the Pledged Account is a commodity account, (ii) the commodity intermediary's jurisdiction (within the meaning of Section 9305(b) of the UCC) is, and during the term of this Control Agreement shall for all purposes of this Control Agreement remain, the State of New York, (iii) *Schedule 1* contains a

E-1

true and complete statement of the Pledged Account and the commodity contracts and any free credit balance carried therein as of the date hereof, and (iv) the Pledged Account is and shall remain a cash account, and the Broker will not extend, directly or indirectly, any "purpose credit" (within the meaning of such term under Regulation T of the Board of Governors of the Federal Reserve System of the United States) to the Grantor in respect of the Pledged Account.

(c) The Mortgage Notes Indenture Trustee hereby instructs the Broker, and the Broker hereby confirms and agrees that, unless the Mortgage Notes Indenture Trustee shall otherwise direct the Broker in writing, all commodity contracts carried by the Broker on its books for the Grantor shall be credited only to, and carried only in, the Pledged Account.

**SECTION 3. *Control.*** The Broker hereby agrees, upon written direction from the Mortgage Notes Indenture Trustee and without further consent from the Grantor, (a) to apply any value distributed on account of the commodity contracts carried in the Pledged Account as directed by the Mortgage Notes Indenture Trustee, to liquidate or otherwise dispose of the Collateral as and to the extent directed by the Mortgage Notes Indenture Trustee and to pay over to the Mortgage Notes Indenture Trustee all proceeds and other value therefrom or otherwise distributed with respect thereto without any setoff or deduction, and (b) except as otherwise directed by the Mortgage Notes Indenture Trustee, not to apply any value distributed on account of any commodity contract carried in the Pledged Account as directed by the Grantor or any other person at any time after the Broker has received notice from the Mortgage Notes Indenture Trustee that an Event

of Default exists and is continuing (and thereafter not until such time as the Mortgage Notes Indenture Trustee sends written notice to the Broker that such Event of Default has been cured or waived).

**SECTION 4. Other Agreements; Termination; Successor Brokers.** The Broker shall simultaneously send to the Mortgage Notes Indenture Trustee copies of all notices given and statements rendered pursuant to the Pledged Account. The Broker shall notify promptly the Mortgage Notes Indenture Trustee and the Grantor if any other person asserts any lien, encumbrance, claim or security interest in or against any of the Collateral. As long as the Guarantee and Collateral Agreement remains in effect, neither the Grantor nor the Broker shall terminate the Pledged Account without thirty (30) days' prior written notice to the other party and the Mortgage Notes Indenture Trustee. In the event of any conflict between the provisions of this Control Agreement and any other agreement governing the Pledged Account or the Collateral, the provisions of this Control Agreement shall control. In the event the Broker no longer serves as Broker for the Collateral, the Pledged Account, the commodity contracts and any free credit balance carried therein shall be transferred to a successor broker, custodian or futures commission merchant satisfactory to the Mortgage Notes Indenture Trustee, provided, that prior to such transfer, such successor broker, custodian or futures commission merchant shall execute an agreement that is substantially in the form of this Control Agreement or is otherwise in form and substance satisfactory to the Mortgage Notes Indenture Trustee.

**SECTION 5. Protection of Broker.** The Broker may rely and shall be protected in acting upon any notice, instruction or other communication that it reasonably believes to be genuine and authorized.

**SECTION 6. Termination.** This Control Agreement shall terminate automatically upon receipt by the Broker of written notice executed by the Mortgage Notes Indenture Trustee that (i) all of the Obligations (excluding unmatured contingent reimbursement and indemnification obligations) secured by the Collateral have been paid in full in immediately available funds, or (ii) all of the Collateral has been released, whichever is sooner, and the Broker shall thereafter be relieved of all duties and obligations hereunder.

**SECTION 7. Waiver; Priority of Mortgage Notes Indenture Trustee's Interests.** Other than with respect to its fees and customary commissions with respect to the Pledged Account, the Broker hereby waives its right to set off any obligations of the Grantor to the Broker against any or all of the

E-2

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Collateral, and hereby agrees that any and all liens, encumbrances, claims or security interests which the Broker may have against the Collateral, either now or in the future in connection with the Pledged Account are and shall be subordinate and junior to the prior payment in full in immediately available funds of all obligations of the Grantor now or hereafter existing under the Indenture, the Guarantee and Collateral Agreement and the other Collateral Agreements, and all other documents related thereto, whether for principal, interest (including, without limitation, interest as provided in the Indenture, whether or not such interest accrues after the filing of such petition for purposes of the federal Bankruptcy Code or is an allowed claim in such proceeding), indemnities, fees, premiums, expenses or otherwise. Except for the foregoing and claims and interests of the Mortgage Notes Indenture Trustee and the Grantor in the Collateral, the Broker does not know of any claim to or security interest or other interest in the Collateral.

**SECTION 8. Notices.** All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three days after being deposited in the mail and sent by first-class mail, postage prepaid, or, in the case of telecopy notice, when received, to the Grantor's and the Mortgage Notes Indenture Trustee's addresses as set forth in the Guarantee and Collateral Agreement, and to the Broker's address as set forth below, or to such other address as any party may give to the others in writing for such purpose:

**[Name of Broker]**  
**[Address of Broker]**  
Attention:  
Telephone: ( ) \_\_\_-\_\_\_\_  
Telecopy: ( ) \_\_\_-\_\_\_\_

**SECTION 9. Amendments in Writing.** None of the terms or provisions of this Control Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the parties hereto.

**SECTION 10. Entire Agreement.** This Control Agreement and the Guarantee and Collateral Agreement constitute the entire agreement and supersede all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

**SECTION 11. Execution in Counterparts.** This Control Agreement may be executed in any number of counterparts (including by telecopy), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

**SECTION 12. Successors and Assigns.** This Control Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Grantor may not assign, transfer or delegate any of its rights or obligations under this Control Agreement without the prior written consent of the Mortgage Notes Indenture Trustee.

**SECTION 13. Governing Law and Jurisdiction.** This Control Agreement has been delivered to and accepted by the Mortgage Notes Indenture Trustee and will be deemed to be made in the State of New York. **SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS CONTROL AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.** Each of the parties hereto submits for itself and its property in any legal action or proceeding relating to this Control Agreement, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof.

**SECTION 14. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS CONTROL AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.**

E-3

IN WITNESS WHEREOF, each of the undersigned has caused this Control Agreement to be duly executed and delivered as of the date first above written.

[NAME OF GRANTOR]

By:

\_\_\_\_\_  
Name:  
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgage Notes Indenture Trustee

By:

\_\_\_\_\_  
Name:  
Title:

[NAME OF BROKER]

By:

\_\_\_\_\_  
Name:  
Title:

E-4

**Annex 1 to  
Guarantee and Collateral Agreement**

ASSUMPTION AGREEMENT, dated as of \_\_\_\_\_, 200\_\_\_\_, made by \_\_\_\_\_, a \_\_\_\_\_ (the "Additional Grantor"), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgage Notes Indenture Trustee (in such capacity, the "Mortgage Notes Indenture Trustee") for (i) the registered holders of the \_\_\_\_\_ % Mortgage Notes due 2010 issued by Wynn Las Vegas, LLC, a Nevada limited liability company, and Wynn Las Vegas Capital Corp., a Nevada corporation (together with Wynn Las Vegas, LLC, the "Note Issuers"), in the aggregate principal amount of \$340,000,000 under that certain Indenture, dated as of even date herewith (as amended, supplemented or otherwise modified from time to time, the "Indenture"), among the Note Issuers, the other Grantors and the Mortgage Notes Indenture Trustee, and (ii) the other Secured Parties (as defined in the Guarantee and Collateral Agreement (as hereinafter defined)). All capitalized terms not defined herein shall have the meaning ascribed to them in the Indenture and the Guarantee and Collateral Agreement, as the case may be.

**RECITALS:**

WHEREAS, in connection with the Indenture, the Note Issuers and certain of their Affiliates (other than the Additional Grantor) have entered into the Guarantee and Collateral Agreement, dated as of \_\_\_\_\_, 2002 (as amended, supplemented or otherwise modified from time to time, the "Guarantee and Collateral Agreement") in favor of the Mortgage Notes Indenture Trustee for the benefit of the Secured Parties;

WHEREAS, the Indenture requires the Additional Grantor to become a party to the Guarantee and Collateral Agreement; and

WHEREAS, the Additional Grantor has agreed to execute and deliver this Assumption Agreement in order to become a party to the Guarantee and Collateral Agreement;

NOW, THEREFORE, IT IS AGREED:

1. *Guarantee and Collateral Agreement.* By executing and delivering this Assumption Agreement, the Additional Grantor, as provided in Section 8.14 of the Guarantee and Collateral Agreement, hereby becomes a party to the Guarantee and Collateral Agreement as a Grantor thereunder with the same force and effect as if originally named therein as a Grantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Grantor thereunder. The information set forth in Annex 1-A hereto is hereby added to the information set forth in Schedules \_\_\_\_\_ to the Guarantee and Collateral Agreement. The Additional Grantor hereby represents and warrants that each of the representations and warranties contained in Section 4 of the Guarantee and Collateral Agreement is true and correct on and as the date hereof (after giving effect to this Assumption Agreement) as if made by such Additional Grantor on and as of such date.

**2. GOVERNING LAW. SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GRANTOR]

By:

\_\_\_\_\_  
Name:  
Title:

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## QuickLinks

[TABLE OF CONTENTS](#)

[GUARANTEE AND COLLATERAL AGREEMENT](#)

[VEHICLES](#)

[FORM OF ACKNOWLEDGMENT AND CONSENT](#)

[FORM OF AFTER-ACQUIRED INTELLECTUAL PROPERTY SECURITY AGREEMENT \(FIRST SUPPLEMENTAL FILING\)](#)

[FORM OF CONTROL AGREEMENT](#)

[FORM OF CONTROL AGREEMENT](#)



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**FORM OF  
CREDIT AGREEMENT**

**among**

**WYNN LAS VEGAS, LLC,  
as the Borrower,**

**The Several Lenders  
from Time to Time Parties Hereto,**

**DEUTSCHE BANK SECURITIES INC.,  
as Lead Arranger and Joint Book Running Manager,**

**DEUTSCHE BANK TRUST COMPANY AMERICAS,  
as Administrative Agent and Swing Line Lender,**

**BANC OF AMERICA SECURITIES LLC,  
as Lead Arranger, Joint Book Running Manager and Syndication Agent,**

**BEAR, STEARNS & CO. INC.,  
as Arranger and Joint Book Running Manager,**

**BEAR STEARNS CORPORATE LENDING INC.,  
as Joint Documentation Agent,**

**DRESDNER BANK AG, NEW YORK BRANCH,  
as Arranger and Joint Documentation Agent,**

**and**

**J.P. MORGAN SECURITIES INC.,  
as Joint Documentation Agent**

**Dated as of October , 2002**

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**TABLE OF CONTENTS**

	<u>Page</u>
<b>SECTION 1. DEFINITIONS</b>	<b>1</b>
1.1 Defined Terms.	1
1.2 Other Definitional Provisions.	43
<b>SECTION 2. AMOUNT AND TERMS OF COMMITMENTS</b>	<b>44</b>
2.1 Term Loan Commitments.	44
2.2 Scheduled Amortization of Term Loans.	44
2.3 Revolving Credit Commitments.	44
2.4 Loan Conversion.	45
2.5 Procedure for Borrowing.	45
2.6 Swing Line Commitment.	47
2.7 Procedure for Swing Line Borrowing; Refunding of Swing Line Loans.	47

2.8	Repayment of Loans; Evidence of Indebtedness.	49
2.9	Commitment Fees, etc.	49
2.10	Termination or Reduction of Revolving Credit Commitments.	50
2.11	Optional Prepayments.	50
2.12	Mandatory Prepayments and Commitment Reductions.	51
2.13	Conversion and Continuation Options.	53
2.14	Minimum Amounts and Maximum Number of Eurodollar Tranches.	54
2.15	Interest Rates and Payment Dates.	54
2.16	Computation of Interest and Fees.	54
2.17	Inability to Determine Interest Rate.	55
2.18	Pro Rata Treatment and Payments.	55
2.19	Requirements of Law.	56
2.20	Taxes.	57
2.21	Indemnity.	60
2.22	Illegality.	60
2.23	Change of Lending Office.	60
2.24	Insurance Proceeds and Eminent Domain Proceeds.	60
<b>SECTION 3. LETTERS OF CREDIT</b>		<b>63</b>
3.1	L/C Commitment.	63
3.2	Procedure for Issuance of Letter of Credit.	64
3.3	Fees and Other Charges.	64
3.4	L/C Participations.	65
3.5	Reimbursement Obligation of the Borrower.	66
3.6	Obligations Absolute.	66
3.7	Letter of Credit Payments.	66

i

---

<b>SECTION 4. REPRESENTATIONS AND WARRANTIES</b>		<b>67</b>
4.1	Financial Condition.	67
4.2	No Change.	67
4.3	Corporate/LLC Existence; Compliance with Law.	67
4.4	Corporate Power; Authorization; Enforceable Obligations.	68
4.5	No Legal Bar.	68
4.6	No Material Litigation.	68
4.7	No Default.	68
4.8	Ownership of Property; Liens.	68
4.9	Intellectual Property.	69
4.10	Taxes.	70
4.11	Federal Regulations.	70
4.12	Labor Matters.	70
4.13	ERISA.	70
4.14	Investment Company Act; Other Regulations.	71
4.15	Subsidiaries.	71
4.16	Use of Proceeds; Letters of Credit.	71
4.17	Environmental Matters.	72
4.18	Accuracy of Information, etc.	72
4.19	Security Documents.	73
4.20	Solvency.	74
4.21	Senior Indebtedness.	74
4.22	Regulation H.	74
4.23	Insurance.	74
4.24	Performance of Agreements; Material Contracts.	74
4.25	Real Estate.	74
4.26	Permits.	75
4.27	Sufficiency of Project Documents.	76
4.28	Utilities.	76
4.29	Fiscal Year.	76
<b>SECTION 5. CONDITIONS PRECEDENT</b>		<b>76</b>
5.1	Conditions to Closing Date.	76
5.2	Conditions to Extensions of Credit on or prior to the Completion Date or Otherwise Pursuant to Section 2.5(a).	76
5.3	Conditions to Extensions of Credit after the Completion Date Other Than Pursuant to Section 2.5(a).	77

ii

---

<b>SECTION 6. AFFIRMATIVE COVENANTS</b>		<b>77</b>
6.1	Financial Statements.	77

6.2	Certificates; Other Information.	78
6.3	Payment of Obligations.	80
6.4	Conduct of Business and Maintenance of Existence, etc.	80
6.5	Maintenance of Property; Leases; Insurance.	81
6.6	Inspection of Property; Books and Records; Discussions.	81
6.7	Notices.	82
6.8	Environmental Laws; Permits.	82
6.9	Interest Rate Protection.	84
6.10	Additional Collateral, Discharge of Liens, etc.	84
6.11	Use of Proceeds and Revenues.	85
6.12	Compliance with Laws, Project Documents, etc.; Permits.	86
6.13	Further Assurances.	86
6.14	Dissolution of the Completion Guarantor.	87
6.15	Water Company Transfers.	87
<b>SECTION 7. NEGATIVE COVENANTS</b>		<b>87</b>
7.1	Financial Condition Covenants.	87
7.2	Limitation on Indebtedness.	89
7.3	Limitation on Liens.	91
7.4	Limitation on Fundamental Changes.	93
7.5	Limitation on Disposition of Property.	93
7.6	Limitation on Restricted Payments.	99
7.7	Limitation on Capital Expenditures.	100
7.8	Limitation on Investments.	101
7.9	Limitation on Optional Payments and Modifications of Governing Documents.	101
7.10	Limitation on Transactions with Affiliates.	102
7.11	Limitation on Sales and Leasebacks.	103
7.12	Limitation on Changes in Fiscal Periods.	103
7.13	Limitation on Negative Pledge Clauses.	103
7.14	Limitation on Restrictions on Subsidiary Distributions, etc.	103
7.15	Limitation on Lines of Business.	103
7.16	Restrictions on Changes.	104
7.17	Limitation on Formation and Acquisition of Subsidiaries and Purchase of Capital Stock.	104
7.18	Limitation on Hedge Agreements.	104
7.19	Limitation on Sale or Discount of Receivables.	104
7.20	Limitation on Zoning and Contract Changes and Compliance.	105
7.21	No Joint Assessment; Separate Lots.	105
7.22	Restrictions on Payments of Management Fees.	105
7.23	Additional Material Contracts.	106
7.24	Limitation on Phase II Land and Phase II Building Development and Operations.	106
7.25	Limitation on Golf Course Land and Golf Course Development.	107
7.26	Acquisition of Real Property.	107
7.27	Project Liquidity Reserve Account.	108
7.28	Lease Terminations.	108
<b>SECTION 8. EVENTS OF DEFAULT</b>		<b>108</b>

---

<b>SECTION 9. THE AGENTS; THE ARRANGERS; THE MANAGERS</b>		<b>113</b>
9.1	Appointment.	113
9.2	Delegation of Duties.	113
9.3	Exculpatory Provisions.	114
9.4	Reliance by Agents.	114
9.5	Notice of Default.	114
9.6	Non-Reliance on Agents, Managers, Arrangers and Other Lenders.	115
9.7	Indemnification.	115
9.8	Arrangers, Agents and Managers in Their Individual Capacities.	115
9.9	Successor Agents.	116
9.10	Authorization to Release Liens.	116
9.11	The Arrangers and Managers.	116
9.12	Withholdings.	116
<b>SECTION 10. MISCELLANEOUS</b>		<b>117</b>
10.1	Amendments and Waivers.	117
10.2	Notices.	118
10.3	No Waiver; Cumulative Remedies.	121
10.4	Survival of Representations and Warranties.	121
10.5	Payment of Expenses; Indemnification.	122
10.6	Successors and Assigns; Participations and Assignments.	123
10.7	Adjustments; Set-off.	125

10.8	Counterparts.	125
10.9	Severability.	125
10.10	Integration.	125
10.11	<b>GOVERNING LAW.</b>	126
10.12	Submission To Jurisdiction; Waivers.	126
10.13	Certain Matters Affecting Lenders.	126
10.14	Acknowledgments.	127
10.15	Confidentiality.	127
10.16	Release of Collateral and Guarantee Obligations.	127
10.17	Accounting Changes.	128
10.18	Delivery of Lender Addenda.	128
10.19	Construction.	128
10.20	<b>WAIVERS OF JURY TRIAL.</b>	128
10.21	Gaming Authorities.	128

ANNEXES:

A	Pricing Grid
---	--------------

SCHEDULES:

1.1	Mortgaged Property
4.4	Consents, Authorizations, Filings and Notices
4.9(b)	Trademarks, Service Marks and Trade Names
4.9(c)	Patents
4.9(d)	Copyrights
4.9(e)	Trade Secrets
4.9(f)	Intellectual Property Licenses
4.15	Subsidiaries
4.19(a)-1	UCC Filing Jurisdictions—Collateral
4.19(a)-2	UCC Financing Statements to Remain on File
4.19(b)	Mortgage Filings Jurisdictions
4.19(c)	UCC Filing Jurisdictions—Intellectual Property Collateral
4.24	Material Contracts
4.25(a)	Real Estate
4.25(d)	Assessments
6.5(d)	Insurance Requirements
7.2(d)	Existing Indebtedness
7.3(f)	Existing Liens

EXHIBITS:

A	Form of Guarantee and Collateral Agreement
B	Form of Compliance Certificate
C	Form of Disbursement Agreement
D	Form of Mortgage
E	Form of Assignment and Acceptance
F	Form of Indemnity Agreement
G-1	Form of Term Note
G-2	Form of Revolving Credit Note
G-3	Form of Swing Line Note
H	Form of Insurance Consultant Certificate
I	Form of Exemption Certificate
J	Form of Lender Addendum
K-1	Form of Project Lender Intercreditor Agreement
K-2	Form of FF&E Intercreditor Agreement
L	Form of Subordinated Intercompany Note
M	Form of Notice of Borrowing
N	Form of Subordination, Non-Disturbance and Attornment Agreement
O	Form of Letter of Credit Request

This CREDIT AGREEMENT is dated as of October , 2002 and entered into among WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "Borrower"), the several banks and other financial institutions or entities from time to time parties to this Agreement (the "Lenders"), DEUTSCHE BANK SECURITIES INC., as lead arranger and joint book running manager, DEUTSCHE BANK TRUST COMPANY AMERICAS, as administrative agent (in such capacity, the "Administrative Agent") and swing line lender, BANC OF AMERICA SECURITIES LLC, as lead arranger, joint book running manager and syndication agent, BEAR, STEARNS & CO. INC., as arranger and joint book running manager, BEAR STEARNS CORPORATE LENDING INC., as joint documentation agent, DRESDNER BANK AG, NEW YORK BRANCH, as arranger and joint documentation agent, and J.P. MORGAN SECURITIES INC., as joint documentation agent.

WHEREAS, the Borrower proposes to develop and own the Project (such defined term and other defined terms used in these Recitals shall have the meanings given in Section 1.1 of this Agreement);

WHEREAS, the Borrower desires to finance the development and construction of the Project with (i) existing cash balances of the Borrower and common equity contributions to the Borrower from certain affiliates of the Borrower (consisting of property and cash) in an aggregate amount of approximately \$937,000,000, (ii) proceeds of the issuance of senior secured Mortgage Notes in an aggregate principal amount of \$340,000,000, (iii) the proceeds of an equipment finance loan from the FF&E Lenders of \$188,500,000 to finance furniture, fixtures and equipment (including, without limitation, the Aircraft and gaming equipment), (iv) projected interest income of approximately \$25,000,000 and (v) the senior secured credit facilities contemplated hereby;

WHEREAS, the Borrower desires that the Lenders extend the senior secured credit facilities contemplated hereby to the Borrower to provide a portion of the funds necessary to develop and construct the Project and, in the case of the Revolving Credit Loans, to provide working capital for the operation of the Project following the Completion Date;

WHEREAS, subject to the terms and conditions hereof, the Lenders are willing to extend such senior secured credit facilities to the Borrower;

WHEREAS, the Borrower desires to secure all of its Obligations by granting to the Administrative Agent on behalf of the Lenders Liens on substantially all of its assets (including the Project and related Collateral), in each case as more fully described in this Agreement and the other Loan Documents; and

WHEREAS, each of the Loan Parties (other than the Borrower and Desert Inn Improvement) shall guaranty the Obligations of the Borrower and shall secure all of its Obligations by granting to the Administrative Agent on behalf of the Lenders Liens on substantially all of its assets (including the Project and related Collateral), in each case as more fully described in this Agreement and the other Loan Documents.

NOW, THEREFORE, in consideration of the premises and the agreements hereinafter set forth, the parties hereto hereby agree as follows:

## SECTION 1. DEFINITIONS

**1.1 Defined Terms.** As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

"Account": any "Commodity Account," "Deposit Account" or "Securities Account" (as such terms are defined in the UCC) with respect to which the Secured Parties have a perfected first priority Lien (subject only to Permitted Liens) securing the Obligations of the Loan Parties pursuant to a Control Agreement.

"Additional Completion Period": the period, if any, commencing on the Debt Service Availability Date and ending on the Completion Date.

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"Additional Land": collectively, the real property and fixtures represented as of the Closing Date by the following Assessor's Parcel Numbers: 162-16-510-019, 162-16-510-020, 162-16-510-023, 162-16-510-026, 162-16-510-027, 162-16-610-020, 162-16-610-023, 162-16-610-024, 162-16-610-025, 162-16-610-026, 162-16-610-027 and 162-16-610-031.

"Additional Material Contracts": any Material Contract entered into after the Closing Date relating to the development, construction, maintenance or operation of the Project.

"Adjustment Date": as defined in the Pricing Grid.

"Administrative Agent": as defined in the preamble hereto.

"Administrative Agent Fee Letter": the Amended and Restated Administrative Agent Fee Letter, dated June 14, 2002, among Valvino, Wynn Resorts Holdings, the Borrower, the Administrative Agent and Deutsche Bank Securities Inc., as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"Advance Confirmation Notice": as defined in the Disbursement Agreement.

"Advance Requests": as defined in 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.

"Affiliated Fund": means, with respect to any Lender that is a fund that invests (in whole or in part) in commercial loans, any other fund that invests (in whole or in part) in commercial loans and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Affiliated Overhead Expenses": for any period, the reasonable costs and expenses of, and actually incurred by, Wynn Resorts and the Loan Parties (other than the Borrower and its Subsidiaries), for salary and benefits, office operations, development, advertising, insurance and other corporate or other organizational overhead, for such period calculated on a consolidated basis, after the elimination of intercompany transactions, and in accordance with GAAP; provided, that Affiliated Overhead Expenses shall not include any fee, profit or similar component payable to Wynn Resorts or any other Affiliate of Wynn Resorts (other than with respect to the salary of Mr. Wynn) and shall represent only the payment or reimbursement of actual costs and expenses incurred by Wynn Resorts and the Loan Parties (other than the Borrower and its Subsidiaries).

"Agents": the collective reference to the Syndication Agent, the Documentation Agents and the Administrative Agent.

"Aggregate Exposure": with respect to any Lender at any time, an amount equal to the sum of (i) the amount of such Lender's Term Loan Commitment then in effect or, if the Term Loan Commitments have been terminated, the amount of such Lender's Term Loan Extensions of Credit then outstanding and (ii) the amount of such Lender's Revolving Credit Commitment then in effect or, if the Revolving Credit Commitments have been terminated, the amount of such Lender's Revolving Extensions of Credit then outstanding.

"Aggregate Exposure Percentage": with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender's Aggregate Exposure at such time to the Aggregate Exposure of all Lenders at such time.

"Agreement": this Credit Agreement, as amended, supplemented, replaced or otherwise modified from time to time in accordance with this Credit Agreement.

"Aircraft": the Existing Aircraft and, after the Disposition of the Existing Aircraft in accordance with Section 7.5(o), the Replacement Aircraft.

"Aircraft Operating Agreement": that certain Amended and Restated Aircraft Operating Agreement dated \_\_\_\_\_ between the Aircraft Trustee and World Travel.

"Aircraft Note": (i) that certain promissory note dated October \_\_, 2002 in an aggregate principal amount of \$[ \_\_\_\_\_ ] issued by World Travel in favor of the Borrower or (ii) after the Disposition of the Existing Aircraft in accordance with Section 7.5(o), a replacement note in substantially the form of the note described in clause (i) of this definition issued by World Travel in favor of the Borrower in an amount not greater than the sum of (x) the principal amount of Indebtedness outstanding under the note described in clause (i) of this definition at the time of the Disposition of the Existing Aircraft and (y) the amount of Indebtedness incurred pursuant to the proviso of Section 7.2(f)(ii).

"Aircraft Trustee": Well Fargo Bank Northwest, National Association, as trustee under a trust agreement in favor of World Travel with respect to the Aircraft, and any successor or replacement trustee.

"Allocable Overhead": for any period, an amount equal to (x) the amount of Affiliated Overhead Expenses for such period divided by (y) the number of gaming and/or hotel projects of Wynn Resorts and its Subsidiaries which were operating during such period or for which debt and/or equity financing has been obtained to finance, in whole or in part, the development, construction and/or opening thereof[; provided, that amounts allocated to any such project shall be prorated based on the period within such period that such project was in operation or financing therefor was obtained].

"Amortization Date": (i) with respect to the first Amortization Date, [December 31, 2005] and (ii) with respect to each subsequent Amortization Date, the last day of each succeeding fiscal quarter of the Borrower.

"Applicable Facility Lenders": with respect to any Facility, Non-Defaulting Lenders holding more than 33<sup>1</sup>/<sub>3</sub>% of the Total Term Loan Extensions of Credit of Non-Defaulting Lenders or the Total Revolving Extensions of Credit of Non-Defaulting Lenders, as the case may be, outstanding under such Facility (or, prior to any termination of the Term Loan Commitments or the Revolving Credit Commitments, as the case may be, Non-Defaulting Lenders holding more than 33<sup>1</sup>/<sub>3</sub>% of the Total Term Loan Credit Commitments (less the aggregate Term Loan Commitments of Defaulting Lenders) or Total Revolving Credit Commitments (less the aggregate Revolving Credit Commitments of Defaulting Lenders), as the case may be).

"Applicable Margin": for each Type of Loan, the rate per annum set forth under the relevant column heading below:

	Base Rate Loans	Eurodollar Loans
Revolving Credit Loans and Swing Line Loans	[ ]%	[ ]%
Term Loans	[ ]%	[ ]%

provided, that on and after the first Adjustment Date occurring after the Opening Date, the Applicable Margin with respect to Revolving Credit Loans and the Swing Line Loans will be determined pursuant to the Pricing Grid.

"Arrangers": collectively, Deutsche Bank Securities Inc., in its capacity as a lead arranger, Banc of America Securities LLC, in its capacity as a lead arranger, Bear, Stearns & Co. Inc., in its capacity as an arranger, and Dresdner Bank AG, New York Branch, in its capacity as an arranger.

"Art Rental and Licensing Agreement": that certain Second Amended and Restated Art Rental and Licensing Agreement, dated as of September 18, 2002, between Mr. Wynn and Wynn Resorts Holdings.

"Aruze Corp.": Aruze Corp., a Japanese public corporation.

"Aruze USA": Aruze USA, Inc., a Nevada corporation.

"Asset Sale": any Disposition of Property or series of related Dispositions of Property other than (i) the granting of any Lien permitted by Section 7.3, (ii) any Disposition permitted by Section 7.4 and (iii) any Disposition permitted by subsections (a), (b), (c), (d), (f), (h), (i), (j), (k), (l), (m), (n) or (o) of Section 7.5 (provided, that in the case of Section 7.5(a), Dispositions of Property thereunder shall be considered "Asset Sales" to the extent of any proceeds thereof not applied to the replacement of Property pursuant to Section 7.5(a)(ii)).

"Assignee": as defined in Section 10.6(c).

"Assignment and Acceptance": as defined in Section 10.6(c).

"Assignor": as defined in Section 10.6(c).

"Available Funds": as defined in the Disbursement Agreement.

"Available Revolving Credit Commitment": as to any Revolving Credit Lender at any time, an amount equal to the excess, if any, of (a) such Revolving Credit Lender's Revolving Credit Commitment then in effect over (b) such Revolving Credit Lender's Revolving Extensions of Credit then outstanding; *provided*, that in calculating any Lender's Revolving Extensions of Credit for the purpose of determining such Lender's (other than the Swing Line Lender) Available Revolving Credit Commitment pursuant to Section 2.9(a), the aggregate principal amount of Swing Line Loans then outstanding shall be deemed to be zero.

"Available Term Loan Commitments": as to any Term Loan Lender at any time, an amount equal to the excess, if any, of (a) such Term Loan Lender's Term Loan Commitment then in effect over (b) such Term Loan Lender's Term Loan Extensions of Credit then outstanding.

"Bankruptcy Code": Title 11 of the United States Code entitled "Bankruptcy", as now or hereafter in effect, or any successor statute.

"Bank Company Collateral Account Agreement": as defined in the Disbursement Agreement.

"Bank Completion Guaranty Collateral Account Agreement": as defined in the Disbursement Agreement.

"Bank Debt Service": for any period, (a) all fees payable during such period to the Administrative Agent, the Issuing Lender, the Swing Line Lender and the Lenders, (b) interest on Term Loans, Swing Line Loans, Revolving Credit Loans and, without duplication, interest on any outstanding Reimbursement Obligations, in each case payable during such period, (c) scheduled Term Loan principal payments (as reduced to reflect actual prepayments through the date of such calculation) and payments with respect to the principal amount of any outstanding Reimbursement

4

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Obligations, in each case payable during such period, and (d) net payments, if any, payable during such period pursuant to Specified Hedge Transactions.

"Bank Local Company Collateral Account Agreement(s)": as defined in the Disbursement Agreement.

"Base Rate": for any day, a rate per annum (rounded upwards, if necessary, to the next  $\frac{1}{16}$  of 1%) equal to the greatest of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus  $\frac{1}{2}$  of 1%.

"Base Rate Loans": Loans for which the applicable rate of interest is based upon the Base Rate.

"Beneficial Owner": as defined in Rule 13d—3 and Rule 13d—5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The term "Beneficially Owned" has a corresponding meaning.

"Benefited Lender": as defined in Section 10.7.

"Board": the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Board of Directors": (i) with respect to a corporation, the board of directors of the corporation; (ii) with respect to a partnership, the board of directors of the general partner of the partnership; and (iii) with respect to any other Person, the board or committee of such Person serving a similar function.

"Borrower": as defined in the preamble hereto.

"Borrowing Date": any Business Day specified by the Borrower as a date on which the Borrower requests the relevant Lender(s) to make Loans hereunder.

"Building Lease": that certain Lease Agreement, dated as of October , by and between Valvino, as lessor, and the Borrower, as lessee, with respect to the lease of space in the Phase II Land Building.

5

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"Business Day": (i) for all purposes other than as covered by clauses (ii) and (iii) below, a day other than a Saturday, Sunday or other day on which commercial banks in New York City, New York or Las Vegas, Nevada are authorized or required by law to close, (ii) with respect to all notices and determinations in connection with, and payments of principal and interest on, Eurodollar Loans, any day which is a Business Day described in clause (i) above and which is also a day for trading by and between banks in Dollar deposits in the New York interbank eurodollar market and (iii) with respect to all notices and determinations in connection with Letters of Credit and payments of principal and interest on Reimbursement Obligations, a day other than a Saturday, Sunday or other day on which commercial banks in New York City, New York are authorized or required by law to close.

"Capital Corp.": Wynn Las Vegas Capital Corp., a Nevada corporation.

"Capital Expenditures": for any period, with respect to any Person, the aggregate of all expenditures by such Person and its Subsidiaries for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) which should be capitalized under GAAP on a consolidated balance sheet of such Person and its Subsidiaries; *provided*, that the amount of Capital Expenditures in respect of fixed or capital assets or additions to equipment in any Fiscal Year shall be *net of* (a) to the

extent applied during such Fiscal Year to the replacement of Property pursuant to Section 7.5(a)(ii), the Net Disposition Proceeds received by any such Person from the Disposition of Property pursuant to Section 7.5(a) by reason of such Property's obsolescence or worn out condition and (b) the Insurance Proceeds and/or Eminent Domain Proceeds received by any such Person for any casualties to, or Taking of, fixed or capital assets and applied during such Fiscal Year to the repair or replacement of fixed or capital assets in accordance with Section 2.24. Notwithstanding the foregoing, any Project Costs, any expenditures in furtherance of the construction of the Entertainment Facility and any expenditures with respect to the purchase of the Replacement Aircraft in accordance with Section 7.5(o), in each case that otherwise would have constituted Capital Expenditures by virtue of the foregoing, shall be excluded from this definition.

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

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

"*Cash Equivalents*": (a) United States dollars; (b) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (as long as the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than six months from the date of acquisition; (c) interest-bearing demand or time deposits (which may be represented by certificates of deposit) issued by banks having general obligations rated (on the date of acquisition thereof) at least "A" or the equivalent by S&P or Moody's or, if not so rated, secured at all times, in the manner and to the extent provided by law, by collateral security in clause (a) or (b) of this definition, of a market value of no less than the amount of monies so invested; (d) repurchase

6

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obligations with a term of not more than seven days for underlying securities of the types described in clauses (b) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above; (e) commercial paper having the highest rating obtainable from Moody's or S&P and in each case maturing within six months after the date of acquisition; (f) money market funds or mutual funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (d) of this definition; and (g) to the extent not permitted in clauses (a) through (f) of this definition, Permitted Securities.

"*Casino Land*": the land owned by the Borrower as described in Exhibit T-4 to the Disbursement Agreement.

"*Change of Control*": the occurrence of any of the following: (i) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Loan Parties, taken as a whole, or of the Borrower and its Subsidiaries, taken as a whole, to any "person" (as that term is used in Section 13(d)(3) of the Exchange Act), other than to Mr. Wynn or a Related Party of Mr. Wynn, (ii) the adoption of a plan relating to the liquidation or dissolution of the Borrower or any successor thereto, (iii) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that (a) any "person" (as defined in clause (i) above), other than Mr. Wynn and any of his Related Parties becomes the Beneficial Owner, directly or indirectly, of more than 50% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of equity interests, (b) any "person" (as defined in clause (i) above) (other than Kazuo Okada, Aruze USA and Aruze Corp., so long as (1) the Stockholders Agreement, as in effect on the Closing Date, remains in full force and effect, (2) a majority of the Board of Directors of Wynn Resorts is constituted of Persons named on any slate of directors chosen by Mr. Wynn and Aruze USA pursuant to the Stockholders Agreement, as in effect on the Closing Date, and (3) Kazuo Okada and his Related Parties either (A) "control" (as that term is used in Rule 405 under the Securities Act) Aruze Corp. and Aruze USA or (B) otherwise remain the direct or indirect Beneficial Owners of the Voting Stock of Wynn Resorts held by Aruze Corp.) becomes the Beneficial Owner, directly or indirectly, of a greater percentage of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of equity interests, than is at that time Beneficially Owned by Mr. Wynn and his Related Parties as a group, (c) Mr. Wynn and his Related Parties as a group own less than 20% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of equity interests (excluding, for purposes of calculating the outstanding voting stock of Wynn Resorts pursuant to this clause (iii)(c), shares of voting stock issued in a primary issuance by Wynn Resorts in one or more bona fide public offerings of additional Voting Stock of Wynn Resorts (other than the IPO)), or (d) Mr. Wynn and his Related Parties as a group own less than 10% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of equity interests, (iv) the first day on which Mr. Wynn does not act as either the Chairman of the Board of Directors of Wynn Resorts or the Chief Executive Officer of Wynn Resorts, other than (1) as a result of death or disability or (2) if the Board of Directors of Wynn Resorts, exercising their fiduciary duties in good faith, removes or fails to re-appoint the Principal as Chairman of the Board of Directors of Wynn Resorts or Chief Executive Officer of Wynn Resorts, (v) the first day on which a majority of the members of the board of directors of Wynn Resorts or the Borrower are not Continuing Directors, (vi) the first day on which Wynn Resorts ceases to own, directly or indirectly, 100% of the outstanding Capital Stock of the Borrower or (vii) Wynn Resorts consolidates with, or merges with or into, any Person or sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of its assets to any Person, or any Person consolidates with, or merges with or into, Wynn Resorts, in any such event pursuant to a transaction in which any of the outstanding voting stock of Wynn Resorts is converted into or exchanged for cash, securities or other property, other than any such transaction where the voting

7

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stock of Wynn Resorts outstanding immediately prior to such transaction is converted into or exchanged for voting stock (other than Disqualified Stock) of the surviving or transferee Person constituting a majority of the outstanding shares of such voting stock of such surviving or transferee Person (immediately after giving effect to such issuance).

"*Closing Date*": the date on which this Agreement and the other Loan Documents are executed and delivered and the conditions precedent set forth in Section 3.1 of the Disbursement Agreement and Section 5.1 of this Agreement have been satisfied or waived.



"Code": the Internal Revenue Code of 1986, as amended from time to time.

"Collateral": all Property of the Loan Parties, Wynn Resorts or any other Person, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document.

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

"Commitment": as to any Lender, the sum of the Term Loan Commitment and the Revolving Credit Commitment of such Lender.

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

"Completion Date": as defined in the Disbursement Agreement.

"Completion Guarantor": Wynn Completion Guarantor, LLC, a Nevada limited liability company.

"Completion Guaranty": that certain Completion Guaranty, dated as of October 1, 2002, by the Completion Guarantor in favor of the Administrative Agent on behalf of the Secured Parties, the Disbursement Agent and the Mortgage Notes Indenture Trustee.

"Completion Guaranty Release Date": as defined in the Disbursement Agreement.

"Compliance Certificate": a certificate duly executed by a Responsible Officer substantially in the form of Exhibit B hereto.

"Confidential Information Memorandum": the Confidential Information Memorandum, dated July 2002 and furnished to the initial Lenders.

"Consents": as defined in the Disbursement Agreement.

"Consolidated Current Assets": at any date, all amounts (other than cash and Cash Equivalents) which would, in conformity with GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a consolidated balance sheet of the Borrower and its Subsidiaries at such date.

"Consolidated Current Liabilities": at any date, all amounts that would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a consolidated balance sheet of the Borrower and its Subsidiaries at such date, but excluding (a) the current portion of any Funded Debt of the Borrower and its Subsidiaries and (b) without duplication of clause (a) above, all Indebtedness consisting of Revolving Credit Loans or Swing Line Loans to the extent otherwise included therein.

"Consolidated EBITDA": of any Person for any period, Consolidated Net Income of such Person and its Subsidiaries for such period plus, without duplication and to the extent reflected as a charge in the statement of such Consolidated Net Income for such period, the sum of (a) income tax expense or the Tax Amount (whether or not paid during such period), (b) Consolidated

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Interest Expense of such Person and its Subsidiaries, amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness (including, in the case of the Borrower, the Loans and Letters of Credit), (c) depreciation and amortization expense, (d) amortization of intangibles (including, but not limited to, goodwill) and (e) any extraordinary expenses or losses (and, whether or not otherwise includable as separate items in the statement of such Consolidated Net Income for such period, non-cash losses on sales of assets outside of the ordinary course of business and pre-opening expenses related to the initial opening of the Project (such pre-opening expenses to be no greater than that set forth in the Project Budget) and the opening of the Entertainment Facility (such pre-opening expenses in the aggregate to be no greater than \$5,000,000)) and minus, to the extent included in the statement of such Consolidated Net Income for such period, the sum of (a) interest income (except to the extent deducted in determining Consolidated Interest Expense) and (b) any extraordinary income or gains (and, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, non-cash gains on the sales of assets outside of the ordinary course of business), all as determined on a consolidated basis in accordance with GAAP.

"Consolidated Interest Coverage Ratio": for any period, the ratio of (a) Consolidated EBITDA of the Borrower and its Subsidiaries for such period to (b) Consolidated Interest Expense of the Borrower and its Subsidiaries for such period.

"Consolidated Fixed Charge Coverage Ratio": for any period, the ratio of (a) Consolidated EBITDA of the Borrower and its Subsidiaries to (b) Consolidated Fixed Charges of the Borrower and its Subsidiaries for such period.

"Consolidated Fixed Charges": of any Person for any period, the sum (without duplication) of (a) Consolidated Interest Expense of such Person and its Subsidiaries for such period, (b) provision for cash income taxes made by such Person or any of its Subsidiaries on a consolidated basis in respect of such period and the payment of any Tax Amount during such period, (c) scheduled payments made during such period on account of principal of Indebtedness of such Person or any of its Subsidiaries (including, without limitation, with respect to the Borrower, scheduled principal payments in respect of the Term Loans or any other Indebtedness under the Financing Agreements), (d) the aggregate amount actually paid by the Borrower and its Subsidiaries in cash during such period on account of Capital Expenditures, and (e) Consolidated Lease Expense of such Person and its Subsidiaries for such period.

"Consolidated Interest Expense": of any Person for any period, total cash interest expense (including that attributable to Capital Lease Obligations) of such Person and its Subsidiaries for such period with respect to all outstanding Indebtedness of such Person and its Subsidiaries (including, without limitation, all commissions, discounts and other fees and charges owed by such Person with respect to letters of credit and bankers' acceptance financing and net costs of such Person under Hedge Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP).

"*Consolidated Lease Expense*": for any period, the aggregate amount of fixed and contingent rentals payable by the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP, for such period with respect to leases of real and personal property.

"*Consolidated Leverage Ratio*": for any period, the ratio of (a) Consolidated Total Debt on the last day of such period to (b) Consolidated EBITDA of the Borrower and its Subsidiaries for such period.

9

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"*Consolidated Member*": a corporation, other than the common parent, that is a member of an affiliated group (as defined in Section 1504 of the Code) of which Wynn Resorts or any of the Loan Parties is the common parent.

"*Consolidated Net Income*": of any Person for any period, the consolidated net income (or loss) of such Person and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP and before any reduction in respect of preferred equity dividends, but giving effect to, without duplication, any amounts paid or distributed by such Person or its Subsidiaries as a Tax Amount or Allocable Overhead if and to the same extent that such amounts would have been included in the calculation of net income if incurred by such Person or its Subsidiaries directly; *provided*, that in calculating Consolidated Net Income of a Person (for purposes of this definition only, the "*Parent*") and its consolidated Subsidiaries for any period, there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary of the Parent or is merged into or consolidated with the Parent or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary of the Parent) in which the Parent or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Parent or such Subsidiary in the form of dividends or similar distributions, (c) the undistributed earnings of any Subsidiary of the Parent to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any Contractual Obligation (other than under any Financing Agreement) or Requirement of Law applicable to such Subsidiary, (d) to the extent not reflected as a charge in the statement of such Consolidated Net Income, any Management Fees paid during such Period and (e) the cumulative effect of a change in accounting principles.

"*Consolidated Net Worth*": at any date, all amounts that would, in conformity with GAAP, be included on a consolidated balance sheet of the Borrower and its Subsidiaries under stockholders' equity at such date.

"*Consolidated Total Debt*": at any date, the aggregate principal amount of all Indebtedness of the Borrower and its Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP.

"*Consolidated Working Capital*": at any date, the excess of Consolidated Current Assets on such date over Consolidated Current Liabilities on such date.

"*Construction Consultant*": Inspection & Valuation International, Inc. or such other construction consultant of recognized national standing appointed by the Administrative Agent.

"*Construction Contract*": a "Contract" as defined in the Disbursement Agreement.

"*Continuing Directors*": as of any date of determination, with respect to any Person, any member of the Board of Directors of such Person who (i) was a member of such board of directors on the Closing Date, (ii) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such board at the time of such nomination or election or (iii) in the case of a limited liability company, was nominated by the direct or indirect Board of Directors of its managing member or sole member.

10

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

"*Control Agreements*": collectively, (i) the Bank Completion Guaranty Collateral Account Agreement, (ii) the Bank Company Collateral Account Agreement, (iii) the Bank Local Company Collateral Account Agreement(s), (iv) each Control Agreement to be executed and delivered by each Loan Party pursuant to the Guarantee and Collateral Agreement, substantially in the form of Exhibit B, Exhibit C or Exhibit D, as the case may be, thereto, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"*Converted Revolving Loan Amount*": as defined in Section 2.4(a).

"*Dealership Lease Agreement*": that certain Lease Agreement, to be entered into between the Borrower, as lessor, and an Affiliate of the Borrower, as lessee, with respect to the lease of space at the Casino Land for the development and operation of a Ferrari and Maserati automobile dealership.

"*Debt Service*": collectively, the Bank Debt Service, the Note Debt Service and the FF&E Debt Service.

"*Debt Service Availability Date*": April 30, 2005.

"*Default*": any of the events specified in Section 8, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"*Defaulting Lender*": at any time, (i) any Lender with respect to which a Lender Default is in effect, (ii) any Lender that is the subject (as a debtor) of any action or proceeding (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, (iii) any Lender that shall make a general assignment for the benefit of its creditors or (iv) any Lender that shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

"*Delivery Requirement*": with respect to each Additional Material Contract:

(a) with respect to each Person party to such Additional Material Contract (other than any Loan Party), copies of the Governing Documents of each such Person (with respect to Persons other than Affiliates of the Borrower, to the extent the same are certified by and publicly available from the secretary of state of the state of formation of such Person), certified, if applicable, by the secretary of state of the state of formation of such Person;

(b) with respect to each Person party to such Additional Material Contract (other than any Loan Party), certificates issued by the secretary of state of the state where the Project is located and, if other than such state, the state of formation of such Person certifying that such Person is in good standing and is qualified to do business in, and has paid all franchise taxes or similar taxes due to, such states; and

(c) to the extent reasonably obtainable, the most recent annual financial statements (audited if available) or Form 10-K and most recent quarterly financial statements or Form 10-Q from each Person party to such Additional Material Contract (other than any Loan Party), together (in the case of any Affiliates of Loan Parties) with certificates from the

11

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appropriate Responsible Officer thereof, stating that no material adverse change in the consolidated assets, liabilities, operations or financial condition of such Person has occurred from those set forth in the most recent financial statements or the balance sheet, as the case may be, provided to the Administrative Agent pursuant to this clause (c).

"*Derivatives Counterparty*": as defined in Section 7.6.

"*Desert Inn Improvement*": Desert Inn Improvement Co., a Nevada corporation.

"*Desert Inn Water*": Desert Inn Water Company, LLC, a Nevada limited liability company.

"*DIIC Casino Water Permit*": the Permit identified as of the Closing Date as Permit No. 13393 (Cert. 4731) as shown in the records of the State of Nevada, Division of Water Resources, in Carson City Nevada (and any successor or replacement Permit thereto).

"*DIIC Water Permits*": collectively, the DIIC Casino Permit and the permits identified as of the Closing Date as Permit No. 16938 (Cert. 4765), Permit No. 16939 (Cert. 4766), Permit No. 24558 (Cert. 7828), Permit No. 24560 (Cert. 7827), Permit No. 24561 (Cert. 7829), and Permit No. 25223 (Cert. 7830), in each case as shown in the records of the State of Nevada, Division of Water Resources, in Carson City Nevada (and any successor or replacement Permits thereto).

"*DIIC Water Transfer*": a transfer by Desert Inn Improvement at no cost and in accordance with all Requirements of Law and pursuant to all necessary consents of Governmental Authorities (including, if applicable, the Nevada Public Utilities Commission and the State of Nevada, Division of Water Resources) of (a) the fee ownership of the Water Utility Land to Wynn Resorts Holdings and (b) the DIIC Water Permits to (x) in the case of the DIIC Casino Water Permit, the Borrower and (y) in the case of all other DIIC Water Permits, Wynn Resorts Holdings.

"*Disbursement Agent*": Deutsche Bank Trust Company Americas, in its capacity as Disbursement Agent under the Disbursement Agreement, and any successor Disbursement Agent appointed pursuant to the terms of the Disbursement Agreement.

"*Disbursement Agreement*": that certain Master Disbursement Agreement in the form of Exhibit C hereto and dated as of the date hereof among the Borrower, the Administrative Agent, the Mortgage Notes Indenture Trustee, the FF&E Agent and the Disbursement Agent.

"*Disbursement Agreement Event of Default*": an "Event of Default" as defined in the Disbursement Agreement.

"*Disposition*": with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, grant of restriction, transfer or other disposition thereof; and the terms "*Dispose*" and "*Disposed of*" shall have correlative meanings.

"*Disqualified Stock*": any Capital Stock or other ownership or profit interest of any Loan Party that any Loan Party is or, upon the passage of time or the occurrence of any event, may become obligated to redeem, purchase, retire, defease or otherwise make any payment in respect of in consideration other than Capital Stock (other than Disqualified Stock).

"*Documentation Agents*": collectively, Bear Stearns Corporate Lending Inc., in its capacity as a joint documentation agent, Dresdner Bank AG, New York Branch, in its capacity as a joint documentation agent, and J.P. Morgan Securities Inc., in its capacity as a joint documentation agent.

"*Dollars*" and "\$": dollars in lawful currency of the United States of America.

"*Domestic Subsidiary*": any Subsidiary of the Borrower organized under the laws of any jurisdiction within the United States of America.

12

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"*Driving Range*": the driving range for the Golf Course to be located on the Phase II Land and leased to the Borrower pursuant to the Driving Range Lease.

"*Driving Range Lease*": that certain Lease Agreement, dated as of October , by and between Valvino, as lessor, and the Borrower, as lessee, with respect to the lease of land on which the driving range for the Golf Course is to be located.

"ECF Percentage": with respect to any Fiscal Year, 75%; *provided*, that, if the Consolidated Leverage Ratio as of the last day of any such Fiscal Year is not greater than 3.5 to 1.0, 50% with respect to such Fiscal Year.

"Eligible Assignee": (A) (i) a commercial bank organized under the laws of the United States or any state thereof; (ii) a savings and loan association or savings bank organized under the laws of the United States or any state thereof; (iii) a commercial bank organized under the laws of any other country or a political subdivision thereof; *provided*, that (x) such bank is acting through a branch or agency located in the United States or (y) such bank is organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development or a political subdivision of such country; and (iv) any other entity which is an "accredited investor" (as defined in Regulation D under the Securities Act) which extends credit or buys loans as one of its businesses including insurance companies, mutual funds and lease financing companies; and (B) for purposes of Section 10.1, any Affiliate or Affiliated Fund of any Lender (*provided*, that if any funding obligations are assigned to an Affiliate of a Lender or Affiliated Fund, such Affiliate or Affiliated Fund, as applicable, shall have demonstrable resources to comply with such obligations); *provided*, that neither an Affiliate of the Borrower nor any Person which has been denied an approval or a license, or otherwise found unsuitable, under the Nevada Gaming Laws applicable to the Lenders shall be an Eligible Assignee; and *provided*, further that so long as no Event of Default shall have occurred and be continuing, no (i) Person that owns or operates a casino located in the State of Nevada (or is an Affiliate of such a Person) (*provided*, that a passive investment constituting less than 20% of the common stock of any such casino shall not constitute ownership thereof for the purposes of this definition) or (ii) Person that owns or operates a convention, trade show or exhibition facility in Las Vegas, Nevada or Clark County, Nevada (or an Affiliate of such a Person) (*provided*, that a passive investment constituting less than 20% of the common stock of any such convention or trade show facility shall not constitute ownership for the purpose of this definition), shall be an Eligible Assignee.

"Eminent Domain Proceeds": all amounts and proceeds (including instruments) received in respect of any Event of Eminent Domain relating to the Project.

"Employee Parking Lot": the parking lot structure located on the Phase II Land that will be used for parking for the employees of the Borrower pursuant to the Employee Parking Lot Lease.

"Employee Parking Lot Lease": that certain Lease Agreement, dated as of October , by and between Valvino, as lessor, and the Borrower, as lessee, with respect to the lease of land on which the parking lot structure for use by the Borrower's employees is located.

"Entertainment Facility": a showroom or entertainment facility located on the Casino Land and the Phase II Land, adjoining and connected directly to the Le Rêve hotel and casino.

"Entertainment Facility Equity Proceeds": to the extent used solely and exclusively for the development and construction of an Entertainment Facility, the aggregate net cash proceeds received by the Borrower from any Person other than another Loan Party (except to the extent another Loan Party is acting as an intermediary for purposes of contributing equity capital contributions from such other Persons), directly or indirectly, as a contribution to its common equity capital.

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"Environmental Claim": any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any governmental authority or any other Person, arising (a) pursuant to or in connection with any actual or alleged violation of any Environmental Law, (b) in connection with any Hazardous Materials or any actual or alleged Hazardous Materials Activity, or (c) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"Environmental Laws": any and all laws, rules, orders, regulations, statutes, ordinances, guidelines, codes, decrees, or other legally enforceable requirements (including, without limitation, common law) of any international authority, foreign government, the United States, or any state, local, municipal or other Governmental Authority, regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or of human health, or employee health and safety, as has been, is now, or may at any time hereafter be, in effect, including, without limitation,

- (a) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9601 *et seq.*) ("CERCLA");
- (b) the Federal Water Pollution Control Act (33 U.S.C. Section 1251 *et seq.*) ("Clean Water Act" or "CWA");
- (c) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 *et seq.*) ("RCRA");
- (d) the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 *et seq.*) ("AEA");
- (e) the Clean Air Act (42 U.S.C. Section 7401 *et seq.*) ("CAA");
- (f) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 11001 *et seq.*) ("EPCRA");
- (g) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 *et seq.*) ("FIFRA");
- (h) the Oil Pollution Act of 1990 (P.L. 101-380, 104 Stat. 486);
- (i) the Safe Drinking Water Act (42 U.S.C. Sections 300f *et seq.*) ("SDWA");
- (j) the Surface Mining Control and Reclamation Act of 1974 (30 U.S.C. Sections 1201 *et seq.*) ("SMCRA");
- (k) the Toxic Substances Control Act (15 U.S.C. Section 2601 *et seq.*) ("TSCA");
- (l) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 *et seq.*) ("HMTA");

- (m) the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Section 7901 *et seq.*) ("*UMTRCA*");
- (n) the Occupational Safety and Health Act (29 U.S.C. Section 651 *et seq.*) ("*OSHA*");
- (o) the Nevada Hazardous Materials law (NRS Chapter 459);
- (p) the Nevada Collection and Disposal of Solid Waste/Sewage law (NRS Chapter 444);
- (q) the Nevada Water Controls/Pollution law (NRS Chapter 445A);
- (r) the Nevada Air Pollution law (NRS Chapter 445B);

14

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- (s) the Nevada Cleanup of discharged Petroleum law (NRS 590.700 to 590.920, inclusive);
- (t) the Nevada Control of Asbestos law (NRS 618.750 to 618.850);
- (u) the Nevada Appropriation of Public Waters law (NRS 533.324 to 533.435, inclusive);
- (v) the Nevada Artificial Water Body Development Permit law (NRS 502.390);
- (w) the Nevada Environmental Requirements Law (NRS 445C.010 to NRS 445C.120, inclusive);
- (x) the Nevada Occupational Safety and Health Act (NRS 618.005 to 618.900, inclusive);
- (y) the Laws Regarding the Authority of Nevada State Fire Marshall Division (NRS 477.010 to 477.250, inclusive);
- (z) the Uniform Fire Code, as now or hereafter adopted in the State of Nevada;
- (aa) the Nevada Protection of Endangered Species, Endangered Wildlife Permit (NRS 503.585) and Endangered Flora Permit law (NRS 527.270); and
- (bb) and all other Federal, state and local Legal Requirements which govern Hazardous Substances, and the regulations adopted and publications promulgated pursuant to all such foregoing laws.

"*Environmental Matter*": any:

- (a) release, emission, entry or introduction into the air including, without limitation, the air within buildings and other natural or man-made structures above ground;
- (b) discharge, release or entry into water including, without limitation, into any river, watercourse, lake, or pond (whether natural or artificial or above ground or which joins or flows into any such water outlet above ground) or reservoir, or the surface of the riverbed or of other land supporting such waters, ground waters, sewer or the sea;
- (c) deposit, disposal, keeping, treatment, importation, exportation, production, transportation, handling, processing, carrying, manufacture, collection, sorting or presence of any Hazardous Substance (including, without limitation, in the case of waste, any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process or activity (including making it re-usable or reclaiming substances from it) and any substance or article which is required to be disposed of as being broken, worn out, contaminated or otherwise spoiled);
- (d) nuisance, noise, defective premises, health and safety at work, industrial illness, industrial injury due to environmental factors, environmental health problems (including, without limitation, asbestosis or any other illness or injury caused by exposure to asbestos) or genetically modified organisms;
- (e) conservation, preservation or protection of the natural or man made environment or any living organisms supported by the natural or man made environment; or
- (f) other matter howsoever directly affecting the environment or any aspect of it.

"*Environmental Permits*": any and all permits, licenses, approvals, registrations, notifications, exemptions and any other authorization required under any Environmental Law.

"*ERISA*": the Employee Retirement Income Security Act of 1974, as amended from time to time.

15

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"*Eurocurrency Reserve Requirements*": for any day as applied to a Eurodollar Loan, the then stated maximum rate of all reserve requirements (including, without limitation, any marginal, emergency, supplemental, special or other reserves under any regulations of the Board or other Governmental

Authority having jurisdiction with respect thereto or otherwise required by applicable law) applicable to any member bank of the Federal Reserve System in respect of eurocurrency funding or liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D).

"*Eurodollar Loans*": Loans the rate of interest applicable to which is based upon the Eurodollar Rate.

"*Eurodollar Rate*": with respect to each day during each Interest Period pertaining to a Eurodollar Loan, a rate per annum equal to (a) the offered quotation to first-class banks in the New York interbank Eurodollar market by the Administrative Agent for Dollar deposits of amounts in immediately available funds comparable to the outstanding principal amount of such Eurodollar Loan of the Administrative Agent (in its capacity as a Lender) with maturities comparable to the Interest Period applicable to such Eurodollar Loan commencing two Business Days thereafter as of 10:00 A.M. (New York time) on the first day of such Interest Period, divided (and rounded upward to the nearest  $\frac{1}{16}$  of 1%) by (b) a percentage equal to 100% minus the Eurocurrency Reserve Requirements.

"*Eurodollar Tranche*": the collective reference to Eurodollar Loans the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

"*Event of Default*": any of the events specified in Section 8, *provided* that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"*Event of Eminent Domain*": with respect to any Property, (i) any compulsory transfer or taking by condemnation, seizure, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking or confiscation of such Property or the requisition of the use of such Property, by any agency, department, authority, commission, board, instrumentality or political subdivision of any state, the United States or another Governmental Authority having jurisdiction or (ii) any settlement in lieu of clause (i) above.

"*Excess Cash Flow*": for any Fiscal Year, the excess, if any, of (a) the sum, without duplication, of (i) Consolidated Net Income of the Loan Parties for such Fiscal Year, (ii) an amount equal to the amount of all non-cash charges (including depreciation and amortization) deducted in arriving at such Consolidated Net Income, (iii) decreases in Consolidated Working Capital of the Loan Parties for such Fiscal Year, (iv) an amount equal to the aggregate net non-cash loss on the Disposition of Property by the Loan Parties during such Fiscal Year (other than sales of inventory in the ordinary course of business), to the extent deducted in arriving at such Consolidated Net Income and (v) the net increase during such Fiscal Year (if any) in deferred tax accounts of the Loan Parties over (b) the sum, without duplication, of (i) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income, (ii) the aggregate amount actually paid by the Loan Parties in cash during such Fiscal Year on account of Capital Expenditures (excluding the principal amount of Indebtedness incurred in connection with such expenditures and any such expenditures financed with the proceeds of any Reinvestment Deferred Amount), (iii) the aggregate amount of all prepayments of Revolving Credit Loans and Swing Line Loans during such Fiscal Year to the extent accompanying permanent optional reductions of the Revolving Credit Commitments and all optional prepayments of the Term Loans during such Fiscal Year, (iv) the aggregate amount of all regularly scheduled principal payments of Funded Debt (including, without limitation, the Term Loans) of the Loan Parties made during such Fiscal Year (other than in respect of any revolving credit facility to the

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extent there is not an equivalent permanent reduction in commitments thereunder such that after giving effect to such commitment reduction the applicable Loan Party, as the case may be, would not be able to reborrow all or any of the amount so prepaid), (v) increases in Consolidated Working Capital of the Loan Parties for such Fiscal Year, (vi) an amount equal to the aggregate net non-cash gain on the Disposition of Property by the Loan Parties during such Fiscal Year (other than sales of inventory in the ordinary course of business), to the extent included in arriving at such Consolidated Net Income, and (vii) the net decrease during such Fiscal Year (if any) in deferred tax accounts of the Loan Parties.

"*Excess Cash Flow Application Date*": as defined in Section 2.12(d).

"*Existing Aircraft*": that certain Bombardier Global Express aircraft, Serial No. 9065, owned by a trust of which World Travel is the beneficial interest holder.

"*Existing Stockholders*": collectively, Mr. Wynn, Aruze USA, Inc., a Nevada corporation, Baron Asset Fund, a Massachusetts business trust, and the Kenneth R. Wynn Family Trust.

"*Extraordinary Deposit Receipts*": any amounts received by any Loan Party from the refund or return of any amounts deposited with any Person as security or cash collateral with respect to any acceptance, letter of credit, completion guaranty, performance bond or similar facility.

"*Facility*": each of (a) the Term Loan Commitments and the Term Loans made thereunder (the "*Term Loan Facility*") and (b) the Revolving Credit Commitments and the extensions of credit made thereunder (the "*Revolving Credit Facility*").

"*Facility Fee Letter*": the Amended and Restated Credit Facilities Fee Letter, dated June 14, 2002, among Valvino, Wynn Resorts Holdings, the Borrower, the Initial Agents, the Initial Arrangers, the Managers and Bank of America N.A., as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"*Federal Funds Effective Rate*": for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

"*FF&E Agent*": Wells Fargo Bank Nevada, National Association, as collateral agent for the FF&E Lenders under the FF&E Facility Agreement.

"*FF&E Debt Service*": for any period, (a) all fees payable during such period to the FF&E Agent and the FF&E Lenders under the FF&E Facility Agreement and related agreements, documents and instruments (including, without limitation, the Other Security Documents related to the FF&E Facility Agreement and the FF&E Guarantee) and (b) interest on the FF&E Notes payable during such period.

"FF&E Facility": the credit facilities, equipment leases or similar agreements to finance the purchase and installment of the Specified FF&E pursuant to the FF&E Facility Agreement.

"FF&E Facility Agreement": the credit agreement among the Borrower, the FF&E Agent and the other FF&E Lenders party thereto dated as of October , 2002.

"FF&E Guarantee": the Guaranty Agreement dated as of October , 2002 among each Loan Party (other than Desert Inn Improvement), the FF&E Agent and the FF&E Lenders.

17

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"FF&E Intercreditor Agreement": that certain Intercreditor Agreement, dated as of the Closing Date among the Administrative Agent, the Mortgage Notes Indenture Trustee and the FF&E Agent, in the form of Exhibit K-2 hereto.

"FF&E Lenders": the lenders that are parties to the FF&E Facility Agreement from time to time.

"FF&E Notes": those certain promissory notes issued by the Borrower to the FF&E Lenders pursuant to the FF&E Facility Agreement.

"Final Completion Date": as defined in the Disbursement Agreement.

"Financing Agreements": collectively, this Agreement and the other Loan Documents, the Mortgage Notes, the Mortgage Notes Indenture, the Mortgage Note Guarantee, the FF&E Facility Agreement, the FF&E Guarantee, the Other Security Documents, and any other loan, security, support or similar agreements entered into on, prior to or after the Closing Date to finance the development, construction and/or operation of the Project, whether with respect to Other Indebtedness or otherwise and including, without limitation, any agreements with respect to Permitted Refinancing Indebtedness.

"Fiscal Year": the fiscal year of the Borrower and the other Loan Parties ending on December 31 of each calendar year.

"Former Lender": as defined in Section 10.13(a).

"Funded Debt": as to any Person, all Indebtedness of such Person of the types described in clauses (a) through (e) of the definition of "Indebtedness" in this Section.

"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 of the Loan Parties pursuant to a Control Agreement described in clause (iv) of the definition thereof.

"Funding Office": the office specified from time to time by the Administrative Agent as its funding office by notice to the Borrower and the Lenders.

"GAAP": generally accepted accounting principles in the United States of America as in effect from time to time, except that for purposes of Sections 2.12(d), 2.12(f), 7.1, 7.5(k), 7.5(l), 7.5(m), 7.10 and 7.22, the Pricing Grid and the definition of "ECF Percentage," GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements delivered pursuant to Section 4.1, unless otherwise modified pursuant to Section 10.17.

"Gaming Facility": any building or other structure used or expected to be used to enclose space in which a gaming operation is conducted and (a) is wholly or partially owned, directly or indirectly, by the Borrower or an Affiliate of the Borrower or (b) any portion or aspect of which is managed or used, or expected to be managed or used, by the Borrower or an Affiliate of the Borrower.

"Golf Course": Le Rêve 's Tom Fazio/Stephen A. Wynn designed 18-hole golf course to be situated on the Golf Course Land, as more particularly described in Exhibit T-4 to the Disbursement Agreement.

"Golf Course Land": the land owned by Wynn Resorts Holdings, Palo and Desert Inn Improvement on which the Golf Course is to be located, as described in Exhibit T-4 to the Disbursement Agreement. The Golf Course Land shall include (a) the Wynn Home Site Land until such time (if ever) as the Wynn Home Site Land has been Disposed of in accordance with Section 7.5(j), (b) the Home Site Land until such time (if ever) as the Home Site Land has been

18

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Disposed of in accordance with Section 7.5(l), (c) the Palo Home Site Land, (d) the Water Utility Land and (e) if at any time acquired by a Loan Party, the Additional Land (or any part thereof).

"Golf Course Land Owners": collectively, Wynn Resorts Holdings, Desert Inn Improvement, Palo and, to the extent the Additional Land (or any part thereof) is acquired by one or more Loan Parties, such Loan Parties.

"Golf Course Lease": that certain Lease Agreement, dated as of October , by and between Wynn Resorts Holdings, as lessor, and the Borrower, as lessee, with respect to the lease of land on which the Golf Course is to be located.

"Governing Documents": collectively, as to any Person, the articles or certificate of incorporation and bylaws, any shareholders agreement, certificate of formation, limited liability company agreement, partnership agreement or other formation or constituent documents of such Person.

"Governmental Authority": 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.

"*Guarantee and Collateral Agreement*": the Guarantee and Collateral Agreement to be executed and delivered by the Borrower and each other Loan Party (other than Desert Inn Improvement), substantially in the form of Exhibit A hereto, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"*Guarantee Obligation*": as to any Person (the "*guaranteeing person*"), any obligation of (a) the guaranteeing person or (b) another Person (including, without limitation, any bank under any letter of credit) to induce the creation of which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the "*primary obligations*") of any other third Person (the "*primary obligor*") in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof or (v) under Hedge Agreements; *provided, however*, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

19

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"*Guarantors*": the collective reference to each of the Loan Parties other than Desert Inn Improvement and the Borrower and, if the Wynn Resorts Guaranty or the Wynn Resorts Security Agreement has been executed and delivered pursuant to the Wynn Resorts Agreement, Wynn Resorts.

"*Hazardous Materials Activity*": any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Substances, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Substances, and any corrective action or response action with respect to any of the foregoing.

"*Hazardous Substances*": (statutory acronyms and abbreviations having the meaning given them in the definition of "Environmental Laws") substances defined as "hazardous substances," "pollutants" or "contaminants" in *Section 101* of the CERCLA; those substances defined as "hazardous waste," "hazardous materials" or "regulated substances" by the RCRA; those substances designated as a "hazardous substance" pursuant to *Section 311* of the CWA; those substances defined as "hazardous materials" in *Section 103* of the HMTA; 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 40 C.F.R. Part 1910, in any other Environmental Laws, and in the regulations adopted and publications promulgated pursuant to said laws, whether or not such regulations or publications are specifically referenced herein.

"*Hedge Agreements*": all interest rate swaps, caps or collar agreements or similar arrangements entered into by the Borrower providing for protection against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies.

"*Home Site Land*": a tract of land not greater than 20 acres located on the Golf Course Land where residential and non-gaming related developments may, after Disposition of the Home Site Land in accordance with Section 7.5(l), be built.

"*Increased Commitments*": as defined in Section 10.1.

"*Indebtedness*": of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of Property or services (other than trade payables incurred in the ordinary course of such Person's business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property), (e) all Capital Lease Obligations or Synthetic Lease

20

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Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party under acceptance, letter of credit, completion guaranties, performance bonds or similar facilities, (g) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Capital Stock of such Person, (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses



(a) through (g) above; (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, (j) for the purposes of Section 8(e) only, all obligations of such Person in respect of Hedge Agreements and (k) the liquidation value of any preferred Capital Stock of such Person or its Subsidiaries held by any Person other than such Person and its Wholly Owned Subsidiaries. All obligations under the Financing Agreements shall constitute Indebtedness.

"*Indemnified Liabilities*": as defined in Section 10.5.

"*Indemnitee*": as defined in Section 10.5.

"*Indemnity Agreements*": collectively, each of the Indemnity Agreements executed by a Loan Party with respect to its Mortgaged Properties in favor of the Administrative Agent substantially in the form of Exhibit F hereto, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"*Independent Director*": means, in the case of any Person, a member of the Board of Directors of such Person who (a) does not have (and whom the Board of Directors of such Person has affirmatively determined does not have) any material relationship (including, without limitation, any commercial, industrial, banking, consulting, legal, accounting, charitable or familial relationship) with such Person, either directly or indirectly or as a partner, equity holder or officer of an organization that has a relationship with such Person, and (b) is not the Principal or a Related Party. For purposes of this definition, no member of the Board of Directors of any Person who is, or who has a Related Party who (i) is a former employee of such Person shall be eligible for consideration as an "Independent Director" until the fifth anniversary of the date on which such employment ended, (ii) in the five years prior to the date of determination, has been affiliated with or employed by a present or former auditor of such Person or of any Affiliate of such Person shall be eligible for consideration as an "Independent Director" until the fifth anniversary of the date on which such affiliation or the auditing relationship ended, or (iii) in the five years prior to the date of determination, has been part of an interlocking directorate in which an executive officer of such Person serves on the compensation committee of another Person that employs such board member shall be eligible for consideration as an "Independent Director." Notwithstanding the preceding, no Person shall be deemed not to be an Independent Director of Wynn Resorts or any Loan Party solely because such Person is a member of the Board of Directors of any direct or indirect parent of a Loan Party.

"*Initial Agents*": the collective reference to the Syndication Agent, Bear Stearns Corporate Lending Inc. in its capacity as documentation agent, and the Administrative Agent.

"*Initial Arrangers*": collectively, Deutsche Bank Securities Inc., in its capacity as a lead arranger, Banc of America Securities LLC, in its capacity as a lead arranger, and Bear, Stearns & Co. Inc., in its capacity as an arranger.

"*Initial Loan Funding Date*": the date the initial Loans are made by the Lenders to the Borrower under this Agreement.

"*Insolvency*": with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

21

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"*Insolvent*": pertaining to a condition of Insolvency.

"*Insurance Advisor*": Marsh USA, Inc., or its successor, appointed by the Administrative Agent.

"*Insurance Proceeds*": all amounts and proceeds (including instruments) paid under any insurance policy maintained by a Loan Party (including, without limitation, any insurance policy required to be maintained by a Loan Party under any Operative Document) other than any such proceeds received in respect of the Aircraft which shall be governed by the FF&E Facility Agreement.

"*Insurance Requirements*": all material terms of any insurance policy required pursuant to this Agreement or any Security Document and all material regulations and then current standards applicable to or affecting any Mortgaged Property or any part thereof or any use or condition thereof, which may, at any time, be recommended by the Board of Fire Underwriters, if any, having jurisdiction over any Mortgaged Property, or any other body exercising similar functions.

"*Intellectual Property*": the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, state, multinational or foreign laws or otherwise, including, without limitation, copyrights, patents, trademarks, service-marks, technology, know-how and processes, recipes, formulas, trade secrets, or licenses (under which the applicable Person is licensor or licensee) relating to any of the foregoing and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

22

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"*Intellectual Property Collateral*": all Intellectual Property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by the Intellectual Property Security Agreement or the Guarantee and Collateral Agreement.

"*Intellectual Property Security Agreement*": the Intellectual Property Security Agreement to be executed and delivered by each Loan Party, substantially in the form of Exhibit C to the Guarantee and Collateral Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"*Intercreditor Agreements*": collectively, the Project Lender Intercreditor Agreement and the FF&E Intercreditor Agreement.

"*Interest Payment Date*": (a) as to any Base Rate Loan, the last day of each March, June, September and December to occur while such Loan is outstanding and the final maturity date of such Loan, (b) as to any Eurodollar Loan having an Interest Period of three months or less, the last day of such

Interest Period, (c) as to any Eurodollar Loan having an Interest Period longer than three months, each day which is three months, or a whole multiple thereof, after the first day of such Interest Period and the last day of such Interest Period and (d) as to any Loan (other than any Revolving Credit Loan that is a Base Rate Loan (unless all Revolving Credit Loans are being repaid in full in immediately available funds and the Revolving Credit Commitments terminated) and any Swing Line Loan), the date of any repayment or prepayment made in respect thereof.

"*Interest Period*": as to any Eurodollar Loan, (a) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Eurodollar Loan and ending one, two, three or six months thereafter, as selected by the Borrower in its Advance Request, Notice of Funding Request, Notice of Borrowing or notice of conversion, as the case may be, given with respect thereto; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan and ending one, two, three or six months thereafter, as selected by the Borrower by irrevocable notice to the Administrative Agent not less than three Business Days prior to the last day of the then current Interest Period with respect thereto; *provided*, that all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period that would otherwise extend beyond the Scheduled Revolving Credit Termination Date or the Scheduled Term Loan Termination Date, as the case may be, shall end on the Revolving Credit Termination Date or the Term Loan Termination Date, as applicable;

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; and

(iv) the Borrower shall select Interest Periods so as not to require a payment or prepayment of any Eurodollar Loan during an Interest Period for such Loan.

"*Investments*": as defined in Section 7.8.

"*IPO*": a bona fide underwritten initial public offering of Wynn Resorts' common stock (other than Disqualified Stock) concurrently with the closing of the transaction represented by this Agreement pursuant to a registration statement that has been declared effective by the Securities and Exchange Commission.

"*Issuing Lender*": Deutsche Bank Trust Company Americas and any other Revolving Credit Lender which at the request of the Borrower and with the consent of the Administrative Agent agrees to issue Letters of Credit. As of the Closing Date, the sole Issuing Lender shall be Deutsche Bank Trust Company Americas.

"*L/C Commitment*": \$25,000,000.

"*L/C Fee Payment Date*": the last day of each March, June, September and December and the last day of the Revolving Credit Commitment Period.

"*L/C Obligations*": at any time, an amount equal to the sum of (a) the aggregate then undrawn and unexpired amount of the then outstanding Letters of Credit and (b) the aggregate amount of drawings under Letters of Credit that have not then been reimbursed pursuant to Section 3.5.

"*L/C Participants*": the collective reference to all the Revolving Credit Lenders other than the Issuing Lender.

"*Las Vegas Jet*": Las Vegas Jet, LLC, a Nevada limited liability company.

"*Lender Addendum*": with respect to any initial Lender, a Lender Addendum, substantially in the form of Exhibit J hereto, to be executed and delivered by such Lender on the Closing Date as provided in Section 10.16.

"*Lender Default*": the failure or refusal (which has not been retracted in writing) of a Lender to make available (i) its portion of any Loan required to be made by such Lender hereunder (including, without limitation, Section 2.7(b)), (ii) its portion of any unreimbursed payment required to be made by such Lender under Section 3.4, (iii) its portion of any participating interest required to be purchased by such Lender pursuant to Section 2.7(c) or (iv) any amount required to be paid and/or reimbursed by such Lender to any Agent or any other Lender hereunder or under any other Loan Document (whether pursuant to Section 2.18(e) or otherwise), in each case at or prior to such time that the same is required to be so made, reimbursed or purchased by such Lender.

"*Lenders*": as defined in the preamble hereto and includes the Issuing Lender.

"*Letter of Credit Commitment Period*": the period from and including the Closing Date to the date that is 30 days prior to the Revolving Credit Termination Date.

"*Letter of Credit Request*": a certificate duly executed by a Responsible Officer of the Borrower substantially in the form of Exhibit O hereto.

"*Letters of Credit*": as defined in Section 3.1(a).

"*License Revocation*": the revocation, failure to renew or suspension of, or the appointment of a receiver or similar official with respect to, any casino, gambling or gaming license, including, without limitation, any Nevada Gaming Approvals, covering any portion of the Project.

"*Lien*": with respect to any Property, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such Property, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in

the nature thereof, any option or other agreement to sell or give a security interest in such Property and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction).

"*Liquidated Damages*": any proceeds or liquidated damages paid pursuant to any obligation, default or breach under the Project Documents (net of arm's length costs incurred by a Loan Party pursuant to arm's length transactions in connection with adjustment or settlement thereof and

24

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taxes paid with respect thereto). For purposes of this definition, so-called "liquidated damages" insurance policies shall be deemed to be Project Documents.

"*Liquidity Reserve Payment Date*": the date no later than five days after the earlier of (i) the date on which the financial statements of the Loan Parties referred to in Section 6.1(a) or (b), as the case may be, for the Quarterly Date upon which the requirements of Section 2.12(f) are satisfied, are required to be delivered to the Lenders and (ii) the date such financial statements are actually delivered.

"*Loan*": any loan made by any Lender pursuant to this Agreement.

"*Loan Conversion*": as defined in Section 2.4(a).

"*Loan Conversion Date*": as defined in Section 2.4(a).

"*Loan Documents*": this Agreement, the Security Documents, the Disbursement Agreement, the Intercreditor Agreements, the Management Fee Subordination Agreement, the Completion Guaranty, the Wynn Resorts Agreement (and the Wynn Resorts Guaranty and the Wynn Resorts Security Agreement, in each case if executed and delivered pursuant thereto), the Indemnity Agreements and the Notes.

"*Loan Parties*": the Borrower, Valvino, Capital Corp., Palo, Wynn Resorts Holdings, Desert Inn Water, Desert Inn Improvement, Wynn Design, World Travel, Las Vegas Jet and each other Subsidiary of Valvino other than the Completion Guarantor (including any such Subsidiaries that become party to a Loan Document pursuant to Section 6.10).

"*Loss Proceeds*": as defined in the Disbursement Agreement.

"*Majority Initial Arrangers*": at any time, the Initial Arrangers holding more than 50% of the sum of (i) the Total Initial Arranger Term Loan Commitments then in effect or, if the Term Loan Commitments have been terminated, the Total Initial Arranger Term Loan Extensions of Credit then outstanding and (ii) the Total Initial Arranger Revolving Credit Commitments then in effect or, if the Revolving Credit Commitments have been terminated, the Total Initial Arranger Revolving Extensions of Credit then outstanding; provided, that, for purposes of determining the Revolving Credit Commitments, Term Loan Commitments, Revolving Extensions of Credit or Term Loan Extensions of Credit, as applicable, held by an Initial Arranger at any time pursuant to this definition only, each Initial Arranger shall be deemed to hold such Revolving Credit Commitments, Term Loan Commitments, Revolving Extensions of Credit or Term Loan Extensions of Credit, as applicable, held by its Affiliates in addition to that held by it directly.

"*Management Agreement*": the Management Agreement, dated as of October , 2002, between the Loan Parties, on the one hand, and Wynn Resorts, on the other hand.

"*Management Fee Subordination Agreement*": the Management Fee Subordination Agreement, dated as of the date hereof, among the Loan Parties, Wynn Resorts, the Mortgage Notes Indenture Trustee and the Administrative Agent.

"*Management Fees*": as defined in the Management Agreement.

"*Managers*": collectively, Deutsche Bank Securities Inc., in its capacity as a joint book running manager, Banc of America Securities LLC, in its capacity as a joint book running manager, and Bear, Stearns & Co. Inc., in its capacity as a joint book running manager.

"*Material Adverse Effect*": (i) 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 Borrower and the other Loan Parties taken as a whole, (b) the Project, (c) the validity or enforceability of this Agreement or any of the other Loan

25

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Documents, (d) the validity, enforceability or priority of the Liens purported to be created by the Security Documents, or (e) the rights or remedies of any Secured Party hereunder or under any of the other Loan Documents or (ii) any event or circumstance that calls into question in any material respect the Projections or any of the material assumptions on which the Projections were prepared.

"*Material Affiliated Contracts*": any Material Contract to which a Loan Party, on the one hand, and an Affiliate of such Loan Party (including any other Loan Party), on the other hand, are parties.

"*Material Contract*": (i) the Golf Course Lease, the Driving Range Lease, the Employee Parking Lot Lease, the Management Agreement, the Tax Indemnification Agreement, the WDD Agreement, the Building Lease, the Water Supply Agreement and the Water Show Entertainment and Production Agreement and (ii) any other contract or arrangement to which (a) a Loan Party, on the one hand, and an Affiliate of such Loan Party (including any other Loan Party), on the other hand, are parties pursuant to which the Loan Parties are, or any one of them is, reasonably expected to incur obligations or liabilities with a Dollar value in excess of \$1,000,000 during the term of such contract or arrangement or (b) any Loan Party is a party (other than the Financing Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect (taking into consideration any viable replacements or substitutions therefor at the time such determination is made).

"Moody's": Moody's Investors Service, Inc., a Delaware corporation, or any successor thereof.

"Mortgage Note Guarantee": the Guarantee and Collateral Agreement dated as of October , 2002 among each Loan Party (other than Desert Inn Improvement) and the Mortgage Notes Indenture Trustee.

"Mortgage Note Holders": the holders of the Mortgage Notes from time to time.

"Mortgage Notes": the [ ]% Mortgage Notes due 2010 issued by the Borrower and Capital Corp. pursuant to the Mortgage Notes Indenture.

"Mortgage Notes Indenture": that certain Indenture, dated as of October , 2002, between the Borrower, Capital Corp., certain guarantors named therein and the Mortgage Notes Indenture Trustee.

"Mortgage Notes Indenture Trustee": Wells Fargo Bank, National Association in its capacity as the trustee under the Mortgage Notes Indenture and its successors in such capacity.

"Mortgaged Properties": the real properties and leasehold estates listed on *Schedule 1.1* or otherwise as to which the Administrative Agent for the benefit of the Secured Parties shall be granted a Lien pursuant to the Mortgages (including at such time, if any, as Desert Inn Improvement executes the Water Property Mortgage, the Water Utility Land).

"Mortgages": each of the mortgages, deeds of trust and deeds to secure Obligations made by any Loan Party in favor of, or for the benefit of, the Administrative Agent for the benefit of the Secured Parties (including at such time, if any, as Desert Inn Improvement executes the Water Property Mortgage, the Water Property Mortgage), substantially in the form of Exhibit D hereto (with such changes thereto as shall be advisable under the law of the jurisdiction in which such mortgage or deed of trust is to be recorded), as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"Mr. Wynn": Stephen A. Wynn, an individual.

"Multiemployer Plan": a Plan that is a multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA.

"Net Cash Proceeds": (a) in connection with any Asset Sale, the proceeds thereof in the form of cash and Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received) of such Asset Sale, net of arm's length attorneys' fees, accountants' fees, investment banking fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset which is the subject of such Asset Sale (other than any Lien pursuant to a Security Document or an Other Security Document (other than a Lien securing obligations under the FF&E Facility Agreement to the extent that (i) such payment is not prohibited under the Intercreditor Agreements or this Agreement and (ii) such Lien on the Collateral subject to such Asset Sale is a Senior Permitted Lien with respect to such Collateral)) and other arm's length fees and expenses, in each case, to the extent actually incurred in connection therewith and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any tax credits or deductions and any tax sharing arrangements, in each case reducing the amount of taxes so paid or estimated to be payable) and (b) in connection with any issuance or sale of debt securities or instruments or the incurrence of loans, the cash proceeds received from such issuance or incurrence, net of arm's length attorneys' fees, investment banking fees, accountants' fees, underwriting discounts and commissions and other arm's length fees and expenses, in each case, to the extent actually incurred by the Borrower or another Loan Party in connection therewith.

"Net Disposition Proceeds": in connection with any Disposition, the proceeds thereof in the form of cash or Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received) of such Disposition, net of arm's length attorneys' fees, accountants' fees, investment banking fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset which is the subject of such Disposition (other than any Lien pursuant to a Security Document or an Other Security Document (other than a Lien securing obligations under the FF&E Facility Agreement to the extent that (i) such payment is not prohibited under the Intercreditor Agreements or this Agreement and (ii) such Lien on the Collateral subject to such Disposition is a Senior Permitted Lien with respect to such Collateral)) and other arm's length fees and expenses, in each case, to the extent actually incurred in connection therewith and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any tax credits or deductions and any tax sharing arrangements, in each case reducing the amount of taxes so paid or estimated to be payable).

"Net Revenues": for any period, the net revenues of the Borrower and its consolidated Subsidiaries, as set forth on the Borrower's income statement for the relevant period under the line item "net revenues," calculated in accordance with GAAP and with Regulation S-X under the Securities Act and in a manner consistent with that customarily utilized in the gaming industry.

"Nevada Gaming Approvals": with respect to any action by a particular Person, any consent, approval or other authorization required for such action by such Person from a Nevada Gaming Authority or under Nevada Gaming Laws.

"Nevada Gaming Authorities": collectively, the Nevada Gaming Commission, the Nevada State Gaming Control Board, the Clark County Liquor and Gaming Licensing Board and any other federal or state agency having jurisdiction over gaming operations in the State of Nevada.

"Nevada Gaming Laws": the Nevada Gaming Control Act, as codified in Chapter 463 of the NRS, as amended from time to time, the regulations of the Nevada Gaming Commission promulgated thereunder, as amended from time to time, and other laws promulgated by the Nevada Gaming Authorities and applying to gaming operations in the State of Nevada.

"Non-Defaulting Lender": any Lender other than a Defaulting Lender.

"*Non-Excluded Taxes*": as defined in Section 2.20(a).

"*Non-U.S. Lender*": as defined in Section 2.20(f).

"*Note Debt Service*": for any period, (a) all fees payable during such period to the Mortgage Notes Indenture Trustee and the Mortgage Note Holders under the Mortgage Notes Indenture and related agreements, documents and instruments (including, without limitation, the Mortgage Notes Guarantees and the Other Security Documents related to the Mortgage Notes Indenture and the Mortgage Notes Guarantees) and (b) interest on the Mortgage Notes payable during such period.

"*Note Debt Service Shortfall Notice*": a written notice by the Mortgage Notes Indenture Trustee to the Administrative Agent pursuant to Section 3.2.3 (b) of the Project Lender Intercreditor Agreement certifying that the Borrower has notified the Mortgage Notes Indenture Trustee in writing that the Borrower does not have sufficient funds to pay Note Debt Service as the same will become due and owing.

"*Notes*": the collective reference to the Revolving Credit Notes, the Term Notes and the Swing Line Notes, if any, evidencing Loans.

"*Notice of Advance Requests*": as defined in the Disbursement Agreement.

"*Notice of Borrowing*": a certificate duly executed by a Responsible Officer of the Borrower substantially in the form of Exhibit M hereto.

"*Notice of Loan Conversion*": as defined in Section 2.4(b).

"*NRS*": the Nevada Revised Statutes, as amended from time to time.

"*Obligations*": the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Loans and Reimbursement Obligations 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) the Loans and all other obligations and liabilities of the Loan Parties or Wynn Resorts to any Arranger, to any Agent, to any Manager or to any Lender (or, in the case of Specified Hedge Agreements, any affiliate of any Lender), whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other

Loan Document, the Letters of Credit, any Specified Hedge Agreement or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including, without limitation, all fees, charges and disbursements of counsel to any Arranger, to any Agent, to any Manager or to any Lender that are required to be paid by any Loan Party pursuant hereto or to any other Loan Document) or otherwise; *provided*, that (i) Obligations of the Borrower under any Specified Hedge Agreement shall be secured and guaranteed pursuant to the Security Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (ii) any release of Collateral or Guarantors effected in the manner permitted by this Agreement shall not require the consent of holders of obligations under Specified Hedge Agreements.

"*On-Site Cash*": amounts held in cash at the Site in connection with and necessary for the ordinary course operations of the Project.

"*Opening Conditions*": as defined in the Disbursement Agreement.

"*Opening Date*": as defined in the Disbursement Agreement.

"*Operative Documents*": the Financing Agreements and the Project Documents.

"*Other Indebtedness*": (i) the Indebtedness of any Loan Party evidenced by the Mortgage Notes or the Mortgage Note Guarantee and (ii) the Indebtedness of any Loan Party evidenced by the FF&E Facility Agreement or the FF&E Guarantee.

"*Other Security Documents*": any agreement, document, instrument or deed granting, creating or evidencing any security or lien for any Other Indebtedness, including, without limitation, the "Security Documents" as defined in the Disbursement Agreement, other than the Security Documents.

"*Palo*": Palo, LLC, a Delaware limited liability company.

"*Palo Home Site Land*": the approximately 1.24 acre tract of land adjacent to the Golf Course owned by Palo, as more particularly described in Exhibit T-4 to the Disbursement Agreement.

"*Participant*": as defined in Section 10.6(b).

"*Pass Through Entity*": any of (1) a grantor trust for federal or state income tax purposes or (2) an entity treated as a partnership or a disregarded entity for federal or state income tax purposes.

"*Payment Amount*": as defined in Section 3.5.

"*Payment Office*": the office of the Administrative Agent specified in Section 10.2 or as otherwise specified from time to time by the Administrative Agent as its payment office by notice to the Borrower and the Lenders.

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

"*Permits*": the collective reference to (i) Environmental Permits, and (ii) any and all other franchises, licenses, leases, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, variances, qualifications, easements, rights of way, Liens and other rights, privileges

and approvals required under any Requirement of Law (including Nevada Gaming Laws).

"*Permitted Businesses*": (i) the gaming business, (ii) the development, construction, ownership and operation of a Gaming Facility, (iii) all businesses, whether or not licensed by the Nevada Gaming Authorities, which are necessary for, incident to, useful to, arising out of, supportive of or

29

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connected to the development, construction, ownership or operation of a Gaming Facility, (iv) any development, construction or operation of lodging, retail, restaurant or convention facilities, sports or entertainment facilities, food and beverage distribution operations, transportation services (including operation of the Aircraft and chartering thereof), parking services, sales and marketing services or other activities related to the foregoing, (v) any business (including any related internet business) that is a reasonable extension, development or expansion of any of the foregoing or incidental thereto and/or (vi) the ownership by a Person of Capital Stock in its directly Wholly Owned Subsidiaries; *provided, however*, that with respect to the Borrower and its Subsidiaries other than, with respect to the ownership and operation of the Aircraft only, World Travel and Las Vegas Jet, the foregoing shall only be Permitted Businesses to the extent related to the Project or furtherance of the Project's development, construction, ownership or operation; *provided, further*, that, notwithstanding the foregoing, the Borrower shall be permitted to sublease space within the Phase II Building to Persons not related to the development, construction, ownership or operation of the Project.

"*Permitted Encumbrances*": as defined in the Disbursement Agreement.

"*Permitted Liens*": the collective reference to (i) in the case of Collateral other than Pledged Stock, Liens permitted by Section 7.3 (but only of the priority and to the extent of coverage expressly set forth in Section 7.3 and subject to the provisions of the Intercreditor Agreements) and (ii) in the case of Collateral consisting of Pledged Stock, non-consensual Liens permitted by Section 7.3 to the extent arising by operation of law and Liens permitted by Section 7.3(k).

"*Permitted Refinancing Indebtedness*": any Indebtedness of the Borrower and, with respect to the Mortgage Notes, Capital Corp. (and, with respect to Guaranty Obligations in support thereof, the other Loan Parties) issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund the Mortgage Notes or Indebtedness under the FF&E Facility; *provided*, that (i) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded (plus all accrued interest on such Indebtedness and the amount of all expenses and premiums incurred in connection therewith), (ii) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded, (iii) the restrictions on the Loan Parties contained in the agreements governing such Permitted Refinancing Indebtedness are no more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded, (iv) if such Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Loan Documents, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Loan Documents on terms at least as favorable to the Lenders as those contained in the applicable documents reflecting such subordination (whether the Intercreditor Agreements or otherwise), (v) the relevant holders of such Permitted Refinancing Indebtedness become party to the Intercreditor Agreements, as applicable, and (vi) all agreements, instruments, documentation and other arrangements associated with such Permitted Refinancing Indebtedness is in form and substance reasonably satisfactory to the Administrative Agent. In the event Permitted Refinancing Indebtedness is used to extend, refinance, renew, replace, amend and restate, restate, defease or refund the Mortgage Notes or the Indebtedness under the FF&E Facility, all relevant definitions and provisions of the Loan Documents related to the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded shall be amended, as necessary, to reflect such Permitted Refinancing Indebtedness and related documentation and/or arrangements.

30

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"*Permitted Securities*": (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 18 months from the date of acquisition, or (b) shares of money market, mutual or similar funds which invest exclusively in assets satisfying the requirements of clause (a) of this definition.

"*Person*": an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"*Phase II Land*": the approximately 20-acre tract of land adjacent to the Le Rêve hotel and casino resort owned by Valvino, as more particularly described in Exhibit T-4 to the Disbursement Agreement.

"*Phase II Land Building*": the building existing on the Phase II Land as of the Closing Date that is subject to the Building Lease.

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

"*Plans and Specifications*": as defined in the Disbursement Agreement.

"*Pledged Stock*": as defined in the Guarantee and Collateral Agreement.

"*Point of Diversion*": with respect to any Water Permit, the location designated under such Water Permit where a well can be located for the draw of water under such Water Permit.

"*Presumed Tax Liability*": for any Person that is not a Pass Through Entity for any period, an amount equal to the product of (a) the Taxable Income allocated or attributable to such Person (directly or through one or more tiers of Pass Through Entities) (net of taxable losses allocated to such Person with

respect to any Loan Party that (i) are, or were previously, deductible by such Person and (ii) have not previously reduced Taxable Income), and (b) the Presumed Tax Rate.

"*Presumed Tax Rate*": with respect to any Person for any period means the highest effective combined Federal, state and local income tax rate applicable during such period to a corporation organized under the laws of the State of Nevada, taxable at the highest marginal Federal income tax rate and the highest marginal Nevada and Las Vegas income tax rates (after giving effect to the Federal income tax deduction for such state and local income taxes, taking into account the effects of the alternative minimum tax, such effects being calculated on the assumption that such Person's only taxable income is the income allocated or attributable to such Person for such period (directly or through one or more tiers of Pass Through Entities) with respect to its equity interest in any of the Loan Parties that is a Pass Through Entity.) In determining the Presumed Tax Rate, the character of the items of income and gain comprising Taxable Income (e.g. ordinary income or long term capital gain) shall be taken into account.

"*Pricing Grid*": the pricing grid attached hereto as Annex A.

"*Prime Rate*": shall mean the prime lending rate as set forth on the British Banking Association Telerate Page 5 (or such other comparable page as may, in the opinion of the Administrative Agent, replace such page for purpose of displaying such rate), as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually available. Any change in the Base Rate due to a change in the Prime Rate or the

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Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"*Proceedings*": as defined in Section 6.7(c).

"*Project*": the Le Rêve Casino Resort, a hotel and casino resort, with related parking structure and golf course facilities to be developed on the Site, all as more particularly described in Exhibit T-1 to the Disbursement Agreement.

"*Project Budget*" as defined in the Disbursement Agreement.

"*Project Costs*": as defined in the Disbursement Agreement.

"*Project Documents*": any and all "Project Documents" as defined in the Disbursement Agreement and any other document or agreement entered into on, prior to or after the Closing Date (including Material Contracts and Additional Material Contracts) relating to the design, engineering, development, construction, installation, maintenance or operation of the Project (including any Guarantee Obligations in furtherance thereof).

"*Project Lender Intercreditor Agreement*": that certain Intercreditor Agreement, as of the Closing Date among the Administrative Agent and the Mortgage Notes Indenture Trustee, in the form of Exhibit K-1 hereto.

"*Project Liquidity Reserve Account*": as defined in the Disbursement Agreement.

"*Project Revenues*": all income and receipts of the Loan Parties including, without limitation, those derived from the ownership or operation of the Project or the Permitted Businesses, including payments received by the Loan Parties under any Project Document, Material Contract or Additional Material Contract, net payments, if any, received under Hedge Agreements, Liquidated Damages, Insurance Proceeds, Eminent Domain Proceeds, together with any receipts derived from the sale of any property pertaining to the Project or the Permitted Businesses or incidental to the operation of the Project or the Permitted Businesses, all as determined in conformity with cash accounting principles, and the proceeds of any condemnation awards relating to the Project or the Permitted Businesses.

"*Projections*": as defined in Section 6.2(c).

"*Property*": any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

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"*Qualified Affiliate Transaction*": any transaction by or among one or more of the Loan Parties, on the one hand, and one or more of Wynn Resorts or any of its Subsidiaries, on the other hand, for the provision of goods, rights and/or services to be used in Permitted Businesses related to or in connection with and, in any event, for the benefit of, the Project.

"*Quarterly Date*": (i) in the case of the calculation of Consolidated EBITDA pursuant to Section 7.1(b), (x) with respect to the first Quarterly Date, the last day of the fiscal quarter of the Borrower in which the Opening Date occurs unless such date is less than 45 days after the Opening Date, in which case the last day of the first full fiscal quarter of the Borrower after the Opening Date and (y) with respect to each subsequent Quarterly Date, the last day of the next succeeding fiscal quarter of the Borrower and (ii) in all other cases, (x) the last day of the fiscal quarter next succeeding the first Quarterly Date for purposes of calculating Consolidated EBITDA pursuant to Section 7.1(b) as determined pursuant to clause (i) of this definition, and (y) with respect to each subsequent Quarterly Date, the last day of the next succeeding fiscal quarter of the Borrower; *provided*, that in no event shall the first Quarterly Date with respect to subparts (i) and (ii) of this definition be later than December 31, 2005.

"*Real Estate*": All real property held or used by the Loan Parties, which the relevant Loan Party owns in fee or in which it holds a leasehold interest as a tenant or in which it holds an easement right as an easement holder or otherwise occupies, including, without limitation, the real property more particularly identified in *Schedule 4.25(a)* and includes, without limitation, the Site and the Site Easements.

"*Refunded Swing Line Loans*": as defined in Section 2.7(b).

"*Refunding Date*": as defined in Section 2.7(c).

"*Register*": as defined in Section 10.6(d).

"*Regulation D*": Regulation D of the Board as in effect from time to time (and any successor to all or a portion thereof).

"*Regulation H*": Regulation H of the Board as in effect from time to time (and any successor to all or a portion thereof).

"*Regulation T*": Regulation T of the Board as in effect from time to time (and any successor to all or a portion thereof).

"*Regulation U*": Regulation U of the Board as in effect from time to time (and any successor to all or a portion thereof).

"*Regulation X*": Regulation X of the Board as in effect from time to time (and any successor to all or a portion thereof).

"*Reimbursement Obligation*": the obligation of the Borrower to reimburse the Issuing Lender pursuant to Section 3.5 for amounts drawn under Letters of Credit.

"*Reinvested Amounts*": as defined in Section 2.12(e).

"*Reinvestment Deferred Amount*": with respect to any Reinvestment Event, the aggregate Net Cash Proceeds received by the Borrower or any other Loan Party in connection therewith that are not applied to prepay the Term Loans or reduce the Revolving Credit Commitments pursuant to Section 2.12(b) as a result of the delivery of a Reinvestment Notice.

"*Reinvestment Event*": any Asset Sale in respect of which the Borrower has delivered a Reinvestment Notice.

33

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"*Reinvestment Notice*": a written notice executed by a Responsible Officer of the Borrower and, if applicable, a Responsible Officer of any other Loan Party who made or is making the corresponding Asset Sale and delivered to the Administrative Agent within 30 days after such Asset Sale, stating that no Default or Event of Default has occurred and is continuing and that the Borrower (and, if applicable, such other Loan Party) intends and expects to use all or a specified portion of the Net Cash Proceeds of such Asset Sale to acquire assets useful in its Permitted Business.

"*Reinvestment Prepayment Amount*": with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to acquire assets useful in the Borrower's or the other applicable Loan Party's, as the case may be, Permitted Business.

"*Reinvestment Prepayment Date*": with respect to any Reinvestment Event, the earlier of (a) the date occurring six months after such Reinvestment Event (or, if the contemplated acquisition of assets in connection with the corresponding Reinvestment Notice cannot be completed within such six month period but is reasonably expected to be completed within nine months after such Reinvestment Event, nine months after such Reinvestment Event) and (b) the date on which the Borrower or the applicable Loan Party shall have determined not to acquire assets useful in its respective Permitted Business with all or any portion of the relevant Reinvestment Deferred Amount.

"*Related Party*": either (i) any 80% (or more) owned Subsidiary, heir, estate, lineal descendent or immediate family member of Mr. Wynn; or (ii) any trust, corporation, partnership or other entity, the beneficiaries, equity holders, partners, owners or Persons beneficially holding an 80% or more controlling interest of which consist of Mr. Wynn and/or such other Persons referred to in the immediately preceding clause (i).

"*Release*": any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Substances into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Substances), including the movement of any Hazardous Substances through the air, soil, surface water or groundwater.

"*Remaining Costs*": as defined in the Disbursement Agreement.

"*Reorganization*": with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

"*Repair Plan*": as defined in Section 2.24(a)(iv).

"*Replacement Aircraft*": that certain aircraft to be acquired with the proceeds of the Replacement Aircraft Indebtedness.

"*Replacement Aircraft Indebtedness*": Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations incurred by Wynn Resorts or a direct Wholly Owned Subsidiary (which may be a trust) of Wynn Resorts (other than any Loan Party) for the purpose of financing all or part of the purchase price of a Replacement Aircraft, so long as: (a) the principal amount of such Indebtedness does not exceed the cost (including sales and excise taxes, installation and delivery charges and other direct costs of, and other direct expenses paid or charged in connection with, such purchase) of the Replacement Aircraft purchased with the proceeds thereof, (b) the aggregate principal amount of such Indebtedness does not exceed \$55.0 million at any time outstanding, and (c) no Loan Party (i) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) as

34

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to such Indebtedness, (ii) is directly or indirectly liable as a guarantor or otherwise as to such Indebtedness, or (iii) constitutes the lender of such Indebtedness.

"*Reportable Event*": any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the thirty day notice period is waived under subsections .27, .28, .29, .30, .31, .32, .34 or .35 of PBGC Reg. Section 4043.

"*Required Facility Lenders*": with respect to any Facility, Non-Defaulting Lenders holding more than 50% of the Total Term Loan Extensions of Credit of Non-Defaulting Lenders or the Total Revolving Extensions of Credit of Non-Defaulting Lenders, as the case may be, outstanding under such Facility (or, prior to any termination of the Term Loan Commitments or the Revolving Credit Commitments, as the case may be, Non-Defaulting Lenders holding more than 50% of the Total Term Loan Credit Commitments (less the aggregate Term Loan Commitments of Defaulting Lenders) or Total Revolving Credit Commitments (less the aggregate Revolving Credit Commitments of Defaulting Lenders), as the case may be).

"*Required Lenders*": at any time, Non-Defaulting Lenders holding more than 50% of the sum of (i) the Total Term Loan Commitments (less the aggregate Term Loan Commitments of Defaulting Lenders) then in effect or, if the Term Loan Commitments have been terminated, the Total Term Loan Extensions of Credit of Non-Defaulting Lenders then outstanding and (ii) the Total Revolving Credit Commitments (less the aggregate Revolving Credit Commitments of Defaulting Lenders) then in effect or, if the Revolving Credit Commitments have been terminated, the Total Revolving Extensions of Credit of Non-Defaulting Lenders then outstanding.

"*Required Minimum Contingency*": as defined in the Disbursement Agreement.

"*Requirement of Law*": as to any Person, the Governing Documents of such Person, and any law, treaty, order, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"*Responsible Officer*": as to any Person, the chief executive officer, president or chief financial officer of such Person, but in any event, with respect to financial matters, the chief financial officer of such Person. Unless otherwise qualified, all references to a "Responsible Officer" shall refer to a Responsible Officer of the Borrower or Wynn Resorts.

"*Restricted Payments*": as defined in Section 7.6.

"*Revolving Commitment Fee*": as defined in Section 2.9(a).

"*Revolving Commitment Fee Rate*": 2.00% per annum; *provided*, that on and after the first Adjustment Date occurring after the Opening Date, the Revolving Commitment Fee Rate will be determined pursuant to the Pricing Grid.

"*Revolving Credit Commitment Period*": the period from and including the Closing Date to the Revolving Credit Termination Date.

"*Revolving Credit Commitment*": as to any Lender, the obligation of such Lender, if any, to make Revolving Credit Loans and/or participate in Swing Line Loans and Letters of Credit, in an aggregate principal and/or face amount not to exceed the amount set forth under the heading "Revolving Credit Commitment" opposite such Lender's name on Schedule 1 to the Lender Addendum delivered by such Lender, or, as the case may be, in the Assignment and Acceptance pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof.

"*Revolving Credit Lender*": each Lender that has a Revolving Credit Commitment or that is the holder of Revolving Credit Loans.

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"*Revolving Credit Loans*": as defined in Section 2.3; *provided*, that any Revolving Credit Loans converted to Term Loans pursuant to Section 2.4 shall cease to be deemed Revolving Credit Loans as of the applicable Loan Conversion Date.

"*Revolving Credit Notes*": as defined in Section 2.8(e).

"*Revolving Credit Percentage*": as to any Revolving Credit Lender at any time, the percentage which such Lender's Revolving Credit Commitment then constitutes of the Total Revolving Credit Commitments (or, at any time after the Revolving Credit Commitments shall have expired or terminated, the percentage which the aggregate principal and/or face amount of such Lender's Revolving Extensions of Credit then outstanding constitutes of the aggregate principal and/or face amount of the Total Revolving Extensions of Credit then outstanding).

"*Revolving Credit Termination Date*": the earlier of (a) the Scheduled Revolving Credit Termination Date and (b) the date on which the Loans become due and payable pursuant to Section 8.

"*Revolving Extensions of Credit*": as to any Revolving Credit Lender at any time, an amount equal to the sum of (a) the aggregate principal amount of all Revolving Credit Loans made by such Lender then outstanding, (b) such Lender's Revolving Credit Percentage of the L/C Obligations then outstanding and (c) such Lender's Revolving Credit Percentage of the aggregate principal amount of Swing Line Loans then outstanding.

"S&P": Standard & Poor's Ratings Group, a New York corporation, or any successor thereof.

"*Scheduled Completion Date*": as defined in the Disbursement Agreement. As of the Closing Date, the Scheduled Completion Date is April 30, 2005.

"*Scheduled Revolving Credit Termination Date*": the sixth anniversary of the Closing Date.

"*Scheduled Term Loan Termination Date*": the seventh anniversary of the Closing Date.

"SEC": the Securities and Exchange Commission (or successors thereto or an analogous Governmental Authority).

"*Second Mortgage Notes Proceeds Account*": as defined in the Disbursement Agreement.

"*Secured Parties*": collectively, the Arrangers, the Agents, the Managers, the Lenders and, with respect to any Specified Hedge Agreement, any affiliate of any Lender party thereto (or any Person that was a Lender or an affiliate thereof when such Specified Hedge Agreement was entered into) that has agreed to be bound by the provisions of Section 7.2 of the Guarantee and Collateral Agreement as if it were a party thereto, and by the provisions of Section 9 hereof as if it were a Lender party thereto.

"*Security Documents*": the collective reference to the Guarantee and Collateral Agreement, the Wynn Resorts Guaranty and the Wynn Resorts Security Agreement (to the extent executed and delivered pursuant to the Wynn Resorts Agreement), the Intellectual Property Security Agreement, the Control Agreements, the Mortgages, the Consents and all other pledge and security documents hereafter delivered to the Administrative Agent granting a Lien on any Property (or associated with such a grant) of any Person to secure the obligations and liabilities of any Loan Party, the Completion Guarantor or Wynn Resorts under any Loan Document.

"*Senior Permitted Liens*": Permitted Liens that are expressly permitted by the terms of the Loan Documents to be superior in priority to the Liens of the Security Documents.

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

36

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"*Site*": all or any portion of the Real Estate, as described in Exhibit T-4 to the Disbursement Agreement. The Site includes, without limitation, the Wynn Home Site Land (until such time (if ever) as such Property has been Disposed of in accordance with Section 7.5(j)), the Golf Course Land (until such time (if ever) as such Property has been Disposed of in accordance with Section 7.5(k)), the Home Site Land (until such time (if ever) as such Property has been Disposed of in accordance with Section 7.5(l)), the Phase II Land (until such time (if ever) as such Property has been Disposed of in accordance with Section 7.5(m)) and any other Property which is subject to a lien under any Mortgage.

"*Site Easements*": the easements appurtenant, easements in gross, license agreements and other rights running for the benefit of the Borrower or any other Loan Party and/or appurtenant to the Site, including, without limitation, those certain easements and licenses described in the Title Policies.

"*Solvent*": when used with respect to any Person, as of any date of determination, (a) the amount of the "present fair saleable value" of the assets of such Person will, as of such date, exceed the amount of all "liabilities of such Person, contingent or otherwise", as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, (d) such Person will be able to pay its debts as they mature, and (e) such Person is not insolvent within the meaning of any applicable Requirements of Law. For purposes of this definition, (i) "debt" means liability on a "claim", and (ii) "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

"*Specified Change of Control*": a "change of control" or similar event (howsoever defined) as defined (i) in the Mortgage Notes Indenture or (ii) the FF&E Facility Agreement.

"*Specified FF&E*": collectively, (a) the Aircraft Note, (b) any "FF&E Collateral" (as defined in the FF&E Intercreditor Agreement) and (c) any replacement of any "FF&E Component Collateral" (as defined in the FF&E Intercreditor Agreement) permitted under the FF&E Facility Agreement; *provided*, that with respect to any replacement of any "FF&E Component Collateral" (as defined in the FF&E Intercreditor Agreement), such replacement shall only constitute Specified FF&E hereunder so long as (x) subject to clause (y) below, at least 75% of the cost of such replacement is paid for with the proceeds from the sale of the "FF&E Component Collateral" being replaced and (y) in the event such replacement is being paid for with any "Loss Proceeds" (as defined in the FF&E Intercreditor Agreement) pursuant to the FF&E Intercreditor Agreement, 100% of the cost of such replacement is paid for with such "Loss Proceeds".

37

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"*Specified Hedge Agreement*": any Hedge Agreement (a) entered into by (i) the Borrower and (ii) any Lender or any affiliate thereof, or any Person that was a Lender or an affiliate thereof when such Hedge Agreement was entered into as counterparty and (b) which has been designated by such Lender and the Borrower, by notice to the Administrative Agent not later than 90 days after the execution and delivery thereof by the Borrower, as a Specified Hedge Agreement; *provided*, that the designation of any Hedge Agreement as a Specified Hedge Agreement shall not create in favor of any Lender or affiliate thereof that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Guarantor under the Guarantee and Collateral Agreement.

"*Stockholders Agreement*": that certain Stockholders Agreement, dated as of April 11, 2002, by and among Mr. Wynn, Baron Asset Fund and Aruze USA, as in effect on the Closing Date.

"*Stop Funding Notice*": as defined in the Disbursement Agreement.

"*Subordinated Debt*": Indebtedness that (i) does not have any scheduled principal payment, mandatory principal prepayment, sinking fund payment or similar payment due prior to the Scheduled Term Loan Termination Date, (ii) is not secured by any Lien on any Property, (iii) is subordinated on terms and conditions reasonably satisfactory to the Initial Arrangers and in any event not less favorable to the Lenders than the terms of the Subordinated Intercompany Note and (iv) is subject to such covenants and events of default as may be reasonably acceptable to the Initial Arrangers; *provided*, that Permitted Refinancing Indebtedness or Indebtedness permitted pursuant to Section 7.2(d) shall not be deemed Subordinated Debt.

"*Subordinated Intercompany Note*": the Subordinated Intercompany Note to be executed and delivered by the Borrower and each of the other Loan Parties, substantially in the form of Exhibit L hereto, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"*Subsidiary*": 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 Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

"*Substitute Lender*": as defined in Section 10.13(a).

"*Supermajority Lenders*": at any time, Non-Defaulting Lenders holding more than 66<sup>2</sup>/<sub>3</sub>% of the sum of (i) the Total Term Loan Commitments (less the aggregate Term Loan Commitments of Defaulting Lenders) then in effect or, if the Term Loan Commitments have been terminated, the Total Term Loan Extensions of Credit of Non-Defaulting Lenders then outstanding and (ii) the Total Revolving Credit Commitments (less the aggregate Revolving Credit Commitments of Defaulting Lenders) then in effect or, if the Revolving Credit Commitments have been terminated, the Total Revolving Extensions of Credit of Non-Defaulting Lenders then outstanding.

"*Swing Line Commitment*": the obligation of the Swing Line Lender to make Swing Line Loans pursuant to Section 2.6 in an aggregate principal amount at any one time outstanding not to exceed \$10,000,000.

"*Swing Line Credit Commitment Period*": the period from and including the Completion Date to the Revolving Credit Termination Date.

38

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"*Swing Line Lender*": Deutsche Bank Trust Company Americas, in its capacity as the lender of Swing Line Loans.

"*Swing Line Loans*": as defined in Section 2.6.

"*Swing Line Notes*": as defined in Section 2.8(e).

"*Swing Line Participation Amount*": as defined in Section 2.7(c).

"*Syndication Agent*": Banc of America Securities LLC, in its capacity as syndication agent.

"*Synthetic Lease Obligations*": all monetary obligations of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations which do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the Indebtedness of such Person (without regard to accounting treatment).

"*Taking*": a taking or voluntary conveyance during the term of this Agreement of all or part of any Mortgaged Property, or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any condemnation or other eminent domain proceeding by any Governmental Authority affecting a Mortgaged Property or any portion thereof, whether or not the same shall have actually been commenced.

"*Tax Amount*": with respect to any period, (i) in the case of any direct or indirect member of a Loan Party that is a Pass Through Entity, the Presumed Tax Liability of such direct or indirect member, and (ii) with respect to any of the Loan Parties that are Consolidated Members, the aggregate federal income tax liability such Persons would owe for such period if each was a corporation filing federal income tax returns on a stand alone basis at all times during its existence and, if any of the Consolidated Members files a consolidated or combined state income tax return such that it is not paying its own state income taxes, then Tax Amount shall also include the aggregate state income tax liability such Consolidated Members would have paid for such period if each was a corporation filing state income tax returns on a stand alone basis at all times during its existence.

"*Tax Indemnification Agreement*": that certain Tax Indemnification Agreement, dated as of October , 2002 among the Existing Stockholders, Valvino and Wynn Resorts, as in effect as of the date hereof.

"*Taxable Income*": with respect to any Person for any period, the taxable income or loss of such Person for such period for federal income tax purposes as a result of such Person's equity ownership of one or more Loan Parties that are Pass Through Entities for such period; *provided, however*, that all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss.

"*Term Loan Commitment*": as to any Term Loan Lender, the obligation of such Lender, if any, to make a Term Loan to the Borrower hereunder in a principal amount not to exceed the amount set forth under the heading "Term Loan Commitment" opposite such Lender's name on Schedule 1 to the Lender Addendum delivered by such Lender, or, as the case may be, in the Assignment and Acceptance pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof; *provided*, that the original aggregate amount of the Term Loan Commitments is \$250,000,000.

"*Term Loan Commitment Fee Rate*": 2.50% per annum for the period from the Closing Date through December 31, 2002, 3.00% per annum for the period from January 1, 2003 through June 30, 2003 and 4.00% per annum for the period from July 1, 2003 through the Term Loan Commitment Termination Date.

39

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"Term Loan Commitment Period": the period from and including the Closing Date to the Term Loan Commitment Termination Date.

"Term Loan Commitment Termination Date": the date that is the last day of the 27<sup>th</sup> full calendar month after the calendar month in which the Closing Date occurs.

"Term Loan Extensions of Credit": as to any Term Loan Lender at any time, an amount equal to the sum of the aggregate principal amount of all Term Loans made by such Lender then outstanding.

"Term Loan Lender": each Lender that has a Term Loan Commitment or is the holder of a Term Loan.

"Term Loan Percentage": as to any Term Loan Lender at any time, the percentage which such Lender's Term Loan Commitment then constitutes of the aggregate Term Loan Commitments (or, at any time after the Term Loan Commitments shall have expired or terminated, the percentage which the aggregate principal amount of such Lender's Term Loans then outstanding constitutes of the aggregate principal amount of the Term Loans then outstanding).

"Term Loan Termination Date": the earlier of (a) the Scheduled Term Loan Termination Date and (b) the date on which the Loans become due and payable pursuant to Section 8.

"Term Loans": as defined in Section 2.1 and shall include any Revolving Credit Loans converted to Term Loans on any Loan Conversion Date pursuant to Section 2.4.

"Term Notes": as defined in Section 2.8(e).

"Title Insurance Company": collectively, Nevada Title Company and such other title insurance companies that have issued Title Policies to the Administrative Agent on behalf of the Lenders in connection with or related to any Mortgage.

"Title Policies": collectively, the policies of title insurance issued by the Title Insurance Company with respect to the Mortgages.

"Total Extensions of Credit": at any time, the sum of (a) the Total Revolving Extensions of Credit and (b) the Total Term Loan Extensions of Credit.

"Total Initial Arranger Revolving Credit Commitments": at any time, the aggregate amount of the Revolving Credit Commitments then in effect and held by the Initial Arrangers or their Affiliates.

"Total Initial Arranger Revolving Extensions of Credit": at any time, the aggregate amount of the Revolving Extensions of Credit of the Revolving Credit Lenders outstanding at such time and held by the Initial Arrangers or their Affiliates.

"Total Initial Arranger Term Loan Commitments": at any time, the aggregate amount of the Term Loan Commitments then in effect and held by the Initial Arrangers or their Affiliates.

"Total Initial Arranger Term Loan Extensions of Credit": at any time, the aggregate amount of the Term Loan Extensions of Credit of the Term Loan Lenders outstanding at such time and held by the Initial Arrangers or their Affiliates.

"Total Revolving Credit Commitments": at any time, the aggregate amount of the Revolving Credit Commitments then in effect; *provided*, that the amount of the Total Revolving Credit Commitments on the Closing Date shall be \$750,000,000.

"Total Revolving Credit Exposure": the Total Revolving Credit Commitments then in effect or, if the Revolving Credit Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding.

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"Total Revolving Extensions of Credit": at any time, the aggregate amount of the Revolving Extensions of Credit of the Revolving Credit Lenders outstanding at such time.

"Total Term Loan Commitments": at any time, the aggregate amount of the Term Loan Commitments then in effect; *provided*, that the amount of the Total Term Loan Commitments on the Closing Date shall be \$250,000,000.

"Total Term Loan Exposure": the Total Term Loan Commitments then in effect or, if the Term Loan Commitments have been terminated, the Total Term Loan Extensions of Credit then outstanding.

"Total Term Loan Extensions of Credit": at any time, the aggregate amount of the Term Loan Extensions of Credit of the Term Loan Lenders outstanding at such time.

"Transferee": as defined in Section 10.15.

"Type": as to any Loan, its nature as a Base Rate Loan or a Eurodollar Loan.

"UCC": the Uniform Commercial Code, as in effect from time to time in any jurisdiction.

"Unallocated Contingency Balance": as defined in the Disbursement Agreement.

"Valvino": Valvino Lamore, LLC, a Nevada limited liability company.

"*Valvino Water Permit Transfer*": the transfer of the Valvino Water Permits by Valvino to the Borrower at no cost, in accordance with all Requirements of Law and pursuant to all necessary consents of Governmental Authorities (including, if applicable, the Nevada Public Utilities Commission and the State of Nevada, Division of Water Resources); *provided*, that (a) the designated place of use for water available for draw under the Valvino Water Permits shall include the Real Estate upon which the water features of the Le Rêve hotel and casino are located, (b) either (i) no Points of Diversion with respect to the Water Permits and the wells associated therewith are located on the Phase II Land or (ii) Valvino shall have transferred at no cost (x) in the case of Points Diversion with respect to the Valvino Water Permits and DIIC Casino Water Permit and the wells associated therewith located on the Phase II Land, such easements to the Borrower as are necessary for the Borrower to access such Points of Diversion, own and operate such wells and transport such water to the water features of the Le Rêve hotel and casino and (y) in the case of Points Diversion with respect to all other DIIC Water Permits and the wells associated therewith located on the Phase II Land, such easements to the Borrower and Wynn Resorts Holdings as are necessary for such Persons to access such Points of Diversion, own and operate such wells and transport the water drawn at such Points of Diversion and from such wells to the Golf Course Land and (c) the Borrower and Wynn Resorts Holdings, as the case may be, shall have taken all actions required pursuant to Section 6.10 with respect to any Property acquired pursuant to this definition.

"*Valvino Water Permits*": collectively, the Permits identified as of the Closing Date as Permit No. 60164 (Cert. 15447) and Permit No. 60165 (Cert. 15448), in each case as shown in the records of the State of Nevada, Division of Water Resources, in Carson City Nevada (and any successor or replacement Permits thereto).

"*Voting Stock*": with respect to any Person as of any date, the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"*Water Entities*": Desert Inn Water and Desert Inn Improvement.

"*Water Permits*": collectively, the DIIC Water Permits and the Valvino Water Permits.

"*Water Property Mortgage*": that certain mortgage, substantially in the form of the Mortgages (with such modifications, if any, as are necessary to comply with Requirements of Law or that the

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Administrative Agent may reasonably request), to be made by Desert Inn Improvement in favor of the Administrative Agent for the benefit of the Secured Parties pursuant to which Desert Inn Improvement will secure, among other things, the Borrower's Obligations by granting a Lien on the Water Utility Land and the DIIC Water Permits, pursuant to and in accordance with any and all necessary approvals by or consents from the Nevada Public Utilities Commission and any other applicable Governmental Authorities.

"*Water Show Entertainment and Production Agreement*": the Agreement, dated January 25, 2001, between Wynn Resorts Holdings and Calitri Services and Licensing Limited Liability Company.

"*Water Supply Agreement*": that certain Water Supply Agreement dated as of October , 2002 among Desert Inn Improvement, Wynn Resorts Holdings and the Borrower.

"*Water Utility Land*": the approximately .17 acre tract of land located on the Golf Course owned by Desert Inn Improvement, as more particularly described in Exhibit T-4 of the Disbursement Agreement; *provided*, that the Water Utility Land shall not include any improvements thereon utilized by Desert Inn Improvement as of the Closing Date for the transportation of water to non-Affiliates of the Borrower.

"*WDD Agreement*": the Wynn Design Agreement, dated as of October , 2002 between the Borrower and Wynn Design.

"*Weighted Average Life to Maturity*": when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one—twelfth) that will elapse between such date and the making of such payment; by

(2) the then outstanding principal amount of such Indebtedness.

"*Wholly Owned Subsidiary*": as to any Person, any other Person all of the Capital Stock of which (other than directors' qualifying shares required by law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

"*Withdrawal Period*": as defined in Section 10.13(b).

"*World Travel*": World Travel, LLC, a Nevada limited liability company.

"*Wynn Design*": Wynn Design & Development, LLC, a Nevada limited liability company.

"*Wynn Group Entities*": collectively, Palo and Wynn Design.

"*Wynn Home Site Land*": an approximately two-acre tract of land located on the Golf Course Land where Wynn's personal residence may, after Disposition of the Wynn Home Site Land in accordance with Section 7.5(j), be built.

"*Wynn Resorts*": Wynn Resorts, Limited, a Nevada corporation.

"*Wynn Resorts Agreement*": that certain Wynn Resorts Agreement, dated as of October , 2002 among Wynn Resorts and the Administrative Agent.

"*Wynn Resorts Guaranty*": the "Parent Guaranty" as defined in the Wynn Resorts Agreement.

"Wynn Resorts Security Agreement": any agreement or other instrument executed by Wynn Resorts in favor of the Administrative Agent on behalf of the Lenders pursuant to the Wynn Resorts Agreement.

1.2 *Other Definitional Provisions.* (a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, accounting terms relating to the Borrower and the other Loan Parties not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP.

(c) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(e) The expressions "payment in full," "paid in full" and any other similar terms or phrases when used herein with respect to the Obligations shall mean the payment in full, in immediately available funds, of all of the Obligations.

(f) The words "including" and "includes" and words of similar import when used in this Agreement shall not be limiting and shall mean "including without limitation" or "includes without limitation", as the case may be.

(g) The words "will" and "shall" and words of similar import when used in this Agreement shall mean a command.

(h) Upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement immediately prior to such termination.

(i) Unless expressly described to the contrary, 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 such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at the time of determination.

## SECTION 2. AMOUNT AND TERMS OF COMMITMENTS

2.1 *Term Loan Commitments.* Subject to the terms and conditions hereof, and in reliance upon the representations and warranties of the Borrower herein set forth and, while in effect, the representations and warranties set forth in the Disbursement Agreement, each Term Loan Lender severally agrees to make term loans ("Term Loans") to the Borrower from time to time during the Term Loan Commitment Period in an aggregate principal amount not to exceed the amount of the Term Loan Commitment of such Lender. The Term Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.5 and 2.13. Term Loans borrowed and subsequently repaid or prepaid may not be reborrowed.

2.2 *Scheduled Amortization of Term Loans.* The Borrower shall make principal payments on the Term Loans on Amortization Dates in the amounts set forth below opposite the applicable Amortization Date:

Amortization Date	Scheduled Repayment of Term Loans
Amortization Dates between and including [December 31, 2005] and December 31, 2006	\$ 10,000,000
Amortization Dates between and including March 31, 2007 and December 31, 2007	\$ 12,500,000
Amortization Dates between and including March 31, 2008 and December 31, 2008	\$ 15,000,000
Amortization Dates between and including March 31, 2009 and September 30, 2009	\$ 30,000,000

; provided, that the scheduled installments of principal of the Term Loans set forth above shall be reduced in connection with any voluntary or mandatory prepayments of the Term Loans in accordance with Sections 2.12 and 2.18; and provided, further that the Term Loans and all other amounts owed hereunder with respect to the Term Loans shall be paid in full no later than the Term Loan Termination Date, and the final installment payable by the Borrower in respect of the Term Loans on such date shall be in an amount sufficient to repay all amounts owing by the Borrower under this Agreement with respect to the Term Loans.

2.3 *Revolving Credit Commitments.* (a) Subject to the terms and conditions hereof, and in reliance upon the representations and warranties of the Borrower herein set forth and, while in effect, the representations and warranties set forth in the Disbursement Agreement, each Revolving Credit Lender severally agrees to make revolving credit loans ("Revolving Credit Loans") to the Borrower from time to time during the Revolving Credit Commitment Period (provided, that until the Total Term Loan Extensions of Credit equals the Total Term Loan Commitments, Revolving Credit Loans shall not be available to the Borrower hereunder) in an aggregate principal amount at any one time outstanding which, when added to such Lender's Revolving Credit Percentage of the sum of (i) the L/C Obligations then outstanding and (ii) the aggregate principal amount of the Swing Line Loans then outstanding, does not exceed the amount of such Lender's Revolving Credit Commitment; provided, that, prior to the Debt Service Availability Date, the Total Revolving Extensions of Credit shall not exceed an amount equal to the difference between (x) the Total Revolving Credit Commitments at such time and (y) [\$36,800,000]; provided, further, that, during the

Additional Completion Period, if any, the Total Revolving Extensions of Credit shall not exceed an amount equal to the difference between (x) the Total Revolving Credit Commitments at such time and (y) \$3,000,000. During the Revolving Credit Commitment Period the Borrower may use the Revolving Credit Commitments by borrowing, prepaying the Revolving Credit Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. The Revolving Credit Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.5 and 2.13, *provided* that no Revolving Credit Loan shall be made as a Eurodollar Loan after the day that is one month prior to the Scheduled Revolving Credit Termination Date.

(b) The Borrower shall repay all outstanding Revolving Credit Loans on the Revolving Credit Termination Date.

**2.4 Loan Conversion.** (a) At such times and from time to time as the aggregate principal amount of all Revolving Credit Loans then outstanding exceeds \$200,000,000, the Majority Initial Arrangers may in their sole and absolute discretion cause the conversion of then outstanding Revolving Credit Loans into Term Loans in accordance with this Section 2.4 (each such conversion of Revolving Credit Loans to Term Loans, a "*Loan Conversion*") by delivering to the Administrative Agent and the Borrower written notice thereof (a "*Notice of Loan Conversion*"). Each Notice of Loan Conversion shall specify:

(i) the principal amount of the Revolving Credit Loans then outstanding that are proposed to be converted to Term Loans (the "*Converted Revolving Loan Amount*"); and

(ii) the proposed date of such Loan Conversion (the "*Loan Conversion Date*"), which shall be no earlier than seven Business Days after the date such Notice of Loan Conversion is delivered by the Majority Initial Arrangers to the Administrative Agent and the Borrower.

(b) Upon receipt of a Notice of Loan Conversion, the Administrative Agent shall promptly deliver such Notice of Loan Conversion to each Revolving Credit Lender. On a Loan Conversion Date, (i) the outstanding Revolving Credit Loans of the Revolving Credit Lenders in an aggregate amount equal to the Converted Revolving Loan Amount specified in the related Notice of Loan Conversion shall automatically be converted to Term Loans *pro rata* according to the respective outstanding principal amounts of the Revolving Credit Loans then held by the Revolving Credit Lenders, (ii) any Revolving Credit Loans so converted shall, as of such Loan Conversion Date, be deemed to be Term Loans and no longer Revolving Credit Loans (*provided*, such Loans shall maintain the Type and, if Eurodollar Loans, the Interest Period applicable to such Loans), (iii) the Revolving Credit Lenders shall, as of such Loan Conversion Date, be deemed to be Term Loan Lenders with respect to such converted Loans, (iv) the Total Revolving Credit Commitment shall be permanently reduced by an amount equal to the Converted Revolving Loan Amount (with each Revolving Credit Lender's Revolving Credit Commitment permanently reduced by an amount equal to its Revolving Credit Loans so converted to Term Loans), (v) the Administrative Agent shall make appropriate notations in the Register pursuant to Section 2.8(d) in order to reflect the Loan Conversion on such Loan Conversion Date and (vi) upon request of any Lender, any Notes previously delivered to such Lender pursuant to Section 2.8(c) will be amended and/or replaced as appropriate in order to reflect such Loan Conversion.

(c) Notwithstanding the foregoing, the aggregate amount of Loan Conversions shall not exceed \$400,000,000; *provided*, that (i) the initial Loan Conversion shall be in a minimum amount of \$100,000,000 or a \$25,000,000 whole multiple in excess thereof and (ii) each subsequent Loan Conversion shall be in minimum amounts of \$50,000,000 or a \$25,000,000 whole multiple in excess thereof.

**2.5 Procedure for Borrowing.** (a) Prior to the Completion Date and, to the extent the proceeds of the requested borrowing are used to pay Project Costs, after the Completion Date but prior to the Final Completion Date, the Borrower may borrow under the Term Loan Commitments or the Revolving Credit Commitments during the Term Loan Commitment Period or the Revolving Credit Commitment Period, as applicable, on any Business Day; *provided*, that the Borrower shall give the Administrative Agent in accordance with and pursuant to the terms of Section 2.4 of the Disbursement Agreement such Notice of Advance Requests in the form, at the times and as required under the Disbursement Agreement. Notwithstanding any provisions of the Disbursement Agreement to the contrary, such Notice of Advance Requests and the related Advance Confirmation Notices from the Disbursement Agent in accordance with the provisions of Section 2.4 of the Disbursement Agreement must be received by the Administrative Agent prior to 12:00 Noon, New York City time, (a) three

Business Days prior to the requested Borrowing Date, in the case of Eurodollar Loans, or (b) one Business Day prior to the requested Borrowing Date, in the case of Base Rate Loans and must specify (i) the amount and Type of Loans to be borrowed, (ii) the requested Borrowing Date and (iii) in the case of Eurodollar Loans, the length of the initial Interest Period therefor. Upon receipt of any Advance Confirmation Notice from the Disbursement Agent, 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 funds immediately available to the Administrative Agent. Such borrowing will then, upon satisfaction or waiver of the conditions precedent specified in Section 5.2, be made available by the Administrative Agent, in like funds as received by the Administrative Agent from the Lenders, to the Disbursement Agent in the Collection Account no later than 12:00 Noon, New York City time, on the applicable Borrowing Date who shall then make the proceeds of such Loans available to the Borrower in accordance with and upon fulfillment of conditions set forth in the Disbursement Agreement.

(b) On or after the Completion Date (other than with respect to borrowings to pay Project Costs prior to the Final Completion Date, such borrowings to be made pursuant to Section 2.5(a)), the Borrower may borrow under the Revolving Credit Commitments during the Revolving Credit Commitment Period on any Business Day; *provided*, that the Borrower shall give the Administrative Agent irrevocable notice in a Notice of Borrowing (which Notice of Borrowing must be received by the Administrative Agent prior to 12:00 Noon, New York City time, (a) three Business Days prior to the requested Borrowing Date, in the case of Eurodollar Loans, or (b) one Business Day prior to the requested Borrowing Date, in the case of Base Rate Loans), specifying (i) the amount and Type of Revolving Credit Loans to be borrowed, (ii) the requested Borrowing Date and (iii) in the case of Eurodollar Loans, the length of the initial Interest Period therefor. Upon receipt of any such Notice of Borrowing from the Borrower, the Administrative Agent shall promptly notify each Revolving Credit Lender thereof. Each Revolving Credit Lender will make the amount of its *pro rata* share of each borrowing available to the Administrative Agent for the account of the Borrower at the Funding Office prior to 12:00 Noon, New York City time, on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then, upon satisfaction or waiver of the conditions precedent specified in Section 5.3, be made available to the Borrower by the Administrative Agent crediting a Funding Account of the Borrower on the books of the Funding Office with the aggregate of the amounts made available to the Administrative Agent by the Revolving Credit Lenders and in like funds as received by the Administrative Agent.

(c) Each borrowing under the Term Loan Commitments or the Revolving Credit Commitments shall be in an amount equal to (x) in the case of Base Rate Loans, \$5,000,000 or a whole multiple in excess thereof (or, if the then aggregate Available Term Loan Commitments or Available Revolving Credit Commitments, as applicable, are less than \$5,000,000, such lesser amount) and (y) in the case of Eurodollar Loans, \$10,000,000 or a \$1,000,000 whole multiple in excess thereof; *provided*, that the Swing Line Lender may request, on behalf of the Borrower, borrowings under the Revolving Credit Commitments which are Base Rate Loans in other amounts pursuant to Section 2.7.

(d) In the event that the proceeds of any Loans deposited into the Collection Account pursuant to subsection (a) above are not disbursed by the Disbursement Agent on the applicable Borrowing Date, the proceeds of such Loans shall be held by the Disbursement Agent and/or returned to the Administrative Agent in accordance with the provisions set forth in the Disbursement Agreement; *provided, however*, that the proceeds of such Loans shall continue to bear interest and be repayable in accordance with the provisions set forth in this Agreement. In

46

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the event that the Administrative Agent receives a Stop Funding Notice from the Disbursement Agent in accordance with and pursuant to the terms of the Disbursement Agreement, none of the Administrative Agent and the Lenders shall, or shall have any obligation to, advance the Loans associated with such Stop Funding Notice; *provided, however*, that the Borrower shall be obligated to make any payments due pursuant to Section 2.21 as a result thereof.

2.6 *Swing Line Commitment.* (a) Subject to the terms and conditions hereof, the Swing Line Lender agrees to make available to the Borrower a portion of the credit otherwise available to the Borrower under the Revolving Credit Commitments from time to time during the Swing Line Credit Commitment Period by making swing line loans ("*Swing Line Loans*") to the Borrower; *provided*, that (i) the aggregate principal amount of Swing Line Loans outstanding at any time shall not exceed the Swing Line Commitment then in effect (notwithstanding that the Swing Line Loans outstanding at any time, when aggregated with the Swing Line Lender's other outstanding Revolving Credit Loans hereunder, may exceed the Swing Line Commitment then in effect) and (ii) the Borrower shall not request, and the Swing Line Lender shall not make, any Swing Line Loan if, after giving effect to the making of such Swing Line Loan, the aggregate amount of the Available Revolving Credit Commitments would be less than zero. During the Swing Line Credit Commitment Period, the Borrower may use the Swing Line Commitment by borrowing, repaying and reborrowing, all in accordance with the terms and conditions hereof. Swing Line Loans shall be Base Rate Loans only.

(b) The Borrower shall repay all outstanding Swing Line Loans on the Revolving Credit Termination Date.

2.7 *Procedure for Swing Line Borrowing; Refunding of Swing Line Loans.* (a) Whenever the Borrower desires that the Swing Line Lender make Swing Line Loans it shall give the Swing Line Lender irrevocable telephonic notice confirmed promptly in writing (which telephonic notice must be received by the Swing Line Lender not later than 1:00 P.M., New York City time, on the proposed Borrowing Date), specifying (i) the amount to be borrowed and (ii) the requested Borrowing Date (which shall be a Business Day during the Swing Line Credit Commitment Period). Each borrowing under the Swing Line Commitment shall be in an amount equal to \$500,000 or a \$100,000 multiple in excess thereof. Not later than 3:00 P.M., New York City time, on the Borrowing Date specified in a notice in respect of Swing Line Loans, the Swing Line Lender shall make available to the Administrative Agent at the Funding Office an amount in immediately available funds equal to the amount of the Swing Line Loan to be made by the Swing Line Lender; *provided*, that the Swing Line Lender shall not be obligated to make any Swing Line Loans at a time when a Lender Default exists unless the Swing Line Lender has entered into arrangements satisfactory to it to eliminate the Swing Line Lender's risk with respect to the Defaulting Lender's or Lenders' participation in such Swing Line Loans. The Administrative Agent shall make the proceeds of such Swing Line Loan available to the Borrower on such Borrowing Date by depositing such proceeds in a Funding Account of the Borrower with the Administrative Agent on such Borrowing Date in immediately available funds.

(b) The Swing Line Lender, at any time and from time to time in its sole and absolute discretion may, on behalf of the Borrower (which hereby irrevocably directs the Swing Line Lender to act on its behalf), on one Business Day's notice given by the Swing Line Lender no later than 12:00 Noon, New York City time, request each Revolving Credit Lender to make, and each Revolving Credit Lender hereby agrees to make, a Revolving Credit Loan, in an amount equal to such Revolving Credit Lender's Revolving Credit Percentage of the aggregate amount of the Swing Line Loans (the "*Refunded Swing Line Loans*") outstanding on the date of such notice, to repay the Swing Line Lender. Each Revolving Credit Lender shall make the amount of such Revolving Credit Loan available to the Administrative Agent at the Funding Office in immediately available funds, not later than 10:00 A.M., New York City time, one Business Day after the date of such notice. The proceeds of such Revolving Credit Loans shall be immediately made available by the Administrative Agent to the Swing Line Lender for application by the Swing Line Lender to the

47

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repayment of the Refunded Swing Line Loans. The Borrower irrevocably authorizes the Swing Line Lender to charge the Borrower's accounts with the Administrative Agent (up to the amount available in each such account) in order to immediately pay the amount of such Refunded Swing Line Loans to the extent amounts received from the Revolving Credit Lenders are not sufficient to repay in full such Refunded Swing Line Loans.

(c) If prior to the time a Revolving Credit Loan would have otherwise been made pursuant to Section 2.7(b), one of the events described in Section 8(f) shall have occurred and be continuing with respect to the Borrower or if for any other reason, as determined by the Swing Line Lender in its sole discretion, Revolving Credit Loans may not be made as contemplated by Section 2.7(b), each Revolving Credit Lender shall, on the date such Revolving Credit Loan was to have been made pursuant to the notice referred to in Section 2.7(b) (the "*Refunding Date*"), purchase for cash an undivided participating interest in the then outstanding Swing Line Loans by paying to the Swing Line Lender an amount (the "*Swing Line Participation Amount*") equal to (i) such Revolving Credit Lender's Revolving Credit Percentage *times* (ii) the sum of the aggregate principal amount of Swing Line Loans then outstanding which were to have been repaid with such Revolving Credit Loans.

(d) Whenever, at any time after the Swing Line Lender has received from any Revolving Credit Lender such Lender's Swing Line Participation Amount, the Swing Line Lender receives any payment on account of the Swing Line Loans, the Swing Line Lender will distribute to such Revolving Credit Lender its Swing Line Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Credit Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Revolving Credit Lender's *pro rata* portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swing Line Loans then due); *provided, however*, that in the event that such payment received by the Swing Line Lender is required to be returned, such Revolving Credit Lender will return to the Swing Line Lender any portion thereof previously distributed to it by the Swing Line Lender.



(e) Each Revolving Credit Lender's obligation to make the Loans referred to in Section 2.7(b) and to purchase participating interests pursuant to Section 2.7(c) shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any setoff, counterclaim, recoupment, defense or other right which such Revolving Credit Lender or the Borrower may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever; (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5; (iii) any adverse change in the condition (financial or otherwise) of the Borrower or any other Person; (iv) any breach of this Agreement or any other Loan Document by the Borrower or any other Person (including, without limitation, any other Revolving Credit Lender); (v) any reduction or termination of the Commitments; or (vi) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing, and each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

48

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2.8 *Repayment of Loans; Evidence of Indebtedness.* (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of the appropriate Revolving Credit Lender or Term Loan Lender, as the case may be, (i) the then unpaid principal amount of each Revolving Credit Loan of such Revolving Credit Lender on the Revolving Credit Termination Date, (ii) the then unpaid principal amount of each Swing Line Loan of such Swing Line Lender on the Revolving Credit Termination Date, and (iii) the principal amount of each Term Loan of such Term Loan Lender in installments according to the amortization schedule set forth in Section 2.2 and the then unpaid principal amount of each Term Loan of such Term Loan Lender on the Term Loan Termination Date. The Borrower hereby further agrees to pay interest on the unpaid principal amount of the Loans from time to time outstanding from the date hereof until payment in full thereof at the rates per annum, and on the dates, set forth in Section 2.15.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing indebtedness of the Borrower to such Lender resulting from each Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent, on behalf of the Borrower, shall maintain the Register pursuant to Section 10.6(d), and a subaccount therein for each Lender, in which shall be recorded (i) the amount of each Loan made hereunder and any Note evidencing such Loan, the Type thereof and each Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) both the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(d) The entries made in the Register and the accounts of each Lender maintained pursuant to Section 2.8(b) shall, to the extent permitted by applicable law, be *prima facie* evidence of the existence and amounts of the obligations of the Borrower therein recorded; *provided, however*, that the failure of any Lender or the Administrative Agent to maintain the Register or any such account, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Loans made to such Borrower by such Lender in accordance with the terms of this Agreement.

(e) The Borrower agrees that, upon the request to the Administrative Agent by any Lender, the Borrower will execute and deliver to such Lender a promissory note of the Borrower evidencing any Term Loans, Revolving Credit Loans or Swing Line Loans, as the case may be, of such Lender, substantially in the forms of Exhibit G-1, G-2 or G-3 hereto, respectively, with appropriate insertions as to date and principal amount (such notes, respectively, "*Term Notes*", "*Revolving Credit Notes*" and "*Swing Line Notes*").

2.9 *Commitment Fees, etc.* (a) The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Credit Lender a commitment fee (the "*Revolving Commitment Fee*") for the period from and including the Closing Date to the last day of the Revolving Credit Commitment Period, computed at the Revolving Commitment Fee Rate on the average daily amount of the Available Revolving Credit Commitment of such Lender during the period for which payment is made, payable quarterly in arrears on the last day of each March, June, September and December and on the Revolving Credit Termination Date, commencing on the first of such dates to occur after the date hereof; *provided, however*, that any Revolving Commitment Fee accrued with respect to any of the Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender, except to the extent that such Revolving Commitment Fee shall otherwise have been due and payable by the Borrower prior to such time; *provided, further*, that no

49

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such Revolving Commitment Fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(b) The Borrower agrees to pay to the Administrative Agent for the account of each Term Loan Lender a commitment fee for the period from and including the Closing Date to the last day of the Term Loan Commitment Period, computed at the Term Loan Commitment Fee Rate on the average daily amount of the Available Term Loan Commitment of such Lender during the period for which payment is made, payable quarterly in arrears on the last day of each March, June, September and December and on the last day of the Term Loan Commitment Period, commencing on the first of such dates to occur after the date hereof; *provided, however*, that any such commitment fee accrued with respect to any of the Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender, except to the extent that such commitment fee shall otherwise have been due and payable by the Borrower prior to such time; *provided, further*, that no such commitment fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(c) The Borrower agrees to pay to the Arrangers, the Managers and the Agents the fees in the amounts and on the dates previously agreed to in writing by the Borrower, the Arrangers, the Managers and the Agents including, without limitation, pursuant to the Facility Fee Letter.

(d) The Borrower agrees to pay to the Administrative Agent the fees in the amounts and on the dates from time to time agreed to in writing by the Borrower and the Administrative Agent including, without limitation, pursuant to the Administrative Agent Fee Letter.

2.10 *Termination or Reduction of Revolving Credit Commitments.* The Borrower shall have the right, upon not less than three Business Days' notice to the Administrative Agent, to terminate the Revolving Credit Commitments or, from time to time, to reduce the amount of the Revolving Credit Commitments; *provided*, that no such termination or reduction of Revolving Credit Commitments shall be permitted if, (x) after giving effect thereto and to any prepayments of the Revolving Credit Loans and Swing Line Loans made on the effective date thereof, (i) the Total Revolving Extensions of Credit would exceed the Total

Revolving Credit Commitments or (ii) if prior to the Completion Date, the Remaining Costs would exceed the Available Funds or the Required Minimum Contingency would exceed the Unallocated Contingency Balance or (y) such termination or reduction is not permitted by the Disbursement Agreement (while in effect). Any such reduction shall be in an amount equal to \$5,000,000, or a whole multiple thereof (or, if less, shall reduce the Revolving Credit Commitments to zero), and shall reduce permanently the Revolving Credit Commitments then in effect.

**2.11 Optional Prepayments.** The Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent at least three Business Days prior thereto in the case of Eurodollar Loans and at least one Business Day prior thereto in the case of Base Rate Loans, which notice shall (i) designate whether the Borrower is prepaying Revolving Credit Loans and/or Term Loans and (ii) specify the date and amount of prepayment and whether the prepayment is of Eurodollar Loans or Base Rate Loans; *provided*, that if a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.21. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of Revolving Credit Loans (unless all Revolving Credit Loans are being repaid and the Revolving Credit Commitments terminated) that are Base Rate Loans and Swing Line Loans) accrued interest to such date on the amount prepaid. Partial prepayments of Term Loans and Revolving Credit Loans shall be in an aggregate principal amount of

50

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\$5,000,000 or a whole multiple in excess thereof. Partial prepayments of Swing Line Loans shall be in an aggregate principal amount of \$100,000 or a whole multiple in excess thereof.

**2.12 Mandatory Prepayments and Commitment Reductions.** (a) If any Indebtedness shall be incurred by the Borrower or any of the other Loan Parties (excluding any Indebtedness incurred in accordance with Section 7.2 (other than with respect to subsection (i) thereof)), an amount equal to 100% of the Net Cash Proceeds thereof shall be applied on the date of such incurrence toward the prepayment of the Term Loans and the reduction of the Revolving Credit Commitments as set forth in Section 2.12(g).

(b) With respect to the Net Cash Proceeds from any Asset Sale as to which the Borrower or any other Loan Party making such Asset Sale has not delivered a Reinvestment Notice within the period required therefor such Net Cash Proceeds (or portion thereof not subject to such a Reinvestment Notice) shall be applied, within one Business Day of the expiration of the aforesaid required period for delivery of a Reinvestment Notice with respect to such Asset Sale, on such date toward the prepayment of the Term Loans and the reduction of the Revolving Credit Commitments as set forth in Section 2.12(g); *provided*, that, notwithstanding the foregoing, (i) the aggregate Net Cash Proceeds of Asset Sales that may be excluded from the foregoing prepayment requirement pursuant to a Reinvestment Notice shall not exceed \$5,000,000 in any Fiscal Year and (ii) on each Reinvestment Prepayment Date, an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event shall be applied toward the prepayment of the Term Loans and the reduction of the Revolving Credit Commitments as set forth in Section 2.12(g).

(c) No later than (i) the Business Day following the date on which funds, whether representing the proceeds of Loans or otherwise, are returned or distributed to the Administrative Agent on behalf of Lenders under the Disbursement Agreement (whether pursuant to Section 2.10 thereof or otherwise), (ii) the Business Day following the date on which Loss Proceeds are required to be applied to the prepayment of Loans under Section 5.21 of the Disbursement Agreement, (iii) the Business Day following the date on which Insurance Proceeds or Eminent Domain Proceeds are required to be applied to the prepayment of Loans pursuant to Section 2.24(f), (iv) the Business Day following the date on which any Loan Party receives Liquidated Damages (*provided*, that to the extent such Liquidated Damages are paid pursuant to any obligation, default or breach, the results of which can be remedied through the expenditure of money, and the applicable Loan Party determines in its reasonable judgment to undertake such remedy, the Liquidated Damages subject to this subsection (iv) shall be net of reasonable amounts that such Loan Party anticipates to incur in connection with such remedy (such amounts, the "*Reinvested Amounts*"); *provided, further*, that in the event such Loan Party has not expended, any Reinvested Amounts in furtherance of such remedy by the date that is six months after a Loan Party initially received the relevant Liquidated Damages or, in the case of any Reinvested Amounts to be expended in furtherance of such remedy pursuant to a contract entered into during such six-month period, such amounts have not been expended by the date that is twelve months after a Loan Party initially received the relevant Liquidated Damages, such non-expended amounts shall be applied on the secured Business Day following such sixth-month or twelve-month, as the case may be, anniversary date to the prepayment of the Term Loans and the reduction of the Revolving Credit Commitments as set forth in Section 2.12(g)(ii)), (v) the Business Day following the date on which amounts related to the initial working capital for the Project under Sections 2.9(e) and 2.11 of the Disbursement Agreement are required to be applied to the prepayment of Loans or (vi) the Business Day following the date on which Insurance Proceeds or Eminent Domain Proceeds are required to be applied to the prepayment of Loans pursuant to Section 2.24(a) or 2.24(h), the Borrower shall prepay and the Administrative Agent shall apply such funds toward the prepayment of the Term Loans and the reduction of the Revolving Credit Commitments (or with respect to

51

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subsections (c)(i), (c)(iii) and (c)(v) above, prepayment of the Revolving Credit Loans (without any permanent reduction of Revolving Credit Commitments)), in each case as set forth in Section 2.12(g).

(d) If, for any Fiscal Year commencing with the Fiscal Year in which the Completion Date occurs, there shall be Excess Cash Flow, the Borrower shall, and shall cause the applicable Loan Parties to, on the relevant Excess Cash Flow Application Date, apply the ECF Percentage of such Excess Cash Flow toward the prepayment of the Term Loans and the reduction of the Revolving Credit Commitments as set forth in Section 2.12(g). Each such prepayment and commitment reduction shall be made on a date (an "*Excess Cash Flow Application Date*") no later than five Business Days after the earlier of (i) the date on which the financial statements of the Loan Parties referred to in Section 6.1(a), for the Fiscal Year with respect to which such prepayment is made, are required to be delivered to the Lenders and (ii) the date such financial statements are actually delivered. Notwithstanding the foregoing, the requirements of this subsection (d) shall be terminated and no longer be applicable if for any Fiscal Year the Consolidated Leverage Ratio of the Borrower as of the last day of such Fiscal Year is not greater than 2.5 to 1.0.

(e) If, on any date after Loans have been made hereunder, the Borrower or any other Loan Party shall receive any Extraordinary Deposit Receipts, the Borrower or such Loan Party shall apply, on such date, the amount of such Extraordinary Deposit Receipts toward the prepayment of Revolving Credit Loans (without any permanent reduction of the Revolving Credit Commitments) and the Term Loans as set forth in Section 2.12(g).

(f) If on the last day of any period of four full consecutive fiscal quarters of the Borrower ending on a Quarterly Date the Consolidated EBITDA of the Borrower for such four full consecutive fiscal quarter period was equal to or greater than \$275,000,000, the Borrower shall apply any amounts on deposit in the Project Liquidity Reserve Account on the Liquidity Reserve Payment Date toward the prepayment of the Revolving Credit Loans (without any permanent reduction of Revolving Credit Commitments) and the Term Loans as set forth in Section 2.12(g).

(g) Subject to Section 2.18, amounts to be applied in connection with prepayments and/or Commitment reductions made pursuant to this Section 2.12 or Section 7.2(i) shall be applied (i) in the case of Sections 2.12(a), 2.12(b) or 7.2(i), *first*, to the prepayment of Term Loans and the permanent reduction of Revolving Credit Commitments pro rata based on the Total Revolving Credit Exposure and the Total Term Loan Exposure, and *second*, to the Borrower or such other Person as shall be lawfully entitled thereto, (ii) in the case of Sections 2.12(c)(ii), 2.12(c)(iv), 2.12(c)(vi) and 2.12(d), *first*, to the prepayment of the Term Loans, *second*, to reduce permanently the Revolving Credit Commitments and, *third*, to the Borrower or such other Person as shall be lawfully entitled thereto and (iii) in the case of Sections 2.12(c)(i), 2.12(c)(iii), 2.12(c)(v), 2.12(e) and 2.12(f), *first*, to the prepayment of Revolving Credit Loans (without any permanent reduction of Revolving Credit Commitments), *second*, to the prepayment of Term Loans, and *third*, to the Borrower or such other Person as shall be lawfully entitled thereto (*provided*, that in the case of subsections (i) and (ii) above, prior to the Completion Date, no such termination or reduction of Revolving Credit Commitments shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Credit Loans made on the effective date thereof, the Remaining Costs shall exceed the Available Funds or the Required Minimum Contingency shall exceed the Unallocated Contingency Balance; *provided, further*, that, in such event, amounts allocable to the termination or reduction of Revolving Credit Commitments that are not so applied due to the first proviso hereof shall nonetheless be applied to prepay Revolving Credit Loans (without any permanent reduction of Revolving Credit Commitments)). Any reduction of the Revolving Credit Commitments in accordance with the foregoing shall be accompanied by prepayment of the Revolving Credit Loans and/or Swing Line Loans to the extent, if any, that the Total Revolving Extensions of Credit exceed the amount of the Total Revolving Credit Commitments as so

52

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reduced, *provided* that if the aggregate principal amount of Revolving Credit Loans and Swing Line Loans then outstanding is less than the amount of the Total Revolving Credit Commitments as so reduced (because L/C Obligations constitute a portion thereof), the Borrower shall, to the extent of the balance of such excess, replace outstanding Letters of Credit and/or deposit an amount in immediately available funds in a cash collateral account established with the Administrative Agent for the benefit of the Secured Parties on terms and conditions satisfactory to the Administrative Agent (and the Borrower hereby grants to the Administrative Agent, for the ratable benefit of the Secured Parties, a continuing first priority security interest (subject to no other Liens other than Liens permitted pursuant to Section 7.3(k) in all amounts at any time on deposit in such cash collateral account to secure all L/C Obligations from time to time outstanding and all other Obligations). If at any time the Administrative Agent determines that any funds held in such cash collateral account are subject to any right or claim of any Person other than the Administrative Agent, the Secured Parties and as otherwise permitted pursuant to Section 7.3(k) or that the total amount of such funds is less than the amount of such excess, the Borrower shall, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited and held in such cash collateral account, an amount equal to the excess of (a) the amount of such excess over (b) the total amount of funds, if any, then held in such cash collateral account that the Administrative Agent determines to be free and clear of any such right and claim. The application of any prepayment pursuant to Section 2.11 and this Section 2.12 shall be made, *first*, to Base Rate Loans and, *second*, to Eurodollar Loans. Each prepayment of the Loans under Section 2.11 and this Section 2.12 (except in the case of Revolving Credit Loans (unless the Revolving Credit Loans are being repaid in full and the Revolving Credit Commitments terminated) that are Base Rate Loans and Swing Line Loans) shall be accompanied by accrued interest to the date of such prepayment to the applicable Lender on the amount prepaid.

**2.13 Conversion and Continuation Options.** (a) The Borrower may elect from time to time to convert Eurodollar Loans to Base Rate Loans by giving the Administrative Agent at least two Business Days' prior irrevocable notice of such election, *provided* that any such conversion of Eurodollar Loans may only be made on the last day of an Interest Period with respect thereto. Other than with respect to Swing Line Loans which shall at all times be Base Rate Loans, the Borrower may elect from time to time to convert Base Rate Loans to Eurodollar Loans by giving the Administrative Agent at least three Business Days' prior irrevocable notice of such election (which notice shall specify the length of the initial Interest Period therefor), *provided* that no Base Rate Loan under a particular Facility may be converted into a Eurodollar Loan (i) when any Event of Default has occurred and is continuing and the Administrative Agent or the Required Facility Lenders in respect of such Facility have determined in its or their sole discretion not to permit such conversions or (ii) after the date that is one month prior to the final scheduled termination or maturity date of such Facility. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

(b) Any Eurodollar Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving irrevocable notice to the Administrative Agent, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Loans, *provided* that no Eurodollar Loan under a particular Facility may be continued as such (i) when any Event of Default has occurred and is continuing and the Administrative Agent or the Required Facility Lenders in respect of such Facility have determined in its or their sole discretion not to permit such continuations or (ii) after the date that is one month prior to the final scheduled termination or maturity date of such Facility, and *provided, further*, that if the Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso such Loans shall be automatically converted to Base Rate Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

53

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**2.14 Minimum Amounts and Maximum Number of Eurodollar Tranches.** Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions, continuations and optional prepayments of Eurodollar Loans hereunder and all selections of Interest Periods hereunder shall be in such amounts and be made pursuant to such elections so that, (a) after giving effect thereto, the aggregate principal amount of the Eurodollar Loans comprising each Eurodollar Tranche shall be equal to \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof and (b) no more than ten Eurodollar Tranches shall be outstanding at any one time.

**2.15 Interest Rates and Payment Dates.** (a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Eurodollar Rate determined for such day plus the Applicable Margin.

(b) Each Base Rate Loan shall bear interest at a rate per annum equal to the Base Rate plus the Applicable Margin.

(c) (i) If all or a portion of the principal amount of any Loan or Reimbursement Obligation shall not be paid when due (whether at the stated maturity, by acceleration or otherwise) or an Event of Default has otherwise occurred and is continuing, all outstanding Loans and Reimbursement Obligations (whether or not overdue) shall bear interest at a rate per annum that is equal to (x) in the case of the Loans, the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section *plus* 2.0% or (y) in the case of Reimbursement Obligations, the rate applicable to Base Rate Loans under the Revolving Credit Facility *plus* 2.0%, and (ii) if all or a portion of any interest payable on any Loan or Reimbursement Obligation or any commitment fee or other amount payable hereunder (in accordance with Section 2.9 or otherwise) shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum equal to the rate then applicable to Base Rate Loans under the relevant Facility *plus* 2.0% (or, in the case of any such other amounts that do not relate to a particular Facility, the rate then applicable to Base Rate Loans under the Revolving Credit Facility *plus* 2.0%), in each case, with respect to subsections (i) and (ii) above, from the date of such non-payment until such amount is paid in full (after as well as before judgment) or so long as such Event of Default is continuing.

(d) Interest shall be payable in arrears on each Interest Payment Date, *provided* that interest accruing pursuant to paragraph (c) of this Section shall be payable from time to time on demand.

**2.16 Computation of Interest and Fees.** (a) Interest, fees and commissions payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to Base Rate Loans the rate of interest on which is calculated on the basis of the Prime Rate, the interest thereon shall be calculated on the basis of a 365-day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Loan resulting from a change in the Base Rate or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations, if any, used by the Administrative Agent in determining any interest rate pursuant to Section 2.15(a).

54

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**2.17 Inability to Determine Interest Rate.** If prior to the first day of any Interest Period:

(a) the Administrative Agent shall have determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period, or

(b) the Administrative Agent shall have received notice from the Applicable Facility Lenders in respect of the relevant Facility that the Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lenders (as conclusively certified by such Lenders) of making or maintaining their affected Loans during such Interest Period,

the Administrative Agent shall give telecopy or telephonic notice thereof to the Borrower and the relevant Lenders as soon as practicable thereafter. If such notice is given (x) any Eurodollar Loans under the relevant Facility requested to be made on the first day of such Interest Period shall be made as Base Rate Loans, (y) any Loans under the relevant Facility that were to have been converted on the first day of such Interest Period to Eurodollar Loans shall be continued as Base Rate Loans and (z) any outstanding Eurodollar Loans under the relevant Facility shall be converted, on the last day of the then current Interest Period with respect thereto, to Base Rate Loans. Until such notice has been withdrawn by the Administrative Agent, no further Eurodollar Loans under the relevant Facility shall be made or continued as such, nor shall the Borrower have the right to convert Loans under the relevant Facility to Eurodollar Loans.

**2.18 Pro Rata Treatment and Payments.** (a) Each borrowing by the Borrower from the Lenders hereunder, each payment by the Borrower on account of any commitment fee and any reduction of the Commitments of the Lenders shall be made *pro rata* according to the respective Term Loan Percentages or Revolving Credit Percentages, as the case may be, of the relevant Lenders. Subject to Section 2.18(c), each payment (other than prepayments) in respect of principal or interest in respect of the Loans, and each payment in respect of fees or expenses payable hereunder shall be applied to the amounts of such obligations owing to the Lenders *pro rata* according to the respective amounts then due and owing to the Lenders. The application of any mandatory prepayment pursuant to this Section 2.18 shall be made, *first*, to Base Rate Loans and, *second*, to Eurodollar Loans.

(b) Each payment (including each prepayment) of Term Loans shall be allocated among the Term Loan Lenders holding such Term Loans *pro rata* based on the principal amount of such Term Loans held by such Term Loan Lenders, and shall be applied to the installments of such Term Loans (provided that the final payment of Term Loans on the Term Loan Termination Date shall be treated as an "installment" for purposes of this subsection (b)) (i) *pro rata* based on the remaining outstanding principal amount of such installments in the case of mandatory prepayments required pursuant to Section 2.12(e) and (ii) in the inverse order of the scheduled maturities of such installments in the case of all other mandatory prepayments. Amounts prepaid on account of the Term Loans may not be reborrowed.

(c) Each payment (including each prepayment) by the Borrower on account of principal of and interest on the Revolving Credit Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Revolving Credit Loans then held by the Revolving Credit Lenders. Each payment in respect of Reimbursement Obligations in connection with any Letter of Credit shall be made to the Issuing Lender.

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(d) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without setoff or counterclaim and shall be made prior to 12:00 Noon, New York City time, on the due date thereof to the Administrative Agent, for the account of the Lenders, at the Payment Office, in Dollars and in immediately available funds. The Administrative Agent shall distribute such payments to the Lenders promptly upon receipt in like funds as received. If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

(e) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender shall pay to the Administrative Agent, on demand, such amount with interest thereon at a rate equal to the daily average Federal Funds Effective Rate for the period until such Lender makes such amount immediately available to the Administrative Agent. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this paragraph shall be conclusive in the absence of manifest error. If such Lender's share of such borrowing is not made available to the Administrative Agent by such Lender within three Business Days of such Borrowing Date, the Administrative Agent shall also be entitled to recover such amount with interest thereon at the rate per annum applicable to Base Rate Loans under the relevant Facility, on demand, from the Borrower.

(f) Unless the Administrative Agent shall have been notified in writing by the Borrower prior to the date of any payment being made hereunder that the Borrower will not make such payment to the Administrative Agent, the Administrative Agent may assume that the Borrower is making such payment, and the Administrative Agent may, but shall not be required to, in reliance upon such assumption, make available to the Lenders their respective pro rata shares of a corresponding amount. If such payment is not made to the Administrative Agent by the Borrower within three Business Days of such required date, the Administrative Agent shall be entitled to recover, on demand, from each Lender to which any amount which was made available pursuant to the preceding sentence, such amount with interest thereon at the rate per annum equal to the daily average Federal Funds Effective Rate. Nothing herein shall be deemed to limit the rights of the Administrative Agent or any Lender against the Borrower.

2.19 *Requirements of Law.* (a) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof or compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority made subsequent to the date hereof:

(i) shall subject any Lender to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit or any Eurodollar Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Non-Excluded Taxes covered by Section 2.20 and changes in the rate of tax on the overall net income of such Lender);

56

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender that is not otherwise included in the determination of the Eurodollar Rate hereunder; or

(iii) shall impose on such Lender any other condition;

and the result of any of the foregoing is to increase the cost to such Lender, by an amount which such Lender deems to be material, of making, converting into, continuing or maintaining Eurodollar Loans or issuing or participating in Letters of Credit, or to reduce any amount receivable hereunder in respect thereof, then, in any such case, the Borrower shall promptly pay such Lender, upon its demand, any additional amounts necessary to compensate such Lender on an after-tax basis for such increased cost or reduced amount receivable. If any Lender becomes entitled to claim any additional amounts pursuant to this Section, it shall promptly notify the Borrower in writing (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled, and setting forth in such notice, in reasonable detail, the basis and calculation of such amounts.

(b) If any Lender shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy or in the interpretation or application thereof or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority made subsequent to the date hereof shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of its obligations hereunder or under or in respect of any Letter of Credit to a level below that which such Lender or such corporation could have achieved but for such adoption, change or compliance (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy) by an amount deemed by such Lender to be material, then from time to time, after submission by such Lender to the Borrower (with a copy to the Administrative Agent) of a written request therefor (which request shall set forth, in reasonable detail, the basis and calculation of the additional amounts sought), the Borrower shall pay to such Lender such additional amount or amounts as set forth in the aforesaid notice; *provided*, that the Borrower shall not be required to compensate a Lender pursuant to this subsection (b) for any amounts incurred more than six months prior to the date on which such Lender notified the Borrower of such Lender's intention to claim compensation therefor; *provided, further*, that, if the circumstances giving rise to such claim have a retroactive effect, then such six-month period shall be extended to include the period of such retroactive effect.

(c) A certificate as to any additional amounts payable pursuant to this Section submitted by any Lender to the Borrower (with a copy to the Administrative Agent) and setting forth, in reasonable detail, the basis and calculation of such amounts shall be conclusive in the absence of manifest error. The obligations of the Borrower pursuant to this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

2.20 *Taxes.* (a) All payments made by the Borrower or any Guarantor under this Agreement or any other Loan Document shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding net income taxes and franchise taxes (imposed in lieu of net income taxes) imposed on any Arranger, any Agent, any Manager or any Lender as a result of a present or former connection between such Arranger, such Agent, such Manager or such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing

57

authority thereof or therein (other than any such connection arising solely from such Arranger's, such Agent's, such Manager's or such Lender's having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any other Loan Document). If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings ("*Non-Excluded Taxes*") are required to be withheld from any amounts payable to any Arranger, any Agent, any Manager or any Lender hereunder, the amounts so payable to such Arranger, such Agent, such Manager or such Lender shall be increased to the extent necessary to yield to such Arranger, such Agent, such Manager or such Lender (after payment of all Non-Excluded Taxes) interest or any such other

amounts that would have been received hereunder or under any other Loan Document had such withholding not been required; *provided, however*, that the Borrower or a Guarantor shall not be required to increase any such amounts payable to any Arranger, any Agent, any Manager or any Lender with respect to any Non-Excluded Taxes (i) that are attributable to such Arranger's, such Agent's, such Manager's or such Lender's failure to comply with the requirements of subsection (f) or (g) of this Section 2.20, or (ii) that are United States withholding taxes imposed on amounts payable to such Arranger, such Agent, such Manager or such Lender at the time such Arranger, such Agent, such Manager or such Lender becomes a party to this Agreement, except to the extent that such Arranger's, such Agent's, such Manager's or such Lender's assignor (if any) was entitled, at the time of assignment, to receive additional amounts from the Borrower or a Guarantor with respect to such Non-Excluded Taxes pursuant to this Section 2.20(a). The Borrower or the applicable Guarantor shall make any such required withholding and pay the full amount withheld to the relevant tax authority or other Governmental Authority in accordance with applicable Requirements of Law.

(b) If any Arranger, Agent, Manager or Lender, as applicable, receives a refund of a tax for which a payment has been made by the Borrower or any Guarantor pursuant to this Section 2.20, which refund in the good faith judgment of such Arranger, Agent, Manager or Lender, as the case may be, is attributable to such payment made by the Borrower or such Guarantor, then such Arranger, Agent, Manager or Lender, as the case may be, shall reimburse the Borrower or such Guarantor for such amount as such Arranger, Agent, Manager or Lender, as the case may be, determines in good faith to be the proportion of the refund as will leave it, after such reimbursement, in the same position it would have been in if the payment of such tax and any payment by the Borrower or such Guarantor under this Section 2.20 had not been made. Subject to this Section 2.20(b), upon the reasonable request of the Borrower or a Guarantor, the Lender or the Administrative Agent, as applicable, shall at its sole discretion, exercised in good faith, use reasonable efforts to cooperate with the Borrower or a Guarantor with a view to obtaining a refund of any Non-Excluded Taxes with respect to which the Borrower or a Guarantor has paid any amounts pursuant to Section 2.20 and which the Borrower or a Guarantor, on advice of counsel, reasonably believes were not correctly or legally asserted by the relevant Governmental Authority.

(c) Subject to subsection (f) below, the Borrower shall indemnify each Arranger, each Agent, each Manager and any Lender for the full amount of Non-Excluded Taxes to the extent payable but not paid by the Borrower or any Guarantor pursuant to Section 2.20(a) and paid by such Arranger, Agent, Manager or Lender or any of their respective Affiliates (including, without limitation, any Non-Excluded Taxes imposed by any Governmental Authority on amounts payable under Section 2.20(a) or this Section 2.20(c) and any penalties, additions to tax interest and related expenses attributable to such Non-Excluded Taxes). Payment under this indemnification shall be made within ten (10) Business Days from the date any Arranger, any Agent, any Manager or any Lender or any of their respective Affiliates makes written demand therefor, which demand shall set forth in reasonable detail the basis and calculation of the amounts demanded. Any Lender (or Transferee) claiming any indemnity payment or additional amounts payable pursuant to Section 2.20(a) shall use reasonable efforts (consistent with legal and regulatory restrictions) to file any certificate or document reasonably requested in writing by the Borrower or a Guarantor if the

58

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making of such a filing would avoid the need for or reduce the amount of any such indemnity payment or additional amounts that may thereafter accrue.

(d) Whenever any Non-Excluded Taxes are payable by the Borrower or a Guarantor, as promptly as possible thereafter the Borrower or such Guarantor shall send to the Administrative Agent for the account of the relevant Arranger, Agent, Manager or Lender, as the case may be, a certified copy of an original official receipt received by the Borrower or such Guarantor showing payment thereof.

(e) The agreements in this Section 2.20 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(f) Each Lender (or Transferee) that is not a U.S. Person (as defined in Section 7701(a)(3) of the Code) (a "*Non-U.S. Lender*") shall deliver to the Borrower and the Administrative Agent (and, in the case of a Participant, to the Lender from which the related participation shall have been purchased) two duly completed copies of either U.S. Internal Revenue Service Form W-8BEN or Form W-8ECI, or, in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest," a Form W-8BEN and a statement substantially in the form of Exhibit I hereto to the effect that such Non-U.S. Lender is eligible for a complete exemption from withholding of U.S. taxes under Section 871(h) or 881(c) of the Code, or any subsequent versions of any of the foregoing or successors thereto, properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by the Borrower or any Guarantor under this Agreement and the other Loan Documents. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation) and on or before the date of the first payment to it following the date, if any, such Non-U.S. Lender changes its applicable lending office pursuant to Section 2.23 hereof. In addition, each Non-U.S. Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Lender. Each Non-U.S. Lender shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). If a Non-U.S. Lender is unable to deliver any form pursuant to this Section 2.20(f), such Non-U.S. Lender shall be entitled to neither relief from withholding nor indemnity hereunder with respect to Non-Excluded Taxes for the period that would have been covered by such form, unless (i) such Non-U.S. Lender's inability to deliver such form resulted from a change in law after the date on which such Lender became a Lender hereunder or as a result of a change in the circumstances of the Borrower or any Guarantor or the use of proceeds of such Non-U.S. Lender's loans or (ii) such Non-U.S. Lender's assignor (if any) was entitled, at the time of assignment, to the indemnity afforded hereunder. Notwithstanding any other provision of this paragraph, a Non-U.S. Lender shall not be required to deliver any form pursuant to this paragraph that such Non-U.S. Lender is not legally able to deliver.

(g) Each Arranger, Agent, Manager and Lender that is entitled to an exemption from non-U.S. withholding taxes under the law of the jurisdiction in which the Borrower or a Guarantor is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement or any other Loan Document shall deliver to the Borrower and the relevant Guarantor(s), as applicable (with a copy to the Administrative Agent), at the time or times prescribed by applicable Requirements of Law or reasonably requested by the Borrower or such Guarantor(s), such properly completed and executed documentation prescribed by applicable Requirements of Law as will permit such payments to be made without withholding; *provided*, that such Arranger, Agent, Manager or Lender is legally entitled to complete, execute and deliver such

59

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documentation and in such Person's judgment such completion, execution or submission would not materially prejudice the legal position of such Person.

(h) The Borrower and each Guarantor shall pay all Non-Excluded Taxes to the relevant Governmental Authority in accordance with applicable Requirements of Law.

**2.21 Indemnity.** The Borrower agrees to indemnify each Lender and to hold each Lender harmless from any loss or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement (whether as a result of a Stop Funding Notice or otherwise), (b) default by the Borrower in making any prepayment after the Borrower has given a notice thereof in accordance with the provisions of this Agreement or (c) the making of a prepayment or conversion of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto. Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. A certificate as to any amounts payable pursuant to this Section submitted to the Borrower by any Lender shall be conclusive in the absence of manifest error. This covenant shall survive the termination of this Agreement and the payment of the Loans and Letters of Credit and all other amounts payable hereunder.

**2.22 Illegality.** Notwithstanding any other provision herein, if the adoption of or any change in any Requirement of Law or in the interpretation or application thereof shall make it unlawful for any Lender to make or maintain Eurodollar Loans as contemplated by this Agreement, then (a) the commitment of such Lender hereunder to make Eurodollar Loans, continue Eurodollar Loans as such and convert Base Rate Loans to Eurodollar Loans shall forthwith be canceled and (b) such Lender's Loans then outstanding as Eurodollar Loans, if any, shall be converted automatically to Base Rate Loans on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law. If any such conversion of a Eurodollar Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, the Borrower shall pay to such Lender such amounts, if any, as may be required pursuant to Section 2.21.

**2.23 Change of Lending Office.** Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.19, 2.20 or 2.22 with respect to such Lender, it will, if requested by the Borrower or a Guarantor, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Loans affected by such event with the object of avoiding the consequences of such event; *provided*, that such designation is made on terms that, in the sole judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal or regulatory disadvantage, and *provided, further*, that nothing in this Section shall affect or postpone any of the obligations or rights of any Borrower or Lender pursuant to Section 2.19, 2.20 or 2.22.

**2.24 Insurance Proceeds and Eminent Domain Proceeds.** (a) This Section 2.24 shall apply to all Insurance Proceeds and all Eminent Domain Proceeds received by any Loan Party after the Final Completion Date. Any such Insurance Proceeds or Eminent Domain Proceeds (other than those described in subsection (b) below and those that the Administrative Agent is required to deliver to the FF&E Agent pursuant to the FF&E Intercreditor Agreement) shall be applied to the prepayment of

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the Obligations of the Borrower in accordance with Sections 2.12 and 2.18, unless, subject to Section 2.24(h) in the case of Eminent Domain Proceeds with respect to the Phase II Land, each of the following conditions are satisfied or waived by the Majority Initial Arrangers (and the Required Lenders, as applicable) as required pursuant to Section 2.24(c) or 2.24(d), within 30 Business Days (or, in the case of Insurance Proceeds or Eminent Domain Proceeds described in Section 2.24(d), 60 Business Days) after any Loan Party's receipt of such Insurance Proceeds or Eminent Domain Proceeds, in which event such amounts shall be applied to the repair or restoration of the Project in accordance with the terms of such Sections:

- (i) such damage or destruction or Event of Eminent Domain does not constitute the destruction of all or substantially all of the man-made portion of the Project;
- (ii) neither a Default nor an Event of Default has occurred and is continuing (other than a Default or an Event of Default resulting solely from such damage or destruction or Event of Eminent Domain) and after giving effect to any proposed repair and restoration, no Default or Event of Default will result from such damage or destruction or proposed repair and restoration or Event of Eminent Domain;
- (iii) the Borrower and the Construction Consultant certify, and the Majority Initial Arrangers (with, if applicable, the consent of the Required Lenders) determine in their reasonable judgment, that repair or restoration of the Project to a condition substantially similar to the condition of the Project immediately prior to the event or events to which the relevant Insurance Proceeds or Eminent Domain Proceeds, as the case may be relate, is technically and economically feasible within a twelve-month period and that a sufficient amount of funds is or will be available to the relevant Loan Party to make such repairs and restorations;
- (iv) the Borrower delivers to the Administrative Agent a plan describing in reasonable detail the nature of the repairs or restoration to be effected and the anticipated costs and schedule associated therewith (the "*Repair Plan*"), in form and substance reasonably satisfactory to the Majority Initial Arrangers (and, if applicable, the Required Lenders);
- (v) the Borrower certifies, and the Majority Initial Arrangers (with, if applicable, the consent of the Required Lenders) determine in their reasonable judgment, that a sufficient amount of funds is or will be available to the Borrower to make all payments on Indebtedness which will become due during and following the repair period and, in any event, to maintain compliance with the covenants set forth in Section 7.1 during such repair period;
- (vi) no Permit is necessary to proceed with the repair and restoration of the Project and no material amendment to the Project Documents, or, except with the consent of the Required Lenders, this Agreement or any of the Loan Document, and no other instrument is necessary for the purpose of effecting the repairs or restoration of the Project or subjecting the repairs or restoration to the Liens of the applicable Security

Documents and maintaining the priority of such Liens or, if any of the above is necessary, the Borrower and/or the appropriate Loan Party will be able to obtain the same as and when required;

(vii) the Majority Initial Arrangers shall receive such additional title insurance, title insurance endorsements, mechanic's lien waivers, certificates, opinions or other matters as they may reasonably request (or, if applicable, as the Required Lenders may request) as necessary or appropriate in connection with such repairs or restoration of the Project or to preserve or protect the Lenders' interests hereunder and in the applicable Collateral; and

(viii) the proposed repair or restoration is permitted by each of the other Financing Agreements.

61

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(b) If there shall occur any damage, destruction or Event of Eminent Domain of or with respect to the Project with respect to which Insurance Proceeds and/or Eminent Domain Proceeds received by the relevant Loan Party(ies) for any single loss or series of related losses not in excess of \$15,000,000 are payable, such Insurance Proceeds and/or Eminent Domain Proceeds shall be held by the Administrative Agent in a Funding Account and released by the Administrative Agent to the relevant Loan Party(ies) in amounts from time to time necessary to make payments for work undertaken towards repair, restoration or reconstruction necessitated by such event(s), upon presentation of documentation reasonably satisfactory to the Administrative Agent supporting such requested payments.

(c) Provided that the conditions set forth in subsection (a) above have been waived by the Majority Initial Arrangers, or have been acknowledged by such Persons as having been satisfied, which acknowledgement shall not be unreasonably withheld, delayed or conditioned, if there shall occur any damage, destruction or Event of Eminent Domain of or with respect to the Project with respect to which Insurance Proceeds and/or Eminent Domain Proceeds received by the relevant Loan Party(ies) for any single loss or series of related losses in excess of \$15,000,000, but not in excess of \$30,000,000, are payable, such Insurance Proceeds and/or Eminent Domain Proceeds received by relevant Loan Party(ies) shall be held by the Administrative Agent in a Funding Account and released by the Administrative Agent to relevant Loan Party(ies) in accordance with subsection (e) below.

(d) Provided that the conditions set forth in subsection (a) above have been waived by the Majority Initial Arrangers and the Required Lenders, or have been acknowledged by such Persons as having been satisfied, which acknowledgement shall not be unreasonably withheld, delayed or conditioned, if there shall occur any damage, destruction or Event of Eminent Domain of or with respect to the Project with respect to which Insurance Proceeds and/or Eminent Domain Proceeds received by the relevant Loan Party(ies) for any single loss or series of related losses in excess of \$30,000,000 are payable, such Insurance Proceeds and/or Eminent Domain Proceeds shall be held by the Administrative Agent in a Funding Account and released by the Administrative Agent to the relevant Loan Party(ies) in accordance with subsection (e) below.

(e) Except as provided in Section 2.24(b), amounts which are to be applied to repair or restoration of the Project pursuant to this Section 2.24 shall be disbursed by the Administrative Agent from the applicable Funding Account in accordance with the procedures set forth in this Section 2.24(e). From time to time the Administrative Agent's authorization of release of Insurance Proceeds and/or Eminent Domain Proceeds for application toward such repairs or restoration shall be conditioned upon the relevant Loan Party's delivery to the Administrative Agent of (i) a certificate from the Borrower (I) describing in reasonable detail the nature of the repairs or restoration to be effected with such release and certifying that such repairs or restoration are materially consistent with, and shall be undertaken in accordance with, the Repair Plan, (II) stating the cost of such repairs or restoration, which shall be no less than the amount of Insurance Proceeds and/or Eminent Domain Proceeds requested in such release, and that such requested release amount will be applied to the cost thereof, (III) stating that the aggregate amount requested in respect of such repairs or restoration (when added to any other Insurance Proceeds and/or Eminent Domain Proceeds received by the relevant Loan Party(ies) or otherwise made available to the Project in respect of such damage or destruction or Event of Eminent Domain) does not exceed the cost of such repairs or restoration and that a sufficient amount of funds is or will be available to the relevant Loan Party(ies) to complete such repair or restoration, and (IV) stating that neither a Default nor an Event of Default has occurred and is continuing other than a Default or an Event of Default resulting solely from such damage, destruction or Event of Eminent Domain (*provided*, that in any event no Default or Event of Default under Sections 7.1 or 8(a) shall have occurred and be continuing), (ii) such documents, certificates and

62

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information of the type described in Section 2.24(a)(vii) as the Majority Initial Arrangers may reasonably request and (iii) in the event such repairs or restorations relate to damage, destruction or Event of Eminent Domain of the type described in Section 2.24(d), all other documents, certificates and information with respect to such Insurance Proceeds, Eminent Domain Proceeds, repair and/or restoration as the Majority Initial Arrangers may reasonably request as necessary or appropriate in connection with such repairs or restoration of the Project or to preserve or protect the Lenders' interests hereunder and in the applicable Collateral.

(f) If, after Insurance Proceeds and/or Eminent Domain Proceeds have been applied to the repair or restoration of the Project as provided in this Section 2.24, any excess Insurance Proceeds and/or Eminent Domain Proceeds shall be applied to the prepayment of the Obligations of the Borrower in accordance with Section 2.12.

(g) If an Event of Default shall have occurred and be continuing (other than a Default or an Event of Default resulting solely from the damage or destruction or Event of Eminent Domain giving rise to the receipt of such Insurance Proceeds or Eminent Domain Proceeds (but in any event including any Default or Event of Default under Sections 7.1 or 8(a))), then any provisions of this Section 2.24 to the contrary notwithstanding, any Insurance Proceeds or Eminent Domain Proceeds may be applied by the Administrative Agent (i) to curing such Event of Default, and any Insurance Proceeds or Eminent Domain Proceeds remaining thereafter shall be applied as provided in this Section 2.24 or (ii) if such Event of Default cannot be cured, toward payment of all other Obligations of the Borrower, in connection with exercise of the Lenders' remedies pursuant to Section 8.

(h) Notwithstanding anything to the contrary contained in this Section 2.24, all Eminent Domain Proceeds received by any Loan Party with respect to the Phase II Land (including, without limitation, the Phase II Land Building) shall be applied to the prepayment of Obligations of the Borrower in accordance with Sections 2.12 and 2.18.



### SECTION 3. LETTERS OF CREDIT

3.1 *L/C Commitment.* (a) Subject to the terms and conditions hereof, the Issuing Lender, in reliance on the agreements of the other Revolving Credit Lenders set forth in Section 3.4(a), agrees to issue standby and commercial letters of credit ("*Letters of Credit*") for the account of the Borrower on any Business Day during the Letter of Credit Commitment Period (*provided*, that until the Total Term Loan Extensions of Credit equals the Total Term Loan Commitments, Letters of Credit shall not be available to the Borrower hereunder) in such form as may be approved from time to time by the Issuing Lender; *provided* that the Issuing Lender shall have no obligation to issue any Letter of Credit if, after giving effect to such issuance, (i) the L/C Obligations would exceed the L/C Commitment, (ii) the aggregate amount of the Available Revolving Credit Commitments would be less than zero, (iii) if such issuance is prior to the Debt Service Availability Date, the Total Revolving Extensions of Credit would exceed an amount equal to the difference between (x) the Total Revolving Credit Commitments at such time and (y) [36,800,000] or (iv) if such issuance is during the Additional Completion Period, the Total Revolving Extensions of Credit would exceed an amount equal to the difference between (x) the Total Revolving Credit Commitments at such time and (y) \$3,000,000. Each Letter of Credit shall (i) be denominated in Dollars and (ii) expire no later than the earlier of (x) the date which is one year after the date of issuance and (y) the date which is five Business Days prior to the Scheduled Revolving Credit Termination Date, *provided* that any Letter of Credit may provide for the extension of the expiry date thereof for additional one-year periods (which shall in no event extend beyond the date referred to in subsection (y) above).

63

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(b) The Issuing Lender shall not at any time be obligated to issue any Letter of Credit hereunder if such issuance would conflict with, or cause the Issuing Lender or any L/C Participant to exceed any limits imposed by, any applicable Requirement of Law.

3.2 *Procedure for Issuance of Letter of Credit.* (a) Prior to the Completion Date, and, to the extent the Letter of Credit is being utilized in furtherance of the payment or support for Project Costs, after the Completion Date but prior to the Final Completion Date, the Borrower may request that the Issuing Lender issue a Letter of Credit by delivering to the Issuing Lender and the Disbursement Agent, in each case in accordance with and pursuant to the terms of Section 2.4 of the Disbursement Agreement such Notice of Advance Requests in the form, at the times and as required under the Disbursement Agreement. Notwithstanding any provisions of the Disbursement Agreement to the contrary, such Notice of Advance Requests and the related Advance Confirmation Notices from the Disbursement Agent in accordance with the provisions of Section 2.4 of the Disbursement Agreement must be received by the Issuing Lender at least 3 Business Days (or such shorter period agreed to by the Issuing Lender) prior to the proposed date of issuance (in addition to such other documents, certificates, documents and papers as the Issuing Lender may request) and must contain all the information relevant to the proposed Letter of Credit issuance as set forth in a Letter of Credit Request.

(b) On or after the Completion Date, the Borrower may request that the Issuing Lender issue a Letter of Credit by delivering to the Issuing Lender and the Administrative Agent, at least 3 Business Days (or such shorter period agreed to by the Issuing Lender) prior to the proposed date of issuance (such proposed date to be a Business Day), a Letter of Credit Request accompanied by such other documents, certificates, documents and papers as the Issuing Lender may request. Letter of Credit Requests may be delivered by facsimile transmission.

Promptly after the issuance or amendment of a Letter of Credit (in any event upon satisfaction or waiver of the conditions precedent set forth in Section 5.2 or 5.3, as the case may be), the Issuing Lender shall notify the Borrower and the Administrative Agent, in writing, of such issuance or amendment and such notice shall be accompanied by a copy of such issuance or amendment. Upon receipt of such notice, the Administrative Agent shall promptly notify the Revolving Credit Lenders, in writing of such issuance or amendment and if so requested by any such Lender the Administrative Agent shall furnish such Lender with a copy of such issuance or amendment. Notwithstanding the foregoing, the Issuing Lender shall not be obligated to make any Letters of Credit available to the Borrower at a time when a Lender Default exists unless the Issuing Lender has entered into arrangements satisfactory to it to eliminate the Issuing Lender's risk with respect to the Defaulting Lender's or Lenders' participation in such Letters of Credit.

3.3 *Fees and Other Charges.* (a) The Borrower shall pay a fee on the aggregate drawable amount of each outstanding Letter of Credit at a per annum rate equal to the Applicable Margin then in effect with respect to Eurodollar Loans under the Revolving Credit Facility, shared ratably among the Revolving Credit Lenders and payable quarterly in arrears on each L/C Fee Payment Date after the issuance date of such Letter of Credit; *provided, however*, that any such fee accrued with respect to any Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender except to the extent that such fee shall otherwise have been due and payable by such Borrower prior to such time; and provided further that no such fee shall accrue for the benefit of a Defaulting Lender so long as such Lender shall be a Defaulting Lender. In addition, the Borrower shall pay to the Issuing Lender for its own account a fronting fee equal to  $\frac{1}{4}$  of 1% per annum on the aggregate drawable amount of each outstanding Letter of Credit (but in any event not less than \$500.00 per annum per Letter of Credit), payable quarterly in arrears on each L/C Fee Payment Date after the issuance date of such Letter of Credit.

64

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(b) In addition to the foregoing fees, the Borrower shall pay or reimburse the Issuing Lender for such normal and customary costs and expenses as are incurred or charged by the Issuing Lender in issuing, negotiating, effecting payment under, amending or otherwise administering any Letter of Credit.

3.4 *L/C Participations.* (a) The Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant, and, to induce the Issuing Lender to issue Letters of Credit hereunder, each L/C Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from the Issuing Lender, on the terms and conditions hereinafter stated, for such L/C Participant's own account and risk an undivided interest equal to such L/C Participant's Revolving Credit Percentage in the Issuing Lender's obligations and rights under each Letter of Credit issued hereunder and the amount of each draft paid by the Issuing Lender thereunder. Each L/C Participant unconditionally and irrevocably agrees with the Issuing Lender that, if a draft is paid under any Letter of Credit for which the Issuing Lender is not reimbursed in full by the Borrower in accordance with the terms of this Agreement, such L/C Participant shall pay to the Issuing Lender, regardless of the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5, upon demand, at the Issuing Lender's address for notices specified herein an amount equal to such L/C Participant's Revolving Credit Percentage of the amount of such draft, or any part thereof, that is not so reimbursed. Each L/C Participant acknowledges and agrees that its obligation to acquire participations and make payments pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit, the occurrence and continuance of a Default or Event of Default, the reduction or termination of the Commitments, any adverse change in the condition (financial or otherwise) of the Borrower or any other Person or any breach of this Agreement or any other

Loan Document by the Borrower or any other Person (including, without limitation, any other Revolving Credit Lender), and each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(b) If any amount required to be paid by any L/C Participant to the Issuing Lender pursuant to Section 3.4(a) in respect of any unreimbursed portion of any payment made by the Issuing Lender under any Letter of Credit is paid to the Issuing Lender within three Business Days after the date such payment is due, such L/C Participant shall pay to the Issuing Lender on demand an amount equal to the product of (i) such amount, times (ii) the daily average Federal Funds Effective Rate during the period from and including the date such payment is required to the date on which such payment is immediately available to the Issuing Lender, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. If any such amount required to be paid by any L/C Participant pursuant to Section 3.4(a) is not made available to the Issuing Lender by such L/C Participant within three Business Days after the date such payment is due, the Issuing Lender shall be entitled to recover from such L/C Participant, on demand, such amount with interest thereon calculated from such due date at the rate per annum applicable to Base Rate Loans under the Revolving Credit Facility. A certificate of the Issuing Lender submitted to any L/C Participant with respect to any amounts owing under this Section shall be conclusive in the absence of manifest error.

(c) Whenever, at any time after the Issuing Lender has made payment under any Letter of Credit and has received from any L/C Participant its *pro rata* share of such payment in accordance with Section 3.4(a), the Issuing Lender receives any payment related to such Letter of Credit (whether directly from the Borrower or otherwise, including proceeds of collateral applied thereto by the Issuing Lender), or any payment of interest on account thereof, the Issuing Lender will distribute to such L/C Participant its *pro rata* share thereof; *provided, however*, that in the event that any such payment received by the Issuing Lender shall be required to be returned by the

65

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Issuing Lender, such L/C Participant shall return to the Issuing Lender the portion thereof previously distributed by the Issuing Lender to it.

**3.5 Reimbursement Obligation of the Borrower.** The Borrower agrees to reimburse the Issuing Lender on each date on which the Issuing Lender notifies the Borrower and the Administrative Agent of the date and amount of a draft presented under any Letter of Credit and paid by the Issuing Lender for the amount of (a) such draft so paid and (b) any taxes, fees, charges or other costs or expenses incurred by the Issuing Lender in connection with such payment (the amounts described in the foregoing subsections (a) and (b) in respect of any drawing, collectively, the "*Payment Amount*"). Each such payment shall be made to the Administrative Agent at the Payment Office, for the account of the Issuing Lender, in Dollars and in immediately available funds. The Administrative Agent shall distribute such payments to the Issuing Lender promptly upon receipt at its address for notices specified herein in like funds as received. Interest shall be payable on each Payment Amount from the date of the applicable drawing until payment in full at the rate set forth in (i) until the second Business Day following the date of the applicable drawing, Section 2.15(b) and (ii) thereafter, Section 2.15(c). Each drawing under any Letter of Credit shall (unless an event of the type described in subsection (i) or (ii) of Section 8(f) shall have occurred and be continuing with respect to the Borrower, in which case the procedures specified in Section 3.4 for funding by L/C Participants shall apply) constitute a request by the Borrower to the Administrative Agent for a borrowing pursuant to Section 2.5 of Base Rate Loans (or, at the option of the Administrative Agent and the Swing Line Lender in their sole discretion, a borrowing pursuant to Section 2.7 of Swing Line Loans) in the amount of such drawing. The Borrowing Date with respect to such borrowing shall be the first date on which a borrowing of Revolving Credit Loans (or, if applicable, Swing Line Loans) could be made, pursuant to Section 2.5 (or, if applicable, Section 2.7), if the Administrative Agent had received a notice of such borrowing at the time of such drawing under such Letter of Credit.

**3.6 Obligations Absolute.** The Borrower's obligations under this Section 3 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that the Borrower may have or have had against the Issuing Lender, any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees with the Issuing Lender that the Issuing Lender shall not be responsible for, and the Borrower's Reimbursement Obligations under Section 3.5 shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. The Issuing Lender shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit. The Borrower agrees that any action taken or omitted by the Issuing Lender under or in connection with any Letter of Credit or the related drafts or documents, if done in accordance with the standards or care specified in the UCC of the State of New York, shall be binding on the Borrower and shall not result in any liability of the Issuing Lender to the Borrower.

**3.7 Letter of Credit Payments.** If any draft or other form of demand shall be presented for payment under any Letter of Credit, the Issuing Lender shall promptly notify the Borrower of the date and amount thereof. The responsibility of the Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment are substantially in conformity with such Letter of Credit.

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## SECTION 4. REPRESENTATIONS AND WARRANTIES

To induce the Arrangers, the Agents, the Managers and the Lenders to enter into this Agreement and to make the Loans and issue or participate in the Letters of Credit, the Borrower hereby represents and warrants to each Arranger, each Agent, each Manager and each Lender that, on the Closing Date (except with respect to Sections 4.25(h), 4.26, 4.27 and 4.28), on each Borrowing Date for Revolving Loans on or after the Completion Date and on the date of issuance or amendment of each Letter of Credit on or after the Completion Date, the following statements are true, correct and complete, it being understood that such representations and warranties are being made solely as of the Closing Date and as a condition to the making of Revolving Loans on or after the Completion Date, the making of Swing Line Loans and the issuance or amendment of Letters of Credit on or after the Completion Date and shall not be made or be a condition to the funding of any Loans or the issuance or amendment of any Letters of Credit prior to the Completion Date:

### 4.1 Financial Condition.

The restated audited consolidated and consolidating balance sheets of Valvino and its consolidated Subsidiaries as at December 31, 2000 and December 31, 2001, and the related consolidated and consolidating statements of income and of cash flows for the Fiscal Years ended on such dates, reported on by and accompanied by an unqualified report from Deloitte & Touche LLP, present fairly in all material respects the consolidated and consolidating financial condition of Valvino and its consolidated Subsidiaries as at such date, and the consolidated and consolidating results of its operations and its consolidated and consolidating cash flows for the respective Fiscal Years then ended. The unaudited consolidated and consolidating balance sheets of Valvino and its consolidated Subsidiaries as at June 30, 2002, and the related unaudited consolidated and consolidating statements of income and cash flows for the 6-month period ended on such date, present fairly in all material respects the consolidated and consolidating financial condition of Valvino and its consolidated Subsidiaries as at such date, and the consolidated and consolidating results of its operations and its consolidated and consolidating cash flows for the 6-month period then ended (subject to normal year-end audit adjustments). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the aforementioned firm of accountants and disclosed therein). Valvino and its Subsidiaries do not have any material Guarantee Obligations, contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including, without limitation, any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph or that have not otherwise been disclosed to the Administrative Agent in writing. During the period from January 1, 2002 to and including the Closing Date there has been no Disposition by Valvino or any of its Subsidiaries of any material part of its business or Property.

**4.2 No Change.** Since December 31, 2001, there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect.

**4.3 Corporate/LLC Existence; Compliance with Law.** Each of the Loan Parties and the Completion Guarantor (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the corporate or limited liability company power and authority, and the legal right, to own and operate its Property, to lease the Property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or limited liability company and in good standing under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification, except to the extent the failure to be so qualified or in good standing could not reasonably be expected to have a Material Adverse Effect and (d) is in compliance with all Requirements of Law except to the extent

67

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that the failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

**4.4 Corporate Power; Authorization; Enforceable Obligations.** Each Loan Party and the Completion Guarantor has the corporate or limited liability company power, as the case may be, and authority, and the legal right, to make, deliver and perform the Loan Documents and the other Operative Documents to which it is a party and to carry out the transactions contemplated thereby and, in the case of the Borrower, to borrow hereunder. Each Loan Party and the Completion Guarantor has taken all necessary corporate or limited liability company action, as the case may be, to authorize the execution, delivery and performance of the Loan Documents and the other Operative Documents to which it is a party and, in the case of the Borrower and Capital Corp., to authorize the borrowings and issuances of Indebtedness on the terms and conditions of this Agreement and the other Operative Documents. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any Person (other than a Loan Party) is required in connection with the borrowings hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement, any of the Loan Documents or any of the other Operative Documents, except (i) consents, authorizations, filings and notices described in *Schedule 4.4*, which consents, authorizations, filings and notices have, unless otherwise indicated on *Schedule 4.4*, been obtained or made and are in full force and effect and (ii) the filings referred to in Section 4.19. Each Loan Document and other Operative Document has been duly executed and delivered on behalf of the Completion Guarantor and each Loan Party party thereto. This Agreement constitutes, and each other Loan Document, Project Document and Operative Document upon execution will constitute, a legal, valid and binding obligation of the Completion Guarantor and each Loan Party party thereto, enforceable against the Completion Guarantor and each such Loan Party in accordance with its 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).

**4.5 No Legal Bar.** The execution, delivery and performance of this Agreement, the other Loan Documents and the other Operative Documents, the issuance of Letters of Credit, the borrowings hereunder and the use of the proceeds thereof will not violate any Requirement of Law or any Contractual Obligation of the Completion Guarantor or any Loan Party and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such Contractual Obligation (other than the Liens created by the Security Documents and the Other Security Documents). No Requirement of Law or Contractual Obligation applicable to the Completion Guarantor or any Loan Party could reasonably be expected to have a Material Adverse Effect.

**4.6 No Material Litigation.** No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened by or against the Completion Guarantor or any Loan Party or against any of their respective properties or revenues (a) with respect to any of the Financing Agreements or any of the transactions contemplated hereby or thereby, or (b) that could reasonably be expected to have a Material Adverse Effect.

**4.7 No Default.** Neither the Completion Guarantor nor any Loan Party is in default under or with respect to any of its Contractual Obligations in any respect that could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

**4.8 Ownership of Property; Liens.** Each of the Loan Parties is the sole owner of, legally and beneficially, and has good, marketable and insurable title to, or has a valid leasehold interest in, all its Real Estate, and good title to, or a valid leasehold interest in, all its other Property, and none of such Property is subject to any claims, liabilities, obligations, charges or restrictions of any kind, nature or description (other than claims, liabilities, obligations, charges or restrictions that individually or in the

68

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aggregate could not reasonably be expected to materially interfere with the business or assets of any Loan Party), or to any Lien except for Permitted Liens. None of the Pledged Stock is subject to any Lien except for Permitted Liens.

**4.9 Intellectual Property.** (a) Each Loan Party owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. No claim has been asserted or is pending by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does the Borrower know of any valid basis for any such claim, except (i) with respect to the Intellectual Property related to or otherwise associated with the Loan Parties' use of the "Le Reve" name, such claims that, if determined adversely to a Loan Party, could not reasonably be expected to have a material adverse effect on such Loan Party's ability to use the "Le Reve" name in its Permitted Business as currently used or contemplated to be used and (ii) with respect to all other Intellectual Property, as could not reasonably be expected to have a Material Adverse Effect. The use by each Loan Party of the Intellectual Property related to or otherwise associated with such Loan Party's use of the "Le Reve" name does not infringe on the rights of any Person, which infringement could reasonably be expected to have a material adverse effect on such Loan Party's ability to use the "Le Reve" name in its Permitted Business as currently used or contemplated to be used. The use by each Loan Party of Intellectual Property other than Intellectual Property related to or otherwise associated with such Loan Party's use of the "Le Reve" name, does not infringe on the rights of any Person, which infringement could reasonably be expected to have a Material Adverse Effect.

(b) As of the Closing Date, *Schedule 4.9(b)* (i) identifies each of the trademarks, service marks and trade name applications and registrations registered by, made by or otherwise held, directly or indirectly, by each of the Loan Parties and identifies which such Person registered, made or otherwise holds such Intellectual Property, and (ii) specifies as to each, the jurisdiction in which such Intellectual Property has been issued or registered (or, if applicable, in which an application for such issuance or registration has been filed), including the respective registration or application numbers and applicable dates of registration or application and expiration.

(c) As of the Closing Date, *Schedule 4.9(c)* (i) identifies each of the patents and patent applications owned by, made by or otherwise held, directly or indirectly, by each of the Loan Parties and identifies which such Person owns, made or otherwise holds such Intellectual Property, and (ii) specifies as to each, the jurisdiction in which such Intellectual Property has been issued or registered (or, if applicable, in which an application for such issuance or registration has been filed), including the respective patent or application numbers and applicable dates of issuance or application and expiration.

(d) As of the Closing Date, *Schedule 4.9(d)* (i) identifies each of the material copyrights and copyright applications and registrations registered by, made by or otherwise held, directly or indirectly, by each of the Loan Parties and identifies which such Person registered, made or otherwise holds such Intellectual Property, and (ii) specifies as to each, the jurisdiction in which such Intellectual Property has been issued or registered (or, if applicable, in which an application for such issuance or registration has been filed), including the respective registration or application numbers and applicable dates of registration or application and expiration.

(e) As of the Closing Date, *Schedule 4.9(e)* (i) identifies, each of the material trade secrets owned by, claimed by, or otherwise held, directly or indirectly, by each of the Loan Parties and identifies which such Person registered, made or otherwise holds such Intellectual Property, and (ii) specifies as to each, the jurisdiction in which such Intellectual Property exists.

69

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(f) As of the Closing Date, *Schedule 4.9(f)* identifies all licenses, sublicenses and other agreements relating to Intellectual Property to which any of the Loan Parties is a party that are material to the conduct of such Loan Party's Permitted Business and pursuant to which (i) any of the Loan Parties is a licensor or sub-licensor or the equivalent or (ii) any other Person is authorized to use any Intellectual Property as a licensee, sub-licensee or the equivalent.

**4.10 Taxes.** (a) Each of the Completion Guarantor and the Loan Parties has filed, or caused to be filed, all tax and informational returns that are required to have been filed by it in any jurisdiction, and all such tax and informational returns are correct and complete in all material respects. Each of the Completion Guarantor and the Loan Parties has paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by it, to the extent the same have become due and payable (other than (x) those taxes that it is contesting in good faith and by appropriate proceedings, and (y) taxes that are not yet due, with respect to each of which it has established reserves that are adequate for the payment thereof and as are required by GAAP).

(b) Neither the Completion Guarantor nor any of the Loan Parties has incurred any material tax liability in connection with the Project or the other transactions contemplated by the Operative Documents which has not been disclosed in writing to the Administrative Agent (including as disclosed in the financial statements delivered to the Lenders hereunder).

(c) There are no Liens for Taxes on any of the Properties of the Completion Guarantor or any of the Loan Parties other than Liens permitted pursuant to Section 7.3(a).

**4.11 Federal Regulations.** No part of the proceeds of the Loans or Letters of Credit will be used for purchasing or carrying any "margin stock" (within the meaning of Regulation U) or for the purpose of purchasing, carrying or trading in any securities under such circumstances as to involve the Borrower in a violation of Regulation X or to involve any broker or dealer in a violation of Regulation T. No indebtedness being reduced or retired out of the proceeds of the Loans or Letters of Credit was or will be incurred for the purpose of purchasing or carrying any "margin stock" (within the meaning of Regulation U). Following application of the proceeds of the Loans and Letters of Credit, "margin stock" (within the meaning of Regulation U) does not constitute more than 25% of the value of the assets of the Borrower and its Subsidiaries. None of the transactions contemplated by this Agreement (including, without limitation, the direct and indirect use of proceeds of the Loans and Letters of Credit) will violate or result in a violation of Regulation T, Regulation U or Regulation X. If requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1 referred to in Regulation U.

**4.12 Labor Matters.** There are no strikes, stoppages, slowdowns or other labor disputes against any of the Loan Parties pending or, to the knowledge of the Borrower, threatened that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of the Loan Parties have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. All payments due from any of the Loan Parties on account of employee health and welfare insurance that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect if not paid have been paid or accrued as a liability on the books of the relevant Loan Party.

**4.13 ERISA.** Neither a Reportable Event nor an "accumulated funding deficiency" (within the meaning of Section 412 of the Code or Section 302 of ERISA) has occurred during the five-year period prior to the date on which this representation is made or deemed made with respect to any Plan. No termination of a Single Employer Plan has occurred, and no Lien in favor of the PBGC or a Plan has arisen, during such five-year period. The actuarial present value of all benefit liabilities under each Single Employer Plan (based on those assumptions that would be used to determine whether each such

Single Employer Plan could be terminated in a standard termination under Section 4041(b) of ERISA) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Plan allocable to such accrued benefits by a material amount. Neither the Borrower, any other Loan Party nor any Commonly Controlled Entity has had a complete or partial withdrawal from any Multiemployer Plan that has resulted or could reasonably be expected to result in a material liability under ERISA, and neither the Borrower, any other Loan Party nor any Commonly Controlled Entity would become subject to any material liability under ERISA if any such Person were to withdraw completely from all Multiemployer Plans as of the most recent valuation date for which each such Multiemployer Plan has furnished data regarding potential withdrawal liability to the applicable Loan Party. As of the Closing Date, no such Multiemployer Plan is in Reorganization or Insolvent.

**4.14 Investment Company Act; Other Regulations.** Neither the Completion Guarantor nor any Loan Party is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended. Neither the Completion Guarantor nor any Loan Party is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, or the Interstate Commerce Act or registration under the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness other than the Nevada Gaming Laws or which may otherwise render all or any portion of the Obligations unenforceable. Incurrence of the Obligations by the Completion Guarantor and the Loan Parties under the Loan Documents complies with all applicable provisions of the Nevada Gaming Laws.

**4.15 Subsidiaries.** (a) The Persons listed on *Schedule 4.15* constitute all the Subsidiaries of Valvino as of the Closing Date. *Schedule 4.15* sets forth as of the Closing Date, the name and jurisdiction of formation of each Subsidiary of Valvino and, as to each such Subsidiary, the percentage and number of each class of Capital Stock owned by its requisite parent entity. Each such Subsidiary is a Wholly Owned Subsidiary of Valvino and, if such Subsidiary's direct parent entity is other than Valvino, its direct parent entity.

(b) There are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Capital Stock of any Subsidiary of Valvino. None of the Subsidiaries of Valvino have issued, or authorized the issuance of, any Disqualified Stock.

(c) Neither Valvino nor any of its Subsidiaries are engaged in any businesses other than the Permitted Businesses. As of the Closing Date, other than, (i) in the case of Las Vegas Jet and World Travel, the Aircraft and Collateral related to the operation and maintenance of the Aircraft, (ii) in the case of Palo, the Palo Home Site Land, (iii) in the case of Wynn Design, Property reasonably related to architectural, engineering, design and project management activities and (iv) in the case of Desert Inn Improvement, the DIIC Water Permits and the Water Utility Land, none of the Water Companies or the Wynn Group Entities owns any material Property other than the Capital Stock of its Subsidiaries (if any).

**4.16 Use of Proceeds; Letters of Credit.** (a) The proceeds of the extensions of credit under this Agreement made prior to the Completion Date and amounts released from the Project Liquidity Reserve Account prior to the Completion Date shall be applied toward Project Costs in accordance with the Disbursement Agreement;

(b) The proceeds of the Revolving Credit Loans made after the Completion Date, the proceeds of the Swing Line Loans and the Letters of Credit shall be used for general business purposes of the Borrower and, to the extent otherwise permitted under the Loan Documents, the other Loan Parties; *provided*, that such general business purposes are in furtherance of, or

associated with, the Permitted Business of such Persons; *provided, further*, that to the extent proceeds of extensions of credit made after the Completion Date but prior to the Final Completion Date are to be applied to Project Costs, such proceeds shall be applied to Project Costs in accordance with the Disbursement Agreement.

**4.17 Environmental Matters.** (a) To the knowledge of the Borrower, the Loan Parties: (i) are, and within the period of all applicable statutes of limitation have been, in material compliance with all applicable Environmental Laws; and (ii) reasonably believe that material compliance with all applicable Environmental Laws that is or is expected to become applicable to any of them will be timely attained and maintained.

(b) To the knowledge of the Borrower, Hazardous Substances are not present at, on, under, in, or about any real property now or formerly owned, leased or operated by any of the Loan Parties, or at any other location (including, without limitation, any location to which Hazardous Substances have been sent for re-use or recycling or for treatment, storage, or disposal) which could reasonably be expected to (i) give rise to liability of any of the Loan Parties under any applicable Environmental Law or otherwise result in costs to any of the Loan Parties that could reasonably be expected to have a Material Adverse Effect, or (ii) materially interfere with any of the Loan Parties' continued operations, or (iii) materially impair the fair saleable value of any real property owned or leased by any of the Loan Parties.

(c) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there is no judicial, administrative, or arbitral proceeding (including any notice of violation or alleged violation) under or relating to any Environmental Law (including, without limitation, any Environmental Claims) to which any of the Loan Parties is, or to the knowledge of the Borrower will be, named as a party that is pending or, to the knowledge of the Borrower, threatened.

(d) No Loan Party has received any written request for information, or been notified that it is a potentially responsible party, under or relating to the federal Comprehensive Environmental Response, Compensation, and Liability Act or any similar Environmental Law.

(e) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no Loan Party has entered into or agreed to any consent decree, order, or settlement or other agreement, or is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral, or other forum for dispute resolution, relating to compliance with or liability under any Environmental Law or Environmental Claim.

(f) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no Loan Party has assumed or retained, by contract or operation of law, any liabilities of any kind, fixed or contingent, known or unknown, under any Environmental Law or with

respect to any Hazardous Substances.

(g) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) Hazardous Materials Activities are not presently occurring, and have not previously occurred, at, on, under, in, or about any Real Estate now or formerly owned, leased or operated by any of the Loan Parties, and (ii) none of the Loan Parties have ever engaged in any Hazardous Materials Activities at any location.

4.18 *Accuracy of Information, etc.* No statement or information contained in this Agreement, any other Loan Document, the Confidential Information Memorandum or any other document, certificate or statement furnished to the Arrangers, the Agents, the Managers or the Lenders or any of them, by or on behalf of the Completion Guarantor or any Loan Party for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the date such statement, information, document or certificate was so furnished (or, in the case of the

72

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Confidential Information Memorandum, as of the date of this Agreement), any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements contained herein or therein not misleading. The projections and *pro forma* financial information contained in the materials referenced above (including, without limitation, the Projections) are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. There is no fact known to the Completion Guarantor or any Loan Party that could reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents, in the Confidential Information Memorandum or in any other documents, certificates and written statements furnished to the Arrangers, the Agents, the Managers and the Lenders for use in connection with the transactions contemplated hereby and by the other Loan Documents.

4.19 *Security Documents.* (a) The Guarantee and Collateral Agreement is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid, binding and enforceable security interest in the Collateral described therein and proceeds and products thereof. In the case of the Pledged Stock, when any stock or membership certificates representing such Pledged Stock are delivered to the Administrative Agent, and in the case of the other Collateral described in the Guarantee and Collateral Agreement, when financing statements in appropriate form are filed in the offices specified on *Schedule 4.19(a)-1* and such other filings as are specified on Schedule 3 to the Guarantee and Collateral Agreement are made, the Guarantee and Collateral Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds and products thereof, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to any other Lien (except Senior Permitted Liens). *Schedule 4.19(a)-2* lists as of the Closing Date each UCC Financing Statement that names any Loan Party as debtor and will remain on file after the Closing Date.

(b) Each of the Mortgages is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid, binding and enforceable Lien on, and security interest in, the Mortgaged Properties described therein and proceeds and products thereof, and when the Mortgages are filed in the offices specified on *Schedule 4.19(b)*, each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all of the Mortgaged Properties and the proceeds and products thereof, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to any other Lien (except Senior Permitted Liens).

(c) The Intellectual Property Security Agreement is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Intellectual Property Collateral described therein and proceeds and products thereof. Upon the filing of (i) the Intellectual Property Security Agreement in the appropriate indexes of the United States Patent and Trademark Office relative to patents and trademarks (within three (3) months after the Closing Date), and the United States Copyright Office relative to copyrights (within thirty (30) days after the Closing Date), together with provision for payment of all requisite fees, and (ii) financing statements in appropriate form for filing in the offices specified on *Schedule 4.19(c)* (which financing statements have been duly completed and executed and filed in accordance with applicable Requirements of Law) the Intellectual Property Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Intellectual Property Collateral and the proceeds and products thereof, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to any other Lien (except Senior Permitted Liens).

(d) The Control Agreements are effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Accounts

73

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described therein and proceeds and products thereof. Upon the execution of the Control Agreements, the Control Agreements shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the Loan Parties in the Accounts and the proceeds and products thereof, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to any other Lien (except Senior Permitted Liens).

4.20 *Solvency.* Each Loan Party and the Completion Guarantor is, and after giving effect to (i) the incurrence of all Indebtedness, (ii) the use of the proceeds of such Indebtedness (including, without limitation, the use of proceeds of the extensions of credit made by the Lenders hereunder) and (iii) and obligations being incurred in connection with the Operative Documents, will be and will continue to be Solvent.

4.21 *Senior Indebtedness.* The Obligations (including, without limitation, the guarantee obligations of each Guarantor under the Loan Documents) constitute senior secured debt of each of the Loan Parties and "Permitted Debt" under and as defined in the Mortgage Notes Indenture. The Mortgage Notes, when issued and paid for, will be the legally valid and binding obligations of the Borrower and Capital Corp., enforceable against the Borrower and Capital Corp. in accordance with their terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability. The issuance and sale of Mortgage Notes, either (a) have been registered or qualified under applicable federal and state securities laws or (b) are exempt therefrom.

4.22 *Regulation H.* No Mortgage encumbers improved real property which is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968.

4.23 *Insurance.* Each of the Loan Parties is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which it is engaged and in any event in accordance with Section 6.5; and none of the Loan Parties has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers at a cost that could not reasonably be expected to have a Material Adverse Effect (other than as a result of general market conditions).

4.24 *Performance of Agreements; Material Contracts.* Neither the Completion Guarantor nor any Loan Party is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists that, with the giving of notice or the lapse of time or both, would constitute such a default, in each case, except where the consequences of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect. *Schedule 4.24* contains a true, correct and complete list of all the Material Contracts in effect on the Closing Date. All Material Contracts (other than Material Contracts described in clause (ii) of the definition thereof) are, to the knowledge of the Borrower, in full force and effect and no material defaults currently exist thereunder.

4.25 *Real Estate.*

(a) As of the Closing Date, *Schedule 4.25(a)* sets forth a true, complete and correct list of all Real Estate, including a brief description thereof, including, in the case of leases, the street address, landlord name, tenant name, guarantor name, current rent amount, lease date and lease expiration date. The Borrower has delivered to the Administrative Agent true, complete and correct copies of all such leases.

(b) All Real Estate and the current use thereof complies with all applicable Requirements of Law (including building and zoning ordinances and codes) and with all Insurance Requirements,

74

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and none of the Loan Parties are non-conforming users of such Real Estate, except where noncompliance or non-conforming use could not reasonably be expected to have a Material Adverse Effect.

(c) No Taking has been commenced or, to the Borrower's knowledge, is contemplated with respect to all or any portion of any Real Estate or for the relocation of roadways providing access to such Real Estate except, in each case, as could not reasonably be expected to have a Material Adverse Effect.

(d) Except as set forth on *Schedule 4.25(d)*, as of the Closing Date there are no current, pending or, to the knowledge of the Borrower, proposed special or other assessments for public improvements or otherwise affecting any Real Estate, nor are there any contemplated improvements to such Real Estate that may result in such special or other assessments. There are no current, pending or, to the knowledge of the Borrower, proposed special or other assessments for public improvements or otherwise affecting any Real Estate, nor are there any contemplated improvements to such Real Estate that may result in such special or other assessments, in any case that could reasonably be expected to result in a material liability to any Loan Party.

(e) None of the Loan Parties has suffered, permitted or initiated the joint assessment of any Real Estate with any other real property constituting a separate tax lot. The Mortgaged Properties have been properly subdivided or entitled to exception therefrom, and for all purposes the Mortgaged Properties may be mortgaged, conveyed and, other than those with respect to leasehold interests, otherwise dealt with as separate legal lots or parcels.

(f) The use being made of all Real Estate is in conformity with the certificate of occupancy and/or such other permits, licenses, variances and certificates for such Real Estate and any other reciprocal easement agreements, restrictions, covenants or conditions affecting such Real Estate except, in each case, to the extent such non-conformity could not reasonably be expected to materially and adversely affect the ownership, occupancy, use or operation of the Mortgaged Properties in furtherance of the Permitted Business of the applicable Loan Party.

(g) There are no outstanding options to purchase or rights of first refusal or restrictions on transferability affecting any Real Estate (other than those set forth in the Financing Agreements).

(h) All Real Estate (other than the Phase II Land) has adequate rights of access to public ways and is served by installed, operating and adequate water, electric, gas, telephone, sewer, sanitary sewer and storm drain facilities, in each case as necessary to permit the Real Estate to be used for its intended purposes. All roads necessary for the utilization of the Real Estate (other than the Phase II Land) for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities or are the subject of access easements for the benefit of such Real Estate.

(i) Except, in each case, as could not reasonably be expected to have a Material Adverse Effect, no building or structure constituting Real Estate or any appurtenance thereto or equipment thereon, or the use, operation or maintenance thereof, violates any restrictive covenant or encroaches on any easement or on any property owned by others.

(j) Since the Closing Date, no portion of the Real Estate has suffered any material damage by fire or other casualty loss that has not heretofore been repaired and restored. No portion of the Real Estate is located in a special flood hazard area as designated by any federal governmental authorities.

4.26 *Permits.* 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 has obtained and holds all Permits required as of the date this representation is deemed made in respect of

75

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all Real Estate and for any other Property otherwise operated by or on behalf of, or for the benefit of, such Person and for the operation of its Permitted Businesses, (ii) all such Permits are in full force and effect, and each of the Loan Parties has performed and observed all requirements of such Permits (to the extent required to be performed by the date this representation 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 are burdensome to any of the Loan Parties, or to the operation of its Permitted Business or any Property owned, leased or otherwise operated by such Person, (v) the Borrower has no knowledge that any Governmental Authority is considering limiting, modifying, suspending, revoking or renewing on burdensome terms any such Permit, 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 that any Permit not required to

have been obtained by the date this representation is deemed made that may be required of such Person is of a type that is routinely granted on application and compliance with the conditions of issuance (such conditions being ministerial or of a type satisfied in the ordinary course of business, without undue expense or delay) and will be timely obtained and complied with, without undue expense or delay.

4.27 *Sufficiency of Project Documents.* Other than those that can be reasonably expected to be commercially available when and as required, the services to be performed, the materials to be supplied and Real Estate and other rights granted or to be granted pursuant to the Project Documents in effect as of such date (a) comprise all of the property interests necessary to secure any right material to the operation and maintenance of the Project in accordance with all Requirements of Law, (b) are sufficient to enable the Project to be located and operated on the Site and (c) provide adequate ingress and egress from the Site for any reasonable purpose in connection with the operation of the Project.

4.28 *Utilities.* All gas, water and electrical interconnection and utility services necessary for the operation of the Project for its intended purposes are available at the Site.

4.29 *Fiscal Year.* The fiscal year of each of the Loan Parties (including the Borrower) ends on December 31 of each calendar year.

## SECTION 5. CONDITIONS PRECEDENT

5.1 *Conditions to Closing Date.* The occurrence of the Closing Date is subject to the satisfaction of each of the conditions precedent described in Section 3.1 of the Disbursement Agreement (unless waived in writing by the Administrative Agent with the consent of all the Lenders).

5.2 *Conditions to Extensions of Credit on or prior to the Completion Date or otherwise pursuant to Section 2.5(a).* The agreement of each Lender to make extensions of credit requested to be made by it on Borrowing Dates occurring on or prior to the Completion Date and, to the extent the provisions of Section 2.5(a) apply to such extensions of credit, after the Completion Date but prior to the Final Completion Date is subject to the satisfaction, prior to or concurrently with the making of such extensions of credit, of the following conditions precedent:

(a) *Notice.* The Borrower and/or the Disbursement Agent, as the case may be, shall have delivered to the Administrative Agent and, in the case of Letters of Credit, the Issuing Lender the Advance Requests and Notice of Advance Requests and related Advance Confirmation Notices with respect to the Loans and/or Letters of Credit requested on such Borrowing Date, in each case in the form, at the times and as required under Section 2.4 of the Disbursement Agreement and in accordance with the procedures specified in Section 2.5(a) hereof in the case of Loans and Section 3.2(a) hereof in the case of Letters of Credit.

76

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(b) *Drawdown Frequency for Loans:* Loans shall be made no more frequently than once every calendar month.

(c) *Satisfaction of Disbursement Agreement Conditions Precedent.* All conditions precedent described in Section 3.3 of the Disbursement Agreement shall have been satisfied or waived in accordance with the terms of the Disbursement Agreement.

5.3 *Conditions to Extensions of Credit after the Completion Date other than pursuant to Section 2.5(a).* The agreement of each Lender to make extensions of credit requested to be made by it on Borrowing Dates occurring after the Completion Date (other than extensions of credit after the Completion Date but prior to the Final Completion Date to the extent the provisions of Section 2.5(a) apply to such extensions of credit) is subject to the satisfaction, prior to or concurrently with the making of such extensions of credit, of the following conditions precedent:

(a) *Notice.* The Borrower shall have delivered (i) in the case of the borrowing of Revolving Loans, a Notice of Borrowing to the Administrative Agent in accordance with the procedures specified in Section 2.5(b), (ii) in the case of the issuance of Letters of Credit, a Letter of Credit Request and the certificates, documents and other papers and information delivered to it in connection therewith to the Issuing Lender in accordance with the procedures specified in Section 3.2(b) and (iii) in the case of the borrowing of Swing Line Loans, the Borrower shall have complied with the provisions of Section 2.7(a).

(b) *Representations and Warranties.* Each of the representations and warranties made by the Completion Guarantor, Wynn Resorts or any Loan Party in or pursuant to the Loan Documents shall be true and correct in all material respects on and as of such date as if made on and as of such date, except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date.

(c) *No Default.* No Default or Event of Default shall have occurred and be continuing on such date or immediately after giving effect to the extensions of credit requested to be made on such date.

(d) *No Material Adverse Effect.* No event or circumstance having a Material Adverse Effect shall have occurred since the Closing Date (except as is no longer continuing).

Each borrowing of Loans by and issuance of a Letter of Credit on behalf of the Borrower hereunder after the Completion Date shall constitute a representation and warranty by the Borrower as of the date of such extension of credit that the conditions contained in this Section 5.3 have been satisfied.

## SECTION 6. AFFIRMATIVE COVENANTS

The Borrower hereby agrees that, so long as the Commitments remain in effect, any Letter of Credit remains outstanding or any Loan or other amount is owing to any Lender, any Arranger, any Manager or any Agent hereunder or under any other Loan Document, the Borrower shall and shall cause each of the other Loan Parties to, directly or indirectly (and by executing the Guarantee and Collateral Agreement, each such other Loan Party agrees that it will):

6.1 *Financial Statements.* Furnish to each Agent and each Lender:

(a) as soon as available, but in any event not later than the earlier of (i) 10 days after the filing with the SEC of Wynn Resorts' Annual Report on Form 10-K (or successor form thereto) with respect to each Fiscal Year and (ii) 90 days after the end of each Fiscal Year, a copy of the audited



flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, by Deloitte & Touche LLP or other independent certified public accountants of nationally recognized standing;

(b) as soon as available, but in any event not later than the earlier of (i) 10 days after the filing with the SEC of Wynn Resorts' Quarterly Report on Form 10-Q (or successor form thereto) with respect to each of the first three quarterly periods of each Fiscal Year and (ii) 45 days after the end of each of the first three quarterly periods of each Fiscal Year, the unaudited consolidated and consolidating balance sheets of Valvino and its consolidated Subsidiaries (including the consolidated balance sheet of the Borrower and its consolidated Subsidiaries) as at the end of such quarter and the related unaudited consolidated and consolidating statements of income and of cash flows for such quarter and the portion of the Fiscal Year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments); and

(c) on or after the Opening Date, as soon as available, but in any event not later than 45 days after the end of each month occurring during each Fiscal Year (other than the third, sixth, ninth and twelfth such month), the unaudited consolidated and consolidating balance sheets of Valvino and its consolidated Subsidiaries (including the consolidated balance sheet of the Borrower and its consolidated Subsidiaries) as at the end of such month and the related unaudited consolidated and consolidating statements of income and of cash flows for such month and the portion of the Fiscal Year through the end of such month, setting forth in each case in comparative form the figures for the previous year and the figures from the applicable Projections, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments).

All such financial statements shall be complete and correct in all material respects (in the case of financial statements delivered pursuant to subsections (b) and (c) of this Section 6.1, subject to normal year-end audit adjustments) and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by such accountants or officer, as the case may be, and disclosed therein).

6.2 *Certificates; Other Information.* Furnish to each Agent and each Lender, or, in the case of subsections (g), (h) and (j), to the Administrative Agent, or, in the case of subsection (l), to the relevant Lender:

(a) concurrently with the delivery of the financial statements referred to in Section 6.1(a), a certificate of the independent certified public accountants reporting on such financial statements stating that (i) their audit examination has included a review of the terms of this Agreement and the other Loan Documents as they relate to accounting matters, (ii) in making the examination necessary therefor no knowledge was obtained of any Default or Event of Default, except as specified in such certificate, and (iii) based on their audit examination nothing has come to their attention that causes them to believe that the information contained in the certificates (including, without limitation, the Compliance Certificate) delivered therewith pursuant to subsection (b) below is not correct or stated in accordance with the terms of this Agreement;

(b) concurrently with the delivery of any financial statements pursuant to Section 6.1, (i) a certificate of a Responsible Officer stating that, to the best of each such Responsible Officer's knowledge, each Loan Party during such period has observed or performed all of its covenants and other agreements, and satisfied every condition, contained in this Agreement and the other Loan Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as

specified in such certificate (ii) in the case of quarterly or annual financial statements, a Compliance Certificate containing all information and calculations necessary for determining compliance by the Loan Parties with the provisions of this Agreement referred to therein as of the last day of the applicable fiscal quarter or Fiscal Year, as the case may be and (iii) in the case of monthly financial statements delivered after the Completion Date, a certificate of a Responsible Officer setting forth all payments made by the Borrower with respect to Affiliated Overhead Expenses during the 12-month period ending on the last day of the applicable month (or such shorter period commencing on the Completion Date if the Completion Date occurred during such 12-month period) and stating that all such payments were in reimbursement of Affiliated Overhead Expenses and permitted pursuant to Section 7.10(d);

(c) as soon as available, and in any event no later than the Completion Date and 30 days prior to the beginning of each Fiscal Year thereafter, a detailed consolidated and consolidating budget of Valvino and its consolidated Subsidiaries (including a detailed consolidated budget of the Borrower and its consolidated Subsidiaries) for such Fiscal Year (or portion thereof from the Completion Date through the end of such Fiscal Year) (including a projected consolidated and consolidating balance sheet of Valvino and its consolidated Subsidiaries (including a consolidated balance sheet for the Borrower and its consolidated Subsidiaries) as of the end of such Fiscal Year, and the related consolidated and consolidating statements of projected cash flow, projected changes in financial position and projected income), and, as soon as available, significant revisions, if any, of such budget and projections with respect to such Fiscal Year (collectively, the "Projections"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect;

(d) within 45 days after the end of each fiscal quarter after the Completion Date, a narrative discussion and analysis of the financial condition and results of operations of each of the Loan Parties for such fiscal quarter and for the period from the beginning of the then current Fiscal Year (or if the then current Fiscal Year is the Fiscal Year in which the Completion Date has occurred, from the Completion Date) to the end of such fiscal quarter, as compared to the portion of the Projections covering such periods and to the comparable periods of the previous Fiscal Year;

(e) within five days after the same are sent, copies of all financial statements and reports that any Loan Party sends to the holders of any class of its debt securities to the extent not previously delivered to the Lenders and, within five days after the same are filed, copies of all financial statements and reports that any Loan Party may make to, or file with, the SEC;

(f) on the date of the occurrence thereof, notice that (i) any or all of the obligations under the Mortgage Notes Indenture or the FF&E Facility Agreement have been accelerated, or (ii) the trustee or the required holders of Mortgages Notes, or the FF&E Agent or required FF&E Lenders, as the case may be, has given notice that any or all such obligations are to be accelerated;

(g) promptly, and in any event within ten Business Days after any Material Contract or any other contract or arrangement pursuant to which the Loan Parties are, or any one of them is, reasonably expected to incur obligations or liabilities with a Dollar value in excess of \$8,000,000 during the term of such contract or arrangement is terminated or amended or any new Material Contract or any other such contract or arrangement is entered into, or upon becoming aware of any material default by any Person under a Material Contract or any other such contract or arrangement, a written statement describing such event with copies of such amendments or new Material Contracts or such other contracts or arrangements, and, with respect to any such terminations or material defaults, an explanation of any actions being taken with respect thereto;

(h) promptly upon receipt, copies of all notices provided to any Loan Party or their Affiliates pursuant to any documents evidencing Other Indebtedness relating to material defaults or material delays and promptly upon execution and delivery thereof, copies of all amendments to any of the documents evidencing Other Indebtedness;

(i) to the extent not included in subsections (a) through (h) above, no later than the date the same are required to be delivered thereunder, copies of all agreements, documents or other instruments (including, without limitation, (i) audited and unaudited, pro forma and other financial statements, reports, forecasts, and projections, together with any required certifications thereon by independent public auditors or officers of any Loan Party or otherwise, (ii) press releases, (iii) statements or reports furnished to any other holder of the securities of any Loan Party, and (iv) regular, periodic and special securities reports) that any Loan Party is required to provide pursuant to the terms of the Other Indebtedness;

(j) promptly, and in any event within 30 days of the end of each Fiscal Year after the Completion Date, deliver to the Administrative Agent a certificate substantially in the form of Exhibit H hereto and otherwise in form and substance satisfactory to the Administrative Agent in consultation with the Insurance Advisor, certifying that the insurance requirements of Section 6.5 have been implemented and are being complied with in all material respects;

(k) within twenty days after the end of each fiscal quarter of the Borrower, a schedule of all Proceedings involving an alleged liability of, or claims against or affecting, any Loan Party equal to or greater than \$1,000,000, and promptly after request by the Administrative Agent such other information as may be reasonably requested by the Administrative Agent to enable the Administrative Agent and its counsel to evaluate any of such Proceedings; and

(l) promptly, such additional financial and other information as any Lender may from time to time reasonably request.

**6.3 Payment of Obligations.** To the extent not otherwise subject to valid subordination, standstill, intercreditor or similar arrangements, pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the relevant Loan Party.

**6.4 Conduct of Business and Maintenance of Existence, etc.** (i) Preserve, renew and keep in full force and effect its corporate or limited liability company existence and in each case remain a Wholly Owned Subsidiary of Wynn Resorts and its direct parent entity, and (ii) take all reasonable action to maintain all rights, privileges, franchises, Permits and licenses necessary or desirable in the normal conduct of its business, except, in each case, as otherwise permitted by Section 7.4 and except, in the case of subsection (ii) above, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.5 Maintenance of Property; Leases; Insurance.** (a) Keep all Property and systems useful and necessary in its business in good working order and condition, ordinary wear and tear excepted.

(b) Maintain all rights of way, easements, grants, privileges, licenses, certificates, and Permits necessary for the intended use of any Real Estate, except any such item the loss of which, individually or in the aggregate, could not reasonably be expected to materially and adversely affect or interfere with the Permitted Business of any Loan Party or have a material adverse effect on the Casino Land, the Golf Course Land or the Phase II Land.

(c) Comply with the terms of each lease or other grant of Real Estate, including easement grants, so as to not permit any material uncured default on its part to exist thereunder, except, in each case, where noncompliance therewith could not reasonably be expected to materially and adversely affect or interfere with the Permitted Business or Property of any Loan Party.

(d) At all times maintain in full force and effect the insurance policies and programs listed on *Schedule 6.5(d)*, which policies and programs may be modified from time to time subject to the prior approval of the Administrative Agent in consultation with the Insurance Consultant, which approval shall not be unreasonably withheld, if (i) the insurance policies and programs listed on *Schedule 6.5(d)* are not then available on commercially reasonable terms and (ii) the resulting coverage is, at the time of the modification, customary for companies engaged in the same or similar business, which are similarly situated, and which have obtained or are then obtaining insurance coverage under similar conditions (including leverage structure) as those then currently applicable to the applicable Loan Party. In the event that, in accordance with the preceding sentence, any Loan Party is, at any time or from time to time, permitted to deviate from the insurance policies and programs described in *Schedule 6.5(d)* and, thereafter, any such requirement set forth in *Schedule 6.5(d)* becomes available on commercially reasonable terms, the applicable Loan Party, as the case may be, shall promptly procure coverage satisfying such requirement.

(e) Deliver to the Administrative Agent on behalf of the Secured Parties, (i) upon request of any Secured Party from time to time, full information as to the insurance carried, (ii) promptly following receipt thereof, from any insurer, a copy of any notice of cancellation or material change in coverage from that existing on the Closing Date, (iii) forthwith, notice of any cancellation or nonrenewal of coverage by any Loan Party, unless such insurance is

replaced prior to the cancellation or non-renewal thereof in accordance with *Schedule 6.5(d)*, and (iv) promptly after such information is available to any Loan Party, full information as to any claim for an amount in excess of \$500,000 with respect to any property and casualty insurance policy maintained by any such Loan Party.

(f) Preserve and protect the Lien status of each respective Mortgage and, if any Lien (other than Liens permitted under Section 7.3) is asserted against a Mortgaged Property, promptly give the Administrative Agent a detailed written notice of such Lien and pay the underlying claim in full or take such other action so as to cause it to be released or bonded over in a manner reasonably satisfactory to the Administrative Agent.

*6.6 Inspection of Property; Books and Records; Discussions.* (a) Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and (b) subject to any Nevada Gaming Laws restricting such actions, permit representatives of any Lender, coordinated through the Administrative Agent, to visit and inspect any of its properties and examine and, at the Borrower's expense, make abstracts from any of its books and records at any reasonable time and upon reasonable prior notice and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of any Loan Party with officers of such Loan Party and with their respective independent certified public accountants.

81

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*6.7 Notices.* Promptly give notice to the Administrative Agent and each Lender of:

(a) the occurrence of any Default or Event of Default;

(b) any (i) default or event of default (or alleged default) under any Contractual Obligation of any Loan Party or (ii) litigation, investigation or proceeding which may exist at any time between any Loan Party and any Governmental Authority, that in either case, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect;

(c) upon any officer of a Loan Party or Wynn Resorts obtaining knowledge thereof, (i) the non-frivolous institution of, or threat of, any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration against or affecting any Loan Party, or any Property of a Loan Party (collectively, "*Proceedings*") not previously disclosed in writing by the Borrower to the Lenders or (ii) any material development in any Proceeding that, in any case (A) if adversely determined, has a reasonable possibility of giving rise to a Material Adverse Effect or (B) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, in each case together with such other information as may be reasonably available to the Loan Parties to enable Lenders and their counsel to evaluate such matters;

(d) the following events, as soon as possible and in any event within 30 days after any Loan Party knows or has reason to know thereof: (i) the occurrence of any Reportable Event with respect to any Plan, a material failure to make any required contribution to a Plan, the creation of any Lien in favor of the PBGC or a Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC, the Borrower, any other Loan Party or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the termination, Reorganization or Insolvency of, any Plan; and

(e) any development or event that has had or could reasonably be expected to have a Material Adverse Effect;

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the relevant Loan Party proposes to take with respect thereto.

*6.8 Environmental Laws; Permits.* (a) Comply in all material respects with, and use best efforts to ensure compliance in all material respects by all tenants and subtenants, if any, with, all applicable Environmental Laws and Environmental Permits, and obtain, maintain and comply in all material respects with, and use best efforts to ensure that all tenants and subtenants obtain, maintain and comply in all material respects with, any and all licenses, approvals, notifications, registrations or Permits required by applicable Environmental Laws.

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws related to the Mortgaged Property or the Project.

(c) The Administrative Agent may, from time to time and in its reasonable discretion, (i) retain, at the Borrower's expense, an independent professional consultant to review any environmental audits, investigations, analyses and reports relating to Hazardous Substances in respect of the Site or the Project prepared by or for any Loan Party and (ii) conduct its own investigation of the Site or the Project. For purposes of conducting such a review and/or investigation, the Administrative Agent and its agents, employees, consultants and contractors shall

82

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have the right to enter into or onto the Site or the Project and to perform such tests on such property (including taking samples of soil, groundwater and suspected asbestos-containing materials) as are reasonably necessary in connection therewith. Any such investigation shall be conducted, unless otherwise agreed to by a Loan Party and the Administrative Agent, during normal business hours and shall be conducted so as not to unreasonably interfere with the ongoing operations at the Site or the Project or to cause any damage or loss to any property at the Site or the Project. Any report of any investigation conducted at the request of the Administrative Agent pursuant to this Section will be obtained and shall be used by the Administrative Agent and the Lenders for the purposes of the Lenders' internal credit decisions, to monitor and police the Loans and to protect the Lenders' security interests, if any, created by the Loan Documents. The Administrative Agent agrees that any such investigation shall be conducted by an environmental consulting firm qualified and licensed by the State of Nevada.

(d) Deliver to the Administrative Agent (i) as soon as practicable following receipt thereof, copies in any Loan Party's possession or any Loan Party's control of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of the Loan Parties or by independent consultants, governmental authorities or any other Persons, with respect to Environmental Matters at the Site or the Project or with respect to any Environmental Claims, (ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (A) any Release required to

be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws, (B) any remedial action taken by any Person in response to (1) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims against a Loan Party that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, or (2) any Environmental Claims against a Loan Party that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (iii) as soon as practicable following the sending or receipt thereof by any Loan Party, a copy of any and all written communications with respect to (A) any Environmental Claims that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (B) any Release required to be reported to any federal, state or local governmental or regulatory agency, and (C) any request for information from any governmental agency indicating that such agency is investigating whether any Loan Party may be potentially responsible for any Hazardous Materials Activity, (iv) prompt written notice describing in reasonable detail (A) any proposed acquisition of stock, assets, or property by any Loan Party that could reasonably be expected to (1) expose any Loan Party to, or result in, Environmental Claims that could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect or (2) affect the ability of any Loan Party to maintain in full force and effect all material Permits required under any Environmental Laws for their respective operations and (B) any proposed action to be taken by any Loan Party to modify current operations in a manner that could reasonably be expected to subject such Loan Party to any material additional obligations or requirements under any Environmental Laws that could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect, (v) any notice that any Governmental Authority may condition approval of, or any application for, any material Permit held by any Loan Party on terms and conditions that are materially burdensome to such Loan Party, or to the operation of any of its businesses or any property owned, leased or otherwise operated by such Person, (vi) notice of any actions or proceedings of the types described in Sections 4.17(c) through (e), (vii) as soon as practicable, all documents submitted to, filed with or received from any Governmental Authority, including without limitation the Nevada Public Utilities Commission, and the State of Nevada, Division of Water Resources, with respect to the Water Permits and (viii) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Administrative Agent in relation to any matters disclosed pursuant to this Section 6.8(d).

83

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**6.9 Interest Rate Protection.** In the case of the Borrower, on or before the Closing Date, enter into Hedge Agreements to the extent necessary to provide that at least 50% of the Term Loan Commitment and \$200,000,000 of the Revolving Loan Commitment will upon drawdown be subject to either a fixed interest rate or interest rate protection for a period of not less than the Term Loan Commitment Period, which Hedge Agreements shall have terms and conditions reasonably satisfactory to the Administrative Agent.

**6.10 Additional Collateral, Discharge of Liens, etc.** (a) With respect to any Property acquired after the Closing Date by any Loan Party as to which the Administrative Agent, for the benefit of the Secured Parties, does not have a perfected security interest (other than the Aircraft), subject to compliance with applicable Nevada Gaming Laws and restrictions on the grant of Liens permitted pursuant to Section 7.13, promptly (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a security interest in such Property and (ii) take all actions necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority security interest in such Property (subject to Permitted Liens), including, without limitation, the filing of UCC financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent. In addition to the foregoing, in the event any such Property acquired after the Closing Date consists of Real Estate or other Property with respect to which a recording in the real property records of an appropriate jurisdiction is required or advisable in order to perfect a security interest therein, promptly (and, in any event, within two Business Days following the date of such acquisition) (1) execute and deliver a mortgage, substantially in the form of the Mortgages (with such modifications, if any, as are necessary to comply with Requirements of Law or that the Administrative Agent may reasonably request), such mortgage to be recorded in the real property records of the appropriate jurisdiction, or execute and deliver a supplement to an existing Mortgage, in either case pursuant to which the applicable Loan Party grants to the Administrative Agent on behalf of the Secured Parties a Lien on such Real Estate subject only to Permitted Liens, (2) provide the Secured Parties with title and extended coverage insurance covering such Real Estate in an amount at least equal to the fair market value of such Real Estate, and in any event consistent with (except for coverage amount) the title and extended coverage insurance covering the Site obtained pursuant to the Disbursement Agreement, or obtain an appropriate endorsement or supplement to an existing Title Policy, (3) execute and deliver an environmental indemnity agreement with respect to such Real Estate, substantially in the form of the Indemnity Agreements (with such modifications, if any, as are necessary to comply with Requirements of Law or that the Administrative Agent may reasonably request), and (4) execute and/or deliver such other documents or provide such other information in furtherance thereof as the Administrative Agent may reasonably request, including delivering documents and taking such other actions which would have been required under Section 3.1 of the Disbursement Agreement if such Real Estate were part of the Mortgaged Property on the Closing Date.

(b) With respect to any new Subsidiary created or acquired after the Closing Date by any Loan Party, subject to compliance with Nevada Gaming Laws, promptly (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Subsidiary (subject to Permitted Liens), (ii) deliver to the Administrative Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of such Loan Party, as applicable, (iii) cause such new Subsidiary (A) to become a party to the Guarantee and Collateral Agreement, the Subordinated Intercompany Note and the Intellectual Property Security Agreement and (B) to take such actions necessary or advisable to grant to the Administrative Agent for the benefit of the Secured Parties a

84

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perfected first priority security interest (subject to Permitted Liens) in the Collateral described in the Guarantee and Collateral Agreement and the Intellectual Property Security Agreement with respect to such new Subsidiary, including, without limitation, the recording of instruments in the United States Patent and Trademark Office and the United States Copyright Office, the execution and delivery by all necessary Persons of Control Agreements and the filing of UCC financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement, the Intellectual Property Security Agreement or by law or as may be requested by the Administrative Agent, (iv) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent and (v) execute and/or deliver such other documents or provide such other information as the Administrative Agent may reasonably request, including delivering documents and taking such other actions which would have been required under Section 3.1 of the Disbursement Agreement if such new Subsidiary were a Loan Party on the Closing Date. In addition to the foregoing, in the event any such new Subsidiary owns or otherwise has interests in any Real Estate or other Property with respect to which a recording in the real property records of an appropriate jurisdiction is required or advisable in order to perfect a security interest therein, promptly (and, in any event, within two Business Days following the date of such acquisition) (1) execute and deliver a mortgage, substantially in the form of the Mortgages (with such modifications, if any, as

are necessary to comply with Requirements of Law or that the Administrative Agent may reasonably request), such mortgage to be recorded in the real property records of the appropriate jurisdiction, or execute and deliver a supplement to an existing Mortgage, in either case pursuant to which the applicable Loan Party grants to the Administrative Agent on behalf of the Secured Parties a Lien on such Real Estate subject only to Permitted Liens, (2) provide the Secured Parties title and extended coverage insurance covering such Real Estate in an amount at least equal to the fair market value of such Real Estate, and in any event consistent with (except for coverage amount) the title and extended coverage insurance covering the Site obtained pursuant to the Disbursement Agreement, or obtain an appropriate endorsement or supplement to an existing Title Policy, (3) execute and deliver an environmental indemnity agreement with respect to such Real Estate, substantially in the form of the Indemnity Agreements (with such modifications, if any, as are necessary to comply with Requirements of Law or that the Administrative Agent may reasonably request), and (4) execute and/or deliver such other documents or provide such other information in furtherance thereof as the Administrative Agent may reasonably request, including delivering documents and taking such other actions which would have been required under Section 3.1 of the Disbursement Agreement if such Real Estate were part of the Mortgaged Property on the Closing Date.

(c) Notwithstanding anything to the contrary in this Section 6.10, paragraphs (a) and (b) of this Section 6.10 shall not apply to any Property or new Subsidiary created or acquired after the Closing Date, as applicable, as to which the Administrative Agent has determined in its sole discretion that the collateral value thereof is insufficient to justify the difficulty, time and/or expense of obtaining a perfected security interest therein.

**6.11 Use of Proceeds and Revenues.** (a) Use the proceeds of the Loans and request the issuance of Letters of Credit, only for the purposes specified in Section 4.16; provided, that (i) no more than [\$963,200,000] of proceeds of extensions of credit hereunder shall be available for application toward Project Costs and (ii) in addition to and without duplication of proceeds of extensions of credit available under clause (i) above with respect to Project Costs, no more than an additional [\$33,800,000] of proceeds of extensions of credit hereunder shall be available during the Additional Completion Period for application toward Debt Service due and payable during the Additional Completion Period.

(b) Subject to subsection (c) below, deposit in a Funding Account all Project Revenues, other than On-Site Cash, (i) received by the Borrower Capital Corp. or Wynn Design after the

85

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Completion Date or (ii) received by any other Loan Party at any time; *provided*, that, in no event shall (A) funds deposited in a Funding Account be (x) transferred to any "Company Account" (as defined in the Disbursement Agreement) or (y) subject to Section 2.5.5 of the Disbursement Agreement, used to pay Project Costs or (B) subject to Section 2.5.5 of the Disbursement Agreement, On-Site Cash (other than to the extent reflecting proceeds of advances made pursuant to the Disbursement Agreement for the payment of Project Costs) be used to pay Project Costs.

(c) Apply (whether directly or through an equity contribution to the Borrower) all Net Cash Proceeds, Excess Cash Flow, Extraordinary Deposit Receipts, Loss Proceeds, Liquidated Damages, Insurance Proceeds and Eminent Domain Proceeds received by it in accordance with Sections 2.12, 2.18 and 2.24.

**6.12 Compliance with Laws, Project Documents, etc.; Permits.** (a) Comply with all Requirements of Law, noncompliance with which could reasonably be expected to cause, individually or in the aggregate, a Material Adverse Effect and comply in all material respects with its Governing Documents.

(b) Comply, duly and promptly, in all material respects with its respective obligations and enforce all of its respective rights under all Project Documents, except, in the case of Project Documents other than Material Affiliated Contracts, where the failure to comply could not reasonably be expected to have a Material Adverse Effect.

(c) From time to time obtain, maintain, retain, observe, keep in full force and effect and comply with the terms, conditions and provisions of all Permits as shall now or hereafter be necessary under applicable laws, except any thereof the noncompliance with which could not reasonably be expected to have a Material Adverse Effect. From time to time maintain, retain, observe and keep in full force and effect and comply with the terms conditions and provisions of all Water Permits.

**6.13 Further Assurances.** From time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take all such actions, as the Administrative Agent may reasonably request, for the purposes of implementing or effectuating the provisions of this Agreement and the other Loan Documents, or of more fully perfecting or renewing the rights of the Administrative Agent and the Lenders with respect to the Collateral (or with respect to any additions thereto or replacements or proceeds or products thereof or with respect to any other property or assets hereafter acquired by any Loan Party which may be deemed to be part of the Collateral) pursuant hereto or thereto. Upon the exercise by the Administrative Agent or any Lender of any power, right, privilege or remedy pursuant to this Agreement or the other Loan Documents which requires any consent, approval, recording, qualification or authorization of any Governmental Authority, the Borrower shall, or shall cause any other applicable Loan Party to (and by executing the Guarantee and Collateral Agreement each such other Loan Party agrees that it will), execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the Administrative Agent or such Lender may be required to obtain from the Borrower or the applicable Loan Party for such governmental consent, approval, recording, qualification or authorization. In the event that, notwithstanding the covenants contained in Article 7, a Lien not otherwise permitted under this Agreement shall encumber the Mortgaged Property or other item of Collateral or any portion thereof, the relevant Loan Party shall promptly discharge or cause to be discharged by payment to the lienor or lien claimant or promptly secure removal by bonding or deposit with the county clerk or otherwise or, at the Administrative Agent's option, and if obtainable promptly obtain title insurance against, any such Lien or mechanics' or materialmen's claims of lien filed or otherwise asserted against the Mortgaged Property or any other item of Collateral or any portion thereof within 60 days after the date of notice thereof; *provided*, that the provisions of this Section 6.13 (and compliance therewith) shall not be deemed to constitute a waiver of any of the

86

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provisions of Article 7. Each of the Loan Parties shall fully preserve the Lien and the priority of each of the Mortgages and the other Security Documents without cost or expense to the Administrative Agent or the Lenders. If any Loan Party fails to promptly discharge, remove or bond off any such Lien or mechanics' or materialmen's claim of lien as described above, which is not being contested by the applicable Loan Party in good faith by appropriate proceedings promptly instituted and diligently conducted, within 30 days after the receipt of notice thereof, then the Administrative Agent may, but shall not be required to, procure the release and discharge of such Lien, mechanics' or materialmen's claim of lien and any judgment or decree thereon, and in furtherance thereof may, in its sole discretion, effect any settlement or compromise with the lienor or lien claimant or post any bond or furnish any security or indemnity as the Administrative Agent, in its sole discretion, may elect. In settling, compromising or arranging for the discharge of any Liens under this subsection, the Administrative Agent shall not be

required to establish or confirm the validity or amount of the Lien. The Borrower agrees that all costs and expenses expended or otherwise incurred pursuant to this Section 6.13 (including reasonable attorneys' fees and disbursements) by the Administrative Agent shall constitute Obligations and shall be paid by the Borrower in accordance with the terms hereof.

**6.14 Dissolution of the Completion Guarantor.** Promptly following the Completion Guaranty Release Date, liquidate, wind up and dissolve the Completion Guarantor.

**6.15 Water Company Transfers.** With respect to Desert Inn Improvement, use its commercially reasonable efforts (i) unless the DIIC Water Transfer has been effected prior thereto, to obtain the approval of the Nevada Public Utilities Commission to the execution and delivery to the Administrative Agent of the Water Property Mortgage and, no later than 10 days after obtaining such approval, execute the Water Property Mortgage and take such other actions required pursuant to Section 6.10 had the Water Property been newly acquired by Desert Inn Improvement on the day of such approval by the Nevada Public Utilities Commission, (ii) to amend the DIIC Casino Water Permit in accordance with all applicable Requirements of Law and pursuant to all necessary consents of Governmental Authorities (including, if applicable, the Nevada Public Utilities Commission and the State of Nevada, Division of Water Resources) so that the designated place of use for water available under such Permit includes the Le Rêve hotel and casino's water features, (iii) to amend the DIIC Water Permits (other than the DIIC Casino Water Permit) in accordance with all applicable Requirements of Law and pursuant to all necessary consents of Governmental Authorities (including, if applicable, the Nevada Public Utilities Commission and the State of Nevada, Division of Water Resources) so that the designated place of use for water available under such Permits includes the Golf Course Land, and (iv) to effectuate the DIIC Water Transfer and take such other actions required pursuant to Section 6.10 with respect to the Property transferred thereby.

## SECTION 7. NEGATIVE COVENANTS

The Borrower hereby agrees that, so long as the Commitments remain in effect, any Letter of Credit remains outstanding or any Loan or other amount is owing to any Lender, any Arranger, any Manager or any Agent hereunder or under any other Loan Document, the Borrower shall not, and shall not permit any of the other Loan Parties to, directly or indirectly (and by executing the Guarantee and Collateral Agreement each such other Loan Party agrees that it will not):

### 7.1 Financial Condition Covenants.

(a) **Consolidated Leverage Ratio.** Permit the Consolidated Leverage Ratio of the Borrower as at the last day of any period of four full consecutive fiscal quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first fiscal

87

quarter which begins after the Opening Date) ending on any Quarterly Date set forth below to exceed the ratio set forth below opposite such Quarterly Date:

Quarterly Date	Consolidated Leverage Ratio
First Quarterly Date	6.75:1
Second Quarterly Date	5.75:1
Third Quarterly Date	5.50:1
Fourth, Fifth and Sixth Quarterly Dates	5.25:1
Seventh and Eighth Quarterly Dates	5.00:1
Ninth and Tenth Quarterly Dates	4.75:1
Eleventh Quarterly Date	4.50:1
Twelfth and Thirteenth Quarterly Dates	4.25:1
Fourteenth and Fifteenth Quarterly Dates	4.00:1
Sixteenth Quarterly Date and each Quarterly Date thereafter	3.75:1

; provided, that for purposes of calculating Consolidated EBITDA pursuant to this Section 7.1(a) for any period which is less than four full fiscal quarters, Consolidated EBITDA shall be calculated on an annualized basis.

(b) **Minimum Consolidated EBITDA.** Permit Consolidated EBITDA of the Borrower for any period of four full consecutive fiscal quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first fiscal quarter which begins after the Opening Date) ending on any Quarterly Date set forth below to be less than the amount set forth below opposite such Quarterly Date:

Quarterly Date	Consolidated EBITDA
First Quarterly Date	\$ 170,000,000
Second Quarterly Date	\$ 215,000,000
Third and Fourth Quarterly Dates	\$ 250,000,000
Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Quarterly Dates	\$ 260,000,000
Eleventh, Twelfth and Thirteenth Quarterly Dates	\$ 270,000,000
Fourteenth and Fifteenth Quarterly Dates	\$ 275,000,000
Sixteenth Quarterly Date and each Quarterly Date thereafter	\$ 280,000,000

; provided, that for purposes of calculating Consolidated EBITDA pursuant to this Section 7.1(b) for any period which is less than four full fiscal quarters, Consolidated EBITDA shall be calculated on an annualized basis.

(c) **Consolidated Fixed Charge Coverage Ratio.** Permit the Consolidated Fixed Charge Coverage Ratio of the Borrower for any period of four full consecutive fiscal quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first fiscal quarter which begins after the Opening Date) ending with any Quarterly Date set forth below to be less than the ratio set forth below opposite such Quarterly Date:

Quarterly Date	Consolidated Fixed Charge Coverage Ratio
First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Quarterly Dates	1.00:1
Ninth Quarterly Date and each Quarterly Date thereafter	1.05:1

88

(d) *Maintenance of Net Worth.* Permit the Consolidated Net Worth of the Borrower at any Quarterly Date to be less than \$900,000,000 plus an amount equal to the sum of 75% of positive Consolidated Net Income for all periods from the Closing Date through such Quarterly Date; *provided*, that in the event Consolidated Net Income is a deficit for the period from the Closing Date through the first Quarterly Date, the Consolidated Net Worth of the Borrower on such Quarterly Date shall be no less than \$900,000,000 minus an amount equal to such deficit.

(e) *Consolidated Interest Coverage Ratio.* Permit the Consolidated Interest Coverage Ratio of the Borrower for any period of four full consecutive fiscal quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first fiscal quarter which begins after the Opening Date) ending on any Quarterly Date set forth below to be less than the ratio set forth below opposite such Quarterly Date:

Quarterly Date	Consolidated Interest Coverage Ratio
First Quarterly Date	1.55:1
Second Quarterly Date	1.75:1
Third Quarterly Date	1.90:1
Fourth, Fifth and Sixth Quarterly Dates	2.00:1
Seventh, Eighth and Ninth Quarterly Dates	2.10:1
Tenth, Eleventh, Twelfth and Thirteenth Quarterly Dates	2.25:1
Fourteenth Quarterly Date and each Quarterly Date thereafter	2.50:1

7.2 *Limitation on Indebtedness.* Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party created under any Loan Document;

(b) Unsecured Indebtedness of (i) any Loan Party (other than the Water Entities) to the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. and the Completion Guarantor (except with respect to Indebtedness, the proceeds of which are necessary for the corporate maintenance of Capital Corp.)), (ii) Valvino to Wynn Resorts Holdings or Wynn Resorts Holdings to Valvino (so long as Wynn Resorts Holdings, on the one hand, or Valvino, on the other hand, is Solvent) and (iii) any Wynn Group Entity to any other Loan Party other than the Water Entities or Capital Corp. (so long as such Loan Party is Solvent); *provided*, that in each case such Indebtedness is evidenced by, and subject to the terms and conditions of, the Subordinated Intercompany Note and is otherwise subordinated in right of payment to the Obligations under the Loan Documents and the Mortgage Notes Indenture on terms and conditions reasonably satisfactory to the Administrative Agent;

(c) Indebtedness of World Travel to the Borrower represented by the Aircraft Note;

(d) Indebtedness (other than the Indebtedness referred to in Section 7.2(f)) of the Loan Parties outstanding on the date hereof and listed on *Schedule 7.2(d)* and any refinancings, refundings, renewals or extensions thereof (without any increase in the principal amount thereof or any shortening of the maturity of any principal amount thereof);

(e) Unsecured Guarantee Obligations made in the ordinary course of business (i) by any Loan Party (other than the Water Entities) of obligations of the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. and the Completion Guarantor), (ii) by Valvino of obligations of Wynn Resorts Holdings or by Wynn Resorts Holdings of obligations of Valvino (so long as Wynn Resorts Holdings, on the one hand, or Valvino, on the other hand, is Solvent) and (iii) any Wynn Group Entity to any other Loan Party other than the Water Entities or Capital Corp. (so long as such Loan Party is Solvent);

89

(f) (i) Indebtedness of the Borrower and Capital Corp. created under the Mortgage Notes Indenture in respect of the Mortgage Notes in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this clause (i), not to exceed \$340,000,000 (reduced by any principal payments required to be made thereon) and Guarantee Obligations of any Loan Party in respect of such Indebtedness represented by the Mortgage Note Guarantee; *provided*, that the principal amount of the Indebtedness permitted pursuant to this Section (f)(i) may be increased for purposes of, and in an amount equal to, Indebtedness permitted pursuant to Section 7.2(l), and (ii) Indebtedness of the Borrower created under the FF&E Facility Agreement, including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this clause (ii), in an aggregate principal amount not to exceed \$188,500,000 (plus any accrued and unpaid interest thereon added to principal) and Guarantee Obligations of any Loan Party in respect of such Indebtedness represented by the FF&E Guarantee; *provided*, that the principal amount of the Indebtedness permitted pursuant to this Section (f)(ii) may be increased by an amount not greater than \$10,000,000 so long as the proceeds of such additional Indebtedness are applied to the acquisition of the Replacement Aircraft in accordance with Section 7.5(o).

(g) Indebtedness of the Loan Parties (including, without limitation, Capital Lease Obligations) secured by Liens permitted by Section 7.3(s) in an aggregate principal amount not to exceed \$10,000,000 at any one time outstanding;

(h) Indebtedness of the Loan Parties to employees of the Loan Parties (or their estates) incurred in connection with any repurchase of employee stock options or stock upon death, disability or termination of such employee in accordance with employment agreements or option plans or agreements,

provided, that (i) such Indebtedness, when aggregated with any payments made under Section 7.6(f), will not exceed \$2,000,000 in any Fiscal Year and \$6,000,000 during the term of this Agreement, (ii) such Indebtedness shall be unsecured and subordinated on terms and conditions satisfactory to the Initial Arrangers and in any event not less favorable to the Loan Parties and the Lenders than the terms of the Subordinated Intercompany Note, subject to such covenants and events of default as may be acceptable to the Initial Arrangers and expressly provide that payments thereon shall be required only to the extent not restricted by any Financing Agreement;

(i) Subordinated Debt of the Loan Parties not to exceed an aggregate of \$25,000,000 at any one time outstanding; provided, that the Net Cash Proceeds of such Subordinated Debt shall be applied within one Business Day of the incurrence of such Subordinated Debt to the prepayment of the Term Loans and the reduction of the Revolving Credit Commitments as set forth in Section 2.12(a);

(j) Indebtedness of the Loan Parties incurred to finance the acquisition of the Additional Land, provided that such Indebtedness shall not exceed the fair market value of the Additional Land (provided, that in determining such fair market value, consideration will be given to the value of the Additional Land to the Loan Parties in light of their current Property and Permitted Business);

(k) on or prior to the date that the Total Term Loan Extensions of Credit equals the Total Term Loan Commitments, Guarantee Obligations represented by performance bonds, guaranties, commercial letters of credit, bankers' acceptances or similar instruments issued by Person other than Wynn Resorts or any Loan Party for the benefit of a trade creditor of any such Loan Party, in an aggregate amount not to exceed \$10,000,000 at any time outstanding so long as (i) such Indebtedness is incurred in the ordinary course of business and (ii) the obligations of any Loan Party, as the case may be, supported by such performance bonds, guaranties, trade letters of credit, bankers' acceptances or similar instruments (1) consist solely of payment obligations with respect

90

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to costs incurred in accordance with the Project Budget which would otherwise be permitted to be paid by the applicable Loan Party pursuant to the Disbursement Agreement, (2) are secured, and (3) are secured solely by Liens permitted by Section 7.3(v);

(l) Indebtedness of the Borrower, the proceeds of which are used solely to develop and construct an Entertainment Facility, in an aggregate principal amount (or original accreted value, as applicable) at any time not to exceed the lesser of (a) \$50,000,000 and (b) 200% of the Entertainment Facility Equity Proceeds; and

(m) additional Indebtedness of the Loan Parties in an aggregate principal amount (for all the Loan Parties) not to exceed \$5,000,000 at any one time outstanding.

7.3 *Limitation on Liens.* Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

(a) Liens for taxes not yet due or which are being contested in good faith by appropriate proceedings, provided that adequate reserves with respect thereto are maintained on the books of the applicable Loan Party, as the case may be, in conformity with GAAP;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business for amounts which are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceeding (such contest proceedings conclusively operating to stay the sale of any portion of the Collateral on account of such Lien); provided, that adequate reserves with respect thereto are maintained on the books of the applicable Loan Party, as the case may be, in conformity with GAAP;

(c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;

(d) deposits by or on behalf of the Loan Parties to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, appeal bonds and other obligations of a like nature incurred in the ordinary course of business, including, without limitation, deposits permitted pursuant to Section 6.10(c) of the Disbursement Agreement.

(e) easements, rights-of-way, restrictions, encroachments and other similar encumbrances and other minor defects and irregularities in title, in each case incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and which do not in any case materially detract from the value of the Property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Loan Party;

(f) Liens in existence on the date hereof listed on *Schedule 7.3(f)*, securing Indebtedness permitted by Section 7.2(d), provided that no such Lien is spread to cover any additional Property (other than proceeds thereof) after the Closing Date and that the amount of Indebtedness secured thereby is not increased;

(g) Liens created pursuant to the Security Documents (including Liens created thereunder securing Specified Hedge Agreements);

(h) leases and subleases permitted under Section 7.5(f) and any leasehold mortgage in favor of any party financing the lessee under any lease or sublease permitted under Section 7.5(f); provided, that (a) no Loan Party is liable for the payment of any principal of, or interest, premiums or fees on, such financing and (b) the affected lease and leasehold mortgage are expressly made subject and subordinate to the Lien of the applicable Mortgage;

(i) Liens created by the Golf Course Lease, the Driving Range Lease, the Building Lease or the Employee Parking Lot Lease (in each case encumbering only the Property covered by such lease agreement);

91

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(j) licenses of patents, trademarks and other intellectual property rights granted by a Loan Party in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of such Loan Party;



(k) Liens securing Indebtedness permitted under Section 7.2(f)(i); *provided*, that such Liens are junior in priority (other than in respect of the Second Mortgage Notes Proceeds Account) to the Liens securing the Obligations;

(l) Liens with respect to Property of the Borrower securing Indebtedness permitted under Section 7.2(f)(ii) and to any proceeds thereof; *provided*, that such Liens attach only to the Specified FF&E (senior in priority to the Liens of the Security Documents on the Specified FF&E);

(m) prior to the Final Completion Date any "Permitted Liens" under the Disbursement Agreement;

(n) any attachment or judgment Lien not constituting an Event of Default under Section 8.1(h);

(o) Permitted Encumbrances;

(p) Liens arising from the filing of UCC financing statements relating solely to leases permitted by this Agreement;

(q) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(r) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any Real Estate;

(s) Liens securing Indebtedness of the Loan Parties incurred pursuant to Section 7.2(g) to finance the acquisition of fixed or capital assets, *provided* that (i) such Liens shall be created substantially simultaneously with the acquisition of such fixed or capital assets (or the refinancing of such Indebtedness as otherwise permitted hereunder) (ii) such Liens do not at any time encumber any Property other than the Property (and proceeds thereof) financed by such Indebtedness, (iii) the principal amount of Indebtedness secured thereby is not increased and (iv) the Property financed by such Indebtedness is not of a type that will become affixed to the Project such that the removal thereof could reasonably be expected to materially interfere with the ongoing ordinary course operations of the Project;

(t) Liens securing Indebtedness of the Loan Parties incurred pursuant to Section 7.2(j) to finance the acquisition of the Additional Land, *provided* that (i) such Liens shall be created substantially simultaneously with the acquisition of the Additional Land, (ii) such Liens do not at any time encumber any Property other than the Additional Land (and proceeds thereof) and (iii) the principal amount of Indebtedness secured thereby is not increased;

(u) Liens with respect to the Aircraft granted by World Travel to the Borrower securing Indebtedness under the Aircraft Note; and

(v) Liens on cash disbursed pursuant to the Disbursement Agreement and deposited with, or held for the account of, any Loan Party securing reimbursement obligations under performance bonds, guaranties, commercial letters of credit, bankers' acceptances or similar instruments permitted under Section 7.2(k), granted in favor of the issuers of such performance bonds, guaranties, commercial letters of credit or bankers' acceptances, so long as (i) any cash disbursed to secure such reimbursement obligations is invested in Permitted Securities only and (ii) the amount of cash and/or Permitted Securities secured by such Liens is not less than the amount of Indebtedness secured thereby and in any event does not exceed 110% of the amount of the

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Indebtedness secured thereby (ignoring, for purposes of this clause (ii), any interest earned or paid on such cash and any dividends or distributions declared or paid in respect of such Permitted Investments).

**7.4 Limitation on Fundamental Changes.** Enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its Property or business, except that:

(a) (i) any Solvent Loan Party may be merged or consolidated with or into the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. and the Completion Guarantor), (ii) Valvino may be merged or consolidated with or into Wynn Resorts Holdings and Wynn Resorts Holdings may be merged or consolidated with or into Valvino (in each case so long as each of Wynn Resorts Holdings and Valvino are Solvent) and (iii) any Solvent Wynn Group Entity may be merged or consolidated with or into any other Loan Party other than the Water Entities or Capital Corp. (so long as such Loan Party is Solvent) (*provided*, that in the event any such merger or consolidation involves the Borrower, the Borrower shall be the continuing or surviving entity and, in the event such merger or consolidation involves a Subsidiary of the Borrower (but not the Borrower), a Subsidiary of the Borrower shall be the continuing or surviving entity);

(b) (i) any Solvent Loan Party may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. and the Completion Guarantor), (ii) Valvino may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to Wynn Resorts Holdings and Wynn Resorts Holdings may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to Valvino (in each case so long as each of Wynn Resorts Holdings and Valvino are Solvent) and (iii) any Solvent Wynn Group Entity may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to any other Loan Party other than the Water Entities or Capital Corp. (so long as such Loan Party is Solvent); *provided*, that any permitted Disposition of Capital Stock of a Loan Party pursuant to this Section 7.4(b) must be of no less than all Capital Stock of such Loan Party; *provided, further*, that in no event shall (x) Wynn Resorts Holdings be permitted to Dispose of any Capital Stock of the Borrower (other than to the extent such Disposition occurs in connection with the merger of Wynn Resorts Holdings into Valvino as permitted pursuant to Section 7.4(a)) or (y) the Borrower or any of its Subsidiaries acquire the Capital Stock of either of the Water Entities (other than to the extent such Disposition occurs in connection with the merger of a Water Entity into the Borrower or a Subsidiary of the Borrower as permitted pursuant to Section 7.4(a); *provided*, that in no event, shall Desert Inn Improvement become a Subsidiary of the Borrower); and

(c) any Loan Party may Dispose of any of its Property in accordance with Section 7.5.

**7.5 Limitation on Disposition of Property.** Dispose of any of its Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or issue or sell any shares of Capital Stock to any Person, except:

(a) the Disposition in the ordinary course of business of obsolete or worn out Property or Property no longer useful in the business of the applicable Loan Party; *provided*, that either (i) such Disposition could not reasonably be expected to materially adversely affect the Project or any of the Mortgaged

Properties or (ii) with respect to Property Disposed of by reason of its obsolescence or worn out condition, prior to or promptly following such Disposition any such Property shall be replaced with other Property of substantially equal or greater utility and either (x) a value at least substantially equal to that of the replaced Property when first acquired or (y) substantially equal or greater quality and, if applicable, prestige and caliber as the replaced Property when first acquired and free from any Lien of any other Person (subject to Permitted Liens) and the applicable Loan Party shall subject such replacement property to the Lien of the

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Security Documents in favor of the Lenders of at least the same priority as the Property so replaced;

(b) the Disposition of Cash or Cash Equivalents (in each case in transactions otherwise permitted hereunder), Investments permitted pursuant to Section 7.8, inventory (in the ordinary course of business) and receivables (in connection with the collection thereof and otherwise as customary in gaming operations of the type conducted by the Loan Parties);

(c) Dispositions permitted by Section 7.4 (including the Disposition of Capital Stock of Loan Parties pursuant to Section 7.4(b));

(d) the sale or issuance of any Loan Party's Capital Stock (other than Disqualified Stock) to its direct parent that is a Loan Party in consideration for Investments permitted pursuant to Section 7.8(e);

(e) Dispositions of Property having a fair market value not in excess of \$5,000,000 in the aggregate (with respect to all the Loan Parties) in any Fiscal Year following the Completion Date; *provided*, that (i) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof; and (ii) the sole consideration received shall be cash;

(f) subject to the last paragraph of this Section 7.5, the Borrower may enter into any leases with respect to any space on or within the Project and any subleases with respect to any space in the Phase II Land Building;

(g) any Loan Party may dedicate space within the Project for the purpose of constructing (i) a mass transit system, (ii) a pedestrian bridge over or a pedestrian tunnel under Las Vegas Boulevard or Sands Avenue or similar structures to facilitate pedestrians or traffic, (iii) a right turn lane or other roadway dedication or (iv) such other structures or improvements reasonably related to and in furtherance of the development, construction and operation of the Project; *provided*, that in each case such dedication does not materially impair or interfere in the use or operations of the Project or any Loan Party or materially detract from the value of the Property subject thereto;

(h) the Loan Parties may license trademarks and trade names in the ordinary course of business;

(i) the incurrence of Liens permitted under Section 7.3; *provided* that any leases other than those permitted pursuant to Section 7.3(i) (whether or not constituting Permitted Liens) shall be permitted only to the extent provided in subsection (f) above and the last paragraph of this Section 7.5;

(j) The applicable Golf Course Land Owner(s) shall be permitted to Dispose of the Wynn Home Site Land to Mr. Wynn, and the Lenders hereby consent to such Disposition, on the conditions that (i) no Default or Event of Default has occurred and is continuing at the time of such Disposition and such Disposition is permitted under the other Financing Agreements, (ii) the cash purchase price paid by Mr. Wynn to such Golf Course Land Owner(s) for the Wynn Home Site Land is in immediately available funds and equal to or greater than the fair market value of the Wynn Home Site Land, as determined in good faith by such Golf Course Land Owner(s), (iii) such Golf Course Land Owner(s) contributes the entire amount of the purchase price paid by Mr. Wynn for the Wynn Home Site Land to the Borrower as a common equity capital contribution, (iv) the Mortgaged Properties affected by the Disposition of the Wynn Home Site Land constitute separate legal parcels under Nevada Revised Statutes, Chapter 278, (v) the Borrower shall have certified and demonstrated to the Initial Arrangers, to the reasonable satisfaction of the Initial Arrangers, that construction of Mr. Wynn's personal residence on the Wynn Home Site will not interfere with the use or operations of the Golf Course and could not otherwise reasonably be expected to impair the overall value of the Project, (vi) the applicable

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Mortgages with respect to the Golf Course Land shall have been amended to reflect the exclusion of the legal description of the Wynn Home Site Land (or applicable portion thereof) as a result of the transfer of fee ownership therein and re-recorded at the Clark County, Nevada Recorder's Office, (vii) the Borrower shall have delivered to the Administrative Agent: (A) (1) a legal opinion from counsel reasonably acceptable to the Administrative Agent to the effect that the Mortgages with respect to the Golf Course Land, to the extent amended and re-recorded pursuant to subsection (vi) above, are enforceable in accordance with their respective terms and are effective to create the security interests described therein and (2) such other legal opinions as the Administrative Agent may reasonably request, each in form and substance reasonably satisfactory to the Administrative Agent, and (B) endorsements, or commitments by the Title Insurer to issue endorsements, to the Title Policy, in each case in form and substance satisfactory to the Administrative Agent, insuring the continuing perfection and priority of the respective Liens on the Golf Course Land (after giving effect to the release of the Wynn Home Site Land and the amendments and re-recordations contemplated by subsection (vi) above) and (viii) (A) either (x) no Points of Diversion with respect to the Water Permits, wells associated therewith or rights-of-way necessary for the transportation of water available under the Water Permits to the Golf Course Land or the water features of the Le Rêve hotel and casino, as the case may be, are located on the Wynn Home Site Land or (y) the applicable Golf Course Land Owner(s) shall have transferred at no cost (I) in the case of Points of Diversion and associated wells with respect to the Valvino Water Permits or the DIIC Casino Water Permit, and rights-of-way necessary for the transportation of water available under such Water Permits to the water features of the Le Rêve hotel and casino, such easements to the Borrower as are necessary for the Borrower to access such Points of Diversion, own and operate such wells and transport such water to the water features of the Le Rêve hotel and casino and (II) in the case of Points of Diversion and associated wells with respect to all other DIIC Water Permits, and rights-of-way necessary for the transportation of water available under such Water Permits to the Golf Course Land, such easements to the Borrower and Wynn Resorts Holdings as are necessary for such Persons to access such Points of Diversion, own and operate such wells and transport such water to the Golf Course Land and (B) the Borrower and Wynn Resorts Holdings, as the case may be, shall have taken all actions required pursuant to Section 6.10 with respect to any Property acquired pursuant to clause (viii)(A) above. Upon satisfaction of the foregoing conditions, the Administrative Agent shall execute and deliver to the appropriate Golf Course Land Owners such documents and instruments, including UCC-3 termination statements and deeds of reconveyance, all as may be reasonably necessary to release the Liens granted to the Lenders in the Wynn Home Site Land, and to permit such Disposition; *provided*, that an instrument reasonably acceptable to the Administrative Agent is recorded against the Wynn Home

(k) The Golf Course Owners shall be permitted to Dispose of the Golf Course Land and in connection therewith, the applicable Loan Parties shall be permitted to Dispose of their ownership in the Capital Stock of Desert Inn Water and Desert Inn Improvement and the DIIC Water Permits (other than the DIIC Casino Water Permit), and the Lenders hereby consent to such Dispositions, on the conditions that (i) no Default or Event of Default has occurred and is continuing at the time of such Disposition and such Dispositions are permitted under the other Financing Agreements, (ii) such Dispositions occur on or after the third anniversary of the Opening Date, (iii) at the time of such Dispositions, the Consolidated Leverage Ratio of the Borrower for the most recent period of four full consecutive fiscal quarters of the Borrower was 3.0 to 1.0 or less (*provided*, that there shall be excluded from the calculation of the Consolidated Leverage Ratio the Consolidated EBITDA, if any, derived from the Golf Course for such four full consecutive fiscal quarters), (iv) after giving effect to such Dispositions, the senior secured long-term Indebtedness under the Facilities shall be rated at least Ba1 by Moody's and BB+ by S&P and (v) (A) either (x) no Points of Diversion with respect to the Valvino Water Permits or the DIIC Casino Water Permit, wells associated therewith or rights-of-way necessary for the transportation of water available under such Water Permits to the water features of the Le Rêve hotel and casino are located on the Golf Course Land or (y) the applicable Golf Course Land Owner(s) shall have transferred at no cost such easements to the Borrower as are necessary for the Borrower to access such Points of Diversion, own and operate such wells and transport such water to the water features of the Le Rêve hotel and casino and (B) the Borrower shall have taken all actions required pursuant to Section 6.10 with respect to any Property acquired pursuant to clause (u)(A) above. Upon satisfaction of the foregoing conditions, the Administrative Agent shall execute and deliver to the applicable Loan Parties such documents and instruments, including UCC-3 termination statements, deeds of reconveyance and certificates of Capital Stock, all as may be reasonably necessary to release the Liens granted to the Lenders in the Golf Course Land, Desert Inn Water, Desert Inn Improvement and the DIIC Water Permits (other than the DIIC Casino Water Permit) (including, without limitation all Capital Stock of Desert Inn Water, and Desert Inn Improvement and Property of Desert Inn Water and Desert Inn Improvement) and to permit such Dispositions;

(l) The applicable Golf Course Land Owners shall be permitted to Dispose of the Home Site Land, and the Lenders hereby consent to such Disposition, on the conditions that (i) no Default or Event of Default has occurred and is continuing at the time of such Disposition and such Disposition is permitted under the other Financing Agreements, (ii) at the time of such Disposition, the Consolidated EBITDA of the Borrower for the most recent period of four full consecutive fiscal quarters of the Borrower was equal to or greater than \$325,000,000, (iii) the Mortgaged Properties affected by the Disposition of the Home Site Land constitute separate legal parcels under Nevada Revised Statutes, Chapter 278, (iv) the Borrower shall have certified and demonstrated to the Initial Arrangers, to the reasonable satisfaction of the Initial Arrangers, that construction of permitted improvements on the Home Site will not interfere with the use or operations of the Golf Course and could not otherwise reasonably be expected to impair the overall value of the Project, (v) the applicable Mortgages with respect to the Golf Course Land shall have been amended to reflect the exclusion of the legal description of the Home Site Land (or portion thereof) as a result of the transfer of fee ownership therein and re-recorded at the Clark County, Nevada, Recorder's Office, (vi) the Borrower shall have delivered to the Administrative Agent: (A) (1) a legal opinion from counsel reasonably acceptable to the Administrative Agent to the effect that the Mortgages with respect to the Golf Course Land, to the extent amended and re-recorded pursuant to subsection (v) above, are enforceable in accordance with their respective terms and are effective to create the security interests described therein and (2) such other legal opinions as the Administrative Agent may reasonably request, each in form and substance reasonably satisfactory to the Administrative Agent, and

(B) endorsements, or commitments by the Title Insurer to issue endorsements, to the Title Policy, in each case in form and substance satisfactory to the Administrative Agent, insuring the continuing perfection and priority of the respective Liens on the Golf Course Land (after giving effect to the release of the Home Site Land and the amendments and re-recordations contemplated by subsection (v) above) and (vii) (A) either (x) no Points of Diversion with respect to the Water Permits, wells associated therewith or rights-of-way necessary for the transportation of water available under the Water Permits to the Golf Course Land or the water features of the Le Rêve hotel and casino, as the case may be, are located on the Home Site Land or (y) the applicable Golf Course Land Owner(s) shall have transferred at no cost (I) in the case of Points of Diversion and associated wells with respect to the Valvino Water Permits or the DIIC Casino Water Permit, and rights-of-way necessary for the transportation of water available under such Water Permits to the water features of the Le Rêve hotel and casino, such easements to the Borrower as are necessary for the Borrower to access such Points of Diversion, own and operate such wells and transport such water to the water features of the Le Rêve hotel and casino and (II) in the case of Points of Diversion with respect to all other DIIC Water Permits and rights-of-way necessary for the transportation of water available under such Water Permits to the Golf Course Land, such easements to the Borrower and Wynn Resorts Holdings as are necessary for such Persons to access such Points of Diversion, own and operate such wells and transport the water drawn therefrom to the Golf Course Land and (B) the Borrower and Wynn Resorts Holdings, as the case may be, shall have taken all actions required pursuant to Section 6.10 with respect to any Property acquired pursuant to clause (vii)(A) above. Upon satisfaction of the foregoing conditions, the Administrative Agent shall execute and deliver to the appropriate Golf Course Land Owners such documents and instruments, including UCC-3 termination statements and deeds of reconveyance, all as may be reasonably necessary to release the Liens granted to the Lenders in the Home Site Land, and to permit such Disposition; *provided*, that an instrument reasonably acceptable to the Administrative Agent is recorded against the Home Site Land to the effect that until the earlier of (x) the Disposition of the Golf Course Land in accordance with Section 7.5(k) or (y) the payment in full of the Obligations, only residential housing and other non-gaming related developments will be developed on the Home Site Land, the provisions of such instrument to burden the Home Site Land for the benefit of the Golf Course Land;

(m) Valvino shall be permitted to Dispose of the Phase II Land, and the Lenders hereby consent to such Disposition, on the conditions that (i) no Default or Event of Default has occurred and is continuing at the time of such Disposition and such Disposition is permitted under the other Financing Agreements, (ii) at the time of such Disposition, (A) the Consolidated EBITDA of the Borrower for the most recent period of two full consecutive fiscal quarters of the Borrower was equal to or greater than \$170,000,000 and the Required Lenders consent to such Disposition or (B) the Consolidated EBITDA of the Borrower for the most recent period of four full consecutive fiscal quarters of the Borrower was equal to or greater than \$325,000,000, (iii) the Valvino Water Permit Transfer shall have occurred and (iv) in the event that any portion of the Entertainment Facility or any other improvements related to the Le Rêve hotel and casino (other than the Phase II Building, the Employee Parking Lot or the Driving Range) are located on the Phase II Land, the Phase II Land upon which such improvements are located shall have been transferred in fee ownership to the Borrower (whether pursuant to lot line adjustments or otherwise) and the Borrower shall have taken all actions required pursuant to Section 6.10 with respect to any Real Estate and other Property acquired pursuant to this clause (iv). Upon satisfaction of the foregoing conditions, the Administrative Agent shall execute and deliver to Valvino

(n) any Event of Eminent Domain; *provided*, that the requirements of Sections 2.12(c) and 2.24 are complied with in connection therewith;

(o) the Disposition of the Existing Aircraft so long as (i) within three (3) Business Days after such Disposition, World Travel or a trust of which World Travel is the beneficial interest holder acquires the Replacement Aircraft, (ii) the aggregate Net Disposition Proceeds from such Disposition are applied to the acquisition of the Replacement Aircraft and no Loan Party applies any other amounts to such acquisition other than (x) proceeds of equity capital contributions from Wynn Resorts (or another Loan Party to the extent acting as an intermediary for purposes of contributing equity capital contributions from Wynn Resorts) and (y) proceeds from Indebtedness permitted pursuant to Section 7.2(f)(ii) and (iii) such Disposition of the Existing Aircraft and the acquisition of the Permitted Aircraft is permitted pursuant to the Other Indebtedness; and

(p) Valvino shall be permitted to effectuate the Valvino Water Permit Transfer (or any portion thereof) and DIIC shall be permitted to effectuate the DIIC Water Transfer (or any portion thereof).

Notwithstanding the foregoing provisions of this Section 7.5, subsection (f) above shall be subject to the additional provisos that: (a) no Default or Event of Default shall exist and be continuing at the time of such transaction, lease or sublease or would occur after as a result of entering into such transaction, lease or sublease (or immediately after any renewal or extension thereof at the option of the Borrower), (b) such transaction, lease or sublease could not reasonably be expected to materially interfere with, impair or detract from the operation of the business of the Borrower or Valvino, as the case may be, and will, in the case of leases associated with the casino, hotel and shopping operations, in the reasonable good faith judgment of the Borrower enhance the value and operations of the Project, (c) except with respect to the Dealership Lease Agreement and subleases of space in the Phase II Land Building by the Borrower, such transaction, lease or sublease is at a fair market rent or value (in light of other similar or comparable prevailing commercial transactions) and contains such other terms such that the lease, taken as a whole, is commercially reasonable and fair to the Borrower in light of prevailing or comparable transactions in other casinos, hotels, hotel attractions, shopping venues or similarly situated buildings, as applicable (*provided*, that each sublease of the Phase II Land Building by the Borrower and the Dealership Lease Agreement shall contain such terms such that the transaction, taken as a whole, does not expose the Borrower to undue liabilities or obligations in light prevailing or comparable transactions), (d) no gaming, hotel or casino operations (other than the operation of arcades and games for minors) may be conducted on any space that is subject to such transaction, lease or sublease other than by the Borrower, (e) with respect to subleases of the Phase II Land Building by the Borrower, no operations other than those conducted in the ordinary course of business in commercial office buildings and those related to the temporary operation of a full service Ferrari and Maserati automobile dealership may be conducted on any space that is subject to such transaction unless, subject at all times to the restrictions set forth in clauses (a) through (d) above, otherwise approved in writing by the Administrative Agent and (f) no lease or sublease may provide that the Borrower or Valvino, as the case may be, may subordinate its fee, condominium or leasehold interest to any lessee or any party financing any lessee; *provided*, that (x) the Administrative Agent on behalf of the Lenders shall agree to provide the tenant under any such lease or sublease with a Subordination, Non-Disturbance and Attornment Agreement and (y) with respect to any such lease having a term of two years or more or aggregate annual rents in excess of \$500,000 (other than leases solely between Loan Parties), the Borrower shall enter into, and cause the tenant under any such lease or sublease to enter into with the Administrative Agent for the benefit of the Lenders, a Subordination, Non-Disturbance and Attornment Agreement, in each case substantially in the form of Exhibit N hereto with such changes as the Administrative Agent may approve, which approval shall not be unreasonably withheld, conditioned or delayed (*provided*, that such changes do not materially and

adversely affect the security interests granted in favor of the Lenders under any of the Security Documents).

**7.6 Limitation on Restricted Payments.** Declare or pay any dividend (other than dividends payable solely in common stock (excluding Disqualified Stock) of the Person making such dividend) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of any Loan Party, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any Loan Party, or enter into any derivatives or other transaction with any financial institution, commodities or stock exchange or clearinghouse (a "*Derivatives Counterparty*") obligating any Loan Party to make payments to such Derivatives Counterparty as a result of any change in market value of any such Capital Stock (collectively, "*Restricted Payments*"), except that:

(a) any Loan Party may pay a dividend or other distribution to Wynn Resorts, through any intermediate Wholly Owned Subsidiaries of Wynn Resorts, of amounts necessary to repurchase Capital Stock or Indebtedness of Wynn Resorts (other than Capital Stock held by the Existing Stockholders) to the extent required by the Nevada Gaming Authorities for not more than the fair market value thereof in order to avoid the suspension, revocation or denial by the Nevada Gaming Authorities of a gaming license necessary for the ownership, construction, maintenance, financing or operation of the Project, in any event to the extent such suspension, revocation or denial would have a Material Adverse Effect; *provided*, that so long as such efforts do not jeopardize any such gaming license necessary for the ownership, construction, maintenance, financing or operation of the Project, Wynn Resorts and its Subsidiaries shall have diligently and in good faith attempted to find a third-party purchaser(s) for such Capital Stock or Indebtedness and no third-party purchaser(s) acceptable to the Nevada Gaming Authorities was willing to purchase such Capital Stock or Indebtedness within a time period acceptable to the Nevada Gaming Authorities;

(b) on the Completion Guaranty Release Date, the Completion Guarantor may pay a dividend or other distribution to Wynn Resorts, through any intermediate Wholly Owned Subsidiaries of Wynn Resorts, in an amount equal to the amount on deposit in the Completion Guaranty Deposit Account after application of amounts on deposit therein in accordance with Section 2.10 of the Disbursement Agreement;

(c) to the extent constituting Restricted Payments, (i) any Loan Party may consummate a transaction permitted pursuant to Section 7.4, (ii) any Loan Party may make Dispositions permitted pursuant to Section 7.5, (iii) any Loan Party may make Investments permitted pursuant to Section 7.8, (iv) any Loan Party may pay Management Fees to Wynn Resorts permitted pursuant to Section 7.22 and (v) any Loan Party may take actions expressly permitted pursuant to Section 7.10;

(d) (i) any Subsidiary of the Borrower may declare and pay cash dividends to the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. or the Completion Guarantor), (ii) Wynn Resorts Holdings may declare and pay cash dividends to Valvino (so long as Valvino is Solvent)

and (iii) any Wynn Group Entity may declare and pay cash dividends to any other Loan Party (so long as such Loan Party is Solvent);

(e) any Loan Party may make distributions to the direct or indirect owners of such Loan Party with respect to any period during which such Loan Party is a Pass Through Entity or a Consolidated Member, such distributions in an aggregate amount not to exceed such owners' Tax Amounts for such period;

(f) so long as no Default or Event of Default shall have occurred and be continuing and no Material Adverse Effect shall have occurred and be continuing (or, in either case, would result

therefrom), the Loan Parties may pay dividends to other Loan Parties to permit such other Loan Parties to (i) repurchase common stock or common stock options from present or former employees of the Loan Parties (or their estates) upon the death, disability or termination of employment of such employees in accordance with employment agreements or option plans or agreements; *provided*, that the aggregate amount of payments under this subsection (f), when aggregated with any Indebtedness incurred by the Loan Parties pursuant to Section 7.2(h), will not exceed \$2,000,000 in any Fiscal Year and \$6,000,000 during the term of this Agreement;

(g) on and after the Completion Date and so long as no Default or Event of Default shall have occurred and be continuing and no Material Adverse Effect shall have occurred and be continuing (or, in either case, would result therefrom), the Loan Parties may make Restricted Payments not otherwise permitted under any other subsection of this Section 7.6 in an amount not to exceed an aggregate of \$5,000,000, *plus*, for each Fiscal Year occurring after the Fiscal Year in which the Completion Date occurs, \$2,000,000;

(h) to the extent constituting Restricted Payments, on or prior to the Final Completion Date the Borrower may pay Project Costs as permitted pursuant to the Disbursement Agreement; and

(i) until the earlier of (i) 12 months following the acquisition of the Replacement Aircraft with the Replacement Aircraft Indebtedness, and (ii) the sale by World Travel or the Aircraft Trustee, as the case may be, of the Existing Aircraft, the payment to Wynn Resorts of amounts necessary to pay interest then due and payable on the Replacement Aircraft Indebtedness in an aggregate amount not to exceed \$1,000,000.

**7.7 Limitation on Capital Expenditures.** Make, commit to make or incur Capital Expenditures, in any Fiscal Year indicated below, in an aggregate amount among all Loan Parties in excess of the corresponding amount set forth below opposite such Fiscal Year; *provided*, that other than Capital Expenditures (x) necessary to keep all associated Property and systems reasonably related to the operation of the Golf Course Land and improvements thereon and the Phase II Land and improvements thereon in good and working order and condition or (y) funded by the proceeds of equity capital contributions from Wynn Resorts (or another Loan Party to the extent acting as an intermediary for purposes of contributing equity capital contributions from Wynn Resorts for such Capital Expenditures), in no event shall any Loan Party commit to make or incur Capital Expenditures with respect to the Golf Course Land or improvements thereon in excess of (A) \$3,000,000 during the period from the Completion Date through the 18 month anniversary thereof and (B) \$5,000,000 in any 12 month period thereafter, and in no event shall any Loan Party commit to make or incur Capital Expenses with respect to the Phase II Land or improvements thereon in excess of \$5,000,000 in any Fiscal Year; *provided, further*, that other than Capital Expenditures (x) necessary or advisable to keep all associated Property and systems reasonably related to the operation of the Aircraft in good and working order and condition, in each case whether pursuant to manufacturer requirements or suggestions, Requirements of Law, good aircraft maintenance practices or otherwise, or (y) funded by the proceeds of equity capital contributions from Wynn Resorts (or another Loan Party to the extent acting as an intermediary for purposes of contributing equity capital contributions from Wynn Resorts for such Capital Expenditures), in no event shall any Loan Party commit to make or incur Capital Expenditures with respect to the Aircraft.

Fiscal Year	Maximum Capital Expenditures
Fiscal Year 2005	\$ 25,000,000
Fiscal Year 2006	\$ 50,000,000
Fiscal Year 2007	\$ 60,000,000
Fiscal Year 2008	\$ 65,000,000
Fiscal Year 2009	\$ 52,500,000

**7.8 Limitation on Investments.** Make any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting an ongoing business from, or make any other investment in, any other Person (all of the foregoing, "*Investments*"), except:

(a) extensions of trade credit in the ordinary course of business (including, without limitation, advances to patrons of the Project's casino operation consistent with ordinary course gaming operations);

(b) (i) prior to the Completion Date, Investments in Permitted Securities and (ii) on or after the Completion Date, Investments in Cash Equivalents;

(c) to the extent constituting Investments, the incurrence of Indebtedness permitted by Sections 7.2(b), 7.2 (c) and 7.2(d);

(d) loans and advances to employees of the Loan Parties in the ordinary course of business (including, without limitation, for travel, entertainment and relocation expenses) in an aggregate amount for all Loan Parties not to exceed \$1,000,000 at any one time outstanding;

(e) Investments (other than those relating to the incurrence of Indebtedness permitted by Section 7.8(c)) (i) by any Loan Party (other than the Water Entities) in the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. (except with respect to Investments, the proceeds of which are necessary for the corporate maintenance of Capital Corp.)), (ii) by Valvino in Wynn Resorts Holdings or by Wynn Resorts Holdings in Valvino (so long

as Wynn Resorts Holdings, on the one hand, or Valvino, on the other hand, is Solvent) and (iii) by any Wynn Group Entity in any other Loan Party other than the Water Entities or Capital Corp. (so long as such Loan Party is Solvent);

(f) Investments consisting of securities received in settlement of debt created in the ordinary course of business and owing to any Loan Party or in satisfaction of judgments;

(g) nominal capital contributions in connection and in furtherance of the formation of new Subsidiaries in accordance with Section 7.17;

(h) to the extent constituting Investments, (i) any Loan Party may consummate a transaction permitted pursuant to Section 7.4, (ii) any Loan Party may make Dispositions permitted pursuant to Section 7.5, (iii) any Loan Party may make Restricted Payments permitted pursuant to Section 7.8 and (iv) any Loan Party may take actions expressly permitted pursuant to Section 7.10; and

(i) in addition to Investments otherwise expressly permitted by this Section 7.8, so long as no Event of Default or Default shall have occurred and be continuing or would result therefrom and no Material Adverse Effect shall have occurred and be continuing or would result therefrom, Investments by the Loan Parties in an aggregate amount (valued at cost) not to exceed \$10,000,000 at any one time outstanding.

**7.9 Limitation on Optional Payments and Modifications of Governing Documents.** (a) Make or offer to make any optional or voluntary payment, prepayment, repurchase or redemption of, or otherwise voluntarily or optionally defease, any Indebtedness, or segregate funds for any such payment, prepayment, repurchase, redemption or defeasance, or enter into any derivative or other transaction with any Derivatives Counterparty obligating any Loan Party to make payments to such Derivatives Counterparty as a result of any change in market value of such Indebtedness, other than the prepayment of Indebtedness incurred hereunder or the prepayment of the Other Indebtedness with the proceeds of Permitted Refinancing Indebtedness; *provided*, that the Borrower may voluntarily prepay the FF&E Facility so long as the Term Loans and/or the Revolving Loans (in the case of the prepayment of Revolving Credit Loans, with a corresponding permanent reduction of the Revolving

101

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Credit Commitment) are prepaid on a *pro rata* basis, (b) amend or modify, or permit the amendment or modification of its Governing Documents in any manner adverse to the Lenders or (c) amend, modify or otherwise change the provisions of Article IV of its limited liability company agreement relating to conduct or any comparable provisions contained in its other charter documents (or, in each case, to the extent the relevant Loan Party is not a limited liability company, any comparable provisions contained in its Governing Documents), or fail to include provisions corresponding to those contained in Article IV of the limited liability company agreement of Valvino, as in effect on the Closing Date, in its limited liability company agreement or other applicable Governing Documents.

**7.10 Limitation on Transactions with Affiliates.** Enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than such transactions solely between the Borrower and its Subsidiaries or solely between Subsidiaries of the Borrower) unless such transaction is:

(a) on terms that are not less favorable to that Loan Party than those that might be obtained at the time in a comparable arm's length transaction with Persons who are not Affiliates of such Loan Party and the Borrower has delivered to the Administrative Agent (1) with respect to any transaction involving an amount in excess of \$1,000,000, a certificate signed by a Responsible Officer certifying that such transaction complies with this Section 7.10, (2) with respect to any transaction involving an amount in excess of \$5,000,000, a resolution of the Board of Directors of the applicable Loan Party(ies) certifying that such transaction complies with this Section 7.10 and that such transaction has been approved by a majority of the Independent Directors of the applicable Loan Party(ies) and (3) with respect to any such transaction that involves aggregate payments in excess of \$10,000,000 (or, with respect to Qualified Affiliate Transactions, \$25,000,000), an opinion as to the fairness to the applicable Loan Party at the time such transaction is entered into from a financial point of view issued by an independent financial advisor satisfactory to the Administrative Agent; *provided*, that, in no such case shall such a transaction consist of, contain, or provide for the payment of (i) Affiliated Overhead Expenses or (ii) any fee, profit or similar component benefiting any Loan Party or Affiliate of a Loan Party, all payments under such transactions to represent only the payment or reimbursement of actual costs and expenses, except (x) transactions where the Borrower or a Subsidiary of the Borrower is the recipient of such payments or (y) transactions where a Loan Party is the recipient of such payments and such payments are being made by a Person other than a Loan Party; *provided, however*, that (x) the Borrower shall be permitted to lease space at the Project for the development and operation of a Ferrari and Maserati automobile dealership to an Affiliate of the Borrower pursuant to the Dealership Lease Agreement at below market rent and (y) the Borrower shall be permitted to sublease space at the Phase II Building to Affiliates of the Borrower at below market rents;

(b) a Disposition permitted pursuant to Section 7.5 (*provided*, that the requirements of subsection (a) above shall apply to leases of the Project by the Borrower permitted pursuant to Section 7.5(f) (other than the Dealership Lease and subleases of the Phase II Land Building) and Dispositions permitted pursuant to Section 7.5(b)), an Investment permitted pursuant to Section 7.8 or a Restricted Payment permitted pursuant to Section 7.6;

(c) so long as no Default or Event of Default shall have occurred and be continuing and no Material Adverse Effect shall have occurred and be continuing (or, in either case, would result therefrom), expressly contemplated by the Tax Indemnification Agreement;

(d) on and after the Completion Date, the reimbursement by the Borrower and its Subsidiaries to the other Loan Parties and Wynn Resorts of Allocable Overhead to the extent incurred by the other Loan Parties and Wynn Resorts; *provided*, that the amount of Allocable

102

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Overhead reimbursable by the Borrower and its Subsidiaries pursuant to this Section 7.10(d) during any 12-month period shall not exceed, in the aggregate, the greater of (x) \$21,500,000 and (y) if the Consolidated Leverage Ratio of the Borrower for the period of four full consecutive fiscal quarters ending on the Quarterly Date immediately prior to the commencement of such 12 month period is 3.5 to 1.0 or less, 1.29% of Net Revenues of the Borrower and its consolidated Subsidiaries for such four full consecutive fiscal quarter period;

(e) expressly contemplated by the Golf Course Lease, the Driving Range Lease, the Employee Parking Lot Lease, the Art Rental and Licensing Agreement, the Water Supply Agreement, the Management Agreement (but only to the extent payments thereunder do not constitute Management Fees

(payments of such amounts being governed pursuant to Section 7.22)), the Building Lease, the WDD Agreement and the Aircraft Operating Agreement; *provided, however*, that any amendments, modifications or supplements thereto after the Closing Date shall comply with Section 7.10(a); and

(f) on or prior to the Final Completion Date, the payment of Project Costs as permitted pursuant to the Disbursement Agreement.

**7.11 Limitation on Sales and Leasebacks.** Enter into any arrangement with any Person providing for the leasing by any Loan Party of Property which has been or is to be sold or transferred by any Loan Party to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such Property or rental obligations of any Loan Party.

**7.12 Limitation on Changes in Fiscal Periods.** Permit the fiscal year of any Loan Party to end on a day other than December 31 or change any Loan Party's method of determining fiscal quarters.

**7.13 Limitation on Negative Pledge Clauses.** Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of a Loan Party to create, incur, assume or suffer to exist any Lien upon any of its Property or revenues, whether now owned or hereafter acquired, to secure the Obligations or, in the case of any Guarantor, its obligations under the Guarantee and Collateral Agreement other than (a) this Agreement and the other Financing Agreements, (b) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby and proceeds thereof); *provided*, that the principal amount of Indebtedness thereunder shall exceed 75% of the original purchase price of the assets financed thereby, and (c) as required by applicable law or any applicable rule or order of any Nevada Gaming Authority.

**7.14 Limitation on Restrictions on Subsidiary Distributions, etc.** Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Loan Party to (a) make Restricted Payments in respect of any Capital Stock of such Loan Party held by, or pay or subordinate any Indebtedness owed to, any other Loan Party, (b) make Investments in any other Loan Party or (c) transfer any of its assets to any other Loan Party, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions under the Mortgage Notes Indenture, (iii) any restrictions existing under the FF&E Facility Agreement and (iv) as required by applicable law or any applicable rule or order of any Nevada Gaming Authority.

**7.15 Limitation on Lines of Business.** Subject to Sections 7.24 and 7.25, enter into any business or investment activities, whether directly or indirectly, other than Permitted Businesses; *provided, however*, that (a) Capital Corp. shall not hold any material Property, incur any Indebtedness or become liable for any obligations or engage in any business activities (other than as co-obligor with respect to the Other Indebtedness and Other Security Documents with respect to the Mortgage Notes Indenture) or have any Subsidiaries and (b) the Water Entities shall not hold any material Property other than the DIIC Water Permits and other Property reasonably related to the provision of water services to the

103

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Golf Course and the Additional Land or engage in any business activities other than the provision of water services to the Golf Course and the Additional Land.

**7.16 Restrictions on Changes.** (a) Agree to any amendment to, assignment or termination of, or waive any of its rights under, any Permit or Project Document or enter into any new Project Document or Permit (it being understood that any Material Contracts which are covered by subsection (c) of this Section 7.16 shall also be subject to the restrictions set forth therein) without in each case obtaining the prior written consent of the Required Lenders if in any such case such amendment or waiver or new Project Document or Permit could reasonably be expected to have a Material Adverse Effect or otherwise adversely affect the Lenders in any material respect (taking into consideration any viable replacements or substitutions therefor at the time such determination is made).

(b) Amend or otherwise change the terms of any Financing Agreements (other than the Loan Documents) or permit the termination thereof (other than in accordance with the terms thereof), or enter into any new Financing Agreements or make any payment consistent with an amendment thereof or change thereto, if the effect of such amendment, change or new Financing Agreement is to increase the interest rate or fees on the Indebtedness evidenced thereby, change (to earlier or more frequent dates) any dates upon which payments of principal or interest are due thereon, change the redemption, prepayment or defeasance provisions thereof or change the subordination provisions thereof (or of any guaranty thereof); *provided*, that the Borrower may amend the terms of any other Financing Agreement to increase the principal amount thereof if such interest is otherwise expressly permitted by the Intercreditor Agreements and this Agreement.

(c) Agree to any amendment to, assignment or termination of, or waive any of its rights under, any Material Contract (other than Material Contracts described in clause (ii) of the definition thereof) or enter into a new Material Contract (other than Material Contracts described in clause (ii) of the definition thereof) without in each case obtaining the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld or delayed. Notwithstanding anything to the contrary contained in this Section 7.16(c), this Section 7.16(c) shall not apply to Construction Contracts.

**7.17 Limitation on Formation and Acquisition of Subsidiaries and Purchase of Capital Stock.** Except as otherwise permitted pursuant to Section 7.4, form, create or acquire any direct or indirect Subsidiary, except so long as no Event of Default or Default shall have occurred and be continuing or would result therefrom, the Borrower and its Subsidiaries may form, create or acquire new Domestic Subsidiaries (in the event of an acquisition of a new Domestic Subsidiary, so long as such new Domestic Subsidiary is Solvent); *provided*, that (a) no such new Subsidiary shall own or operate or possess any material license, franchise or right used in connection with the ownership or operation of the Project or any material Project assets, (b) any such new Subsidiary shall be a Wholly Owned Subsidiary of its requisite parent entity, and (c) any such new Subsidiary shall become a Loan Party hereunder and otherwise comply with the requirements of Section 6.10. Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Loan Party own any Capital Stock other than that of its Wholly Owned Subsidiaries.

**7.18 Limitation on Hedge Agreements.** Enter into any Hedge Agreement other than Hedge Agreements entered into in the ordinary course of business, and not for speculative purposes, and to protect against changes in interest rates or foreign exchange rates.

**7.19 Limitation on Sale or Discount of Receivables.** Except as permitted pursuant to Section 7.5(b), directly or indirectly, sell with recourse, or discount or otherwise sell for less than the face value thereof, any of its notes or accounts receivable other than an assignment for purposes of collection in the ordinary course of business.

104

7.20 *Limitation on Zoning and Contract Changes and Compliance.* Initiate, consent to or acquiesce to (a) any zoning downgrade of the Mortgaged Properties or seek any material variance under any existing zoning ordinance except, in each case, to the extent such downgrade or variance could not reasonably be expected to materially and adversely affect the occupancy, use or operation of the Golf Course Land, the Phase II Land or the Casino Land, (b) use or permit the use of the Mortgaged Properties in any manner that could result in such use becoming a non-conforming use (other than a non-conforming use otherwise in compliance with applicable land use laws, rules and regulations by virtue of a variance or otherwise) under any zoning ordinance or any other applicable land use law, rule or regulation or (c) any change in any laws, requirements of Governmental Authorities or obligations created by private contracts which now or hereafter could reasonably be likely to materially and adversely affect the occupancy, use or operation of the Golf Course Land, the Phase II Land or the Casino Land.

7.21 *No Joint Assessment; Separate Lots.* Suffer, permit or initiate the joint assessment of any Mortgaged Property with any other real property constituting a separate tax lot.

7.22 *Restrictions on Payments of Management Fees.* Pay to Wynn Resorts any Management Fees unless:

(a) no Default or Event of Default shall have occurred and be continuing or would result from such payment and no Material Adverse Effect shall have occurred and be continuing or would result from such payment;

(b) the Consolidated Leverage Ratio of the Borrower and its consolidated Subsidiaries for the most recently ended four full consecutive fiscal quarter period of the Borrower immediately preceding the date on which such Management Fee is proposed to be paid is no greater than 3.5 to 1.0 (calculated on a pro forma basis, giving effect to the payment of the Management Fees proposed to be paid and any Indebtedness proposed to be incurred to finance the payment of such Management Fees as if the same was paid and/or incurred during such prior period); and

(c) such Management Fees in the aggregate not to exceed, during any 12-month, period 1.5% of the Net Revenues of the Borrower and its consolidated Subsidiaries for the period of four full consecutive fiscal quarters of the Borrower most recently ended prior to the commencement of such 12-month period.

105

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Any Management Fees not permitted to be paid during a particular 12-month period pursuant to this Section 7.22 shall be deferred and shall accrue. Such accrued and unpaid Management Fees may be paid in any subsequent 12-month period to the extent such payment would be permitted under this Section 7.22 and the Management Fees Subordination Agreement.

7.23 *Additional Material Contracts.* Enter into or become a party to any Additional Material Contract except upon delivery to the Administrative Agent of each Delivery Requirement with respect to such Additional Material Contract; provided, however, that the requirements of this Section 7.23 shall not apply to Construction Contracts.

7.24 *Limitation on Phase II Land and Phase II Building Development and Operations.* At any time prior to the Disposition of the Phase II Land in accordance with Section 7.5(m), (i) construct, develop, improve, use or operate, or permit to be constructed, developed, improved, used or operated, the Phase II Land or any improvement on the Phase II Land (including further construction, development, improvement, use or operation of the Phase II Land Building), including any excavation or site work on the Phase II Land, (ii) enter into, or permit to be entered into, any contract or agreement for such construction, development, improvement, use or operation or for any materials, supplies or labor necessary in connection with such construction, development, improvement, use or operation (other than a contract or agreement that is conditional upon the Disposition of the Phase II Land in accordance with Section 7.5(m)) or (iii) incur any Indebtedness, the proceeds of which are expected to be used, or are used, for the construction, development, improvement, use or operation of the Phase II Land or any improvement on the Phase II Land, except:

(a) construction, development or improvement to the Phase II Land and improvements thereon (including, without limitation, the Phase II Land Building, the Employee Parking Lot and the Driving Range) prior to the Final Completion Date in accordance with the Plans and Specifications;

(b) use and operation of the Phase II Land and improvements thereon (including, without limitation, the Phase II Land Building, the Employee Parking Lot and the Driving Range) (i) for commercial office space purposes, including services and amenities reasonably related thereto and customary for commercial office space properties, (ii) for the temporary operation of a full service Ferrari and Maserati automobile dealership, (iii) in accordance with the Phase II Building Lease, the Driving Range Lease and the Employee Parking Lot Lease, and (iv) for such other purposes as the Administrative Agent may approve in writing; *provided, however*, that in no event shall the Phase II Land or the improvements thereon (including, without limitation, the Phase II Land Building, the Employee Parking Lot and the Driving Range) be used or operated for gaming, hotel, entertainment or casino purposes;

(c) maintenance and repairs of the Phase II Land and improvements thereon (including, without limitation, the Phase II Land Building, the Employee Parking Lot and the Driving Range) in the ordinary course of business necessary to keep all associated Property and systems reasonably related to the operation of such Real Estate and other Property in good and working order and condition;

(d) modifications and/or reconfigurations to the Phase II Land Building in furtherance of the provision of office space and associated amenities to the Project or under leases to Persons permitted pursuant to Section 7.5(f);

(e) the design, construction, development and operation of the Entertainment Facility to the extent any of the same is located on the Phase II Land; and

(f) in the event of loss or damage to the Phase II Land or improvements thereon (including, without limitation, the Phase II Land Building, the Employee Parking Lot and the Driving Range), the repair and restoration of such Property in accordance with Section 2.24.

106

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**7.25 Limitation on Golf Course Land and Golf Course Development.** At any time prior to the Disposition of the Golf Course Land in accordance with Section 7.5(k) (i) construct, develop or improve, or permit to be constructed, developed or improved, the Golf Course Land or any improvement on the Golf Course Land, including any excavation or site work on the Golf Course Land, (ii) enter into, or permit to be entered into, any contract or agreement for such construction, development or improvement, or for any materials, supplies or labor necessary in connection with such construction, development or improvement (other than a contract or agreement that is conditional upon the Disposition of the Golf Course Land in accordance with Section 7.5(k)) or (iii) incur any Indebtedness, the proceeds of which are expected to be used, or are used, for the construction, development or improvement of the Golf Course Land or any improvement on the Golf Course Land, except:

- (a) construction, development or improvement to the Golf Course Land and improvements thereon prior to the Final Completion Date in accordance with the Plans and Specifications;
- (b) maintenance and repairs in the ordinary course of business necessary to keep all associated Property and systems reasonably related to the operation of the Golf Course Land and the Golf Course in good and working order and condition;
- (c) modifications and/or reconfigurations of the Golf Course either (x) in connection with and in furtherance of the Disposition of the Wynn Home Site Land or the Home Site Land in accordance with Sections 7.5(j) and 7.5(l) or (y) desirable, in the reasonable opinion of the Borrower, in order to enhance or improve the Golf Course;
- (d) use and operation of the Golf Course on the Golf Course Land in accordance with the Golf Course Lease; and
- (e) in the event of loss or damage to the Golf Course Land or improvements thereon, the repair and restoration of such Property in accordance with Section 2.24.

**7.26 Acquisition of Real Property.** Acquire a fee, easement or other interest in any real property (including, without limitation, any lease of Real Property, but excluding (x) the acquisition (but not the exercise) of any options to acquire any such interests in real property, (y) the leasing of the Project or the Phase II Land Building as permitted by Section 7.5(f) and (z) the transactions contemplated by the Golf Course Lease, the Driving Range Lease, the Employee Parking Lot Lease and the Building Lease and any other leasehold interests acquired by a Loan Party over Real Estate already subject to the Lien of the Mortgages) unless (a) the Borrower or an applicable other Loan Party shall have delivered to the Administrative Agent a Phase I Report with respect to such real property along with a corresponding reliance letter from an environmental consultant reasonably satisfactory to the Administrative Agent confirming that no Hazardous Substances were found in, on or under such real property in a manner that could reasonably be expected to result in a material liability to such Loan Party and that a Phase II Report is not warranted by the findings of such Phase I Report and (b) if Hazardous Substances were found in, on or under such real property pursuant to such Phase I Report in a manner that could reasonably be expected to result in a material liability to such Loan Party or a Phase II Report is warranted by the findings of such Phase I Report, the Borrower or an applicable other Loan Party shall have either (i) delivered to the Administrative Agent on behalf of the Lenders a Phase II Report with respect to such real property along with a corresponding reliance letter from an environmental consultant reasonably satisfactory to the Administrative Agent, confirming, in form and substance reasonably satisfactory to the Administrative Agent, either (A) that no Hazardous Substances were found in, on or under such real property in a manner that could reasonably be expected to result in a material liability to such Loan Party or (B) matters otherwise reasonably satisfactory to the Administrative Agent or (ii) delivered to the Administrative Agent an environmental indemnity agreement in form and substance reasonably satisfactory to the Administrative Agent pursuant to which an indemnitor reasonably satisfactory to the Administrative Agent indemnifies the Borrower, the

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relevant other Loan Parties and the Lenders from any and all damages or other liabilities relating to or arising from Hazardous Substances then in, on or under such real property or otherwise caused by or attributable to such indemnitor.

**7.27 Project Liquidity Reserve Account.** (a) Prior to the Completion Date, utilize, apply or otherwise withdraw any amounts on deposit in the Project Liquidity Reserve Account except in accordance with Section 5.9.2 of the Disbursement Agreement.

- (b) On or after the Completion Date, subject to Section 2.12(f), utilize, apply or otherwise withdraw any amounts on deposit in the Project Liquidity Reserve Account; *provided*, that to the extent Project Revenues or other funds (including proceeds of Revolving Loans or other Indebtedness permitted pursuant to Section 7.2) are not available to the Borrower or otherwise sufficient to pay Bank Debt Service or Note Debt Service as the same become due and payable (such circumstance to be certified in writing to the Administrative Agent by a Responsible Officer of the Borrower), the Administrative Agent shall apply amounts on deposit in the Project Liquidity Reserve Account to pay first, due and owing Bank Debt Service and second, in the event the Mortgage Notes Indenture Trustee delivers a Note Debt Service Shortfall Notice and no Bank Debt Service is due and owing at such time, due and owing Note Debt Service.

**7.28 Lease Terminations.** Terminate or permit the termination of, or reduce or permit the reduction of the Real Estate or other Property covered by, (i) the Driving Range Lease, the Building Lease or the Parking Lot Lease, in each case until such time as (A) the Phase II Land is Disposed of in accordance with Section 7.5(m) and (B) with respect to the Parking Lot Lease, the Borrower has entered into such agreements or otherwise obtained such Property which in the reasonable opinion of the Majority Arrangers provides a satisfactory alternative to the Parking Lot Lease with respect to the provision of parking services for the Borrower's employees or (ii) the Golf Course Lease until such time as the Golf Course Land is Disposed of in accordance with Section 7.5(k) (*provided*, that the Real Estate or other Property subject to the Golf Course Lease may be reduced in connection with the Disposition of the Wynn Home Site Land pursuant to Section 7.5(j) or the Disposition of the Home Site Land in accordance with Sections 7.5(l), in either case so long as such reduction is only with respect to such Real Estate or other Property being Disposed of pursuant to such Disposition).

## SECTION 8. EVENTS OF DEFAULT

If any of the following events shall occur and be continuing:

- (a) (i) The Borrower shall fail to pay any principal of any Loan or Reimbursement Obligation when due in accordance with the terms hereof; or (ii) the Borrower shall fail to pay any interest on any Loan or Reimbursement Obligation or any Loan Party shall fail to pay any other amount payable hereunder or under any other Loan Document, within five days after any such interest or other amount becomes due in accordance with the terms hereof; *provided*, that the failure to pay any amount due under the Disbursement Agreement (and not otherwise due hereunder) shall constitute an Event of Default hereunder only to the extent such failure to pay constitutes a Disbursement Agreement Event of Default; or

(b) Any representation or warranty made or deemed made by Wynn Resorts, the Completion Guarantor or any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made; *provided*, that the inaccuracy of any representation or warranty contained only in the Disbursement Agreement shall constitute an Event of Default hereunder only to the extent such inaccuracy constitutes a Disbursement Agreement Event of Default; or

108

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(c) (i) any Loan Party shall default in the observance or performance of any agreement contained in Section 6.4, Section 6.7(a), Section 7 or Section 5 of the Guarantee and Collateral Agreement (*provided*, that with respect to those covenants incorporated by reference from this Agreement into the Guarantee and Collateral Agreement and made the direct obligations of the Loan Parties pursuant to Section 5.1 of the Guarantee and Collateral Agreement, no Event of Default shall occur from a Loan Party's default in the observance or performance of such covenants until expiration of the notice and cure periods, if any, set forth under this Section 8 that are applicable to the corresponding covenants in this Agreement), (ii) Wynn Resorts shall default in the observance or performance of any agreement contained in the Wynn Resorts Agreement (or, to the extent executed and delivered pursuant to the Wynn Resorts Agreement, the Wynn Resorts Guaranty or the Wynn Resorts Security Agreement), (iii) the Completion Guarantor shall default in the observance or performance of any covenant or agreement contained in the Completion Guaranty, (iv) an "Event of Default" under and as defined in any Mortgage shall have occurred and be continuing or (v) a Disbursement Agreement Event of Default shall have occurred and be continuing; or

(d) Wynn Resorts or any Loan Party shall default in the observance or performance of any other covenant or agreement contained in this Agreement or any other Loan Document to which it is a party (other than as provided in subsections (a) through (c) of this Section but subject to the proviso set forth in Section 8(c)), and such default shall continue unremedied for a period of 30 days after the earlier of (i) the Borrower or any other Loan Party becoming aware of such default or (ii) receipt by the Borrower or any other Loan Party of notice from the Administrative Agent or any Lender of such default; *provided*, that the failure to perform or comply with any such provision of the Disbursement Agreement shall constitute an Event of Default hereunder only to the extent such failure to perform or to comply constitutes a Disbursement Agreement Event of Default; or

(e) The Borrower or any other Loan Party shall (i) default in making any payment of any principal of any Indebtedness (including, without limitation, any Guarantee Obligation, but excluding the Loans) on the scheduled due date with respect thereto; or (ii) default in making any payment of any interest on any such Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or (iii) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause immediately such Indebtedness to become due prior to its stated maturity or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable; *provided*, that a default, event or condition described in subsection (i), (ii) or (iii) of this subsection (e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in subsections (i), (ii) and (iii) of this subsection (e) shall have occurred and be continuing with respect to Indebtedness the outstanding principal amount of which exceeds in the aggregate \$5,000,000; or

(f) (i) Wynn Resorts, the Completion Guarantor, the Borrower or any other Loan Party shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Wynn Resorts, the Completion Guarantor, the Borrower or any

109

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other Loan Party shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Wynn Resorts, the Completion Guarantor, the Borrower or any other Loan Party any case, proceeding or other action of a nature referred to in subsection (i) above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of 60 days; or (iii) there shall be commenced against Wynn Resorts, the Completion Guarantor, the Borrower or any other Loan Party any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) Wynn Resorts, the Completion Guarantor, the Borrower or any other Loan Party shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in subsection (i), (ii), or (iii) above; or (v) Wynn Resorts, the Completion Guarantor, the Borrower or any other Loan Party shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) (i) Any Person shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan shall arise on the assets of any Loan Party or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Required Lenders, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA other than in a standard termination under Section 4041(b) of ERISA, (v) any Loan Party or any Commonly Controlled Entity shall, or in the reasonable opinion of the Required Lenders is likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan, (vi) any Loan Party, or any of their Subsidiaries or any Commonly Controlled Entity shall be required to make during any Fiscal Year payments pursuant to any employee welfare benefit plan (as defined in Section 3(1) of ERISA) that provides benefits to retired employees (or their dependents), other than as required by Sections 601 et. seq. of ERISA, Section 4980B of the Code, or the corresponding provisions of applicable state law or (vii) any Loan Party or any Commonly Controlled Entity shall be required to make during any Fiscal Year contributions to any

defined benefit pension plan subject to Title IV of ERISA (including any Multiemployer Plan); and in each case in subsections (i) through (viii) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect; or

(h) One or more judgments or decrees shall be entered against any Loan Party involving for the Loan Parties taken as a whole a liability (not paid or fully covered by insurance as to which the relevant insurance company has acknowledged coverage) of \$5,000,000 or more, and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within 45 days from the entry thereof; or

(i) Any of the Security Documents, the guarantee contained in Section 2 of the Guarantee and Collateral Agreement or, to the extent executed and delivered pursuant to the Wynn Resorts Agreement, the Wynn Resorts Guaranty or the Wynn Resorts Security Agreement, shall cease, for any reason (other than pursuant to the terms thereof), to be in full force and effect, or any Loan Party or any Affiliate of any Loan Party shall so assert or shall assert that any provision of any Loan Document is not in full force and effect, or any Lien created by any of the Security

110

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Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby; or

(j) Any of the Operative Documents shall terminate or be terminated or canceled, become invalid or illegal or otherwise cease to be in full force and effect prior to its stated expiration date or Wynn Resorts, the Borrower, any other Loan Party, any Affiliate of the Borrower or any other Person shall breach or default under any term, condition, provision, covenant, representation or warranty contained in any Project Document (after the giving of any applicable notice and the expiration of any applicable grace period); *provided*, that the occurrence of any of the foregoing events with respect to any Project Document (other than any Material Affiliated Contract) shall constitute an Event of Default hereunder only if the same could reasonably be expected to result in a Material Adverse Effect and the same shall continue unremedied for thirty (30) days after the earlier of (i) the Borrower or any other Loan Party becoming aware of such occurrence or (ii) receipt by the Borrower or any other Loan Party of notice from the Administrative Agent or any Lender of such occurrence; *provided, however*, that in the case of any such Project Document, if the occurrence is the result of actions or inactions by a party other than a Loan Party, then no Event of Default shall be deemed to have occurred as a result thereof if the Borrower provides written notice to the Administrative Agent immediately upon (but in no event more than two (2) Banking Days after) the Borrower or any Loan Party becoming aware of such occurrence that the relevant Loan Party intends to replace such Project Document and (x) such Loan Party obtains a replacement obligor or obligors for the affected party, (y) such Loan Party enters into a replacement Project Document on terms no less beneficial to such Loan Party and the Secured Parties in any material respect than the Project Document being replaced within sixty (60) days of such occurrence; *provided, however*, that the replacement Project Document may require the applicable Loan Party to pay amounts under the replacement Project Document in excess of those that would have been payable under the replaced Project Document and (z) such occurrence, after considering any replacement obligor and replacement Project Document and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect; *provided, further*, that a breach, default or termination under any Construction Contract prior to the Completion Date shall constitute an Event of Default hereunder only to the extent such breach, default or termination constitutes a Disbursement Agreement Event of Default; or

(k) an "event of default" under and as defined in any of the Financing Agreements (other than the Loan Documents) (in any event, after the expiration of any applicable cure periods); or

(l) (i) A Change of Control shall occur; or (ii) a Specified Change of Control shall occur; or

111

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(m) The Liens on the Property of the Completion Guarantor, the Loan Parties or Wynn Resorts, under the Mortgage Notes Indenture or the Mortgage Note Guarantee, in each case as permitted pursuant to Section 7.3(k), shall cease, for any reason, to be validly subordinated and junior in right to the Liens of the Administrative Agent and the Secured Parties on the Property of such Persons under the Loan Documents;

(n) Any Subordinated Debt or the Management Fees payable under the Management Agreement shall cease, for any reason, to be validly subordinated to the Obligations of the Loan Parties as provided in the Management Agreement, the Management Fee Subordination Agreement and the documentation, instruments or other agreements related to the Subordinated Debt, as the case may be;

(o) A License Revocation that continues for three consecutive calendar days affecting gaming operations accounting for five percent or more of the consolidated gross revenues (calculated in accordance with GAAP) of the Borrower related to gaming operations;

(p) The Borrower or any other Loan Party shall fail to observe, satisfy or perform, or there shall be a violation or breach of, any of the terms, provisions, agreements, covenants or conditions attaching to or under the issuance to such Person of any Permit or any such Permit or any provision thereof shall be suspended, revoked, cancelled, terminated or materially and adversely modified or fail to be in full force and effect or any Governmental Authority shall challenge or seek to revoke any such Permit if such failure to perform, violation, breach, suspension, revocation, cancellation, termination or modification could reasonably be expected to have a Material Adverse Effect; or

(p) The Completion Date shall not have occurred by the Scheduled Completion Date.

then, and in any such event, (A) if such event is an Event of Default specified in subsection (i) or (ii) of paragraph (f) above with respect to Wynn Resorts or any Loan Party, automatically the Commitments shall immediately terminate and the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents (including, without limitation, all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) shall immediately become due and payable, and (B) if such event is any other Event of Default, either or both of the following actions may be taken: (i) with the consent of the Required Facility Lenders for the respective Facility, the Administrative Agent may, or upon the request of the Required Facility Lenders for the respective Facility, the Administrative Agent shall, by notice to the Borrower, declare the Revolving Credit Commitments and/or the Term Loan Commitments, as the case may be, to be terminated forthwith, whereupon applicable Commitments shall immediately terminate; and (ii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Loans hereunder (with accrued interest thereon) and all other amounts owing

under this Agreement and the other Loan Documents (including, without limitation, all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) to be due and payable forthwith, whereupon the same shall immediately become due and payable. Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent and the Lenders shall be entitled to exercise any and all remedies available under the Security Documents (subject to applicable Nevada Gaming Laws and securing any required Nevada Gaming Approvals), including, without limitation, the Guarantee and Collateral Agreement and the Mortgages, or otherwise available under applicable law or otherwise, including, without limitation, the right to (I) enter into possession of the Project and perform any and all work and labor necessary to complete the Project or to operate and maintain the Project, and all sums expended by the Administrative Agent or any other Secured Party in so doing, together with interest on such total amount at the highest default rate

112

provided hereunder, shall be repaid by the Borrower to the Administrative Agent or such Secured Party upon demand and shall be secured by the Loan Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the total amount of the Commitments and (II) set off and apply all monies on deposit in any Account or any amounts paid under the Completion Guaranty or any other monies of a Loan Party on deposit with the Administrative Agent or any Lender to the satisfaction of the Obligations. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, the Borrower shall at such time deposit in a cash collateral account opened by the Administrative Agent an amount in immediately available funds equal to the aggregate then undrawn and unexpired amount of such Letters of Credit (and the Borrower hereby grants to the Administrative Agent, for the ratable benefit of the Secured Parties, a continuing security interest in all amounts at any time on deposit in such cash collateral account to secure the undrawn and unexpired amount of such Letters of Credit and all other Obligations). If at any time the Administrative Agent determines that any funds held in such cash collateral account are subject to any right or claim of any Person other than the Administrative Agent and the Secured Parties or as otherwise permitted pursuant to Section 7.3(k) or that the total amount of such funds is less than the aggregate undrawn and unexpired amount of outstanding Letters of Credit, the Borrower shall, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited and held in such cash collateral account, an amount equal to the excess of (a) such aggregate undrawn and unexpired amount over (b) the total amount of funds, if any, then held in such cash collateral account that the Administrative Agent determines to be free and clear of any such right and claim. Amounts held in such cash collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other Obligations of the Loan Parties hereunder and under the other Loan Documents. After all such Letters of Credit shall have expired or been fully drawn upon, all Reimbursement Obligations shall have been satisfied and all other Obligations of the Loan Parties hereunder and under the other Loan Documents shall have been paid in full, the balance, if any, in such cash collateral account shall be returned to the Loan Parties (or such other Person as may be lawfully entitled thereto). Notwithstanding anything to the contrary contained in this Agreement, in the event the consent of the Lenders (whether the Required Lenders, the Required Facility Lenders for a particular Facility or otherwise) is required in connection with the exercise of remedies pursuant to this Section 8, for purposes of determining the required lender consent pursuant to the applicable definitions thereto (whether the "Required Lenders", the "Required Facility Lenders" or otherwise), the Commitments of the Lenders shall be deemed terminated.

#### THE AGENTS; THE ARRANGERS; THE MANAGERS

**9.1 Appointment.** Each Lender hereby irrevocably designates and appoints the Agents as the agents of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes each Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to such Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, no Agent shall have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against any Agent.

**9.2 Delegation of Duties.** Each Agent may execute any of its duties under this Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of

113

counsel concerning all matters pertaining to such duties. No Agent shall be responsible for the negligence or misconduct of any agents or attorneys in-fact selected by it with reasonable care.

**9.3 Exculpatory Provisions.** No Arranger, Manager or Agent nor any of their respective officers, directors, partners, employees, agents, attorneys and other advisors, attorneys-in-fact or affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted solely and proximately from its or such Person's own gross negligence or willful misconduct in breach of a duty owed to the party asserting liability) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Person or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Arrangers, the Managers or the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Person party thereto to perform its obligations hereunder or thereunder. Neither the Agents, the Managers nor the Arrangers shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Person.

**9.4 Reliance by Agents.** Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, teletype, telex or teletype message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Loan Parties), independent accountants and other experts selected by such Agent. The Agents may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. Each Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders or the requisite Lenders required under Section 10.1 to authorize or require such action (or, if so specified by this

Agreement, all Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders or the requisite Lenders under Section 10.1 to authorize or require such action (or, if so specified by this Agreement, all Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans and Letters of Credit.

9.5 *Notice of Default.* No Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless such Agent has received notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the requisite Lenders (or, if so specified by this Agreement, all Lenders); *provided*, that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

114

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9.6 *Non-Reliance on Agents, Managers, Arrangers and Other Lenders.* Each Lender expressly acknowledges that neither the Arrangers, the Agents, the Managers nor any of their respective officers, directors, employees, agents, attorneys and other advisors, partners, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by any Arranger, Agent or Manager hereinafter taken, including any review of the affairs of a Loan Party, the Completion Guarantor or any other Person, shall be deemed to constitute any representation or warranty by any Arranger, Agent or Manager to any Lender. Each Lender represents to the Arrangers, the Agents and the Managers that it has, independently and without reliance upon any Arranger, Agent or Manager or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition, prospects and creditworthiness of the Loan Parties and the Completion Guarantor and their affiliates and made its own decision to make its Loans (and in the case of the Issuing Lender, its Letters of Credit) hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Arranger, Agent or Manager or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition, prospects and creditworthiness of the Loan Parties and the Completion Guarantor and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, no Arranger, Agent or Manager shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or the Completion Guarantor or any other Person that may come into the possession of such Arranger, Agent or Manager or any of its officers, directors, employees, agents, attorneys and other advisors, partners, attorneys-in-fact or affiliates.

9.7 *Indemnification.* The Lenders agree to indemnify each Arranger, Agent and Manager in its capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Aggregate Exposure Percentages in effect on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Aggregate Exposure Percentages immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (including, without limitation, at any time following the payment of the Loans) be imposed on, incurred by or asserted against such Arranger, Agent or Manager in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Arranger, Agent or Manager under or in connection with any of the foregoing; provided, that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted solely and proximately from such Arranger's, Agent's or Manager's gross negligence or willful misconduct in breach of a duty owed to such Lender. The agreements in this Section 9.7 shall survive the payment of the Loans and Letters of Credit and all other amounts payable hereunder.

9.8 *Arrangers, Agents and Managers in Their Individual Capacities.* Each Arranger, Agent and Manager and their respective affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though such Arranger was not an Arranger, such Agent was not an Agent and such Manager was not a Manager. With respect to any Loans made or renewed by it and with respect to any Letter of Credit issued or participated in by it, each Arranger, Agent and Manager shall have the same rights and powers under this Agreement and the other Loan Documents

115

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as any Lender and may exercise the same as though it were not an Arranger, an Agent or a Manager, as the case may be, and the terms "Lender" and "Lenders" shall include each Arranger, Agent and Manager in their respective individual capacities.

9.9 *Successor Agents.* The Administrative Agent may resign as Administrative Agent upon 10 days' notice to the Lenders and the Borrower. If the Administrative Agent shall resign as Administrative Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall (unless an Event of Default under Section 8(a) or Section 8(f) with respect to the Borrower shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld, conditioned or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Loans or Letters of Credit. If no successor agent has accepted appointment as Administrative Agent by the date that is 10 days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. After any retiring Administrative Agent's resignation as the Administrative Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under this Agreement and the other Loan Documents.

9.10 *Authorization to Release Liens.* The Administrative Agent is hereby irrevocably authorized by each of the Lenders to release any Lien covering any Property of the Completion Guarantor, the Borrower or any of the other Loan Parties or any other Person that is the subject of a Disposition which is permitted by

this Agreement or any other Loan Document or which has been consented to in accordance with Section 10.1.

9.11 *The Arrangers and Managers.* Other than with respect to, in the case of the Arrangers, Sections 2.4, 2.24, 7.2(h) and 7.5, the Arrangers and the Managers, in their capacity as such, shall have no duties or responsibilities, and shall incur no liability, under this Agreement and the other Loan Documents.

9.12 *Withholdings.* (a) To the extent required by any applicable law, the Administrative Agent may withhold from any interest payment to any Lender an amount equivalent to any applicable withholding tax. If the forms or other documentation required by Section 2.20(f) are not delivered to the Administrative Agent, then the Administrative Agent may withhold from any interest payment to any Lender not providing such forms or other documentation, an amount equivalent to the applicable withholding tax.

(b) If the Internal Revenue Service or any authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs and any out of pocket expenses.

116

(c) If any Lender sells, assigns, grants a participation in, or otherwise transfers its rights under this Agreement, the purchaser, assignee, participant or transferee, as applicable, shall comply and be bound by the terms of Section 2.20(f) and this Section 9.12.

## SECTION 10. MISCELLANEOUS

10.1 *Amendments and Waivers.* Neither this Agreement nor any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 10.1. The Required Lenders and each other Person party to the relevant Loan Document may, or (with the written consent of the Required Lenders) the Administrative Agent and each other Person party to the relevant Loan Document may, from time to time, (a) enter into written amendments, supplements or modifications hereto and to the other Loan Documents (including amendments and restatements hereof or thereof) for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the other Persons hereunder or thereunder or (b) waive, on such terms and conditions as may be specified in the instrument of waiver, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences. Notwithstanding the foregoing, no such waiver and no such amendment, supplement or modification shall (i) forgive the principal amount or extend the final scheduled date of maturity of any Loan or Reimbursement Obligation, extend the scheduled date of any amortization payment in respect of any Term Loan, reduce the stated rate of any interest or fee payable hereunder or extend the scheduled date of any payment thereof, or increase the amount or extend the expiration date of any Commitment of any Lender, in each case without the consent of each Lender (other than a Defaulting Lender) directly affected thereby (such consent being in lieu of the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1); (ii) amend, modify or waive any provision of this Section or reduce any percentage specified in the definition of Required Lenders, Required Facility Lenders, Applicable Facility Lenders or Majority Initial Arrangers, consent to the assignment or transfer by any Person (other than a Lender) of any of its rights and obligations under this Agreement and the other Loan Documents, release all or substantially all of the Collateral or release a significant Guarantor from its guarantee obligations under the Loan Documents, in each case without the consent of all Lenders (other than Defaulting Lenders); (iii) amend, modify or waive any provision of Section 9 without the consent of any Arranger, Agent or Manager directly affected thereby (in addition to the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1); (iv) amend, modify or waive any provision of Section 2.6 or 2.7 without the written consent of the Swing Line Lender (in addition to the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1); (v) amend, modify or waive any provision of Section 2.12(g) or Section 2.18 without the consent of the Required Facility Lenders with respect to the Facility directly affected thereby (such consent being in lieu of the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1); (vi) amend, modify or waive any provision of Section 3 without the consent of the Issuing Lender (in addition to the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1), (vii) amend, modify or waive any condition, provision or requirement to the funding of Loans or the issuance or amendment of Letters of Credit (whether pursuant to the Disbursement Agreement, this Agreement or otherwise) without the consent of, (I) in the case of Term Loans, the Required Facility Lenders with respect to the Term Loan Facility, (II) in the case of Revolving Credit Loans, the Required Facility Lenders with respect to the Revolving Credit Facility, and (III) in the case of the issuance or amendment of Letters of Credit, the Required Facility Lenders with respect to the Revolving Credit Facility (in each case such consent being in lieu of the consent of the Required Lenders required pursuant to the second sentence of this Section 10.1) or (viii) amend, modify or waive any condition, provision or requirement set forth in Section 7.5 without the consent of the Supermajority Lenders; *provided, however*, that any Loan Conversion shall be at the sole discretion of the Majority Initial Arrangers and shall not require the consent of any other Lender pursuant to this

117

Section 10.1 or otherwise. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Agents, the Arrangers, the Managers and all future holders of the Loans and Letters of Credit. In the case of any waiver, the Loan Parties, the Lenders, the Arrangers, the Managers and the Agents shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Any such waiver, amendment, supplement or modification shall be effected by a written instrument signed by the parties required to sign pursuant to the foregoing provisions of this Section; *provided*, that delivery of an executed signature page of any such instrument by facsimile transmission shall be effective as delivery of a manually executed counterpart thereof. Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Required Facility Lenders with respect to the affected Facility and the Borrower (x) to permit a Revolving Credit Lender(s) or a Term Loan Lender(s), as the case may be (or other Eligible Assignee reasonably acceptable to the Administrative Agent, who desires to become a Revolving Credit Lender or a Term Loan Lender, as the case may be), to increase its (their) Revolving Credit Commitments or Term Loan Commitments, as the case may be (or, in the case of an Eligible Assignee, acquire Revolving Credit Commitments or Term Loan Commitments as the case may be, in which case such Eligible Assignee shall be deemed a "Revolving Credit Lender" or "Term Loan Lender", as the case may be, hereunder) (all such increases in the Revolving Credit Commitments and the Term Loan Commitments pursuant to this sentence, the "*Increased Commitments*") and (y) to include appropriately the Lenders holding such Increased Commitments in any determination of the Required Lenders and Majority Facility Lenders with respect to the applicable Facility; *provided*, that nothing contained in this sentence is intended, nor shall it be construed, to be a

commitment or otherwise create an obligation on behalf of any Lender to make Increased Commitments; *provided, further*, that, as set forth in subsection (i) above, in no event shall the Commitment of any Lender be increased without such Lender's consent. Subject to subsection (vii) above, to the extent the Administrative Agent is entitled or required to make any determinations (whether a consent, waiver or otherwise) under the Intercreditor Agreements or the Disbursement Agreement, the Administrative Agent shall make such determinations upon the advice of the Required Lenders.

10.2 *Notices.* All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three Business Days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice, when received, addressed (a) in the case of the Borrower, the Arrangers, the Managers and the Agents, as follows and (b) in the case of the Lenders, as set forth on Schedule I to the Lender Addendum to which such Lender is a party or, in the case of a Lender which becomes a party to this Agreement pursuant to an Assignment

118

and Acceptance, in such Assignment and Acceptance or (c) in the case of any party, to such other address as such party may hereafter notify to the other parties hereto:

The Borrower:	Wynn Las Vegas, LLC c/o Wynn Resorts Holdings, LLC 3145 Las Vegas Boulevard South Las Vegas, Nevada 89109 Attention: Ron Kramer Telecopy: (702) 791-0167 Telephone: (702) 733-4123
with a copy to:	Irell & Manella LLP 1800 Avenue of the Stars, Suite 900 Los Angeles, California 90067 Attention: C. Kevin McGeehan, Esq. Telecopy: (310) 282-5610 Telephone: (310) 203-7110
The Administrative Agent or Swing Line Lender:	Deutsche Bank Trust Company Americas 31 West 52 <sup>nd</sup> Street New York, New York 10019 Attention: George Reynolds Telecopy: (646) 324-7450 Telephone: (646) 324-2112
with a copy to:	Latham & Watkins 885 Third Avenue New York, New York 10022 Attention: Christopher Plaut, Esq. Telecopy: (212) 906-1200 Telephone: (212) 751-4864
Deutsche Bank Securities Inc., as advisor, lead arranger and joint book running manager	31 West 52 <sup>nd</sup> Street New York, New York 10019 Attention: George Reynolds Telecopy: (646) 324-7450 Telephone: (646) 324-2112
with a copy to:	Latham & Watkins 885 Third Avenue New York, New York 10022 Attention: Christopher Plaut, Esq. Telecopy: (212) 906-1200 Telephone: (212) 751-4864
Banc of America Securities LLC, as advisor, lead arranger, joint book running manager and syndication agent	9 West 57 <sup>th</sup> Street, 32 <sup>nd</sup> Floor New York, New York 10019 Attention: Elton Vogel Telecopy: (212) 847-5329 Telephone: (212) 583-8000

119

with a copy to:	Latham & Watkins 885 Third Avenue New York, New York 10022
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Attention: Christopher Plaut, Esq.  
Telecopy: (212) 906-1200  
Telephone: (212) 751-4864

Bear, Stearns & Co. Inc., as advisor,  
arranger and joint book running  
manager:

383 Madison Avenue  
New York, New York 10179  
Attention: Victor Bulzacchelli  
Telecopy: (212) 272-8540  
Telephone: (212) 272-3042

with a copy to:

Latham & Watkins  
885 Third Avenue  
New York, New York 10022  
Attention: Christopher Plaut, Esq.  
Telecopy: (212) 906-1200  
Telephone: (212) 751-4864

Bear Stearns Corporate Lending Inc., as  
joint documentation agent

383 Madison Avenue  
New York, New York 10179  
Attention: Victor Bulzacchelli  
Telecopy: (212) 272-8540  
Telephone: (212) 272-3042

with a copy to:

Latham & Watkins  
885 Third Avenue  
New York, New York 10022  
Attention: Christopher Plaut, Esq.  
Telecopy: (212) 906-1200  
Telephone: (212) 751-4864

Dresdner Bank AG, New York Branch,  
as arranger and joint documentation  
agent

1301 Avenue of the Americas—36<sup>th</sup> Floor  
New York, New York 10019  
Attention: Michael Lessler  
Telecopy: (212) 429-4181  
Telephone: (212) 429-2242

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telecopy: \_\_\_\_\_  
Telephone: \_\_\_\_\_

J.P. Morgan Securities Inc., as joint  
documentation agent

270 Park Avenue, 31<sup>st</sup> Floor  
New York, New York 10017  
Attention: [ \_\_\_\_\_ ]  
Telecopy: [( \_\_\_\_\_ ) \_\_\_\_\_ ]  
Telephone: [( \_\_\_\_\_ ) \_\_\_\_\_ ]

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telecopy: \_\_\_\_\_  
Telephone: \_\_\_\_\_



**10.3 No Waiver; Cumulative Remedies.** No failure to exercise and no delay in exercising, on the part of any Arranger, any Agent, any Manager or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

**10.4 Survival of Representations and Warranties.** All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

121

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**10.5 Payment of Expenses; Indemnification.** The Borrower agrees (a) to pay or reimburse the Arrangers, the Agents and the Managers for all their reasonable and itemized out-of-pocket costs and expenses incurred in connection with the syndication of the Facilities (other than fees payable to syndicate members) and the development, preparation and execution of, and any amendment, supplement or modification to, this Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby, including, without limitation, the reasonable fees and disbursements and other charges of counsel to each of the Arrangers, the Agents and the Managers and the charges of IntraLinks and the fees, expenses and disbursements of consultants (including, without limitation, the Construction Consultant and any other engineering, insurance or construction consultants), (b) to pay or reimburse each Lender, Arranger, Manager and Agent for all its costs and expenses incurred in connection with the enforcement or preservation of any rights under this Agreement, the other Loan Documents and any such other documents, including, without limitation, the fees and disbursements of counsel (including the allocated fees and disbursements and other charges of in-house counsel) to each Lender and of counsel to each Arranger, Manager and Agent and the charges of IntraLinks, (c) to pay, indemnify, and hold each Lender, Arranger, Manager and Agent harmless from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp, excise and other taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Loan Documents and any such other documents, and (d) to pay, indemnify, and hold each Lender, Arranger, Agent, Manager, their respective affiliates, and their respective officers, directors, partners, trustees, employees, affiliates, shareholders, attorneys and other advisors, agents, attorneys-in-fact and controlling persons (each, an "Indemnitee") harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to or arising out of the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents and any such other documents, including, without limitation, any of the foregoing relating to the use of proceeds of the Loans or Letters of Credit, the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of any Loan Party or any of their Properties or the use by unauthorized persons of information or other materials sent through electronic, telecommunications or other information transmission systems that are intercepted by such persons and the fees and disbursements and other charges of legal counsel in connection with claims, actions or proceedings by any Indemnitee against the Borrower hereunder (all the foregoing in this subsection (d), collectively, the "Indemnified Liabilities"), provided, that the Borrower shall have no obligation hereunder to any Indemnitee with respect to Indemnified Liabilities to the extent such Indemnified Liabilities are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted solely and proximately from the gross negligence or willful misconduct of such Indemnitee in breach of a duty owed to the Borrower. Without limiting the foregoing, and to the extent permitted by applicable law, the Borrower agrees not to assert and to cause the other Loan Parties not to assert, and hereby waives and agrees to cause the other Loan Parties so to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnitee. All amounts due under this Section shall be payable not later than five days after written demand therefor. Statements payable by the Borrower pursuant to this Section shall be submitted to the Borrower in accordance with Section 10.2, or to such other Person or address as may be hereafter designated by the Borrower in a written notice to the Administrative Agent. The agreements in this Section shall survive repayment of the Loans and Letters of Credit and all other amounts payable hereunder.

122

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**10.6 Successors and Assigns; Participations and Assignments.** (a) This Agreement shall be binding upon and inure to the benefit of the Borrower, the Lenders, the Arrangers, the Agents, the Managers, all future holders of the Loans and Letters of Credit and their respective successors and assigns, except that the Borrower may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Administrative Agent and each Lender.

(b) Any Lender may, without the consent of the Borrower or any other Person, in accordance with applicable law, at any time sell to one or more banks, financial institutions or other entities (each, a "Participant") participating interests in any Loan owing to such Lender, any Commitment of such Lender or any other interest of such Lender hereunder and under the other Loan Documents. In the event of any such sale by a Lender of a participating interest to a Participant, such Lender's obligations under this Agreement to the other parties to this Agreement shall remain unchanged, such Lender shall remain solely responsible for the performance thereof, such Lender shall remain the holder of any such Loan for all purposes under this Agreement and the other Loan Documents, and the Borrower, the Arrangers, the Agents and the Managers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents. In no event shall any Participant under any such participation have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by any Loan Party therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, the Loans or any fees payable hereunder, or postpone the date of the final maturity of the Loans, in each case to the extent subject to such participation. The Borrower agrees that if amounts outstanding under this Agreement and the Loans are due or unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall, to the maximum extent permitted by applicable law, be deemed to have the right of setoff in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement, provided that, in purchasing such participating interest, such Participant shall be deemed to have agreed to share with the Lenders the proceeds thereof as provided in Section 10.7(a) as fully as if it were a Lender hereunder. The Borrower also agrees that each Participant shall be entitled to the benefits of Sections 2.19, 2.20 and 2.21 with respect to its participation in the Commitments and the Loans outstanding from time to time as if it was a Lender; provided, that, in the case of Section 2.20, such Participant shall have complied with the requirements

of said Section and *provided, further*, that no Participant shall be entitled to receive any greater amount pursuant to any such Section than the transferor Lender would have been entitled to receive in respect of the amount of the participation transferred by such transferor Lender to such Participant had no such transfer occurred.

(c) Any Lender (an "Assignor") may, in accordance with applicable law and upon written notice to the Administrative Agent, at any time and from time to time assign to any Lender, any Affiliate thereof or Affiliated Fund of the assigning Lender (*provided*, that if any funding obligations are assigned to an Affiliate of a Lender or Affiliated Fund, such Affiliate or Affiliated Fund, as applicable, shall have demonstrable resources to comply with such obligations) or of another Lender or, with the consent of the Borrower and the Administrative Agent and, in the case of any assignment of Revolving Credit Commitments, the written consent of the Issuing Lender and the Swing Line Lender (which, in each case, shall not be unreasonably withheld, conditioned or delayed), to an additional bank, financial institution or other entity that is an Eligible Assignee (an "Assignee") all or any part of its rights and obligations under this Agreement pursuant to an assignment and acceptance agreement, substantially in the form of Exhibit E hereto (an "Assignment and Acceptance"), executed by such Assignee and such Assignor (and, where the consent of the Borrower, the Administrative Agent or the Issuing Lender or the Swing Line Lender is required pursuant to the foregoing provisions, by the Borrower and such other Persons)

123

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and delivered to the Administrative Agent for its acceptance and recording in the Register; *provided*, that no such assignment to an Assignee (other than any Lender or any Affiliate thereof or Affiliated Fund) shall be in an aggregate principal amount of less than \$5,000,000 with respect to Revolving Credit Commitments or \$1,000,000 with respect to Term Loan Commitments, unless otherwise agreed by the Borrower and the Administrative Agent. Any such assignment need not be ratable as among the Facilities. Upon such execution, delivery, acceptance and recording, from and after the effective date determined pursuant to such Assignment and Acceptance, (x) the Assignee thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of a Lender hereunder with a Commitment and/or Loans as set forth therein, and (y) the Assignor thereunder shall, to the extent provided in such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of an Assignor's rights and obligations under this Agreement, such Assignor shall cease to be a party hereto). Notwithstanding any provision of this Section, the consent of the Borrower shall not be required for any assignment that occurs at any time when any Event of Default shall have occurred and be continuing.

(d) The Administrative Agent shall, on behalf of the Borrower, maintain at its address referred to in Section 10.2 a copy of each Assignment and Acceptance delivered to it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Commitment of, and principal amount of the Loans owing to, each Lender from time to time. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register as the owner of the Loans and any Notes evidencing such Loans recorded therein for all purposes of this Agreement. Any assignment of any Loan, whether or not evidenced by a Note, shall be effective only upon appropriate entries with respect thereto being made in the Register (and each Note shall expressly so provide). Any assignment or transfer of all or part of a Loan evidenced by a Note shall be registered on the Register only upon surrender for registration of assignment or transfer of the Note evidencing such Loan, accompanied by a duly executed Assignment and Acceptance; thereupon one or more new Notes in the same aggregate principal amount shall be issued to the designated Assignee, and the old Notes shall be returned by the Administrative Agent to the Borrower marked "canceled". The Register shall be available for inspection by the Borrower or any Lender (with respect to any entry relating to such Lender's Loans) at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of an Assignment and Acceptance executed by an Assignor and an Assignee (and, in any case where the consent of any other Person is required by Section 10.6(c), by each such other Person) together with payment to the Administrative Agent of a registration and processing fee of \$3,500 (except that no such registration and processing fee shall be payable in the case of an Assignee which is already a Lender or is an Affiliate of a Lender or an Affiliated Fund or with respect to the initial syndication of the Commitments), the Administrative Agent shall (i) promptly accept such Assignment and Acceptance and (ii) on the effective date determined pursuant thereto record the information contained therein in the Register and give notice of such acceptance and recordation to the Borrower. On or prior to such effective date, the Borrower, at its own expense, upon request, shall execute and deliver to the Administrative Agent (in exchange for the Revolving Credit Note and/or Term Note, as the case may be, of the assigning Lender) a new Revolving Credit Note and/or Term Note, as the case may be, to such Assignee or its registered assigns in an amount equal to the Revolving Credit Commitment and/or Term Loan Commitment, as the case may be, assumed or acquired by it pursuant to such Assignment and Acceptance and, if the Assignor has retained a Revolving Credit Commitment and/or Term Loan Commitment, as the case may be, upon request, a new Revolving Credit Note and/or Term Notes, as the case may be, to the Assignor or its registered assigns in an amount equal to the Revolving Credit Commitment and/or Term Loans or Term Loan Commitment, as the case may be, retained

124

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by it hereunder. Such new Note or Notes shall be dated the Closing Date and shall otherwise be in the form of the Note or Notes replaced thereby.

(f) For the avoidance of doubt, the parties to this Agreement acknowledge that the provisions of this Section concerning assignments of Loans and Notes relate only to absolute assignments and that such provisions do not prohibit assignments creating security interests, including, without limitation, any pledge or assignment by a Lender of any Loan or Note to any Federal Reserve Bank in accordance with applicable law.

**10.7 Adjustments; Set-off.** (a) Except to the extent that this Agreement provides for payments to be allocated to a particular Lender or to the Lenders under a particular Facility, if any Lender (a "Benefited Lender") shall at any time receive any payment of all or part of the Obligations owing to it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 8(f), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of such other Lender's Obligations, such Benefited Lender shall purchase for cash from the other Lenders a participating interest in such portion of each such other Lender's Obligations, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; *provided, however*, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) In addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, upon any amount becoming due and payable by the Borrower hereunder (whether at the stated maturity, by acceleration or otherwise), to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the Borrower. Each Lender agrees to notify promptly the Borrower and the Administrative Agent after any such setoff and application made by such Lender, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

**10.8 Counterparts.** This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

**10.9 Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**10.10 Integration.** Other than the promises, undertakings, representations or warranties set forth in the Administrative Agent Fee Letter and the Facility Fee Letter, this Agreement and the other Loan Documents represent the agreement of the Borrower, the Agents, the Arrangers, the Managers and the Lenders with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by any Arranger, any Manager, any Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

125

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**10.11 GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAW RULES THEREOF OTHER THAN SECTION 5-1041 OF THE NEW YORK GENERAL OBLIGATIONS LAW.**

**10.12 Submission To Jurisdiction; Waivers.** The Borrower hereby irrevocably and unconditionally:

(a) submits for itself and its Property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Borrower at its address set forth in Section 10.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

**10.13 Certain Matters Affecting Lenders.** (a) If (i) the Nevada Gaming Authorities shall determine that any Lender does not meet suitability standards prescribed under the Nevada Gaming Laws or (ii) any other gaming authority with jurisdiction over the gaming business of the Borrower shall determine that any Lender does not meet its suitability standards (in any such case, a "Former Lender"), the Administrative Agent shall have the right (but not the duty) to designate bank(s) or other financial institution(s) (in each case, a "Substitute Lender," which may (but not need) be any Lender or Lenders or Affiliated Fund of a Lender that agree to become a Substitute Lender and to assume the rights and obligations of the Former Lender, subject to receipt by the Administrative Agent of evidence that such Substitute Lender (if not a Lender or Lenders or Affiliated Fund of a Lender) is an Eligible Assignee. The Substitute Lender shall assume the rights and obligations of the Former Lender under this Agreement. The Borrower shall bear the costs and expenses of any Lender required by the Nevada Gaming Authorities, or any other gaming authority with jurisdiction over the gaming business of the Borrower, to file an application for a finding of suitability in connection with the investigation of an application by the Borrower for a license to operate a gaming establishment.

(b) Notwithstanding the provisions of subsection (a) of this Section 10.13, if any Lender becomes a Former Lender, and if the Administrative Agent fails to find a Substitute Lender pursuant to subsection (a) of this Section 10.13 within any time period specified by the appropriate gaming authority for the withdrawal of a Former Lender (the "Withdrawal Period"), the Borrower shall immediately prepay in full the outstanding amount of all Revolving Extensions of Credit and Term Loans Extensions of Credit of such Former Lender, together with accrued interest thereon to the earlier of (x) the date of payment or (y) the last day of any Withdrawal Period.

126

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**10.14 Acknowledgments.** The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) neither any Arranger, any Agent, any Manager nor any Lender has any fiduciary relationship with or duty to the Borrower, the Completion Guarantor or any other Loan Party arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between

the Arrangers, the Agents, the Managers and the Lenders, on one hand, and the Borrower, the Completion Guarantor any other Loan Party, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Arrangers, the Agents, the Managers and the Lenders or among the Borrower, the Completion Guarantor, the other Loan Parties and the Lenders.

**10.15 Confidentiality.** Subject to Section 10.21, each of the Arrangers, the Agents, the Managers and the Lenders agrees to keep confidential all non-public information provided to it by any Loan Party pursuant to this Agreement that is designated by such Loan Party as confidential; *provided*, that nothing herein shall prevent any Arranger, any Agent, any Manager or any Lender from disclosing any such information (a) to any Arranger, any Agent, any Manager, any other Lender or any affiliate of any thereof, (b) to any Participant or Assignee (each, a "Transferee") or prospective Transferee that agrees to comply with the provisions of this Section, (c) to any of its employees, directors, agents, attorneys, accountants and other professional advisors, (d) to any financial institution that is a direct or indirect contractual counterparty in swap agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section), (e) upon the request or demand of any Governmental Authority having jurisdiction over it, (f) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law, (g) if requested or required to do so in connection with any litigation or similar proceeding, (h) that has been publicly disclosed other than in breach of this Section 10.15, (i) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender or (j) in connection with the exercise of any remedy hereunder or under any other Loan Document.

**10.16 Release of Collateral and Guarantee Obligations.** (a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon request of the Borrower in connection with any Disposition of Property permitted by the Loan Documents, the Administrative Agent shall (without notice to or vote or consent of any Lender, or any affiliate of any Lender that is a party to any Specified Hedge Agreement) take such actions as shall be required to release its security interest in any Collateral being Disposed of in such Disposition, and to release any guarantee obligations of any Person being Disposed of in such Disposition, to the extent necessary to permit consummation of such Disposition in accordance with the Loan Documents *provided* that the Borrower and, if applicable, the appropriate Loan Party shall have delivered to the Administrative Agent, at least five Business Days prior to the date of the proposed release, a written request for release identifying the relevant Collateral being Disposed of in such Disposition and the terms of such Disposition in reasonable detail, including the date thereof, the price thereof and any expenses in connection therewith, together with a certification by the Borrower and, if applicable, the appropriate Loan Party stating that such transaction is in compliance with this Agreement and the other Loan Documents and that the proceeds of such Disposition will be applied in accordance with this Agreement and the other Loan Documents.

127

(b) Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations (other than Obligations in respect of any Specified Hedge Agreement) have been paid in full, all Commitments have terminated or expired and no Letter of Credit or Reimbursement Obligation shall be outstanding, upon request of the Borrower, the Administrative Agent shall (without notice to or vote or consent of any Lender, or any affiliate of any Lender that is a party to any Specified Hedge Agreement) take such actions as shall be required to release the security interest of the Loan Documents in all Collateral, and to release all guarantee obligations provided for in any Loan Document, whether or not on the date of such release there may be outstanding Obligations in respect of Specified Hedge Agreements.

**10.17 Accounting Changes.** In the event that any "Accounting Change" (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then the Borrower and the Administrative Agent agree to enter into negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the Borrower's and the other Loan Parties' financial condition (including the requirements and restrictions associated with the provisions of this Agreement applicable thereto) shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. "Accounting Changes" refers to changes in accounting principles required or permitted by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

**10.18 Delivery of Lender Addenda.** Each initial Lender shall become a party to this Agreement by delivering to the Administrative Agent a Lender Addendum duly executed by such Lender, the Borrower and the Administrative Agent.

**10.19 Construction.** Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

**10.20 WAIVERS OF JURY TRIAL. THE BORROWER, THE ARRANGERS, THE AGENTS, THE MANAGERS AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.**

**10.21 Gaming Authorities.** The Arrangers, the Agents, the Managers and each Lender agree to cooperate with the Nevada Gaming Authorities in connection with the administration of their regulatory jurisdiction over Wynn Resorts, the Borrower and the other Loan Parties, including, without limitation, to the extent not inconsistent with the internal policies of such Lender, Arranger, Agent or Manager and any applicable legal or regulatory restrictions, the provision of such documents or other information as may be requested by any such Nevada Gaming Authorities relating to the Arrangers, the Agents, the Managers, any of the Lenders, Wynn Resorts or the Borrower or any other Loan Party, or the Loan Documents. Notwithstanding any other provision of this Agreement, the Borrower expressly authorizes, and will cause each other Loan Party to authorize, each Agent, Manager, Arranger and Lender to cooperate with the Nevada Gaming Authorities as described above.

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128

IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

WYNN LAS VEGAS, LLC,  
a Nevada limited liability company,  
as the Borrower

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

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

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

By: [ \_\_\_\_\_ ]  
Name: [ \_\_\_\_\_ ]  
Title: [ \_\_\_\_\_ ]

DEUTSCHE BANK SECURITIES, INC.,  
as Lead Arranger and Joint Book Running Manager

By: [ \_\_\_\_\_ ]  
Name: [ \_\_\_\_\_ ]  
Title: [ \_\_\_\_\_ ]

DEUTSCHE BANK TRUST COMPANY AMERICAS,  
as Administrative Agent and Swing Line Lender

By: [ \_\_\_\_\_ ]  
Name: [ \_\_\_\_\_ ]  
Title: [ \_\_\_\_\_ ]

BANC OF AMERICA SECURITIES LLC,  
as Lead Arranger, Joint Book Running Manager  
and Syndication Agent

By: [ \_\_\_\_\_ ]  
Name: [ \_\_\_\_\_ ]  
Title: [ \_\_\_\_\_ ]

BEAR, STEARNS & CO. INC.,  
as Arranger and Joint Book Running Manager

By: [ \_\_\_\_\_ ]  
Name: [ \_\_\_\_\_ ]  
Title: [ \_\_\_\_\_ ]

By: [ \_\_\_\_\_ ]  
Name: [ \_\_\_\_\_ ]  
Title: [ \_\_\_\_\_ ]

DRESDNER BANK AG, NEW YORK BRANCH,  
as Arranger and Joint Documentation Agent

By: [ \_\_\_\_\_ ]  
Name: [ \_\_\_\_\_ ]  
Title: [ \_\_\_\_\_ ]

J.P. MORGAN SECURITIES INC.,  
as Joint Documentation Agent

By: [ \_\_\_\_\_ ]  
Name: [ \_\_\_\_\_ ]  
Title: [ \_\_\_\_\_ ]

**PRICING GRID FOR REVOLVING CREDIT LOANS, SWING LINE LOANS  
AND REVOLVING COMMITMENT FEES**

<b>Consolidated Leverage Ratio</b>	<b>Applicable Margin for Eurodollar Loans</b>	<b>Applicable Margin for Base Rate Loans</b>	<b>Revolving Commitment Fee Rate</b>
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Changes in the Applicable Margin with respect to Revolving Credit Loans and Swing Line Loans or in the Revolving Commitment Fee Rate resulting from changes in the Consolidated Leverage Ratio shall become effective on the first date (each such date, an "Adjustment Date") on which financial statements are delivered to the Lenders pursuant to Section 6.1 with respect to each Quarterly Date (but in any event not later than the 45th day after the end of each of the first three quarterly periods of each Fiscal Year or the 90th day after the end of each Fiscal Year, as the case may be) and shall remain in effect until the next change to be effected pursuant to this paragraph. If any financial statements referred to above are not delivered within the time periods specified above, then, until such financial statements are delivered, the Consolidated Leverage Ratio as at the end of the fiscal period that would have been covered thereby shall for the purposes of this definition be deemed to be less than [ ] to 1.0 and greater than [ ] to 1.0, respectively. In addition, at all times while an Event of Default shall have occurred and be continuing, the Consolidated Leverage Ratio shall for the purposes of this definition be deemed to be less than [ ] to 1.0 and greater than [ ] to 1.0, respectively. If on any Adjustment Date the Consolidated Leverage Ratio would result in different Applicable Margins or Revolving Commitment Fee Rates, the higher Applicable Margin or Revolving Commitment Fee Rate shall govern. Each determination of the Consolidated Leverage Ratio pursuant to this definition shall be made with respect to the period of four full consecutive fiscal quarters of the Borrower ending at the end of the period covered by the relevant financial statements (or such shorter period ending on any Quarterly Date and beginning on the first day of the first fiscal quarter which begins after the Opening Date); provided, that for purposes of calculating Consolidated EBITDA in order to calculate the Consolidated Leverage Ratio for any period which is less than four full fiscal quarters, Consolidated EBITDA shall be calculated on an annualized basis.

**MORTGAGED PROPERTY**

**CONSENTS, AUTHORIZATIONS, FILINGS AND NOTICES**

**TRADEMARKS, SERVICE MARKS AND TRADE NAMES**

S-4.9(b)

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**SCHEDULE 4.9(c)**

**PATENTS**

S-4.9(c)

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**SCHEDULE 4.9(d)**

**COPYRIGHTS**

S-4.9(d)

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**SCHEDULE 4.9(e)**

**TRADE SECRETS**

S-4.9(e)

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**SCHEDULE 4.9(f)**

**INTELLECTUAL PROPERTY LICENSES**

S-4.9(f)

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**SCHEDULE 4.15**

**SUBSIDIARIES**

S-4.15

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**SCHEDULE 4.19(a)-1**

**UCC FILING JURISDICTIONS—COLLATERAL**

**Loan Party**

**Filing Office**

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S-4.19(a)-1

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**SCHEDULE 4.19(a)-2**

**UCC FINANCING STATEMENTS TO REMAIN ON FILE**

S-4.19(a)-2

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**SCHEDULE 4.19(b)**

**MORTGAGE FILING JURISDICTIONS**

S-4.19(b)

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**SCHEDULE 4.19(c)**

**UCC FILING JURISDICTIONS—INTELLECTUAL PROPERTY COLLATERAL**

S-4.19(c)

**MATERIAL CONTRACTS**

S-4.24

SCHEDULE 4.25(a)

**REAL ESTATE**

S-4.25(a)

SCHEDULE 4.25(d)

**ASSESSMENTS**

S-4.25(d)

SCHEDULE 6.5(d)

**INSURANCE REQUIREMENTS**

S-6.5(d)

SCHEDULE 7.2(d)

**EXISTING INDEBTEDNESS**

S-7.2(d)

SCHEDULE 7.3(f)

**EXISTING LIENS**

S-7.3(f)

EXHIBIT D

**FORM OF MORTGAGE**

APNs:

Recording requested by and recorded counterparts should be returned to:

Sony Ben-Moshe, Esq.  
Latham & Watkins  
701 B Street, Suite 2100  
San Diego, California 92101

Mail Property Tax Statements to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



MADE BY

a \_\_\_\_\_,  
as Trustor,

to

Nevada Title Company,  
a Nevada corporation,  
as Trustee,  
for the benefit of

DEUTSCHE BANK TRUST COMPANY AMERICAS,  
in its capacity as Administrative Agent for the benefit of the Banks,  
as Beneficiary

\*\*\*\*\*

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS OF CLARK COUNTY, NEVADA UNDER THE NAMES OF \_\_\_\_\_ AS "DEBTOR" AND DEUTSCHE BANK TRUST COMPANY AMERICAS AS "SECURED PARTY."

THIS INSTRUMENT IS A "CONSTRUCTION MORTGAGE" AS THAT TERM IS DEFINED IN SECTION 104.9334(8) OF THE NEVADA REVISED STATUTES AND SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT UPON LAND.

TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE ONE COVENANTS OF TRUSTOR</b>	<b>12</b>
1.1 Performance of Loan Documents	13
1.2 General Representations, Covenants and Warranties	13
1.3 Compliance with Legal Requirements	13
1.4 Taxes	13
1.5 Insurance.	14
1.6 Condemnation	14
1.7 Care of Trust Estate.	15
1.8 Leases.	15
1.9 Further Encumbrance.	16
1.10 Partial Releases of Trust Estate.	17
1.11 Further Assurances.	18
1.12 Security Agreement and Financing Statements	18
1.13 Assignment of Leases and Rents	20
1.14 Expenses.	20
1.15 Beneficiary's Cure of Trustor's Default	21
1.16 Use of Land	21
1.17 Compliance with Permitted Lien Agreements	21
1.18 Defense of Actions	21
1.19 Affiliates.	22
1.20 Title Insurance	22
1.21 [Leasehold Estates	22
1.22 [Payment of Subject Leases Expenses	22
1.23 [Trustor's Covenants with Respect to Subject Leases.	23
1.24 Rejection of Subject Leases	25
<b>ARTICLE TWO CREDIT AGREEMENT PROVISIONS</b>	<b>25</b>
2.1 Interaction with the Guaranty	25
2.2 Other Collateral	25
<b>ARTICLE THREE DEFAULTS</b>	<b>26</b>
3.1 Event of Default	26
<b>ARTICLE FOUR REMEDIES</b>	<b>26</b>
4.1 Acceleration of Maturity	26
4.2 Protective Advances	26
4.3 Institution of Equity Proceedings	26
4.4 Beneficiary's Power of Enforcement.	27
4.5 Beneficiary's Right to Enter and Take Possession, Operate and Apply Income.	28
4.6 Leases	29
4.7 Purchase by Beneficiary	29
4.8 Waiver of Appraisalment, Valuation, Stay, Extension and Redemption Laws	29
4.9 Receiver	29
4.10 Suits to Protect the Trust Estate	30

4.11	Proofs of Claim	30
4.12	Trustor to Pay the Obligations on Any Default in Payment; Application of Monies by Beneficiary.	30
4.13	Delay or Omission; No Waiver	31
4.14	No Waiver of One Default to Affect Another	31

4.15	Discontinuance of Proceedings; Position of Parties Restored	31
4.16	Remedies Cumulative	32
4.17	Interest After Event of Default	32
4.18	Foreclosure; Expenses of Litigation	32
4.19	Deficiency Judgments	32
4.20	Waiver of Jury Trial	33
4.21	Exculpation of Beneficiary	33

**ARTICLE FIVE RIGHTS AND RESPONSIBILITIES OF TRUSTEE; OTHER PROVISIONS RELATING TO TRUSTEE** 33

5.1	Exercise of Remedies by Trustee	33
5.2	Rights and Privileges of Trustee	33
5.3	Resignation or Replacement of Trustee	34
5.4	Authority of Beneficiary	34
5.5	Effect of Appointment of Successor Trustee	34
5.6	Confirmation of Transfer and Succession	34
5.7	Exculpation	34
5.8	Endorsement and Execution of Documents	35
5.9	Multiple Trustees	35
5.10	Terms of Trustee's Acceptance	35

**ARTICLE SIX MISCELLANEOUS PROVISIONS** 35

6.1	Heirs, Successors and Assigns Included in Parties	35
6.2	Addresses for Notices, Etc	35
6.3	Change of Notice Address	36
6.4	Headings	36
6.5	Invalid Provisions to Affect No Others	36
6.6	Changes and Priority Over Intervening Liens	36
6.7	Estoppel Certificates	37
6.8	Waiver of Setoff and Counterclaim; Other Waivers	37
6.9	Governing Law	37
6.10	Required Notices	37
6.11	Reconveyance	38
6.12	Attorneys' Fees	38
6.13	Late Charges	38
6.14	Cost of Accounting	38
6.15	Right of Entry	38
6.16	Corrections	38
6.17	Statute of Limitations	38
6.18	Subrogation	38
6.19	Joint and Several Liability	39
6.20	Homestead	39
6.21	Context	39
6.22	Time	39
6.23	Interpretation	39
6.24	Effect of NRS 107.030	39
6.25	Amendments	39
6.26	No Conflicts	39

**ARTICLE SEVEN POWER OF ATTORNEY** 40

7.1	Grant of Power	40
-----	----------------	----

7.2	Other Acts	40
-----	------------	----

**SCHEDULE A DESCRIPTION OF THE LAND**  
**[SCHEDULE B DESCRIPTION OF LEASED PREMISES]**

**DEED OF TRUST, [LEASEHOLD DEED OF TRUST,] ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, [LEASEHOLD DEED OF TRUST,] ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called "*Deed of Trust*") is made and effective as of \_\_\_\_\_, 200\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_ (together with all successors and assigns of the Trust Estate (as hereinafter defined), "*Trustor*"), whose address is \_\_\_\_\_, to Nevada Title Company, a Nevada corporation, whose address is 2500 North Buffalo, Suite 150, Las Vegas, Nevada 89128, as Trustee ("*Trustee*"), for the benefit of DEUTSCHE BANK TRUST COMPANY AMERICAS

("Beneficiary"), in its capacity as Administrative Agent under (i) that certain Credit Agreement (as the same may be amended or modified from time to time, the "Credit Agreement") dated as of October , 2002 among Wynn Las Vegas, LLC, a Nevada limited liability company ("Borrower"), Beneficiary and the other parties signatory thereto (such other parties, together with Beneficiary, the "Banks") pursuant to which the Banks have agreed to lend to Borrower an aggregate principal amount of \$1,000,000,000 and (ii) that certain Guarantee and Collateral Agreement (as the same may be amended or modified from time to time, the "Guaranty") dated as of October , 2002 by Trustor and the other parties thereto for the benefit of Beneficiary on behalf of the Banks pursuant to which Trustor will guaranty the payment and performance of all obligations of Borrower under the Credit Agreement and the other Loan Documents.

**THIS INSTRUMENT SECURES FUTURE ADVANCES. THE MAXIMUM AMOUNT OF PRINCIPAL TO BE SECURED HEREBY IS \$1,000,000,000. THIS INSTRUMENT IS TO BE GOVERNED BY THE PROVISIONS OF NRS 106.300 THROUGH NRS 106.400 INCLUSIVE.**

**THE OBLIGATIONS SECURED HEREBY INCLUDE REVOLVING CREDIT OBLIGATIONS WHICH PERMIT BORROWING, REPAYMENT AND REBORROWING. INTEREST ON OBLIGATIONS SECURED HEREBY ACCRUES AT A RATE WHICH MAY FLUCTUATE FROM TIME TO TIME.**

**DEFINITIONS**—As used in this Deed of Trust, the following terms have the meanings hereinafter set forth:

"**Accounts Receivable**" shall have the meaning set forth in Section 9-102 (NRS 104.9102) of the UCC for the term "account."

"**Appurtenant Rights**" means all and singular tenements, hereditaments, rights, reversions, remainders, development rights, privileges, benefits, easements (in gross or appurtenant), rights-of-way, licenses, gores or strips of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all appurtenances whatsoever and claims or demands of Trustor at law or in equity in any way belonging, benefiting, relating or appertaining to the Land, the Project, the Trustor, [the Leased Premises,] the airspace over the Land, the Improvements or any of the Trust Estate encumbered by this Deed of Trust, or which hereinafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor.

"**Bankruptcy**" means, with respect to any Person, that (i) a court having jurisdiction in the Trust Estate 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 in the Trust Estate 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

2

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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 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.

"**Business Day**" means any day that is not a Saturday, a Sunday or a day on which banking institutions in the State of Nevada or the City of New York are not required to be open.

"**Deed of Trust**" means this Deed of Trust as it may be amended, increased or modified from time to time.

"**Disbursement Agreement**" means that certain Master Disbursement Agreement dated as of , 2002, among Borrower, Beneficiary, [TO INSERT TRUSTEE], Deutsche Bank Trust Company Americas, in its capacity as disbursement agent, and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Credit Agreement.

[" **Lease**" means that certain for the Leased Premises.]

[" **Leased Premises**" means the situated in described in the Lease and more specifically described in *Schedule B* attached hereto and incorporated herein.]

"**Event of Default**" has the meaning set forth in *Section 3.1* hereof.

"**FF&E**" means all furniture, fixtures, equipment, appurtenances and personal property now or in the future contained in, used in connection with, attached to, or otherwise useful or convenient to the use, operation, or occupancy of, or placed on, but unattached to, any part of the Site or Improvements whether or not the same constitutes real property or fixtures in the State of Nevada, including all removable window and floor coverings, all furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator and escalator plants, cooking facilities, vacuum cleaning systems, public address and communications systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings, fixtures, and building materials, all gaming and financial equipment, computer equipment, calculators, adding machines, gaming tables, video game and slot machines, and any other electronic equipment of every nature used or located on any part of the Site or Improvements, together with all Venetian blinds, shades, draperies, drapery and curtain rods, brackets, bulbs, cleaning

**"FF&E Financing Agreement"** means any financing agreement entered into by Trustor (i) the proceeds of which are used by Trustor for the acquisition or lease of FF&E, (ii) pursuant to which Trustor grants to the lender or lessor thereunder a security interest in the FF&E so acquired or leased and (iii) which is permitted by the Credit Agreement and the Guaranty.

**"Governmental Authority"** means any agency, authority, board, bureau, commission, department, office, public entity, or instrumentality of any nature whatsoever of the United States federal or foreign government, any state, province or any city or other political subdivision or otherwise, whether now or hereafter in existence, or any officer or official thereof, including, without limitation, any Nevada Gaming Authority.

**"Imposition"** means any taxes, assessments, water rates, sewer rates, maintenance charges, other governmental impositions and other charges now or hereafter levied or assessed or imposed against the Trust Estate or any part thereof.

**"Improvements"** means (1) all the buildings, structures, facilities and improvements of every nature whatsoever now or hereafter situated on the Site or any real property encumbered hereby, and (2) all fixtures, machinery, appliances, goods, building or other materials, equipment, including without limitation all gaming equipment and devices, and all machinery, equipment, engines, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage; all wall-beds, wall-safes, built-in furniture and installations, shelving, lockers, partitions, doorstops, vaults, motors, elevators, dumb-waiters, awnings, window shades, Venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm, surveillance and security systems, computers, drapes, drapery rods and brackets, mirrors, mantels, screens, linoleum, carpets and carpeting, plumbing, bathtubs, sinks, basins, pipes, faucets, water closets, laundry equipment, washers, dryers, ice-boxes and heating units; all kitchen and restaurant equipment, including but not limited to silverware, dishes, menus, cooking utensils, stoves, refrigerators, ovens, ranges, dishwashers, disposals, water heaters, incinerators, furniture, fixtures and furnishings, communication systems, and equipment; all cocktail lounge supplies, including but not limited to bars, glassware, bottles and tables used in connection with the Site; all chaise lounges, hot tubs, swimming pool heaters and equipment and all other recreational equipment (computerized and otherwise), beauty and barber equipment, and maintenance supplies used in connection with the Site; all amusement rides and attractions attached to the Site, all specifically designed installations and furnishings, and all furniture, furnishings and personal property of every nature whatsoever now or hereafter owned or leased by Trustor or in which Trustor has any rights or interest and located in or on, or attached to, or used or intended to be used or which are now or may hereafter be appropriated for use on or in connection with the operation of the Site or any real or personal property encumbered hereby or any other Improvements, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, accessions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing, and all of the right, title and interest of Trustor in and to any such property, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and improvements and a part of the real property hereby encumbered.

**"Indemnity Agreement"** means that certain Indemnity Agreement dated as of \_\_\_\_\_, 200\_\_ by Trustor for the benefit of Beneficiary and certain other indemnified parties named therein.

**"Insolvent"** means with respect to any person or entity, that such person or entity shall be deemed to be insolvent if it shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due and payable and/or if the fair market value of its assets does not exceed its aggregate liabilities.

**"Intangible Collateral"** means (a) the rights to use all names and all derivations thereof now or hereafter used by Trustor in connection with the Site or Improvements, including, without limitation, the name "Le Reve", including any variations thereon, together with the goodwill associated therewith, and all names, logos, and designs used by Trustor, or in connection with the Site or in which Trustor has rights, with the exclusive right to use such names, logos and designs wherever they are now or hereafter used in connection with the Project (or in connection with the marketing of the Project), and any and all other trade names, trademarks or service marks, whether or not registered, now or hereafter used in the operation of the Project, including, without limitation, any interest as a lessee, licensee or franchisee, and, in each case, together with the goodwill associated therewith; (b) subject to the absolute assignment contained herein, the Rents; (c) any and all books, records, customer lists, concession agreements, supply or service contracts, licenses, permits, governmental approvals (to the extent such licenses, permits and approvals may be pledged under applicable law), signs, goodwill, casino and hotel credit and charge records, supplier lists, checking accounts, safe deposit boxes (excluding the contents of such deposit boxes owned by persons other than Trustor and its subsidiaries), cash, instruments, chattel papers, including inter-company notes and pledges, documents, unearned premiums, deposits, refunds, including but not limited to income tax refunds, prepaid expenses, rebates, tax and insurance escrow and impound accounts, if any, actions and rights in action, and all other claims, including without limitation condemnation awards and insurance proceeds, and all other contract rights and general intangibles resulting from or used in connection with the operation and occupancy of the Trust Estate and the Improvements and in which Trustor now or hereafter has rights; and (d) general intangibles, vacation license resort agreements or other time share license or right to use agreements, including without limitation all rents, issues, profits, income and maintenance fees resulting therefrom, whether any of the foregoing is now owned or hereafter acquired.

**"Land"** means the real property situated in the County of Clark, State of Nevada, more specifically described in Schedule A attached hereto and incorporated herein by reference, including any after acquired title thereto.

**"Leased Premises"** means, as the context may require, the \_\_\_\_\_ Leased Premises, the \_\_\_\_\_ Leased Premises, the \_\_\_\_\_ Leased Premises and/or the \_\_\_\_\_ Leased Premises.]

**"Legal Requirements"** means all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and Environmental Laws and regulations, all applicable gaming laws and regulations, and all other applicable laws, ordinances, rules, regulations,

judicial decisions, administrative orders, and other requirements of any Governmental Authority having jurisdiction over Trustor, the Trust Estate and/or any Affiliate of Trustor, in effect either at the time of execution of this Deed of Trust or at any time during the term hereof, including, without limitation, all Environmental Laws and Nevada Gaming Laws.

**"Nevada Gaming License"** means any gaming license necessary for the ownership, construction, maintenance, financing or operation of the Project, whether issued and/or required by Nevada Gaming Authorities, Nevada Gaming Laws or otherwise.

**"Notes"** means, collectively, those certain promissory note(s) to be issued pursuant to the Credit Agreement, as the same may be amended or replaced from time to time in accordance with its terms.

**"NRS"** means the Nevada Revised Statutes as in effect from time to time.

**"Obligations"** means (i) the payment and performance by Borrower of each covenant and agreement of Borrower contained in the Credit Agreement, the Notes and the other Loan Documents (including the Security Documents) and (ii) the payment and performance by Trustor

5

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of each covenant and agreement of Trustor contained in the Guaranty, this Deed of Trust, the Indemnity Agreement and the other Loan Documents.

**"Permitted Dispositions"** means (a) the sale, transfer, lease or other disposition of assets in the Trust Estate, in the ordinary course of business, of inventory held in the ordinary course of business (b) the dispositions set forth in *Section 1.10* hereof and (c) other sales, transfers, leases or other dispositions of assets in the Trust Estate, including entering into Space Leases; *provided that*, in each case, all applicable provisions of the Loan Documents are complied with.

**"Personal Property"** has the meaning set forth in *Section 1.12* hereof.

**"Proceeds"** has the meaning assigned to it under the UCC and, in any event, shall include but not be limited to (i) any and all proceeds of any insurance (including without limitation property casualty and title insurance), indemnity, warranty or guaranty payable from time to time with respect to any of the Trust Estate; (ii) any and all proceeds in the form of accounts, security deposits, tax escrows (if any), down payments (to the extent the same may be pledged under applicable law), collections, contract rights, documents, instruments, chattel paper, liens and security instruments, guarantees or general intangibles relating in whole or in part to the Project and all rights and remedies of whatever kind or nature Trustor may hold or acquire for the purpose of securing or enforcing any obligation due Trustor thereunder; (iii) any and all payments in any form whatsoever made or due and payable from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Trust Estate by any Governmental Authority; (iv) subject to the absolute assignment contained herein, the Rents or other benefits arising out of, in connection with or pursuant to any Space Lease of the Trust Estate; and (v) any and all other amounts from time to time paid or payable in connection with any of the Trust Estate; *provided, however*, that the Trustor is not authorized to dispose of any of the Trust Estate unless such disposition is a Permitted Disposition.

**"Project"** means the resort-hotel-casino-mall complex proposed to be constructed in Clark County, Nevada as described in the Plans and Specifications, as such Plans and Specifications may be amended pursuant to the Disbursement Agreement.

**"Rents"** means all rents, room revenues, income, receipts, issues, profits, revenues and maintenance fees, room, food and beverage revenues, license and concession fees, income, proceeds and other benefits to which Trustor may now or hereafter be entitled from the Site, the Improvements, the Space Leases or any property encumbered hereby or any business or other activity conducted by Trustor at the Site or the Improvements.

**"Site"** means the Land and the Appurtenant Rights [ and, if the context so requires, the Leased Premises].

**"Space Leases"** means any and all leases, subleases, lettings, licenses, concessions, operating agreements, management agreements, and all other agreements affecting the Trust Estate that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, that give any person the right to conduct its business on, or otherwise use, operate or occupy, all or any portion of the Site or Improvements and any leases, agreements or arrangements permitting anyone to enter upon or use any of the Trust Estate to extract or remove natural resources of any kind, together with all amendments, extensions, and renewals of the foregoing entered into in compliance with this Deed of Trust, together with all rental, occupancy, service, maintenance or any other similar agreements pertaining to use or occupation of, or the rendering of services at the Site, the Improvements or any part thereof.

6

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**"Space Lessee(s)"** means any and all tenants, licensees, or other grantees of the Space Leases and any and all guarantors, sureties, endorsers or others having primary or secondary liability with respect to such Space Leases.

["**Subject Leases**" means the Lease, the Lease, the Lease, the Lease and .]

**"Tangible Collateral"** means all personal property, goods, equipment, supplies, building and other materials of every nature whatsoever and all other tangible personal property constituting a part or portion of the Project and/or used in the operation of the hotel, casino, restaurants, stores, parking facilities, observation tower and all other commercial operations on the Site or Improvements, including but not limited to communication systems, visual and electronic surveillance systems and transportation systems and not constituting a part of the real property subject to the real property lien of this Deed of Trust and including all property and materials stored therein in which Trustor has an interest and all tools, utensils, food and beverage, liquor, uniforms, linens, housekeeping and maintenance supplies, vehicles, fuel, advertising and promotional material, blueprints, surveys, plans and other documents relating to the Site or Improvements, and all construction materials and all furnishings, fixtures and equipment, including, but not limited to, all FF&E and all equipment and devices which are or are to be installed and used in connection with the operation of the Project, those items of furniture, fixtures and equipment which are to be purchased or leased by Trustor, machinery and any other item of personal property in which Trustor now or hereafter own or acquire an interest or right, and which are used or useful in the construction, operation, use and occupancy of the Project and all present and future right

and interest of Trustor in and to any casino operator's agreement, license agreement or sublease agreement used in connection with the Site or the Improvements.

**"Title Insurer"** means Commonwealth Land Title Company.

**"Trust Estate"** means all of the property described in Granting Clauses (A) through (O) below, inclusive, and each item of property therein described, provided, however, that such term shall not include the property described in Granting Clause (I)(P)(Q) below.

**"UCC"** means the Uniform Commercial Code in effect in the State of Nevada from time to time, NRS chapters 104 and 104A.

The following terms shall have the meaning assigned to such terms in the Disbursement Agreement:

**Disbursement Agent  
Plans and Specifications**

The following terms shall have the meaning assigned to such terms in the Credit Agreement:

**Affiliate  
Closing Date  
Environmental Laws  
Financing Agreements  
Lien  
Loan Documents  
Nevada Gaming Authorities  
Nevada Gaming Laws  
Permitted Encumbrance  
Permitted Liens  
Person  
Security Documents**

7

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In addition, any capitalized terms used in this Deed of Trust which are not otherwise defined herein shall have the meaning ascribed to such terms in the Disbursement Agreement and, if not defined therein, the meaning ascribed to such terms in the Credit Agreement and, if not defined therein, the meaning ascribed to such terms in the Guaranty; *provided*, that upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement immediately prior to such termination.

8

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**W I T N E S E T H:**

IN CONSIDERATION OF TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION; THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AND FOR THE PURPOSE OF SECURING in favor of Beneficiary (1) the Obligations; (2) the payment of such additional loans or advances as hereafter may be made to Trustor (individually or jointly and severally with any other Person) or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; *provided, however*, that any and all future advances by Beneficiary to Trustor made for the improvement, protection or preservation of the Trust Estate, together with interest at the rate applicable to overdue principal set forth in the Credit Agreement, shall be automatically secured hereby unless such a note or instrument evidencing such advances specifically recites that it is not intended to be secured hereby and (3) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof or to protect the security hereof (including Protective Advances as such term is defined in *Section 4.2* hereof), together with interest thereon as herein provided, Trustor, in consideration of the premises, and for the purposes aforesaid, does hereby ASSIGN, BARGAIN, CONVEY, PLEDGE, RELEASE, HYPOTHECATE, WARRANT, AND TRANSFER WITH POWER OF SALE UNTO TRUSTEE IN TRUST FOR THE BENEFIT OF BENEFICIARY AND THE BANKS each of the following:

- (A) The Land;
- (B) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Improvements;
- (C) TOGETHER WITH all Appurtenant Rights;
- (D) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to the Tangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;
- (E) TOGETHER WITH the Intangible Collateral to the extent permitted by, or not prohibited by, Nevada Gaming Laws and other applicable law;
- (F) TOGETHER WITH (i) all the estate, right, title and interest of Trustor of, in and to all judgments and decrees, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof, or to any Appurtenant Rights thereto, and Beneficiary is (subject to the terms hereof) hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittance therefor, and (subject to the terms hereof) to apply the same toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable; (ii) all proceeds of any sales or other dispositions of the property or rights described in Granting Clauses (A), (B), (C), (D) and (E) hereof or any part thereof whether voluntary or involuntary, provided, however, that the foregoing shall not be deemed to permit such sales, transfers, or other dispositions except as specifically permitted herein; and (iii) whether arising from any voluntary or involuntary

disposition of the property described in Granting Clauses (A), (B), (C), (D) and (E), all Proceeds, products, replacements, additions, substitutions, renewals and accessions, remainders, reversions and after-acquired interest in, of and to such property;

(G) TOGETHER WITH the absolute assignment of any Space Leases or any part thereof that Trustor has entered into, taken by assignment, taken subject to, or assumed, or has otherwise become bound by, now or in the future, together with all of the following (including all "Cash

9

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Collateral" within the meaning of the Bankruptcy Law) arising from the Space Leases: (a) Rents (subject, however, to the aforesaid absolute assignment to Trustee for the benefit of Beneficiary and the conditional permission hereinbelow given to Trustor to collect the Rents), (b) all guarantees, letters of credit, security deposits, collateral, cash deposits, and other credit enhancement documents, arrangements and other measures with respect to the Space Leases, (c) all of Trustor's right, title, and interest under the Space Leases, including the following: (i) the right to receive and collect the Rents from the lessee, sublessee or licensee, or their successor(s), under any Space Lease(s) and (ii) the right to enforce against any tenants thereunder and otherwise any and all remedies under the Space Leases, including Trustor's right to evict from possession any tenant thereunder or to retain, apply, use, draw upon, pursue, enforce or realize upon any guaranty of any Space Lease; to terminate, modify, or amend the Space Leases; to obtain possession of, use, or occupy, any of the real or personal property subject to the Space Leases; and to enforce or exercise, whether at law or in equity or by any other means, all provisions of the Space Leases and all obligations of the tenants thereunder based upon (A) any breach by such tenant under the applicable Space Lease (including any claim that Trustor may have by reason of a termination, rejection, or disaffirmance of such Space Lease pursuant to any Bankruptcy Law) and (B) the use and occupancy of the premises demised, whether or not pursuant to the applicable Space Lease (including any claim for use and occupancy arising under landlord-tenant law of the State of Nevada or any Bankruptcy Law). Permission is hereby given to Trustor, so long as no Event of Default has occurred and is continuing hereunder, to collect and use the Rents, as they become due and payable, but not more than one (1) month in advance thereof. Upon the occurrence of an Event of Default, the permission hereby given to Trustor to collect the Rents shall automatically terminate, but such permission shall be reinstated upon a cure or waiver of such Event of Default. Beneficiary shall have the right, at any time and from time to time, to notify any Space Lessee of the rights of Beneficiary as provided by this section;

Notwithstanding anything to the contrary contained herein, the foregoing provisions of this Paragraph (G) shall not constitute an assignment for purposes of security but shall constitute an absolute and present assignment of the Rents to Beneficiary, subject, however, to the conditional license given to Trustor to collect and use the Rents as hereinabove provided; and the existence or exercise of such right of Trustor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Trustor;

(H) TOGETHER WITH all of Trustor's right, title and interest in and to any and all Plans and Specifications and all maps, plans, specifications, surveys, studies, tests, reports, data and drawings relating to the development of the Site or the Project and the construction of the Improvements, including, without limitation, all marketing plans, feasibility studies, soils tests, design contracts and all contracts and agreements of Trustor relating thereto including, without limitation, architectural, structural, mechanical and engineering plans and specifications, studies, data and drawings prepared for or relating to the development of the Site or the Project or the construction, renovation or restoration of any of the Improvements or the extraction of minerals, sand, gravel or other valuable substances from the Site and purchase contracts or any agreement granting Trustor a right to acquire any land situated within Clark County, Nevada;

(I) TOGETHER WITH, to the extent permitted by applicable law, all of Trustor's right, title, and interest in and to any and all licenses, permits, variances, special permits, franchises, certificates, rulings, certifications, validations, exemptions, filings, registrations, authorizations, consents, approvals, waivers, orders, rights and agreements (including, without limitation, options, option rights, contract rights now or hereafter obtained by Trustor from any Governmental Authority having or claiming jurisdiction over the Land, the FF&E, the Project, or any other element of the Trust Estate or providing access thereto, or the operation of any business on, at, or from the Site including, without limitation, any liquor or Nevada Gaming Licenses (except for any

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registrations, licenses, findings of suitability or approvals issued by the Nevada Gaming Authorities or any other liquor or gaming licenses which are non-assignable); *provided*, that upon an Event of Default hereunder or under the Credit Agreement or under the Guaranty, if Beneficiary is not qualified under the Nevada Gaming Laws to hold such Nevada Gaming Licenses, then Beneficiary may designate an appropriately qualified third party to which an assignment of such Nevada Gaming Licenses can be made in compliance with the Nevada Gaming Laws;

(J) TOGETHER WITH all the estate, right, title and interest of Trustor of, in and to all water stock, water permits and other water rights relating to the Site, including, without limitation, those evidenced by \_\_\_\_\_];

(K) TOGETHER WITH all oil and gas and other mineral rights, if any, in or pertaining to the Site and all royalty, leasehold and other rights of Trustor pertaining thereto;

(L) TOGETHER WITH any and all monies and other property, real or personal, which may from time to time be subjected to the lien hereof by Trustor or by anyone on its behalf or with its consent, or which may come into the possession or be subject to the control of Trustee or Beneficiary pursuant to this Deed of Trust, the Credit Agreement, the Guaranty or any other Loan Document (including any Security Document), including, without limitation, any Protective Advances (as defined in *Section 4.2* hereof) under this Deed of Trust; and all of Trustor's right, title, and interest in and to all extensions, improvements, betterments, renewals, substitutes for and replacements of, and all additions, accessions, and appurtenances to, any of the foregoing that Trustor may subsequently acquire or obtain by any means, or construct, assemble, or otherwise place on any of the Trust Estate, and all conversions of any of the foregoing; it being the intention of Trustor that all property hereafter acquired by Trustor and required by the Credit Agreement, the Guaranty, any other Loan Document (including any Security Document) or this Deed of Trust to be subject to the lien of this Deed of Trust or intended so to be shall forthwith upon the acquisition thereof by Trustor be subject to the lien of this Deed of Trust as if such property were now owned by Trustor and were specifically described in this Deed of Trust and granted hereby or pursuant hereto, and Trustee and Beneficiary are hereby authorized, subject to Nevada Gaming Laws and other applicable laws, to receive any and all such property as and for additional security for the obligations secured or intended

to be secured hereby. Trustor agrees to take any action as may reasonably be necessary to evidence and perfect such liens or security interests, including, without limitation, the execution of any documents necessary to evidence and perfect such liens or security interests;

(M) TOGETHER WITH, to the extent permitted by applicable laws, any and all Accounts Receivable and all royalties, earnings, income, proceeds, products, rents, revenues, reversions, remainders, issues, profits, avails, production payments, and other benefits directly or indirectly derived or otherwise arising from any of the foregoing, all of which are hereby assigned to Beneficiary, who, except as otherwise expressly provided in this Deed of Trust (including the provisions of *Section 1.13* hereof), is authorized to collect and receive the same, to give receipts and acquittances therefor and to apply the same to the Obligations secured hereunder, whether or not then due and payable;

(N) TOGETHER WITH Proceeds of the foregoing property described in Granting Clauses (A) through (M);

(O) TOGETHER WITH Trustor's rights further to assign, sell, lease, encumber or otherwise transfer or dispose of the property described in Granting Clauses (A) through (N) inclusive, above, for debt or otherwise;

(P) [TOGETHER WITH any right of Trustor to elect to terminate the Subject Leases or remain in possession of the Leased Premises pursuant to 11 U.S.C. section 365(h)(1) or any similar

11

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provision of applicable law and any possessory rights of Trustor in the Leased Premises pursuant to 11 U.S.C. section 365(h)(2) or any other similar provision of applicable law]; and

(Q) EXPRESSLY EXCLUDING, HOWEVER, any assets expressly excluded from the definition of "Collateral" in the Credit Agreement.

Trustor, for itself and its successors and assigns, covenants and agrees to and with Trustee that, at the time or times of the execution of and delivery of these presents or any instrument of further assurance with respect thereto, Trustor has good right, full power and lawful authority to assign, grant, convey, warrant, transfer, bargain or sell its interests in the Trust Estate in the manner and form as aforesaid, and that the Trust Estate is free and clear of all liens and encumbrances whatsoever, except Permitted Liens, and Trustor shall warrant and forever defend the above-bargained property in the quiet and peaceable possession of Trustee and its successors and assigns against all and every person or persons lawfully or otherwise claiming or to claim the whole or any part thereof, except for Permitted Liens. Trustor agrees that any greater title to the Trust Estate hereafter acquired by Trustor during the term hereof shall be automatically subject hereto.

## ARTICLE ONE

### COVENANTS OF TRUSTOR

The Beneficiary and the Banks have been induced to enter into the Credit Agreement, the Guaranty and the other Loan Documents and to make advances of loans to Borrower thereunder on the basis of the following material covenants, all agreed to by Trustor:

12

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**1.1 Performance of Loan Documents.** Trustor shall perform, observe and comply with each and every provision hereof, and with each and every provision contained in the Guaranty and the other Loan Documents and shall promptly pay to the Administrative Agent or the Disbursement Agent, as applicable, when payment shall become due, the principal with interest thereon and all other sums required to be paid by Trustor under this Deed of Trust, the Guaranty and the other Loan Documents.

**1.2 General Representations, Covenants and Warranties.** Trustor represents, covenants and warrants that: (a) Trustor has good and marketable title to an indefeasible fee estate in the Site [(other than the Leased Premises) and a valid leasehold interest in the Leased Premises], free and clear of all encumbrances except Permitted Encumbrances, and that it has the right to hold, occupy and enjoy its interest in the Trust Estate, and has good right, full power and lawful authority to subject the Trust Estate to the Lien of this Deed of Trust and pledge the same as provided herein and Beneficiary may at all times peaceably and quietly enter upon, hold, occupy and enjoy the entire Trust Estate in accordance with the terms hereof; (b) Trustor is not Insolvent and no bankruptcy or insolvency proceedings are pending or contemplated by or, to the best of Trustor's knowledge, threatened against Trustor; (c) all costs arising from construction of any Improvements, the performance of any labor and the purchase of all Tangible Collateral and Improvements have been or shall be paid when due (subject to the provisions of the Disbursement Agreement, the Credit Agreement, the Guaranty and this Deed of Trust); (d) the Land has frontage on, and direct access for ingress and egress to dedicated street(s); (e) Trustor shall at all times conduct and operate the Trust Estate in a manner so as not to lose, or permit its affiliate to lose, the right to conduct gaming activities at the Project; (f) no material part of the Trust Estate has been damaged, destroyed, condemned or abandoned, other than those portions of the Trust Estate that (i) have been the subject of condemnation proceedings that have resulted in the conveyance of such portion of the Trust Estate to the Trustor or (ii) have been demolished in furtherance of the development of the Project as contemplated under the Disbursement Agreement; (g) as of the date hereof, no part of the Trust Estate is the subject of condemnation proceedings[, other than condemnation proceedings to convey Land to the Trustor,] and Trustor has no knowledge of any contemplated or pending condemnation proceeding with respect to any portion of the Trust Estate [other than condemnation proceedings to convey Land to the Trustor]; and (h) Trustor acknowledges and agrees that it presently may use, and in the past may have used, one or more of the trade or fictitious names, "Le Reve", " ", " " and " " and in each case variations thereof (collectively, the "**Enumerated Names**") in connection with the operation of the business at the Trust Estate, and Trustor further represents and warrants that the Enumerated Names are the only such trade or fictitious names Trustor has so used. For all purposes under this Deed of Trust it shall be deemed that the term "Trustor" includes all trade or fictitious names that (or any successor or assign thereof) now or hereafter uses, or has in the past used, including, without limitation, the Enumerated Names, with the same force and effect as if this Deed of Trust had been executed in all such names (in addition to " ").

**1.3 Compliance with Legal Requirements.** Except as provided in the Guaranty, Trustor shall promptly, fully, and faithfully comply in all material respects with all Legal Requirements and shall cause all portions of the Trust Estate and its use and occupancy to fully comply in all material respects with Legal Requirements at all times, whether or not such compliance requires work or remedial measures that are ordinary or extraordinary, foreseen or unforeseen, structural or nonstructural, or that interfere with the use or enjoyment of the Trust Estate.



**1.4 Taxes.** Except as otherwise permitted by the Credit Agreement and the Disbursement Agreement, (a) Trustor shall pay all Impositions as they become due and payable and shall deliver to Beneficiary promptly upon Beneficiary's request, evidence satisfactory to Beneficiary that the Impositions have been paid or are not delinquent; (b) Trustor shall not suffer to exist, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to

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the Land as a single lien, except as may be required by law; and (c) in the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the taxation of deeds of trust or obligations secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Deed of Trust, the Notes, the Guaranty or the other Loan Documents, Trustor shall pay all such taxes.

**1.5 Insurance.**

**(a) Hazard Insurance Requirements and Proceeds.**

(1) *Hazard Insurance.* Trustor shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of Beneficiary, during the term of this Deed of Trust, insurance policies insuring the Trust Estate and liability insurance policies, all in accordance with the requirements of the Guaranty. Trustor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Trust Estate in partial or complete extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Beneficiary in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(2) *Handling of Proceeds.* All Proceeds from any insurance policies shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement, the Guaranty and the Disbursement Agreement (while in effect). All proceeds of insurance allocable to Trustor, as owner [or lessee] of the Site, and attributable to business interruption insurance shall be collected, held, handled and disbursed in accordance with the provisions of the Credit Agreement, the Guaranty and the Disbursement Agreement. Any such proceeds disbursed to Beneficiary shall be applied to pay amounts then due and payable under this Deed of Trust. The balance shall be retained by Beneficiary or its designee in an interest bearing or other investment account approved by Beneficiary, which account Trustor hereby pledges to Beneficiary to secure the Obligations. Disbursements shall be permitted from such account to pay expenses reasonably incurred by Trustor in owning and operating the Trust Estate, as reasonably approved by Beneficiary.

**(b) Compliance with Insurance Policies.** Trustor shall not violate or permit to be violated any of the conditions or provisions of any policy of insurance required by the Guaranty or this Deed of Trust and Trustor shall so perform and satisfy the requirements of the companies writing such policies that, at all times, companies of good standing shall be willing to write and/or continue such insurance. Trustor further covenants to promptly send to Beneficiary all notices relating to any violation of such policies or otherwise affecting Trustor's insurance coverage or ability to obtain and maintain such insurance coverage.

**1.6 Condemnation.** Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute in its own or Trustor's name any action or proceeding relating to any condemnation and to settle or compromise any claim in connection therewith, and Trustor hereby appoints Beneficiary as its attorney-in-fact to take any action in Trustor's name pursuant to Beneficiary's rights hereunder. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Estate or any portion thereof, Trustor shall notify the Trustee and Beneficiary of the pendency of such proceedings. Trustor from time to time shall execute and deliver to Beneficiary all instruments requested by it to permit such participation; provided, however, that such instruments shall be deemed as supplemental to the foregoing grant of permission to Trustee and Beneficiary, and unless otherwise required, the foregoing permission shall, without more, be deemed sufficient to permit Trustee and/or Beneficiary to participate in such proceedings on behalf of Trustor. All such compensation awards, damages, claims, rights of action and Proceeds, and any other payments or relief,

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and the right thereto, are, whether paid to Beneficiary or Trustor or a third party trustee, included in the Trust Estate. Beneficiary, after deducting therefrom all its expenses, including reasonable attorneys fees, shall apply all Proceeds paid directly to it in accordance with the provisions of the Credit Agreement and the Guaranty. All Proceeds paid directly to the Trustor shall be applied, if received by Trustor prior to the Final Completion Date, in accordance with the Disbursement Agreement and, if received on or after the Final Completion Date, in accordance with the Credit Agreement and the Guaranty. To the extent that any condemnation proceeds are not required to be applied towards restoration of the improvements upon the Site, then Beneficiary shall have the right to apply said condemnation proceeds towards repayment of the Obligations. Trustor hereby waives any rights it may have under NRS 37.115, as amended or recodified from time to time.

**1.7 Care of Trust Estate.**

(a) Trustor shall preserve and maintain the Trust Estate in good condition and repair. Trustor shall not permit, commit or suffer to exist any waste, impairment or deterioration of the Trust Estate or of any part thereof that in any manner materially impairs Beneficiary's security hereunder and shall not take any action which will increase the risk of fire or other hazard to the Trust Estate or to any part thereof.

(b) Except for Permitted Dispositions, no material part of the Improvements or Tangible Collateral that are part of the Trust Estate shall be removed, demolished or materially altered, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Trustor shall have the right, without such consent, to remove and dispose of free from the lien of this Deed of Trust any part of the Improvements or Tangible Collateral that are part of the Trust Estate as from time to time may become worn out or obsolete or otherwise not useful in connection with the operation of the Trust Estate, provided that either (i) such removal or disposition does not materially affect the value of the Trust Estate or (ii) prior to or promptly following such removal, any such property shall be replaced with other property of substantially equal utility and of a value at least substantially equal to that of the replaced property when first acquired and free from any security interest of any other person (subject only to Permitted Liens), and by such removal and replacement Trustor shall be deemed to have subjected such replacement property to the lien of this Deed of Trust.

(c) Notwithstanding the foregoing provisions of this Section 1.7, the Trustor may develop the Project in the manner contemplated by the Disbursement Agreement, the Credit Agreement, the Guaranty and the other Loan Documents.

### 1.8 Leases.

(a) Trustor represents, warrants and covenants that:

(i) as of the date hereof, Trustor has not entered into any Space Leases;

(ii) except for the assignment effected hereby and in the other Financing Agreements, Trustor has not executed any assignment or pledge of any of the Space Leases, the Rents, or of Trustor's right, title and interest in the same; and

(iii) this Deed of Trust does not and will not constitute a violation or default under any Space Lease, and is and shall at all times constitute a valid lien on Trustor's interests in the Space Leases.

(b) Trustor shall not enter into any Space Lease or any modifications or amendments to any Space Lease, either orally or in writing, unless such Space Lease complies with the requirements of the Credit Agreement and the Guaranty.

15

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(c) After an Event of Default, upon the request of Administrative Agent Trustor shall deliver to Beneficiary executed copies of all Space Leases.

### 1.9 Further Encumbrance.

(a) Trustor covenants that at all times prior to the discharge of the Obligations, except for Permitted Liens and Permitted Dispositions, Trustor shall neither make nor suffer to exist, nor enter into any agreement for, any sale, assignment, exchange, mortgage, transfer, Lien, hypothecation or encumbrance of all or any part of the Trust Estate, including, without limitation, the Rents. As used herein, "transfer" includes the actual transfer or other disposition, whether voluntary or involuntary, by law, or otherwise, except those transfers specifically permitted herein, provided, however, that "transfer" shall not include the granting of utility or other beneficial easements with respect to the Trust Estate which have been or are granted by Trustor and are reasonably necessary to the construction, maintenance or operation of the Project.

(b) Any Permitted Lien consisting of the lien of a deed of trust which is junior to the lien of the Loan Documents (including the Security Documents) (a "Subordinate Deed of Trust") shall be permitted hereunder so long as there shall have been delivered to Beneficiary, not less than thirty (30) days prior to the date thereof, a copy thereof which shall contain express covenants in form and substance satisfactory to Beneficiary to the effect that: (i) the Subordinate Deed of Trust is in all respects subject and subordinate to this Deed of Trust; (ii) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Trust Estate shall be named as a party defendant nor shall any action be taken with respect to the Trust Estate which would terminate any occupancy or tenancy of the Trust Estate, or any portion thereof, without the consent of Beneficiary; (iii) any Rents, if collected through a receiver or by the holder of the Subordinate Deed of Trust, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Notes, the Guaranty or the other Loan Documents, and then to the payment of maintenance expenses, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation, and maintenance of the Trust Estate; and (iv) if any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust, prompt notice of the commencement thereof shall be given to Beneficiary.

(c) Trustor agrees that in the event the ownership of the Trust Estate or any part thereof becomes vested in a person other than Trustor, Beneficiary may, without notice to Trustor, deal in any way with such successor or successors in interest with reference to this Deed of Trust, the Notes, the Guaranty, the other Loan Documents and other Obligations hereby secured without in any way vitiating or discharging Trustor's or any guarantor's, surety's or endorser's liability hereunder or upon the obligations hereby secured. No sale of the Trust Estate and no forbearance to any person with respect to this Deed of Trust and no extension to any person of the time for payment of the Obligations, and other sums hereby secured given by Beneficiary shall operate to release, discharge, modify, change or affect the original liability of Trustor, or such guarantor, surety or endorser either in whole or in part.

(d) If Trustor shall fail to make any payment required to be made by it under any FF&E Financing Agreement, except where Trustor is contesting such payment in good faith, then the Beneficiary shall be entitled to make such payment on Trustor's behalf and any and all sums so expended by the Beneficiary shall be secured by this Deed of Trust and shall be repaid by Trustor upon demand, together with interest thereon at the interest at the rate applicable to overdue principal set forth in the Credit Agreement from the date of advance.

### 1.10 Partial Releases of Trust Estate.

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(a) Trustor may from time to time make a Permitted Disposition including, but not limited to, (i) transferring a portion of the Trust Estate (including any temporary taking) to any person legally empowered to exercise the power of eminent domain, or pursuant to dedication agreements that are now in effect or entered into in the future in connection with the development of the Project, (ii) granting utility easements reasonably necessary or desirable for the construction and/or operation of the Project, which grant or transfer is for the benefit of the Trust Estate, or (iii) transferring all or a portion of the Trust Estate as permitted pursuant to the Disbursement Agreement or the other Loan Documents. In each such case, Beneficiary shall execute and deliver any instruments necessary or appropriate to effectuate or confirm any such transfer or grant, free from the lien of this Deed of Trust, *provided, however*, that Beneficiary shall execute a lien release or subordination agreement, as appropriate, for matters described in clauses (i) and (iii) above only if:

(A) Such transfer, grant or release is not prohibited by the Credit Agreement or the Guaranty and all conditions precedent contained in the Credit Agreement and the Guaranty for such transfer, grant or release, if any, shall have been satisfied; and

(B) Beneficiary and Trustee shall have received a counterpart of the instrument pursuant to which such transfer, grant or release is to be made, and each instrument which Beneficiary or Trustee is requested to execute in order to effectuate or confirm such transfer, grant or release.

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**1.11 Further Assurances.**

(a) At its sole cost and without expense to Trustee or Beneficiary, and subject in all events to compliance with the Nevada Gaming Laws and other applicable Legal Requirements, Trustor shall do, execute, acknowledge and deliver any and all such further acts, deeds, conveyances, notices, requests for notices, financing statements, continuation statements, certificates, assignments, notices of assignments, agreements, instruments and further assurances, and shall mark any chattel paper, deliver any chattel paper or instruments to Beneficiary and take any other actions that are necessary, prudent, or reasonably requested by Beneficiary or Trustee to perfect or continue the perfection and first priority of Beneficiary's security interest in the Trust Estate, to protect the Trust Estate against the rights, claims, or interests of third persons other than holders of Permitted Liens or to effect the purposes of this Deed of Trust, including the security agreement and the absolute assignment of Rents contained herein, or for the filing, registering or recording thereof.

(b) Trustor shall forthwith upon the execution and delivery of this Deed of Trust, and thereafter from time to time, cause this Deed of Trust and each instrument of further assurance to be filed, indexed, registered, recorded, given or delivered in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee and/or Beneficiary to, the Trust Estate.

(c) [Upon any modification of the boundaries of the Leased Premises (or any portion thereof), Trustor, at Trustor's expense, shall notify Beneficiary and amend this Deed of Trust to reflect an accurate description of the Leased Premises (or such portion thereof). In connection therewith, Trustor shall provide Beneficiary with such title insurance endorsements to Beneficiary's ALTA extended coverage Lender's Policy(ies) of Title Insurance as Beneficiary may reasonably request.]

**1.12 Security Agreement and Financing Statements.** Trustor (as debtor) hereby grants to Beneficiary (as creditor and secured party) a present and future security interest in all Tangible Collateral, Intangible Collateral, FF&E, Improvements, all other personal property now or hereafter owned or leased by Trustor or in which Trustor has or will have any interest, to the extent that such property constitutes a part of the Trust Estate (whether or not such items are stored on the premises or elsewhere), Proceeds of the foregoing comprising a portion of the Trust Estate and all products, substitutions, and accessions therefor and thereto, subject to Beneficiary's rights to treat such property as real property as herein provided (collectively, the "**Personal Property**"). Trustor shall execute and/or deliver any and all documents and writings, including without limitation financing statements pursuant to the UCC, as may be necessary or prudent to preserve and maintain the priority of the security interest granted hereby on property which may be deemed subject to the foregoing security agreement or as Beneficiary may reasonably request, and shall pay to Beneficiary on demand any reasonable expenses incurred by Beneficiary in connection with the preparation, execution and filing of any such documents. Trustor hereby authorizes and empowers Beneficiary to file, on Trustor's behalf, all financing statements and refiling and continuations thereof as advisable to create, preserve and protect said security interest. Trustor acknowledges and agrees that it is not authorized to, and will not, authenticate or file, or authorize the filing of, any financing statements or other record with respect to the Personal Property (including any amendments thereto, or continuation or termination statements thereof), except as permitted by the Guaranty. Trustor approves and ratifies any filing or recording of records made by or on behalf of Beneficiary in connection with the perfection of the security interest in favor of Beneficiary hereunder. This Deed of Trust constitutes both a real property deed of trust and a "security agreement," within the meaning of the UCC, and the Trust Estate includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Trust Estate. Trustor by executing and delivering this Deed of Trust has granted to Beneficiary, as security of the Obligations, a security interest in the Trust Estate.

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(a) **Fixture Filing.** Without in any way limiting the generality of the immediately preceding paragraph or of the definition of the Trust Estate, this Deed of Trust constitutes a fixture filing under Sections 9-334 and 9-502 of the UCC (NRS 104.9334 and 104.9502). For such purposes, (i) the "debtor" is Trustor and its address is the address given for it in the initial paragraph of this Deed of Trust; (ii) the "secured party" is Beneficiary, and its address for the purpose of obtaining information is the address given for it in the initial paragraph of this Deed of Trust; (iii) the real estate to which the fixtures are or are to become attached is Trustor's interest in the Site; and (iv) the record owner of such real estate or interests therein is Trustor [(with respect to the Land and as the lessor under the Subject Leases)].

(b) **Remedies.** This Deed of Trust shall be deemed a security agreement as defined in the UCC and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall include any or all of (i) those prescribed herein, and (ii) those available under applicable law, and (iii) those available under the UCC, all at Beneficiary's sole election. In addition, a photographic or other reproduction of this Deed of Trust shall be sufficient as a financing statement for filing wherever filing may be necessary to perfect or continue the security interest granted herein.

(c) **Derogation of Real Property.** It is the intention of the parties that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing the express declaration and intention of the parties hereto as hereinabove stated that everything used in connection with the production of income from the Trust Estate and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real property encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. It is the intention of the parties that the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Trustor's interest as lessors in any present or future Space Lease or rights to Rents, shall never be construed as in anyway altering any of the rights of Beneficiary as determined by this Deed of Trust or impugning the priority of Beneficiary's real property lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Beneficiary in the event any court or judge shall at any time hold with respect to the matters set forth in the foregoing clauses (1), (2) and (3) that notice of Beneficiary's priority of interest to be effective against a particular class of persons, including but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the UCC records.

(d) **Priority; Permitted Financing of Tangible Collateral.** All Personal Property of any nature whatsoever which is subject to the provisions of this security agreement shall be purchased or obtained by Trustor in its name and free and clear of any lien or encumbrance, except for Permitted Liens and the lien hereof, for use only in connection with the business and operation of the Project, and shall be and at all times remain free and clear of any lease or similar arrangement, chattel financing, installment sale agreement, security agreement and any encumbrance of like kind, so that Beneficiary's security interest shall attach to and vest in Trustor for the benefit of Beneficiary, with the priority herein specified, immediately upon the installation or

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this Deed of Trust. The foregoing shall not be construed as limiting Trustor's rights to transfer Personal Property pursuant to Permitted Dispositions or to obtain releases of Personal Property from the Lien of this Deed of Trust pursuant to *Section 1.10* hereof.

(e) **Preservation of Contractual Rights of Collateral.** Trustor shall, prior to delinquency, default, or forfeiture, perform all obligations and satisfy all material conditions required on its part to be satisfied to preserve its rights and privileges under any contract, lease, license, permit, or other authorization (i) under which it holds any Tangible Collateral or (ii) which constitutes part of the Intangible Collateral, except where Trustor is contesting such obligations in good faith.

(f) **Removal of Collateral.** Except for damaged or obsolete Tangible Collateral which is either no longer usable or which is removed temporarily for repair or improvement or removed for replacement on the Trust Estate with Tangible Collateral of similar function or as otherwise permitted herein, none of the Tangible Collateral shall be removed from the Trust Estate without Beneficiary's prior written consent.

(g) **Change of Name.** Trustor shall not change its corporate (or other entity) or business name, or do business within the State of Nevada under any name other than such name, or any trade name(s) other than those as to which Trustor gives prior written notice to Beneficiary of its intent to use such trade names, or any other business names (if any) specified in the financing statements delivered to Beneficiary for filing in connection with the execution hereof, without, in each case, providing Beneficiary with the additional financing statement(s) and any other similar documents deemed reasonably necessary by Beneficiary to assure that its security interest remains perfected and of undiminished priority in all such Personal Property notwithstanding such name change.

**1.13 Assignment of Leases and Rents.** Subject to Nevada Gaming Laws and other applicable Legal Requirements, the assignment of Leases and Rents set out above in Granting Clause (G) shall constitute an absolute and present assignment to Beneficiary, subject to the license herein given to Trustor to collect the Rents, and shall be fully operative without any further action on the part of any party, and specifically Beneficiary shall be entitled upon the occurrence of an Event of Default hereunder to all Rents and to enter upon the Site and the Improvements to collect such Rents, provided, however, that Beneficiary shall not be obligated to take possession of the Trust Estate, or any portion thereof. The absolute assignment contained in Granting Clause (G) shall not be deemed to impose upon Beneficiary any of the obligations or duties of Trustor provided in any such Space Lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any lessee shall have been joined as a party defendant in any action to foreclose this Deed of Trust and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Trust Estate or any part thereof).

**1.14 Expenses.**

(a) Trustor shall pay when due and payable all out-of-pocket costs, including without limitation, those reasonable appraisal fees, recording fees, taxes, abstract fees, title policy fees, escrow fees, attorneys' and paralegal fees, travel expenses, fees for inspecting architect(s) and engineer(s) and all other costs and expenses of every character which may hereafter be incurred by Beneficiary or any assignee of Beneficiary in connection with the preparation and execution of the Guaranty and the other Loan Documents (including the Security Documents) to which Trustor is a party or instruments, agreements or documents of further assurance, the funding of the indebtedness secured hereby, and the enforcement of the Guaranty or any Loan Document (including any Security Document) to which Trustor is a party. Other than costs associated with the enforcement of any Loan Document, all such costs shall be itemized in reasonable detail; and

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(b) Trustor shall, upon demand by Beneficiary, reimburse Beneficiary or any assignee of Beneficiary for all such reasonable expenses which have been incurred or which shall be incurred by it; and

(c) Trustor shall indemnify Beneficiary with respect to any transaction or matter in any way connected with any portion of the Trust Estate, this Deed of Trust, including any occurrence at, in, on, upon or about the Trust Estate (including any personal injury, loss of life, or property damage), or Trustor's use, occupancy, or operation of the Trust Estate, or the filing or enforcement of any mechanic's lien, or otherwise caused in whole or in part by any act, omission or negligence occurring on or at the Trust Estate, including failure to comply with any Legal Requirement or with any requirement of this Deed of Trust that applies to Trustor, except to the extent resulting from the gross negligence, fraud or willful misconduct of Trustee or Beneficiary. If Beneficiary is a party to any litigation as to which either Trustor is required to indemnify Beneficiary (or is made a defendant in any action of any kind against Trustor or relating directly or indirectly to any portion of the Trust Estate) then, at Beneficiary's option, Trustor shall undertake Beneficiary's defense, using counsel reasonably satisfactory to Beneficiary (and any settlement shall be subject to Beneficiary's consent, which consent shall not be unreasonably withheld), and in any case shall indemnify Beneficiary against such litigation. Trustor shall pay all reasonable costs and expenses, including reasonable legal costs, that Beneficiary pays or incurs in connection with any such litigation. Any amount payable under any indemnity in this Deed of Trust shall be a demand obligation, shall be added to, and become a part of, the secured obligations under this Deed of Trust, shall be secured by this Deed of Trust and, if not paid promptly following demand therefor (which demand shall, unless associated with Loan Document enforcement actions, set forth in reasonable detail an itemization of the amount so demanded) shall bear interest at the interest rate specified in the Credit Agreement. Such indemnity shall survive any release of this Deed of Trust and any foreclosure.

**1.15 Beneficiary's Cure of Trustor's Default.** If Trustor defaults hereunder in the payment of any tax, assessment, lien, encumbrance or other Imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition or term of this Deed of Trust or any other Financing Agreement or any FF&E Financing Agreement, Beneficiary may, but is not obligated to, to preserve its interest in the Trust Estate, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and reasonable costs and expenses incurred or paid by Beneficiary in connection therewith shall become due and payable immediately. The amounts so incurred or paid by Beneficiary, together with interest thereon at the interest rate applicable to overdue principal set forth in the Credit Agreement, from the date incurred until paid by Trustor, shall be added to the indebtedness and secured by the lien of this Deed of Trust. Beneficiary, is hereby empowered to enter and to authorize others to enter upon the Site or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Trustor or any person in possession

holding under Trustor. No exercise of any rights under this Section 1.15 by Beneficiary shall cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

**1.16 Use of Land.** Trustor covenants that the Trust Estate shall be used and operated in a manner consistent with the requirements of the Loan Documents.

**1.17 Compliance with Permitted Lien Agreements.** Trustor shall comply with each and every material obligation contained in any agreement pertaining to a Permitted Lien.

**1.18 Defense of Actions.** Trustor shall appear in and defend any action or proceeding affecting or purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of title search and insurance or other evidence of title,

preparation of survey, and reasonable attorneys' fees in any such action or proceeding in which Beneficiary or Trustee may appear or may be joined as a party and in any suit brought by Beneficiary based upon or in connection with this Deed of Trust, the Guaranty or any Loan Document to which Trustor is a party. Nothing contained in this section shall, however, limit the right of Beneficiary to appear in such action or proceeding with counsel of its own choice, either on its own behalf or on behalf of Trustor.

**1.19 Affiliates.**

(a) **Subject to Trust Deed.** Subject to compliance with the requirements of applicable Nevada Gaming Laws, Trustor shall cause all of its Affiliates in any way involved with the operation of the Trust Estate or the Project to observe the covenants and conditions of this Deed of Trust to the extent necessary to give the full intended effect to such covenants and conditions and to protect and preserve the security of Beneficiary hereunder.

(b) **Restriction on Use of Subsidiary or Affiliate.** Except as permitted under the Credit Agreement, the Notes, the Guaranty or the other Loan Documents (including any Security Document), Trustor shall not use any Affiliate in the operation of the Trust Estate or the Project if such use would in any way impair the security for the Obligations or circumvent any covenant or condition of this Deed of Trust, the Guaranty or of any other Loan Document.

**1.20 Title Insurance.** On or promptly after the effective date of this Deed of Trust, Trustor shall cause to be delivered to Trustee at Trustor's expense, one or more ALTA extended coverage Lender's Policies of Title Insurance showing fee title to the real property situated in the County of Clark, State of Nevada, more specifically described in Schedule A attached hereto, vested in Trustor and the lien of this Deed of Trust to be a perfected lien, prior to any and all encumbrances other than Permitted Encumbrances (excluding, however, any such non-Permitted Encumbrances for which the Title Insurer has agreed to provide an endorsement or affirmative coverage protecting the lien of this Deed of Trust against such non-Permitted Encumbrances).

**1.21 [Leasehold Estates.** Trustor represents, covenants and warrants: (a) that the Subject Leases are in full force and effect and unmodified; (b) Trustor will defend the leasehold estate under each Subject Lease for the entire remainder of the term set forth in each of the said Subject Leases against all and every Person or Persons lawfully claiming, or who may claim the same or any part thereof, subject to the payment of the rents in the Subject Leases reserved and subject to the performance and observance of all of the terms, covenants, conditions and warranties thereof; and (c) that there is no uncured default under any Subject Lease or in the performance of any of the terms, covenants, conditions or warranties thereof on the part of the lessor or the lessee to be observed and performed and that no state of facts exist under a Subject Lease which, with the lapse of time or giving of notice or both would constitute a default thereunder.]

**1.22 [Payment of Subject Leases Expenses.** The Trustor shall pay or cause to be paid on or prior to the date due all rents, additional rents and other charges and Impositions payable by the lessor or the lessee under the Subject Leases for which provision has not been made hereinbefore, when and as often as the same shall become due and payable.]

**1.23 [Trustor's Covenants with Respect to Subject Leases.**

(a) Trustor shall at all times promptly and faithfully keep and perform, or cause to be kept and performed, all the covenants and conditions contained in the Subject Leases to be kept and performed by it under the Subject Leases and in all respects conform to and comply with the terms and conditions of the Subject Leases. Trustor shall, within ten days after written demand from Beneficiary, deliver to Beneficiary proof of payment of all items that are required to be paid by Trustor under the Subject Leases, including, without limitation, rent, taxes, operating expenses and other charges. Trustor shall promptly deliver to Beneficiary copies of all notices given with respect to or which affect the Subject Leases including pleadings or notices of default given under the Subject Leases. Trustor further covenants that it shall not do or permit anything to occur or fail to occur which will impair or tend to impair the security of this Deed of Trust or will be grounds for declaring a forfeiture or termination of either Subject Lease, and upon any such failure as aforesaid, Trustor shall be subject to all of the rights and remedies granted Beneficiary in this Deed of Trust.

(b) Except as otherwise permitted in the Loan Documents, Trustor shall not modify, extend or in any way alter the terms of the Subject Leases or cancel or surrender said Subject Leases or reject the Subject Leases in a case pending under the Bankruptcy Code, or waive, execute, condone or in anyway release or discharge the lessor thereunder of or from the obligations, covenants, conditions and agreements by said lessor to be done and performed; and Trustor does expressly release, relinquish and surrender unto Beneficiary all of its rights, power and authority to cancel, surrender, amend, modify or alter in any way the terms and provisions of the Subject Leases and any attempt on the part of Trustor to exercise any such right without the written approval and consent of Beneficiary thereto being first had and obtained shall constitute an Event of Default under the terms hereof and the other Loan Documents Documents and all Obligations and other sums secured hereby shall, at the option of Beneficiary, become due and payable forthwith. If Trustor becomes a debtor under the Bankruptcy Code, Trustor shall assume and assign the Subject Leases to Beneficiary, and it further agrees that it shall not object to any request by Beneficiary that the Subject Leases not be rejected, or that Beneficiary be authorized to assume Trustor's rights under the Subject Leases.

(c) Trustor shall deliver to Beneficiary an original executed copy of each Subject Lease, an estoppel certificate from the Lessor within ten (10) days of request by Beneficiary and in such form and content as shall be satisfactory to Beneficiary, as well as any and all documentary evidence received by it showing compliance by Trustor with the provisions of the Subject Leases.

(d) Trustor does hereby authorize and irrevocably appoint and constitute Beneficiary as its true and lawful attorney-in-fact, which appointment is coupled with an interest, in its name, place and stead, to take any and all actions deemed necessary or desirable by Beneficiary to perform and comply with all the obligations of Trustor under the Subject Leases, and to do and take upon the occurrence and during continuation of an Event of Default, but without any obligation so to do or take, any action which Beneficiary deems reasonably necessary to prevent or cure any default by Trustor under the Subject Leases, to enter into and upon the Site, the Project or the Improvements or any part thereof as provided in the Loan Documents in order to prevent or cure any default of Trustor pursuant thereto, to the end that the rights of Trustor in and to the leasehold estate created by the Subject Leases shall be kept free from default.

(e) In the event of any failure by Trustor to perform or cause the performance of any covenant on the part of lessor or lessee to be observed and performed under the Subject Leases, the performance by Beneficiary on behalf of Trustor of the applicable Subject Lease covenant shall not remove or waive, as between Trustor and Beneficiary, the corresponding Event of Default under the terms hereof and any amount so advanced by Beneficiary or any costs incurred in

23

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connection therewith, with interest thereon at the interest rate applicable to overdue principal under the Credit Agreement, shall constitute additional Obligations secured hereby and be immediately due and payable.

(f) To the extent permitted by law, the price payable by Trustor, or by any other party so entitled, in the exercise of the right of redemption, if any, shall include all rents paid and other sums advanced by Beneficiary, on behalf of Trustor, as lessee under the Subject Leases.

(g) Trustor shall use all reasonable efforts to enforce the obligations of the lessor under the Subject Leases in a commercially reasonable manner.

(h) No release or forbearance of any of Trustor's obligations under the Subject Leases by the lessor thereunder, shall release Trustor from any of its obligations under this Deed of Trust.

(i) The lien of this Deed of Trust shall attach to all of Trustor's rights and remedies at any time arising under or pursuant to section 365(h) of the Bankruptcy Law, including, without limitation, all of Trustor's rights to remain in possession of the Leased Premises. Trustor shall not elect to treat the Subject Leases as terminated under section 365(h)(1) of the Bankruptcy Law, and any such election shall be void.

(i) If pursuant to section 365(h)(2) of the Bankruptcy Law, Trustor shall seek to offset against the rent reserved in the Subject Leases the amount of any damages caused by the nonperformance by the lessor or any other party of any of their respective obligations thereunder after the rejection by the lessor or such other party of the Subject Leases under the Bankruptcy Law, then Trustor shall, prior to effecting such offset, notify Beneficiary of its intent to do so, setting forth the amount proposed to be so offset and the basis therefor. Beneficiary shall have the right to object to all or any part of such offset that, in the reasonable judgment of Beneficiary, would constitute a breach of the Subject Leases, and in the event of such objection, Trustor shall not effect any offset of the amounts found objectionable by Beneficiary. Neither Beneficiary's failure to object as aforesaid nor any objection relating to such offset shall constitute an approval of any such offset by Beneficiary.

(ii) If any action, proceeding, motion or notice shall be commenced or filed in respect of the lessor under the Subject Leases or any other party or in respect of the Subject Leases in connection with any case under the Bankruptcy Law, then Beneficiary shall have the option to intervene in any such litigation with counsel of Beneficiary's choice. Beneficiary may proceed in its own name in connection with any such litigation, and Trustor agrees to execute any and all powers, authorizations, consents or other documents required by Beneficiary in connection therewith.

(iii) Trustor shall, after obtaining knowledge thereof, promptly notify Beneficiary of any filing by or against the lessor or any other party with an interest in the Leased Premises of a petition under the Bankruptcy Law. Trustor shall promptly deliver to Beneficiary, following receipt, copies of any and all notices, summonses, pleadings, applications and other documents received by Trustor in connection with any such petition and any proceedings relating thereto.

(iv) If there shall be filed by or against Trustor a petition under the Bankruptcy Law, and Trustor, as lessee under the Subject Leases, shall determine to reject the Subject Leases pursuant to section 365(a) of the Bankruptcy Law, then Trustor shall give Beneficiary a notice of the date on which Trustor shall apply to the bankruptcy court for authority to reject the Subject Leases (such notice to be no later than twenty (20) days prior to such date). Beneficiary shall have the right, but not the obligation, to serve upon Trustor at any time prior to the date on which Trustor shall so apply to the bankruptcy court a notice stating that Beneficiary demands that Trustor assume and assign the Subject Leases to Beneficiary pursuant to section 365 of the Bankruptcy Law. If Beneficiary shall serve upon Trustor the

24

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notice described in the preceding sentence, to the extent permitted by law Trustor shall not seek to reject the Subject Leases and shall comply with the demand provided for in the preceding sentence. In addition, effective upon the entry of an order for relief with respect to Trustor under the Bankruptcy Law, Trustor hereby assigns and transfers to Beneficiary a non-exclusive right to apply to the bankruptcy court under section 365(d) (4) of the Bankruptcy Law for an order extending the period during which the Subject Leases may be rejected or assumed; and shall (a) promptly notify Beneficiary of any default by Trustor in the performance or observance of any of the terms, covenants or conditions on the part of Trustor to be performed or observed under the Subject Leases and of the giving of any written notice by the lessor thereunder to Trustor of any such default, and (b) promptly cause a copy of each written notice given to Trustor by the lessor under the Subject Leases to be delivered to Beneficiary. Beneficiary may rely on any notice received by it from any such lessor of any default by Trustor under the Subject Leases and may take such

action as may be permitted by law to cure such default even though the existence of such default or the nature thereof shall be questioned or denied by Trustor or by any Person on its behalf.

(k) Beneficiary shall have the right upon notice to Trustor to participate in the adjustment and settlement of any insurance proceeds and in the determination of any condemnation award under the Subject Leases to the extent and in the manner provided in the Subject Leases.]

#### 1.24 **Rejection of Subject Leases.**

[To the extent applicable, if the lessor under the Subject Leases rejects or disaffirms the Subject Leases or purports or seeks to disaffirm the Subject Leases pursuant to any Bankruptcy Law, then:

(a) To the extent permitted by law, Trustor shall remain in possession of the Leased Premises demised under the Subject Leases and shall perform all acts reasonably necessary for Trustor to remain in such possession for the unexpired term of such Subject Leases (including all renewals), whether the then existing terms and provisions of such Subject Leases require such acts or otherwise; and

(b) All the terms and provisions of this Deed of Trust and the Lien created by this Deed of Trust shall remain in full force and effect and shall extend automatically to all of Trustor's rights and remedies arising at any time under, or pursuant to, Section 365(h) of the Bankruptcy Code, including all of Trustor's rights to remain in possession of the Leased Premises.]

## **ARTICLE TWO CREDIT AGREEMENT PROVISIONS**

### 2.1 **Interaction with the Guaranty**

(a) **Incorporation by Reference.** All terms, covenants, conditions, provisions and requirements of the Guaranty are incorporated by reference in this Deed of Trust.

(b) **Conflicts.** In the event of any conflict or inconsistency between the provisions of this Deed of Trust and those of the Guaranty, the Credit Agreement or the Disbursement Agreement, the provisions of the Guaranty, the Credit Agreement or the Disbursement Agreement, as applicable, shall govern.

2.2 **Other Collateral.** This Deed of Trust is one of a number of security agreements to secure the debt delivered by or on behalf of Trustor and other Persons pursuant to the Credit Agreement and the other Loan Documents (including the Security Documents) and securing the Obligations secured hereunder. All potential junior Lien claimants are placed on notice that, under any of the Loan Documents (including the Security Documents) (including a separate future unrecorded agreement between Trustor and Beneficiary), other collateral for the Obligations secured hereunder (*i.e.*, collateral

25

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other than the Trust Estate) may, under certain circumstances, be released without a corresponding reduction in the total principal amount secured by this Deed of Trust. Such a release would decrease the amount of collateral securing the same indebtedness, thereby increasing the burden on the remaining Trust Estate created and continued by this Deed of Trust. No such release shall impair the priority of the lien of this Deed of Trust. By accepting its interest in the Trust Estate, each and every junior Lien claimant shall be deemed to have acknowledged the possibility of, and consented to, any such release. Nothing in this paragraph shall impose any obligation upon Beneficiary.

## **ARTICLE THREE DEFAULTS**

3.1 **Event of Default.** The term "Event of Default," wherever used in this Deed of Trust, shall mean any of (i) one or more of the events of default listed in the Credit Agreement (ii) so long as the Disbursement Agreement is in effect, one or more of the events of default listed in the Disbursement Agreement (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) or (iii) if any "borrower" (as that term is defined in NRS 106.310) who may send a notice pursuant to NRS 106.380(1), (x) delivers, sends by mail or otherwise gives, or purports to deliver, send by mail or otherwise give, to a beneficiary under this Deeds of Trust (A) any notice of an election to terminate the operation of this Deed of Trust as security for any secured obligation, including, without limitation, any obligation to repay any "future advance" (as defined in NRS 106.320) of "principal" (as defined in NRS 106.345), or (y) any other notice pursuant to NRS 106.380(1), (y) records a statement pursuant to NRS 106.380(3), or (z) causes this Deed of Trust, any secured obligation, or any Secured Party to be subject to NRS 106.380(2), 106.380(3) or 106.400.

## **ARTICLE FOUR REMEDIES**

4.1 **Acceleration of Maturity.** If an Event of Default occurs, Beneficiary may (except that such acceleration shall be automatic if the Event of Default is caused by Borrower's or Trustor's Bankruptcy), in accordance with the Loan Documents, declare the Obligations to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become due and payable without demand, presentment, notice or other requirements of any kind (all of which Trustor waives) notwithstanding anything in this Deed of Trust or any Loan Document or applicable law to the contrary.

4.2 **Protective Advances.** If the Borrower or Trustor fails to make any payment or perform any other obligation under the Notes, Credit Agreement, the Guaranty or any other Financing Agreement, then without thereby limiting Beneficiary's other rights or remedies, waiving or releasing any of Trustor's obligations, or imposing any obligation on Beneficiary, Beneficiary may either advance any amount owing or perform any or all actions that Beneficiary considers necessary or appropriate to cure such default. All such advances shall constitute "Protective Advances." No sums advanced or performance rendered by Beneficiary shall cure, or be deemed a waiver of any Event of Default.

**4.3 Institution of Equity Proceedings.** If an Event of Default occurs, Beneficiary may institute an action, suit or proceeding in equity for specific performance of this Deed of Trust, the Notes, the Guaranty or any other Loan Document (including any Security Document), all of which shall be specifically enforceable by injunction or other equitable remedy. Trustor waives any defense based on laches or any applicable statute of limitations.

**4.4 Beneficiary's Power of Enforcement.**

26

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(a) If an Event of Default occurs, Beneficiary shall be entitled, at its option and in its sole and absolute discretion, to prepare and record on its own behalf, or to deliver to Trustee for recording, if appropriate, written declaration of default and demand for sale and written Notice of Breach and Election to Sell (NRS 107.080(3)) (or other statutory notice) to cause the Trust Estate to be sold to satisfy the obligations hereof, and in the case of delivery to Trustee, Trustee shall cause said notice to be filed for record.

(b) After the lapse of such time as may then be required by law following the recordation of said Notice of Breach and Election to Sell, and notice of sale having been given as then required by law, including compliance with all applicable Nevada Gaming Laws, Trustee without demand on Trustor, shall sell the Trust Estate or any portion thereof at the time and place fixed by it in said notice, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder, of cash in lawful money of the United States payable at the time of sale. Trustee may, for any cause it deems expedient, postpone the sale of all or any portion of said property until it shall be completed and, in every case, notice of postponement shall be given by public announcement thereof at the time and place last appointed for the sale and from time to time thereafter Trustee may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall execute and deliver to the purchaser its Deed, Bill of Sale, or other instrument conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in such instrument of conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

(c) After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including, without limitation, costs of evidence of title and reasonable attorneys' fees and other legal expenses of Trustee or Beneficiary in connection with a sale, Trustee shall apply the proceeds of such sale to payment of all sums expended under the terms hereof not then repaid, with accrued interest at the rate applicable to overdue principal set forth in the Credit Agreement to the payment of all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto as provided in NRS 40.462.

(d) Subject to compliance with applicable Nevada Gaming Laws, if any Event of Default occurs, Beneficiary may, either with or without entry or taking possession of the Trust Estate, and without regard to whether or not the indebtedness and other sums secured hereby shall be due and without prejudice to the right of Beneficiary thereafter to bring an action or proceeding to foreclose or any other action for any default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (1) to enforce payment of the Obligations, to the extent permitted by law, or the performance of any term hereof or any other right; (2) to foreclose this Deed of Trust in any manner provided by law for the foreclosure of mortgages or deeds of trust on real property and to sell, as an entirety or in separate lots or parcels, the Trust Estate or any portion thereof pursuant to the laws of the State of Nevada or under the judgment or decree of a court or courts of competent jurisdiction, and Beneficiary shall be entitled to recover in any such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be awarded by the court; (3) to exercise any or all of the rights and remedies available to it under the Loan Documents; and (4) to pursue any other remedy available to it. Beneficiary shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Beneficiary may determine.

27

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(e) The remedies described in this *Section 4.4* may be exercised with respect to all or any portion of the Personal Property, either simultaneously with the sale of any real property encumbered hereby or independent thereof. Beneficiary shall at any time be permitted to proceed with respect to all or any portion of the Personal Property in any manner permitted by the UCC. Trustor agrees that Beneficiary's inclusion of all or any portion of the Personal Property (and all personal property that is subject to a security interest in favor, or for the benefit, of Beneficiary) in a sale or other remedy exercised with respect to the real property encumbered hereby, as permitted by the UCC, is a commercially reasonable disposition of such property.

**4.5 Beneficiary's Right to Enter and Take Possession, Operate and Apply Income.**

(a) Subject to compliance with applicable Nevada Gaming Laws, if an Event of Default occurs, (i) Trustor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession and, if and to the extent permitted by law, Beneficiary itself, or by such officers or agents as it may appoint, may enter and take possession of all the Trust Estate including the Personal Property, without liability for trespass, damages or otherwise, and may exclude Trustor and its agents and employees wholly therefrom and may have joint access with Trustor to the books, papers and accounts of Trustor; and (ii) Trustor shall pay monthly in advance to Beneficiary on Beneficiary's entry into possession, or to any receiver appointed to collect the Rents, all Rents then due and payable.

(b) If Trustor shall for any reason fail to surrender or deliver the Trust Estate, the Personal Property or any part thereof after Beneficiary's demand, Beneficiary may obtain a judgment or decree conferring on Beneficiary or Trustee the right to immediate possession or requiring Trustor to deliver immediate possession of all or part of such property to Beneficiary or Trustee and Trustor hereby specifically consents to the entry of such judgment or decree. Trustor shall pay to Beneficiary or Trustee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Beneficiary or Trustee, their attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

(c) Subject to compliance with applicable Nevada Gaming Laws, upon every such entering upon or taking of possession, Beneficiary or Trustee may hold, store, use, operate, manage and control the Trust Estate and conduct the business thereof, and, from time to time in its sole and absolute discretion and without being under any duty to so act:

(1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;



(2) insure or keep the Trust Estate insured;

(3) manage and operate the Trust Estate and exercise all the rights and powers of Trustor in their name or otherwise with respect to the same;

(4) enter into agreements with others to exercise the powers herein granted Beneficiary or Trustee, all as Beneficiary or Trustee from time to time may determine; and, subject to the absolute assignment of the Leases and Rents to Beneficiary, Beneficiary or Trustee may collect and receive all the Rents, including those past due as well as those accruing thereafter; and shall apply the monies so received by Beneficiary or Trustee in such priority as Beneficiary may determine to (1) the payment of interest and principal due and payable on the Notes or the other Loan Documents, (2) the deposits for taxes and assessments and insurance premiums due, (3) the cost of insurance, taxes, assessments and other proper charges upon the Trust Estate or any part thereof; (4) the compensation, expenses and disbursements of the

28

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agents, attorneys and other representatives of Beneficiary or Trustee; and (5) any other charges or costs required to be paid by Trustor under the terms hereof; and

(5) rent or sublet the Trust Estate or any portion thereof for any purpose permitted by this Deed of Trust.

Beneficiary or Trustee shall surrender possession of the Trust Estate and the Personal Property to Trustor only when all that is due upon such interest and principal, tax and insurance deposits, and all amounts under any of the terms of the Credit Agreement or this Deed of Trust, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

**4.6 Leases.** Beneficiary is authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Trust Estate, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights shall not be, nor be asserted by Trustor to be, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Trust Estate, or any portion thereof. Unless otherwise agreed by Beneficiary in writing, all Space Leases executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Deed of Trust; provided, however that (i) in accordance with the terms of the Loan Documents, Beneficiary may be required to execute a non-disturbance and attornment agreement in connection with certain Space Leases; and (ii) from time to time Beneficiary may execute and record among the land records of the jurisdiction where this Deed of Trust is recorded, subordination statements with respect to such of said Space Leases as Beneficiary may designate in its sole discretion, whereby the Space Leases so designated by Beneficiary shall be made superior to the lien of this Deed of Trust for the term set forth in such subordination statement. From and after the recordation of such subordination statements, and for the respective periods as may be set forth therein, the Space Leases therein referred to shall be superior to the lien of this Deed of Trust and shall not be affected by any foreclosure hereof. All such Space Leases shall contain a provision to the effect that the Trustor and Space Lessee recognize the right of Beneficiary to elect and to effect such subordination of this Deed of Trust and consents thereto.

**4.7 Purchase by Beneficiary.** Upon any foreclosure sale (whether judicial or nonjudicial), Beneficiary may bid for and purchase the property subject to such sale and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

**4.8 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws.** Trustor agrees to the full extent permitted by law that if an Event of Default occurs, neither Trustor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Trust Estate or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Trustor for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Trust Estate marshalled upon any foreclosure of the lien hereof and agrees that Trustee or any court having jurisdiction to foreclose such lien may sell the Trust Estate in part or as an entirety.

**4.9 Receiver.** If an Event of Default occurs, Beneficiary, to the extent permitted by law and subject to compliance with all applicable Nevada Gaming Laws, and without regard to the value, adequacy or occupancy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Trust Estate and to collect all Rents and apply the same as the court may direct, and

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such receiver may be appointed by any court of competent jurisdiction upon application by Beneficiary. Beneficiary may have a receiver appointed without notice to Trustor or any third party, and Beneficiary may waive any requirement that the receiver post a bond. Beneficiary shall have the power to designate and select the Person who shall serve as the receiver and to negotiate all terms and conditions under which such receiver shall serve. Any receiver appointed on Beneficiary's behalf may be an Affiliate of Beneficiary. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. The right to enter and take possession of and to manage and operate the Trust Estate and to collect all Rents, whether by a receiver or otherwise, shall be cumulative to any other right or remedy available to Beneficiary under this Deed of Trust, the Guaranty or the other Loan Documents or otherwise available to Beneficiary and may be exercised concurrently therewith or independently thereof. Beneficiary shall be liable to account only for such Rents (including, without limitation, security deposits) actually received by Beneficiary, whether received pursuant to this section or any other provision hereof. Notwithstanding the appointment of any receiver or other custodian, Beneficiary shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Deed of Trust to, Beneficiary.

**4.10 Suits to Protect the Trust Estate.** Beneficiary shall have the power and authority to institute and maintain any suits and proceedings as Beneficiary, in its sole and absolute discretion, may deem advisable (a) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Deed of Trust, (b) to preserve or protect its interest in the Trust Estate, or (c) to restrain the enforcement of or compliance with any legislation or other Legal Requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Beneficiary's interest.

**4.11 Proofs of Claim.** In the case of any receivership, Insolvency, Bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Trustor, or, to the extent the same would result in an Event of Default hereunder, any Subsidiary, or any guarantor, co-maker or endorser of any of Trustor's obligations, its creditors or its property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim or other documents as it may deem to be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Trustor under the Loan Document, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Trustor after such date.

**4.12 Trustor to Pay the Obligations on Any Default in Payment; Application of Monies by Beneficiary.**

(a) In case of a foreclosure sale of all or any part of the Trust Estate and of the application of the proceeds of sale to the payment of the sums secured hereby, Beneficiary shall be entitled to enforce payment from Trustor of any additional amounts then remaining due and unpaid with respect to the Obligations and to recover judgment against Trustor for any portion thereof remaining unpaid, with interest at the rate applicable to overdue principal as set forth in the Credit Agreement.

(b) Trustor hereby agrees to the extent permitted by law, that no recovery of any judgment by Beneficiary or other action by Beneficiary and no attachment or levy of any execution upon any Property of Trustor by Beneficiary (other than a foreclosure of the entire Trust Estate hereunder) shall in any way affect the Lien and security interest of this Deed of Trust upon the Trust Estate or any part thereof or any Lien, rights, powers or remedies of Beneficiary hereunder, but such Lien, rights, powers and remedies shall continue unimpaired as before.

(c) Any monies collected or received by Beneficiary under this *Section 4.12* shall be first applied to the payment of reasonable compensation, expenses and disbursements of the agents,

30

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attorneys and other representatives of Beneficiary, and the balance remaining shall be applied to the Obligations.

(d) The provisions of this section shall not be deemed to limit or otherwise modify the provisions of any guaranty of the indebtedness evidenced by the Notes or the other Loan Documents.

**4.13 Delay or Omission; No Waiver.** No delay or omission of Beneficiary or any Bank to exercise any right, power or remedy upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Beneficiary whether contained herein or in the other Loan Documents or otherwise available to Beneficiary may be exercised from time to time and as often as may be deemed expedient by Beneficiary.

**4.14 No Waiver of One Default to Affect Another.** No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Beneficiary or the required percentage of the Banks (as determined pursuant to the Credit Agreement), to the extent applicable under the Credit Agreement, (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Notes, the Credit Agreement, this Deed of Trust, the Guaranty, the Disbursement Agreement or any other Loan Document (including any Security Document); (d) releases any part of the Trust Estate from the lien or security interest of this Deed of Trust or any other instrument securing the Obligations; (e) consents to the filing of any map, plat or replat of the Site (to the extent such consent is required); (f) consents to the granting of any easement on the Site (to the extent such consent is required); or (g) makes or consents to any agreement changing the terms of this Deed of Trust or any other Loan Document subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability of Trustor under the Guaranty, this Deed of Trust or any other Loan Document (including any Security Document) or otherwise, or any subsequent purchaser of the Trust Estate or any part thereof or any maker, co-signer, surety or guarantor. No such act or omission shall preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary, shall the lien or security interest of this Deed of Trust be altered thereby, except to the extent expressly provided in any releases, maps, easements or subordinations described in clause (d), (e), (f) or (g) above of this Section 4.14. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Trust Estate, Beneficiary, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Trust Estate or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder, or waiving its right to declare such sale or transfer an Event of Default as provided herein. Notwithstanding anything to the contrary contained in this Deed of Trust or any other Loan Document (including any Security Document), (i) in the case of any non-monetary Event of Default, Beneficiary may continue to accept payments due or secured hereunder without thereby waiving the existence of such or any other Event of Default and (ii) in the case of any monetary Event of Default, Beneficiary may accept partial payments of any sums due or secured hereunder without thereby waiving the existence of such Event of Default if the partial payment is not sufficient to completely cure such Event of Default.

**4.15 Discontinuance of Proceedings; Position of Parties Restored.** If Beneficiary shall have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry of judgment or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such

31

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proceedings shall have resulted in a final determination adverse to Beneficiary, then and in every such case Trustor and Beneficiary shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Beneficiary shall continue as if no such proceedings had occurred or had been taken.

**4.16 Remedies Cumulative.** No right, power or remedy, including without limitation remedies with respect to any security for the Obligations, conferred upon or reserved to Beneficiary by this Deed of Trust or any other Loan Document (including any Security Document) is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or any other Loan Document (including any Security Document), now or hereafter existing at law, in equity or by statute, and Beneficiary shall be entitled to resort to such rights, powers, remedies or security as Beneficiary shall in its sole and absolute discretion deem advisable.

**4.17 Interest After Event of Default.** If an Event of Default shall have occurred and is continuing, all sums outstanding and unpaid under the Obligations shall, at Beneficiary's option, bear interest at the rate applicable to overdue principal set forth in the Credit Agreement until such Event of Default has been cured. Trustor's obligation to pay such interest shall be secured by this Deed of Trust.

**4.18 Foreclosure; Expenses of Litigation.** If Trustee forecloses, reasonable attorneys' fees for services in the supervision of said foreclosure proceeding shall be allowed to the Trustee and Beneficiary as part of the foreclosure costs. In the event of foreclosure of the lien hereof, there shall be allowed and included as additional indebtedness all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after foreclosure sale or entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and guarantees, and similar data and assurances with respect to title as Beneficiary may deem reasonably advisable either to prosecute such suit or to evidence to a bidder at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Trust Estate or any portion thereof. All expenditures and expenses of the nature in this section mentioned, and such expenses and fees as may be incurred in the protection of the Trust Estate and the maintenance of the lien and security interest of this Deed of Trust, including the fees of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Guaranty or any other Loan Document (including any Security Document), the Trust Estate or any portion thereof, including, without limitation, civil, probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the rate applicable to overdue principal set forth in the Credit Agreement, and shall be secured by this Deed of Trust. Trustee waives its right to any statutory fee in connection with any judicial or nonjudicial foreclosure of the lien hereof and agrees to accept a reasonable fee for such services.

**4.19 Deficiency Judgments.** If after foreclosure of this Deed of Trust or Trustee's sale hereunder, there shall remain any deficiency with respect to any Obligations, and Beneficiary shall institute any proceedings to recover such deficiency or deficiencies, all such amounts shall continue to bear interest at the rate applicable to overdue principal set forth in the Credit Agreement. Trustor waives any defense to Beneficiary's recovery against Trustor of any deficiency after any foreclosure sale of the Trust Estate. Trustor expressly waives any defense or benefits that may be derived from any statute granting Trustor any defense to any such recovery by Beneficiary. In addition, Beneficiary and Trustee shall be entitled to recovery of all of their reasonable costs and expenditures (including without limitation any court imposed costs) in connection with such proceedings, including their reasonable attorneys' fees, appraisal fees and the other costs, fees and expenditures referred to in Section 4.18

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above. This provision shall survive any foreclosure or sale of the Trust Estate, any portion thereof and/or the extinguishment of the lien hereof.

**4.20 Waiver of Jury Trial.** Beneficiary and Trustor each waive any right to have a jury participate in resolving any dispute whether sounding in contract, tort or otherwise arising out of, connected with, related to or incidental to the relationship established between them in connection with the Obligations. Any such disputes shall be resolved in a bench trial without a jury.

**4.21 Exculpation of Beneficiary.** The acceptance by Beneficiary of the assignment contained herein with all of the rights, powers, privileges and authority created hereby shall not, prior to entry upon and taking possession of the Trust Estate by Beneficiary, be deemed or construed to make Beneficiary a "mortgagee in possession"; nor thereafter or at any time or in any event obligate Beneficiary to appear in or defend any action or proceeding relating to the Space Leases, the Rents or the Trust Estate, or to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Space Lease or to assume any obligation or responsibility for any security deposits or other deposits except to the extent such deposits are actually received by Beneficiary, nor shall Beneficiary, prior to such entry and taking, be liable in any way for any injury or damage to person or property sustained by any Person in or about the Trust Estate.

## ARTICLE FIVE

### RIGHTS AND RESPONSIBILITIES OF TRUSTEE;

### OTHER PROVISIONS RELATING TO TRUSTEE

Notwithstanding anything to the contrary in this Deed of Trust, Trustor and Beneficiary agree as follows.

**5.1 Exercise of Remedies by Trustee.** To the extent that this Deed of Trust or applicable law, including all applicable Nevada Gaming Laws, authorizes or empowers, or does not require approval for, Beneficiary to exercise any remedies set forth in Article Four hereof or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under the law of the State of Nevada) shall have the power to exercise any or all such remedies, and to perform any acts provided for in this Deed of Trust in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the State of Nevada. In connection therewith, Trustee: (a) shall not exercise, or waive the exercise of, any of Beneficiary's remedies (other than any rights of Trustee to any indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise or waiver. Trustee may, however, decline to follow Beneficiary's request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

**5.2 Rights and Privileges of Trustee.** To the extent that this Deed of Trust requires Trustor to indemnify Beneficiary or reimburse Beneficiary for any expenditures Beneficiary may incur, Trustee shall be entitled to the same indemnity and the same rights to reimbursement of expenses as Beneficiary, subject to such limitations and conditions as would apply in the case of Beneficiary. To the extent that this Deed of Trust negates or limits Beneficiary's liability as to any matter, Trustee shall be entitled to the same negation or limitation of liability. To the extent that Trustor, pursuant to this Deed of Trust, appoints Beneficiary as Trustor's attorney in fact for any purpose, Beneficiary or (when so instructed by Beneficiary) Trustee shall be entitled to act on Trustor's behalf without joinder or confirmation by the other.

**5.3 Resignation or Replacement of Trustee.** Trustee may resign by an instrument in writing addressed to Beneficiary, and Trustee may be removed at any time with or without cause (i.e., in Beneficiary's sole and absolute discretion) by an instrument in writing executed by Beneficiary. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Beneficiary shall deem it desirable to appoint a substitute, successor or replacement Trustee to act instead of Trustee originally named (or in place of any substitute, successor or replacement Trustee), then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor, substitute or replacement Trustee, without any formality other than appointment and designation in writing executed by Beneficiary, which instrument shall be recorded if required by the law of the State of Nevada. The law of the State of Nevada (including, without limitation, the Nevada Gaming Laws) shall govern the qualifications of any Trustee. The authority conferred upon Trustee by this Deed of Trust shall automatically extend to any and all other successor, substitute and replacement Trustee(s) successively until the obligations secured hereunder have been paid in full or the Trust Estate has been sold hereunder or released in accordance with the provisions of the Guaranty and the other Loan Documents (including the Security Documents). Beneficiary's written appointment and designation of any Trustee shall be full evidence of Beneficiary's right and authority to make the same and of all facts therein recited. No confirmation, authorization, approval or other action by Trustor shall be required in connection with any resignation or other replacement of Trustee.

**5.4 Authority of Beneficiary.** If Beneficiary is a banking corporation, state banking corporation or a national banking association and the instrument of appointment of any successor or replacement Trustee is executed on Beneficiary's behalf by an officer of such corporation, state banking corporation or national banking association, then such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary.

**5.5 Effect of Appointment of Successor Trustee.** Upon the appointment and designation of any successor, substitute or replacement Trustee, and subject to compliance with applicable Nevada Gaming Laws and other applicable laws, Trustee's entire estate and title in the Trust Estate shall vest in the designated successor, substitute or replacement Trustee. Such successor, substitute or replacement Trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

**5.6 Confirmation of Transfer and Succession.** Upon the written request of Beneficiary or of any successor, substitute or replacement Trustee, any former Trustee ceasing to act shall execute and deliver an instrument transferring to such successor, substitute or replacement Trustee all of the right, title, estate and interest in the Trust Estate of Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver all properties and moneys held by said Trustee hereunder to said successor, substitute or replacement Trustee.

**5.7 Exculpation.** Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or otherwise be responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or knowing violation of law. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law). Trustee shall be under no liability for interest on any moneys received by it hereunder.

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**5.8 Endorsement and Execution of Documents.** Upon Beneficiary's written request, Trustee shall, without liability or notice to Trustor, execute, consent to, or join in any instrument or agreement in connection with or necessary to effectuate the purposes of the Guaranty and the other Loan Documents (including the Security Documents). Trustor hereby irrevocably designates Trustee as its attorney in fact to execute, acknowledge and deliver, on Trustor's behalf and in Trustor's name, all instruments or agreements necessary to implement any provision(s) of this Deed of Trust or to further perfect the lien created by this Deed of Trust on the Trust Estate. This power of attorney shall be deemed to be coupled with an interest and shall survive any disability of Trustor.

**5.9 Multiple Trustees.** If Beneficiary appoints multiple trustees, then any Trustee, individually, may exercise all powers granted to Trustee under this instrument, without the need for action by any other Trustee(s).

**5.10 Terms of Trustee's Acceptance.** Trustee accepts the trust created by this Deed of Trust upon the following terms and conditions:

(a) **Delegation.** Trustee may exercise any of its powers through appointment of attorney(s) in fact or agents.

(b) **Counsel.** Trustee may select and employ legal counsel (including any law firm representing Beneficiary). Trustor shall reimburse all reasonable legal fees and expenses that Trustee may thereby incur.

(c) **Security.** Trustee shall be under no obligation to take any action upon any Event of Default unless furnished security or indemnity, in form satisfactory to Trustee, against costs, expenses, and liabilities that Trustee may incur.

(d) **Costs and Expenses.** Trustor shall reimburse Trustee, as part of the Obligations secured hereunder, for all reasonable disbursements and expenses (including reasonable legal fees and expenses) incurred by reason of and as provided for in this Deed of Trust, including any of the foregoing incurred in Trustee's administering and executing the trust created by this Deed of Trust, in complying with all applicable Nevada Gaming Laws and performing Trustee's duties and exercising Trustee's powers under this Deed of Trust.

(e) **Release.** Upon full and indefeasible payment and performance of the Obligations secured hereunder, Beneficiary shall request that Trustee release this Deed of Trust. Upon receipt of such request Trustee shall release this Deed of Trust to Trustor. Trustor shall pay all costs of recordation, if any.

## ARTICLE SIX

### MISCELLANEOUS PROVISIONS

**6.1 Heirs, Successors and Assigns Included in Parties.** Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included, and subject to the limitations set forth in Section 1.9, all covenants and agreements contained in this Deed of Trust, by or on behalf of Trustor or Beneficiary shall bind and inure to the benefit of its heirs, successors and assigns, whether so expressed or not.

6.2 **Addresses for Notices, Etc.** Any notice, report, demand or other instrument authorized or required to be given or furnished under this Deed of Trust to Trustor or Beneficiary shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered by hand at such address or (ii) three (3) days after the same is

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deposited in the United States mail as first class certified mail, return receipt requested, postage paid, whether or not the same is actually received by such party:

Beneficiary: Deutsche Bank Trust Company Americas  
31 West 52<sup>nd</sup> Street, 7<sup>th</sup> Floor  
New York, New York 10019  
Attn: Jeff Baevsky

With a copy to: Latham & Watkins  
701 B. Street, Suite 2100  
San Diego, California 92101  
Attn: Sony Ben-Moshe, Esq.

Trustor: \_\_\_\_\_  
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\_\_\_\_\_  
Attn: Legal Department

With a copy to: Irell & Manella LLP  
1800 Avenue of the Stars, Suite 900  
Los Angeles, California 90067  
Attn: C. Kevin McGeehan

Trustee: Nevada Title Company  
2500 North Buffalo, Suite 150  
Las Vegas, Nevada 89128  
Attn: Robbie Graham

6.3 **Change of Notice Address.** Any Person may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed to that person, by furnishing written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by such other parties.

6.4 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

6.5 **Invalid Provisions to Affect No Others.** In the event that any of the covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Guaranty or any other Loan Document (including the Security Documents) shall be invalid, illegal or unenforceable in any respect, the validity of the lien hereof and the remaining covenants, agreements, terms or provisions contained herein or in the Notes, the Credit Agreement, the Guaranty or any other Loan Document (including the Security Documents) shall be in no way affected, prejudiced or disturbed thereby. To the extent permitted by law, Trustor waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

6.6 **Changes and Priority Over Intervening Liens.** Neither this Deed of Trust nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Trustor and Beneficiary relating to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

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6.7 **Estoppel Certificates.** Within ten (10) Business Days after Beneficiary's written request, Trustor shall from time to time execute a certificate, in recordable form (an "Estoppel Certificate"), stating, except to the extent it would be inaccurate to so state: (a) the current amount of the Obligations secured hereunder and all elements thereof, including principal, interest, and all other elements; (b) that Trustor has no defense, offset, claim, counterclaim, right of recoupment, deduction, or reduction against any of the Obligations secured hereunder; (c) that neither the Guaranty, this Deed of Trust nor any other Loan Documents (including the Security Documents) to which it is a party have been amended, whether orally or in writing; (d) that Trustor has no claims against Beneficiary of any kind; (e) that any power of attorney granted to Beneficiary is in full force and effect; and (f) such other matters relating to this Deed of Trust, the Guaranty or any other Loan Document (including any Security Document) to which it is a party and the relationship of Trustor and Beneficiary as Beneficiary shall request. In addition, the Estoppel Certificate shall set forth the reasons why it would be inaccurate to make any of the foregoing assurances.

6.8 **Waiver of Setoff and Counterclaim; Other Waivers.** All Obligations shall be payable without setoff, counterclaim or any deduction whatsoever. Trustor hereby waives the right to assert a counterclaim (other than a compulsory counterclaim) in any action or proceeding brought against it by Beneficiary and/or any Bank under the Loan Documents, or arising out of or in any way connected with this Deed of Trust or the other Loan Documents (including the Security Documents) or the Obligations.

**6.9 Governing Law.** The Credit Agreement, the Guaranty and the Notes provide that they are governed by, and construed and enforced in accordance with, the laws of the State of New York. This Deed of Trust shall also be construed under and governed by the laws of the State of New York; provided, however, that (i) the terms and provisions of this Deed of Trust pertaining to the priority, perfection, enforcement or realization by Beneficiary of its respective rights and remedies under this Deed of Trust with respect to the Trust Estate shall be governed and construed and enforced in accordance with the internal laws of the State of Nevada (the "State") without giving effect to the conflicts-of-law rules and principles of the State; (ii) Trustor agrees that to the extent deficiency judgments are available under the laws of the State after a foreclosure (judicial or nonjudicial) of the Trust Estate, or any portion thereof, or any other realization thereon by Beneficiary or any Bank under the Loan Documents, Beneficiary or such Bank, as the case may be, shall have the right to seek such a deficiency judgment against Trustor in the State; and (iii) Trustor agrees that if Beneficiary or any Bank under the Loan Documents obtains a deficiency judgment in another state against Trustor, then Beneficiary or such Bank, as the case may be, shall have the right to enforce such judgment in the State to the extent permitted under the laws of the State, as well as in other states.

**6.10 Required Notices.** Trustor shall notify Beneficiary promptly of the occurrence of any of the following and shall immediately provide Beneficiary a copy of the notice or documents referred to: (i) receipt of notice from any Governmental Authority relating to all or any material part of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (ii) receipt of any notice from any tenant leasing all or any material portion of the Trust Estate if such notice relates to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iii) receipt of notice from the holder of any Permitted Lien relating to a default or act, omission or circumstance which would result in a default after notice or passage of time or both; (iv) the commencement of any proceedings or the entry of any judgment, decree or order materially affecting all or any portion of the Trust Estate or which involve the potential liability of Trustor or its Affiliates in an amount in excess of \$25,000,000 (other than for personal injury actions and related property damage suits which are covered by such insurance); or (v) commencement of any judicial or administrative proceedings or the entry of any judgment, decree or order by or against or otherwise affecting Trustor or any Affiliate of

37

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Trustor, a material portion of the Trust Estate, or a material portion of the Personal Property, or any other action by any creditor or lessor thereof as a result of any default under the terms of any lease.

**6.11 Reconveyance.** Upon written request of Trustor when the Obligations secured hereby have been satisfied in full, Beneficiary shall cause Trustee to reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

**6.12 Attorneys' Fees.** Without limiting any other provision contained herein, Trustor agrees to pay all costs of Beneficiary or Trustee incurred in connection with the enforcement of this Deed of Trust, the Guaranty or the other Loan Documents to which it is a party, including without limitation all reasonable attorneys' fees whether or not suit is commenced, and including, without limitation, fees incurred in connection with any probate, appellate, bankruptcy, deficiency or any other litigation proceedings, all of which sums shall be secured hereby.

**6.13 Late Charges.** By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to collect any late charge thereon or interest thereon at the interest rate on the Notes or as otherwise specified in the Credit Agreement, if so provided, not then paid or its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any amounts not so paid.

**6.14 Cost of Accounting.** Trustor shall pay to Beneficiary, for and on account of the preparation and rendition of any accounting, which Trustor may be entitled to require under any law or statute now or hereafter providing therefor, the reasonable costs thereof.

**6.15 Right of Entry.** Subject to compliance with applicable Nevada Gaming Laws, Beneficiary may at any reasonable time or times and on reasonable prior written notice to Trustor make or cause to be made entry upon and inspections of the Trust Estate or any part thereof in person or by agent.

**6.16 Corrections.** Trustor shall, upon request of Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust (including, but not limited to, in the exhibits and schedules attached hereto) or in the execution or acknowledgement hereof, and shall execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

**6.17 Statute of Limitations.** To the fullest extent allowed by the law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor.

**6.18 Subrogation.** Should the proceeds of any loan or advance made by Beneficiary or any Bank under the Credit Agreement, repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by Beneficiary or any Bank under the Credit Agreement, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior or superior lien or encumbrance upon the Trust Estate, or any part thereof, then, as additional security hereunder, Trustee, on behalf of Beneficiary, shall be subrogated to any and all rights, superior titles, liens, and equities owned or claimed by any owner or holder of said outstanding liens, charges, and indebtedness, however remote, regardless of whether said liens, charges, and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

38

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**6.19 Joint and Several Liability.** All obligations of Trustor hereunder, if more than one, are joint and several. Recourse for deficiency after sale hereunder may be had against the property of Trustor, without, however, creating a present or other lien or charge thereon.

**6.20 Homestead.** Trustor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Trust Estate as against the collection of the Obligations, or any part hereof.

6.21 **Context.** In this Deed of Trust, whenever the context so requires, the neuter includes the masculine and feminine, and the singular including the plural, and vice versa.

6.22 **Time.** Time is of the essence of each and every term, covenant and condition hereof. Unless otherwise specified herein, any reference to "days" in this Deed of Trust shall be deemed to mean "calendar days."

6.23 **Interpretation.** As used in this Deed of Trust unless the context clearly requires otherwise: The terms "herein" or "hereunder" and similar terms without reference to a particular section shall refer to the entire Deed of Trust and not just to the section in which such terms appear; the term "lien" shall also mean a security interest, and the term "security interest" shall also mean a lien.

6.24 **Effect of NRS 107.030.** To the extent not inconsistent herewith, the provisions of NRS 107.030 (1), (2) (in amounts as hereinabove provided for), (3), (4) (with interest at the default rate provided for under the Credit Agreement), (5), (6), (7) (reasonable), (8) and (9) are included herein by reference and made part of this Deed of Trust.

6.25 **Amendments.** This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought and only as permitted by the provisions of the Guaranty.

6.26 **No Conflicts.** In the event that any of the provisions contained here conflict with the Guaranty, the provisions contained in the Credit Agreement and the Guaranty shall prevail.

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**ARTICLE SEVEN**

**POWER OF ATTORNEY**

7.1 **Grant of Power.** Subject to compliance with applicable Nevada Gaming Laws, Trustor irrevocably appoints Beneficiary and any successor thereto as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable only during the continuance of an Event of Default to act for Trustor in its name, place and stead as hereinafter provided:

7.1.1 **Possession and Completion.** To take possession of the Site and the Project, remove all employees, contractors and agents of Trustor therefrom, complete or attempt to complete the work of construction, and market, sell or lease the Site and the Project.

7.1.2 **Plans.** To make such additions, changes and corrections in the current Plans and Specifications as may be necessary or desirable, in Beneficiary's reasonable discretion, or as it deems proper to complete the Project.

7.1.3 **Employment of Others.** To employ such contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers and other agents as Beneficiary, in its discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.4 **Security Guards.** To employ watchmen to protect the Site and the Project from injury.

7.1.5 **Compromise Claims.** To pay, settle or compromise all bills and claims then existing or thereafter arising against Trustor, which Beneficiary, in its discretion, deems proper for the protection or clearance of title to the Site or Personal Property, or for the protection of Beneficiary's interests with respect thereto.

7.1.6 **Legal Proceedings.** To prosecute and defend all actions and proceedings in connection with the Site or the Project.

7.2 **Other Acts.** To execute, acknowledge and deliver all other instruments and documents in the name of Trustor that are necessary or desirable, to exercise Trustor's rights under all contracts concerning the Site or the Project, including, without limitation, under any Space Leases, and to do all other acts with respect to the Site or the Project that Trustor might do on its own behalf, as Beneficiary, in its reasonable discretion, deems proper.

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IN WITNESS WHEREOF, Trustor has executed this Deed of Trust, [Leasehold Deed of Trust,] Assignment of Leases and Rents, Security Agreement and Fixture Filing as of the day and year first above written.

TRUSTOR:

\_\_\_\_\_  
a \_\_\_\_\_

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STATE OF NEVADA            )  
  ) ss:  
COUNTY OF CLARK         )

This instrument was acknowledged before me on \_\_\_\_\_, 200 by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_.

SCHEDULE A

DESCRIPTION OF LAND

[SCHEDULE B

DESCRIPTION OF LEASED PREMISES]

EXHIBIT F

FORM OF INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (the "Indemnity") is entered into as of the day of , 200 , by , a (the "Company"), to and for the benefit of DEUTSCHE BANK TRUST COMPANY AMERICAS, as administrative agent (the "Administrative Agent") for the Lenders under the Credit Agreement (in each case as hereinafter defined), and, to the extent not otherwise referenced, the Indemnified Parties (as hereinafter defined).

WITNESSETH:

A. Pursuant to that certain Credit Agreement dated as of October , 2002 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among Wynn Las Vegas, LLC, a Nevada limited liability company (the "Borrower"), the banks and other financial institutions or entities (the "Lenders") from time to time parties thereto, the Administrative Agent, Deutsche Bank Securities Inc, as lead arranger and joint book running manager, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York Branch, as arranger and joint documentation agent, and J.P. Morgan Securities Inc., as joint documentation agent, the Lenders have agreed to make loans (the "Loans") to the Borrower. Capitalized terms used herein, but not otherwise defined herein, shall have the meaning assigned to such terms in the Credit Agreement.

B. The Loans are secured by, among other things, the Deed of Trust (as hereinafter defined), which Deed of Trust encumbers the real property described therein (the "Real Property"), and the improvements now or hereafter constructed thereon (which improvements, together with the Real Property, shall hereinafter be referred to as the "Property").

C. The Lenders have made it a condition of the Lenders making the Loans that this Indemnity is executed and delivered by the Company and the Lenders make the Loans in reliance on this Indemnity.

D. The obligations of the Company hereunder are secured under, among other things, the Deed of Trust.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company covenants and agrees to and for the benefit of the Administrative Agent for the benefit of the Lenders as follows:

1. Definitions.

(a) "Claims" means any and all actual out-of-pocket costs incurred by an Indemnified Party (as defined below) including, without limitation, reasonable attorneys' fees and expenses, expenses, losses, damages, liabilities, fines, penalties, charges, injury to person, property, or natural resources, administrative and judicial proceedings and orders, injunctive relief, judgments, remedial action requirements and enforcement actions of any kind, arising directly or indirectly, in whole or in part, out of or attributable to (i) any breach or default by the Company in the performance of any of its obligations under paragraphs 3(a)-(d) hereof, or (ii) any Release (as defined below) or threatened Release, whether foreseeable or unforeseeable, arising prior to any release, reconveyance or foreclosure of the Deed of Trust (or following any such release, conveyance or foreclosure to the extent attributable to pre-existing conditions), or conveyance in lieu of foreclosure; and in each instance, regardless of when such Release, inaccuracy or breach is

discovered and regardless of whether or not caused by or in the control of the Company, any employees, agents, contractors or subcontractors of the Company or any third persons. Without limiting the generality of the foregoing and for purposes of clarification only, Claims also include:

(i) actual out-of-pocket costs reasonably incurred by an Indemnified Party in connection with (x) determining whether the Property is in compliance with all applicable Hazardous Substances Laws (as hereinafter defined), (y) taking any necessary precautions to protect against any Release or threatened Release, or (z) any removal, remediation of any kind and disposal of any Hazardous Substances (as hereinafter defined), and

(ii) any repair of any damage to the Property or any other property caused by any such precautions, removal, remediation or disposal.



The rights of the Indemnified Parties hereunder shall not be limited by any investigation or the scope of any investigation undertaken by or on behalf of the Lenders in connection with the Property prior to the date hereof. Notwithstanding the foregoing, Claims shall exclude any Release caused by or resulting from the negligence or misconduct of any of the Indemnified Parties.

(b) "*Deed of Trust*" means that certain Deed of Trust, [Leasehold Deed of Trust,] Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of \_\_\_\_\_, 200\_\_ and made by the Company, as trustor, to \_\_\_\_\_, as trustee, for the benefit of the Administrative Agent, as beneficiary, as the same may be amended, supplemented or otherwise modified from time to time.

(c) "*Hazardous Substances*" means and includes any flammable explosives, radioactive materials or hazardous, toxic or dangerous wastes, substances or related materials or any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority or which, even if not so regulated, may or could pose a hazard to the health and safety of the occupants of the Property or of property adjacent to the Property, including, but not limited to, asbestos, PCBs, petroleum products and by-products (including, but not limited to, crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), substances defined or listed as "hazardous substances," "hazardous materials," "hazardous wastes" or "toxic substances" or similarly identified in, pursuant to, or for purposes of, any of the Hazardous Substances Laws, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as now or hereafter amended (42 U.S.C. Section 9601, *et seq*); the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Section 1801, *et seq*); the Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. Section 6901, *et seq*); any so-called "Superfund" or "Superlien" law; or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material; or any substances or mixture regulated under the Toxic Substance Control Act of 1976, as now or hereafter amended (15 U.S.C. Section 2601 *et seq*); and any "pollutant" under the Clean Water Act, as now or hereafter amended (33 U.S.C. Section 1251 *et seq*); and any hazardous air pollutant under the Clean Air Act (42 U.S.C. Section 7901 *et seq*), in each case as now or hereafter amended.

(d) "*Hazardous Substances Laws*" means all federal, state and local environmental, health or safety laws, ordinances, regulations, rules of common law or policies regulating Hazardous Substances, including, without limitation, those governing the generation, use, refinement, handling, treatment, removal, storage, production, manufacture, transportation or disposal of Hazardous Substances, as such laws, ordinances, regulations, rules and policies may be in effect from time to time and be applicable to the Property.

3

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(e) "*Indemnified Parties*" means each Agent, Manager, Arranger and Lender in its individual capacity and each of their respective directors, officers, shareholders, agents, employees, participants, successors and assigns and shall also include any purchasers of all or any portion of the Property at any foreclosure sale and the initial purchaser following the consummation of any deed in lieu of foreclosure, but not including any other purchasers of the Property.

(f) "*Proceedings*" means the institution of, or threat of, any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration against or affecting the Company or any property of the Company, in each case with respect to Hazardous Substance Laws, Hazardous Substances or Releases.

(g) "*Release*" means any presence, use, generating, storing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Substances into the environment, or about, on, from, under, within or affecting the Property, or transported to or from the Property, including continuing migration of Hazardous Substances into or through soil, surface water or groundwater.

## 2. *Environmental Indemnification by the Company.*

(a) The Company hereby agrees to defend (with counsel reasonably approved by the Administrative Agent), indemnify and hold the Indemnified Parties harmless from and against, and shall reimburse the Indemnified Parties for, any and all Claims.

(b) The Indemnified Parties shall have the right to employ independent counsel reasonably satisfactory to the Company to represent it in any action or proceeding to which this Indemnity is applicable if and to the extent that the Indemnified Parties determine in good faith that their rights and interests may be compromised or not fully and adequately represented by legal counsel acting for the Company, whether on account of any potential defenses that the Company may have to its obligations under this Indemnity or otherwise, and in such event the reasonable fees and expenses of the Indemnified Parties' independent counsel shall be paid by the Company.

(c) Subject to the last sentence of Section 1(a) above, the Company's obligations hereunder shall not be diminished or affected in any respect as a result of any notice or disclosure, if any, to, or other knowledge, if any, by, any Indemnified Party of any Release or threatened Release, or as a result of any other matter related to the Company's obligations hereunder, nor shall any Indemnified Party be deemed to have permitted or acquiesced in any Release or any breach of the Company's other obligations hereunder, solely because any Indemnified Party had notice, disclosure or knowledge thereof, whether at the time this Indemnity is delivered or at any time thereafter.

(d) This Indemnity shall not be limited by any representation, warranty or indemnity of the Company made herein or in connection with any indebtedness secured by the Deed of Trust, irrespective of whether the Company has knowledge as of the date of the Deed of Trust, or during the term of the Deed of Trust, of the matters to which such representation, warranty or indemnity relates.

## 3. *Environmental Covenants*

(a) The Company shall not, and shall use commercially reasonable efforts to not permit any tenants or other occupants of the Property to, at any time in the future, cause or permit a Release, except in compliance with applicable Hazardous Substances Laws.

(b) Upon becoming aware thereof, the Company shall give prompt written notice to the Administrative Agent of any pending Claims or of any Proceedings.

4

(c) The Company shall give prompt written notice to the Administrative Agent of the Company's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Substances Laws including, without limitation, the Company's discovery of any occurrence or condition on the Property or on any real property adjoining or in the vicinity of the Property that could cause the Property to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Substances Laws.

(d) In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, precautionary actions or other remedial work of any kind or nature (hereinafter, "*Remedial Work*") is required under any applicable Hazardous Substances Law as a result of, or in connection with, any Release, suspected Release, or threatened Release, the Company shall within thirty (30) days after receipt of information that such Remedial Work is or may be required (or such shorter period of time as may be required under applicable law, regulation, order or agreement), commence the performance of, or cause to be commenced, and thereafter diligently prosecute to completion, the performance of all such Remedial Work in compliance with all applicable Hazardous Substances Laws. All Remedial Work shall be performed by one or more contractors, approved in advance in writing by the Administrative Agent, and under the supervision of a consulting engineer approved in advance in writing by the Administrative Agent, which consent shall not be unreasonably withheld, delayed or conditioned. All costs and expenses of such Remedial Work shall be paid by the Company, including, without limitation, the charges of such contractor(s) and/or the consulting engineer, and the Indemnified Parties' reasonable attorneys' fees and costs, including, without limitation, fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event the Company shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, the performance of such Remedial Work, the Administrative Agent or any other Indemnified Party may, but shall not be required to, cause such Remedial Work to be performed and all costs and expenses thereof, or incurred in connection therewith, shall be deemed Claims hereunder.

#### 4. *Liability.*

(a) Notwithstanding any other provisions of this Indemnity or any of the Loan Documents, any liability of the Company hereunder shall be its personal liability (but such personal liability shall not be deemed to incorporate personal liability of its directors, officers, employees or agents), and may be asserted against its interest in the Property as well as against any and all of its other assets.

(b) Without limiting the foregoing, the obligations of the Company hereunder shall survive the following events, to the maximum extent permitted by law: (i) repayment of the Obligations and any judicial or nonjudicial foreclosure under the Deed of Trust or conveyance in lieu of such foreclosure, notwithstanding that all or any portion of any obligations secured by the Deed of Trust shall have been discharged thereby, (ii) any election by any Indemnified Party to purchase all or any portion of the Property at a foreclosure sale by crediting all or any portion of the obligations secured by the Deed of Trust against the purchase price therefor (except to the extent and only to the extent that such Indemnified Party has specifically elected in writing in its sole discretion to credit against the purchase price any Claims hereunder which were liquidated in amount at the time of such foreclosure sale, it being presumed for these purposes that the obligations secured by the Deed of Trust shall be discharged by any such crediting in the order set forth in the Deed of Trust), (iii) any release or reconveyance of the Deed of Trust, any waiver of the lien of the Deed of Trust, or any release or waiver of any other security for the Obligations, and (iv) any termination, cancellation or modification of any Loan Document. Upon and following the occurrence of any of the foregoing, the obligations of the Company hereunder shall remain unsecured obligations, and shall be enforceable against the Company to the fullest extent permitted by applicable law.

5

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(c) The obligations of the Company hereunder are not intended to be the obligations of a surety or guarantor. The liability of the Company under this Indemnity shall in no way be limited or impaired by (i) any extensions of time for performance required by the Loan Documents; (ii) the accuracy or inaccuracy of any representations and warranties made by the Company in any of the Loan Documents; or (iii) the release of any person or entity from performance or observance of any of the agreements, covenants, terms, or conditions contained in any of the Loan Documents by operation of law or otherwise.

(d) The rights and remedies of the Indemnified Parties under this Indemnity (i) shall be in addition to any other rights and remedies of such Indemnified Parties under any Loan Document or at law or in equity, and (ii) may be enforced by any of the Indemnified Parties, to the maximum extent permitted by law, without regard to or affecting any rights and remedies that such Indemnified Party may have under any Loan Document or at law or in equity, and without regard to any limitations on such Indemnified Party's recourse for recovery of the indebtedness represented by the Obligations as may be provided in any Loan Document.

5. *Site Visits, Observation and Testing.* The Administrative Agent and any of the other Indemnified Parties and their respective agents and representatives shall have the right at any reasonable time, and upon reasonable prior notice, but subject to the rights of tenants under their leases, to enter and visit the Property to make such inspections and inquiries as they shall deem appropriate, including inspections for violations of any of the terms of this Indemnity and for determining the existence, nature and magnitude of any past or present Release or threatened Release, and they shall also have the right, following any Event of Default, or where the Administrative Agent has a reasonable basis upon which to believe that the Property may be harmed, unsafe or contaminated, and upon reasonable prior notice, to enter and visit the Property to make such tests (including, without limitation, taking and removing soil or groundwater samples) as they shall deem appropriate. Neither the Administrative Agent nor any of the other Indemnified Parties have any duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by the Administrative Agent or any other Indemnified Party shall impose any liability on the Administrative Agent or such other Indemnified Party. In no event shall any site visit, observation or testing by the Administrative Agent or any other Indemnified Party be a representation that Hazardous Substances are or are not present in, on or under the Property, or that there has been or shall be compliance with any Hazardous Substances Laws or any other applicable governmental law. Neither the Company nor any other party is entitled to rely on any site visit, observation or testing by the Administrative Agent or any other Indemnified Party. Neither the Administrative Agent nor any of the other Indemnified Parties owe any duty of care to protect the Company or any other party against, or to inform the Company or any other party of, any Hazardous Substances or any other adverse condition affecting the Property. The Administrative Agent and any other Indemnified Party shall give the Company reasonable notice before entering the Property, and shall make reasonable efforts to avoid interfering with the Company's use of the Property in exercising any rights provided in this paragraph 5.

6. *Interest Accrued.* Any amount owed hereunder to an Indemnified Party not paid within thirty (30) days after written demand from such Indemnified Party with an explanation of the amounts claimed shall bear interest at a rate per annum equal to the maximum interest rate applicable to overdue principal set forth in the Credit Agreement.

7. *Subrogation of Indemnity Rights.* If the Company fails to fully perform its obligations hereunder, any Indemnified Party shall be entitled to pursue any rights or claims that the Company may have against any present, future or former owners, tenants or other occupants or users of the Property, any portion thereof or any adjacent or proximate properties, relating to any Claim or the performance of Remedial Work (to the extent of performance by such Indemnified Party), and the Company hereby assigns all of such rights and claims to the Indemnified Parties under such

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circumstances and shall take all actions required by the Indemnified Parties to cooperate with such Indemnified Parties in enforcing such rights and claims under such circumstances.

8. *Reliance.* The Company acknowledges that it is making and giving the indemnities and representations and covenants contained in this Indemnity with the knowledge that the Administrative Agent and the Lenders are relying on such indemnities and representations and covenants in entering into the Loan Documents and making the Loans to the Company.

9. *Successors and Assigns.* This Indemnity shall inure to the benefit of each Indemnified Party's successors and assigns, and shall be binding upon the heirs, successors, and assigns of the Company. The Company shall not assign any rights or obligations under this Indemnity without first obtaining the written consent of the Administrative Agent, which may be given or withheld in the sole discretion of the Administrative Agent. Notwithstanding any other provision of this Indemnity to the contrary, the Company shall not be released from its obligations hereunder without obtaining the written consent of the Administrative Agent, which consent may be given or withheld in the sole discretion of the Administrative Agent. Nothing herein shall be deemed to be a consent to the transfer of the Property which transfer would be otherwise prohibited by any Loan Document.

10. *Miscellaneous.* This Indemnity shall be governed by and construed in accordance with the laws of the State of Nevada. If this Indemnity is executed by more than one person or entity, the liability of the undersigned hereunder shall be joint and several. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action, and the Company hereby waives and covenants not to assert any defense in the nature of splitting of causes of action or merger of judgments. In no event shall any provision of this Indemnity be deemed to be a waiver of or to be in lieu of any right or claim, including, without limitation, any right of contribution or other right of recovery, that any party to this Indemnity might otherwise have against any other party to this Indemnity under any Hazardous Substances Laws. If any term of this Indemnity or any application thereof shall be invalid, illegal or unenforceable, the remainder of this Indemnity and any other application of such term shall not be affected thereby. No delay or omission in exercising any right hereunder shall operate as a waiver of such right or any other right.

11. *Notices.* All notices expressly provided hereunder to be given by the Company to the Administrative Agent and all notices and demands of any kind or nature whatsoever which the Company may be required or may desire to give to or serve on the Administrative Agent shall be in

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writing and shall be served by certified mail, return receipt requested, or by a reputable commercial overnight carrier that provides a receipt, such as Federal Express. Notice shall be addressed as follows:

Administrative Agent:

Deutsche Bank Trust Company Americas  
31 West 52<sup>nd</sup> Street  
New York, New York 10019  
Attn.: George Reynolds  
Telecopy No.: (646) 324-7450  
Telephone No.: (646) 324-2112

with a copy to:

Latham & Watkins  
701 "B" Street, Suite 2100  
San Diego, California 92101  
Attn.: Sony Ben-Moshe, Esq.  
Telecopy No.: (619) 696-7419  
Telephone No.: (619) 236-1234

The Company:

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Attn.:  
Telecopy No.: (\_\_\_\_)\_\_\_\_\_  
Telephone No.: (\_\_\_\_)\_\_\_\_\_

with a copy to:

Irell & Manella LLP  
1800 Avenue of the Stars, Suite 900  
Los Angeles, California 90067  
Attn.: C. Kevin McGeehan, Esq.  
Telecopy No.: (310) 282-5610  
Telephone No.: (310) 203-7110

12. *Attorneys' Fees and Expenses.* If the Administrative Agent or any Lender refers this Indemnity or any of the other Loan Documents to an attorney to enforce, construe or defend the same, as a consequence of any Event of Default, with or without the filing of any legal action or proceeding, the Company shall pay to the Administrative Agent, immediately upon demand, the amount of all costs incurred by the Administrative Agent in connection therewith (including,

without limitation, reasonable attorneys' fees), together with interest thereon from the date of award at the maximum interest rate applicable to overdue principal set forth in the Credit Agreement.

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8

IN WITNESS WHEREOF, this Indemnity is executed as of the day and year first above written.

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

9

EXHIBIT G-1

FORM OF TERM NOTE

THIS NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND PROVISIONS OF THE CREDIT AGREEMENT REFERRED TO BELOW. TRANSFERS OF THIS NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MUST BE RECORDED IN THE REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF SUCH CREDIT AGREEMENT.

\$ \_\_\_\_\_ New York, New York  
No. \_\_\_\_\_, 200

FOR VALUE RECEIVED, the undersigned, WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "*Borrower*"), hereby unconditionally promises to pay to \_\_\_\_\_ (the "*Lender*") or its registered assigns at the Payment Office specified in the Credit Agreement (as hereinafter defined) in lawful money of the United States and in immediately available funds, the principal amount of (a) \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or, if less, (b) the unpaid principal amount of the Term Loans made by the Lender pursuant to the Credit Agreement. The principal amount shall be paid in the amounts and on the dates specified in Section 2.2 of the Credit Agreement. The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in Section 2.15 of the Credit Agreement.

The holder of this Note is authorized to endorse on the schedules annexed hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof the date, Type and amount of the Term Loans and the date and amount of each payment or prepayment of principal with respect thereto, each conversion of all or a portion thereof to another Type, each continuation of all or a portion thereof as the same Type and, in the case of Eurodollar Loans, the length of each Interest Period with respect thereto. Each such endorsement shall constitute *prima facie* evidence of the accuracy of the information endorsed. The failure to make any such endorsement or any error in any such endorsement shall not affect the obligations of the Borrower in respect of the Term Loans.

This Note (a) is one of the Term Notes referred to in the Credit Agreement dated as of October \_\_\_\_\_, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Credit Agreement*"), among the Borrower, the Lender, the several banks and other financial institutions or entities from time to time parties thereto, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Deutsche Bank Trust Company Americas, as administrative agent and swing line lender, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York Branch, as arranger and joint documentation agent, and J.P. Morgan Securities Inc., as joint documentation agent, (b) is subject to the provisions of the Credit Agreement and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement. This Note is secured and guaranteed as provided in the Loan Documents. Reference is hereby made to the Loan Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and the guarantees, the terms and conditions upon which the security interests and each guarantee were granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence of any one or more of the Events of Default, all principal and all accrued interest then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement.

G-1-1

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR IN THE CREDIT AGREEMENT, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AND IN ACCORDANCE WITH THE REGISTRATION AND OTHER PROVISIONS OF SECTION 10.6 OF THE CREDIT AGREEMENT.**

WYNN LAS VEGAS, LLC,  
a Nevada limited liability company,  
as the Borrower

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

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

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

G-1-2

**Schedule A  
to Term Note**

**LOANS, CONVERSIONS AND REPAYMENTS OF BASE RATE LOANS**

<b>Date</b>	<b>Amount of Base Rate Loans</b>	<b>Amount Converted to Base Rate Loans</b>	<b>Amount of Principal of Base Rate Loans Repaid</b>	<b>Amount of Base Rate Rate Loans Converted to Eurodollar Loans</b>	<b>Unpaid Principal Balance of Base Rate Loans</b>	<b>Notation Made By</b>
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G-1-3

**Schedule B  
to Term Note**

**LOANS, CONTINUATIONS, CONVERSIONS AND REPAYMENTS OF EURODOLLAR LOANS**

<b>Date</b>	<b>Amount of Eurodollar Loans</b>	<b>Amount Converted to Eurodollar Loans</b>	<b>Interest Period and Eurodollar Rate with Respect Thereto</b>	<b>Amount of Principal of Eurodollar Loans Repaid</b>	<b>Amount of Eurodollar Loans Converted to Base Rate Loans</b>	<b>Unpaid Principal Balance of Eurodollar Loans</b>	<b>Notation Made By</b>
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G-1-4

**EXHIBIT G-2**

THIS NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND PROVISIONS OF THE CREDIT AGREEMENT REFERRED TO BELOW. TRANSFERS OF THIS NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MUST BE RECORDED IN THE REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF SUCH CREDIT AGREEMENT.

\$  
No.

New York, New York  
, 200

FOR VALUE RECEIVED, the undersigned, WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "*Borrower*"), hereby unconditionally promises to pay to (the "*Lender*") or its registered assigns at the Payment Office specified in the Credit Agreement (as hereinafter defined) in lawful money of the United States and in immediately available funds, on the Revolving Credit Termination Date the principal amount of (a) DOLLARS (\$ ), or, if less, (b) the aggregate unpaid principal amount of all Revolving Credit Loans made by the Lender to the Borrower pursuant to the Credit Agreement. The Borrower further agrees to pay interest in like money at such Payment Office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in Section 2.15 of the Credit Agreement.

The holder of this Note is authorized to endorse on the schedules annexed hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof the date, Type and amount of each Revolving Credit Loan made pursuant to the Credit Agreement and the date and amount of each payment or prepayment of principal thereof, each continuation of all or a portion thereof as the same Type, each conversion of all or a portion thereof to another Type and, in the case of Eurodollar Loans, the length of each Interest Period with respect thereto. Each such endorsement shall constitute *prima facie* evidence of the accuracy of the information endorsed. The failure to make any such endorsement or any error in any such endorsement shall not affect the obligations of the Borrower in respect of any Revolving Credit Loan.

This Note (a) is one of the Revolving Credit Notes referred to in the Credit Agreement dated as of October , 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Credit Agreement*"), among the Borrower, the Lender, the several banks and other financial institutions or entities from time to time parties thereto, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Deutsche Bank Trust Company Americas, as administrative agent and swing line lender, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York Branch, as arranger and joint documentation agent, and J.P. Morgan Securities, Inc., as joint documentation agent, (b) is subject to the provisions of the Credit Agreement and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement. This Note is secured and guaranteed as provided in the Loan Documents. Reference is hereby made to the Loan Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and the guarantees, the terms and conditions upon which the security interests and each guarantee were granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence of any one or more of the Events of Default, all principal and all accrued interest then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement.

G-2-1

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All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR IN THE CREDIT AGREEMENT, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AND IN ACCORDANCE WITH THE REGISTRATION AND OTHER PROVISIONS OF SECTION 10.6 OF THE CREDIT AGREEMENT.**

**THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

WYNN LAS VEGAS, LLC,  
a Nevada limited liability company,  
as the Borrower

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

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

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

By:

Name:

\_\_\_\_\_  
\_\_\_\_\_

Title: \_\_\_\_\_

G-2-2

**Schedule A  
to Revolving Credit Note**

**LOANS, CONVERSIONS AND REPAYMENTS OF BASE RATE LOANS**

<u>Date</u>	<u>Amount Converted to Base Rate Loans</u>	<u>Amount of Principal of Base Rate Loans Repaid</u>	<u>Amount of Base Rate Loans Converted to Eurodollar Loans</u>	<u>Unpaid Principal Balance of Base Rate Loans</u>	<u>Notation Made By</u>
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G-2-3

**Schedule B  
to Revolving Credit Note**

**LOANS, CONTINUATIONS, CONVERSIONS AND REPAYMENTS OF EURODOLLAR LOANS**

<u>Date</u>	<u>Amount Converted to Eurodollar Loans</u>	<u>Interest Period and Eurodollar Rate with Respect Thereto</u>	<u>Amount of Principal of Eurodollar Loans Repaid</u>	<u>Amount of Eurodollar Loans Converted to Base Rate Loans</u>	<u>Unpaid Principal Balance of Eurodollar Loans</u>	<u>Notation Made By</u>
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G-2-4

**EXHIBIT G-3**

**FORM OF SWING LINE NOTE**

THIS NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND PROVISIONS OF THE CREDIT AGREEMENT REFERRED TO BELOW. TRANSFERS OF THIS NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MUST BE RECORDED IN THE REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF SUCH CREDIT AGREEMENT.

\$ \_\_\_\_\_ NEW YORK, NEW YORK  
No. \_\_\_\_\_, 200

FOR VALUE RECEIVED, the undersigned, WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "*Borrower*"), hereby unconditionally promises to pay \_\_\_\_\_ (the "*Swing Line Lender*") or its registered assigns at the Payment Office specified in the Credit Agreement (as herein defined) in lawful money of the United States and in immediately available funds, on the Revolving Credit Termination Date the principal amount of (a) \_\_\_\_\_ dollars (\$ \_\_\_\_\_), or, if less, (b) the aggregate unpaid principal amount of all Swing Line Loans made by the Swing Line Lender to the Borrower pursuant to the Credit Agreement, as hereinafter defined. The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in Section 2.15 of such Credit Agreement.

The holder of this Note is authorized to endorse on the schedules annexed hereto and made a part hereto or on a continuation thereof which shall be attached hereto and made a part hereof the date and amount of each Swing Line Loan made pursuant to the Credit Agreement and the date and amount of each payment or prepayment of principal thereof. Each such endorsement shall constitute *prima facie* evidence of the accuracy of the information endorsed. The failure to make any such endorsement or any error in any such endorsement shall not affect the obligations of the Borrower in respect of any Swing Line Loan.

This Note (a) is one of the Swing Line Notes referred to in the Credit Agreement dated as of October \_\_\_\_\_, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Credit Agreement*"), among the Borrower, the Swing Line Lender, the several banks and other financial institutions or entities from time to time parties thereto, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Deutsche Bank Trust Company Americas, as administrative agent and swing line lender, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York Branch, as arranger and joint documentation agent, and J.P. Morgan Securities Inc., as joint documentation agent, (b) is subject to the provisions of the Credit Agreement and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement. This Note is secured and guaranteed as provided in the Loan Documents. Reference is hereby made to the Loan Documents for a description of the properties and assets in which a





QuickLinks

[FORM OF CREDIT AGREEMENT among WYNN LAS VEGAS, LLC, as the Borrower, The Several Lenders from Time to Time Parties Hereto, DEUTSCHE BANK SECURITIES INC., as Lead Arranger and Joint Book Running Manager, DEUTSCHE BANK TRUST COMPANY AMERICAS, as Administrative Agent and Swing Line Lender, BANC OF AMERICA SECURITIES LLC, as Lead Arranger, Joint Book Running Manager and Syndication Agent, BEAR, STEARNS & CO. INC., as Arranger and Joint Book Running Manager, BEAR STEARNS CORPORATE LENDING INC., as Joint Documentation Agent, DRESDNER BANK AG, NEW YORK BRANCH, as Arranger and Joint Documentation Agent, and J.P. MORGAN SECURITIES INC., as Joint Documentation Agent Dated as of October , 2002](#)

[TABLE OF CONTENTS](#)

[RECITALS](#)

[SECTION 1. DEFINITIONS](#)

[SECTION 2. AMOUNT AND TERMS OF COMMITMENTS](#)

[SECTION 3. LETTERS OF CREDIT](#)

[SECTION 4. REPRESENTATIONS AND WARRANTIES](#)

[SECTION 5. CONDITIONS PRECEDENT](#)

[SECTION 6. AFFIRMATIVE COVENANTS](#)

[SECTION 7. NEGATIVE COVENANTS](#)

[SECTION 8. EVENTS OF DEFAULT](#)

[THE AGENTS; THE ARRANGERS; THE MANAGERS](#)

[SECTION 10. MISCELLANEOUS](#)

[PRICING GRID FOR REVOLVING CREDIT LOANS, SWING LINE LOANS AND REVOLVING COMMITMENT FEES](#)

[MORTGAGED PROPERTY](#)

[CONSENTS, AUTHORIZATIONS, FILINGS AND NOTICES](#)

[TRADEMARKS, SERVICE MARKS AND TRADE NAMES](#)

[PATENTS](#)

[COPYRIGHTS](#)

[TRADE SECRETS](#)

[INTELLECTUAL PROPERTY LICENSES](#)

[SUBSIDIARIES](#)

[UCC FILING JURISDICTIONS—COLLATERAL](#)

[UCC FINANCING STATEMENTS TO REMAIN ON FILE](#)

[MORTGAGE FILING JURISDICTIONS](#)

[UCC FILING JURISDICTIONS—INTELLECTUAL PROPERTY COLLATERAL](#)

[MATERIAL CONTRACTS](#)

[REAL ESTATE](#)

[ASSESSMENTS](#)

[INSURANCE REQUIREMENTS](#)

[EXISTING INDEBTEDNESS](#)

[EXISTING LIENS](#)

[FORM OF MORTGAGE](#)

[DEED OF TRUST, \[LEASEHOLD DEED OF TRUST,\] ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING MADE BY , a , as Trustor, to Nevada Title Company, a Nevada corporation, as Trustee, for the benefit of DEUTSCHE BANK TRUST COMPANY AMERICAS, in its capacity as Administrative Agent for the benefit of the Banks, as Beneficiary.](#)

[TABLE OF CONTENTS](#)

[DEED OF TRUST, \[LEASEHOLD DEED OF TRUST,\] ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING](#)

[ARTICLE ONE COVENANTS OF TRUSTOR](#)

[ARTICLE TWO CREDIT AGREEMENT PROVISIONS](#)

[ARTICLE THREE DEFAULTS](#)

[ARTICLE FOUR REMEDIES](#)

[ARTICLE FIVE RIGHTS AND RESPONSIBILITIES OF TRUSTEE; OTHER PROVISIONS RELATING TO TRUSTEE](#)

[ARTICLE SIX MISCELLANEOUS PROVISIONS](#)

[ARTICLE SEVEN POWER OF ATTORNEY](#)

[SCHEDULE A DESCRIPTION OF LAND](#)

[\[SCHEDULE B DESCRIPTION OF LEASED PREMISES\]](#)

[FORM OF INDEMNITY AGREEMENT](#)

[FORM OF TERM NOTE](#)

[LOANS, CONVERSIONS AND REPAYMENTS OF BASE RATE LOANS](#)

[LOANS, CONTINUATIONS, CONVERSIONS AND REPAYMENTS OF EURODOLLAR LOANS](#)

[FORM OF REVOLVING CREDIT NOTE](#)

[LOANS, CONVERSIONS AND REPAYMENTS OF BASE RATE LOANS](#)

[LOANS, CONTINUATIONS, CONVERSIONS AND REPAYMENTS OF EURODOLLAR LOANS](#)

[FORM OF SWING LINE NOTE](#)

[LOANS AND REPAYMENTS OF SWING LINE LOANS](#)

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**FORM OF  
LOAN AGREEMENT**

by and among

**WYNN LAS VEGAS, LLC,  
AS BORROWER,**

**WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION,  
NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS COLLATERAL AGENT,**

and

**THE PERSONS LISTED ON SCHEDULE IA HERETO,  
AS LENDERS**

dated as of October , 2002

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**BANC OF AMERICA LEASING & CAPITAL, LLC  
AND  
DEUTSCHE BANK SECURITIES INC.,  
AS JOINT LEAD ARRANGERS AND JOINT BOOK RUNNING MANAGERS**

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**Table of Contents**

Section	Heading	Page
SECTION 1.	DEFINITIONS	1
Section 1.1.	Use of Defined Terms	1
SECTION 2.	CONDITIONS PRECEDENT TO DOCUMENT CLOSING DATE FUNDINGS; APPLICATION OF PAYMENTS	1
Section 2.1.	Effectiveness of Loan Agreement	1
Section 2.2.	[Reserved]	1
Section 2.3.	Fundings Generally	1
Section 2.4.	Preliminary Notice Review	3
Section 2.5.	Advance Dates	3
Section 2.6.	Mutilated, Destroyed, Lost or Stolen Notes	4
Section 2.7.	Fees	4
SECTION 3.	OPTIONAL PAYMENTS; INTEREST AND PRINCIPAL PAYMENTS BY THE BORROWER	5
Section 3.1.	Optional Payments of Principal	5
Section 3.2.	Scheduled Payments of Principal; Mandatory Prepayments	5
Section 3.3.	Interest Rates and Payment Dates	5
Section 3.4.	Pro Rata Treatment and Payments	6
Section 3.5.	Computations; Interest Rate Determination; Conclusive Determinations	6
Section 3.6.	Highest Lawful Rate	7
Section 3.7.	Adjustment	8
Section 3.8.	Payments and Distributions	8
SECTION 4.	CONDITIONS PRECEDENT TO ADVANCES	9
Section 4.1.	Conditions Precedent to the Initial Advance	9
Section 4.2.	Conditions Precedent to Each Advance	10
SECTION 5.	REPRESENTATIONS AND WARRANTIES	10

Section 5.1.	Representations and Warranties of the Borrower	10
Section 5.2.	Representations and Warranties of Lenders	20
Section 5.3.	Representations and Warranties of Collateral Agent	21
<b>SECTION 6.</b>	<b>AFFIRMATIVE COVENANTS</b>	<b>22</b>
Section 6.1.	Financial Statements	22
Section 6.2.	Certificates; Other Information	23
Section 6.3.	Payment of Obligations	25
Section 6.4.	Conduct of Business and Maintenance of Existence, Etc	25
Section 6.5.	Maintenance of Property; Leases; Insurance	25
Section 6.6.	Inspection of Property; Books and Records; Discussions	25
Section 6.7.	Notices	25
Section 6.8.	Environmental Laws; Permits	26
Section 6.9.	[Intentionally Omitted]	27
Section 6.10.	Additional Subsidiaries and Discharge of Liens	27
Section 6.11.	Use of Proceeds	28
Section 6.12.	Compliance with Laws, Project Documents, Etc.; Permits	28
Section 6.13.	Further Assurances	28
Section 6.14.	[Reserved]	29
Section 6.15.	[Reserved]	29
Section 6.16.	Use of Proceeds on Initial Advance Date	29

---

Section 6.17.	Appraisal	29
<b>SECTION 7.</b>	<b>NEGATIVE COVENANTS</b>	<b>29</b>
Section 7.1.	Financial Condition Covenants	29
Section 7.2.	Limitation on Indebtedness	31
Section 7.3.	Limitation on Liens	33
Section 7.4.	Limitation on Fundamental Changes	34
Section 7.5.	Limitation on Disposition of Property	35
Section 7.6.	Limitation on Restricted Payments	37
Section 7.7.	Limitation on Capital Expenditures	39
Section 7.8.	Limitation on Investments	39
Section 7.9.	Limitation on Optional Payments and Modifications of Governing Documents	40
Section 7.10.	Limitation on Transactions with Affiliates	41
Section 7.11.	Limitation on Sales and Leasebacks	42
Section 7.12.	Limitation on Changes in Fiscal Periods	42
Section 7.13.	Limitation on Negative Pledge Clauses	42
Section 7.14.	Limitation on Restrictions on Subsidiary Distributions, Etc	42
Section 7.15.	Limitation on Lines of Business	42
Section 7.16.	Restrictions on Changes	42
Section 7.17.	Limitation on Formation and Acquisition of Subsidiaries and Purchase of Capital Stock	43
Section 7.18.	Limitation on Hedge Agreements	43
Section 7.19.	Limitation on Sale or Discount of Receivables	43
Section 7.20.	Limitation on Zoning and Contract Changes and Compliance	43
Section 7.21.	No Joint Assessment; Separate Lots	44
Section 7.22.	Restrictions on Payments of Management Fees	44
Section 7.23.	Additional Material Contracts	44
Section 7.24.	Lease Terminations	44
<b>SECTION 8.</b>	<b>RISK OF LOSS; INSURANCE</b>	<b>45</b>
Section 8.1.	Casualty	45
Section 8.2.	Insurance Coverages	48
Section 8.3.	Insurance Certificates	49
<b>SECTION 9.</b>	<b>EVENTS OF DEFAULT AND REMEDIES.</b>	<b>50</b>
Section 9.1.	Events of Default	50
Section 9.2.	Remedies on Default	54
Section 9.3.	Remedies on Aircraft Default	54
<b>SECTION 10.</b>	<b>ASSIGNMENT BY LENDERS; PARTICIPATIONS</b>	<b>54</b>
Section 10.1.	Assignments	54
Section 10.2.	Participations	55
Section 10.3.	Pledges	56
<b>SECTION 11.</b>	<b>THE COLLATERAL AGENT</b>	<b>56</b>
Section 11.1.	Appointment	56

Section 11.2.	Delegation of Duties	56
Section 11.3.	Exculpatory Provisions	56
Section 11.4.	Reliance by Collateral Agent; Indemnity	56
Section 11.5.	Notice of Default	57
Section 11.6.	Non-Reliance on Collateral Agent and Other Lenders	58
Section 11.7.	Indemnification	58

ii

Section 11.8.	Collateral Agent in Its Individual Capacity	58
Section 11.9.	Successor Collateral Agent	58
Section 11.10.	Action upon Instructions	59
SECTION 12.	INDEMNITY	59
Section 12.1.	General Indemnification	59
Section 12.2.	General Tax Indemnity	60
Section 12.3.	Gross Up	62
Section 12.4.	Increased Capital Costs	63
Section 12.5.	Environmental Indemnity	63
Section 12.6.	Eurodollar Rate Illegal, Unavailable or Impracticable	64
Section 12.7.	Funding Losses	64
Section 12.8.	Actions of Lenders	65
SECTION 13.	GENERAL CONDITIONS	65
Section 13.1.	Payment of Transaction Costs and Other Costs	65
Section 13.2.	Effect of Waiver	65
Section 13.3.	Survival of Covenant	65
Section 13.4.	Applicable Law	65
Section 13.5.	Effect and Modification	65
Section 13.6.	Notices	66
Section 13.7.	Consideration for Consents to Waivers and Amendments	67
Section 13.8.	Severability	68
Section 13.9.	Successors and Assigns	68
Section 13.10.	No Third-Party Beneficiaries	68
Section 13.11.	Brokers	68
Section 13.12.	Captions; Table of Contents	68
Section 13.13.	Schedules and Exhibits	68
Section 13.14.	Submission to Jurisdiction	68
Section 13.15.	Jury Trial	69
Section 13.16.	Role of Banc of America Leasing & Capital, LLC and Deutsche Bank Securities Inc.	69
Section 13.17.	Confidentiality	69
Section 13.18.	Gaming Authorities	69
Section 13.19.	Trust Agreement	69
Signature Page		70

iii

## APPENDICES

Appendix I — Definitions

## SCHEDULES

SCHEDULE IA1	—	Lenders' Commitment Percentage
SCHEDULE IA2	—	Lenders' Allocated Commitment Amount
SCHEDULE IB	—	Addresses for Notice and Payment
SCHEDULE II	—	Principal Payment Schedule
Schedule 4.4	—	Consents, Authorizations, Filings and Notices
Schedule 4.9(b)	—	Trademarks, Service Marks and Trade Names
Schedule 4.9(c)	—	Patents
Schedule 4.9(d)	—	Copyrights
Schedule 4.9(e)	—	Trade Secrets
Schedule 4.9(f)	—	Intellectual Property Licenses
Schedule 4.15	—	Subsidiaries
Schedule 4.19(a)(1)	—	UCC Financing Jurisdictions and UCC Financing Statements To Remain on File
Schedule 4.24	—	Material Contracts
Schedule 4.25(a)	—	Real Estate
Schedule 4.25(b)	—	Assessments
Schedule 7.2(d)	—	Existing Indebtedness
Schedule 7.3(f)	—	Existing Liens

## EXHIBITS

EXHIBIT A	—	Form of Note
EXHIBIT B	—	[Reserved]
EXHIBIT C	—	Form of Opinion of FAA Counsel to the Borrower and each Guarantor
EXHIBIT D	—	[Reserved]
EXHIBIT E	—	Form of Officer's Certificate of the Borrower
EXHIBIT F	—	Form of Assignment and Assumption Agreement
EXHIBIT G	—	Form of Disbursement Agreement
EXHIBIT H	—	Form of Intercompany Note
EXHIBIT I	—	Form of FF&E Guaranty
EXHIBIT J	—	Form of the Borrower Security Agreement
EXHIBIT K	—	Form of Aircraft Security Agreement
EXHIBIT L	—	Form of the Borrower Aircraft Assignment
EXHIBIT M	—	Form of Insurance Consultant Certificate

iv

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## FORM OF WYNN LAS VEGAS, LLC LOAN AGREEMENT

This LOAN AGREEMENT, dated as of October , 2002 (as amended, supplemented or otherwise modified from time to time, this "*Loan Agreement*"), is by and among WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "*Borrower*"), WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity (except as specifically set forth herein), but solely as collateral agent (the "*Collateral Agent*") and the Persons listed on **Schedule IA** hereto, as Lenders (each individually, together with any permitted successors and assigns, a "*Lender*," and, collectively, the "*Lenders*").

### WITNESSETH:

WHEREAS, the Lenders shall, on the terms and subject to the conditions hereinafter set forth, make loans to the Borrower on each Advance Date; and

WHEREAS, the Borrower will use the proceeds of such Loans (i) to make an intercompany loan to World Travel, (ii) to purchase, finance and/or refinance the acquisition of the Equipment and (iii) to pay Transaction Costs;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### SECTION 1. DEFINITIONS.

*Section 1.1. Use of Defined Terms.* Unless the context shall otherwise require, capitalized terms used and not defined herein shall have the meanings assigned thereto in **Appendix I** hereto (whether directly or by reference) for all purposes hereof; and the rules of interpretation set forth in **Appendix I** hereto shall apply to this Loan Agreement.

### SECTION 2. CONDITIONS PRECEDENT TO DOCUMENT CLOSING DATE; FUNDINGS; APPLICATION OF PAYMENTS.

*Section 2.1. Effectiveness of Loan Agreement.* This Loan Agreement shall be effective as of the Document Closing Date upon the satisfaction, and/or waiver by each of the Lenders, of each of the conditions precedent described in Section 3.1 of the Disbursement Agreement.

All documents and instruments required to be delivered on the Document Closing Date to any party shall be delivered at the offices of Latham & Watkins (Los Angeles, California), or at such other location as the Collateral Agent and the Borrower may agree. The release by any party of its counterparts to this Loan Agreement shall constitute conclusive evidence of its satisfaction with the form and substance of each of the items so delivered under this **Section 2.1**.

*Section 2.2. [Reserved].*

*Section 2.3. Fundings Generally.*

(a)(i) Subject to the terms and conditions of this Loan Agreement and in reliance on the representations and warranties of each of the parties hereto contained herein or made pursuant hereto, upon receipt of the initial Advance Request, on the Initial Advance Date, each Lender shall make an Advance to the Borrower, which Advance shall be loaned by the Borrower to World Travel pursuant to the Intercompany Note, by making available by wire transfer in accordance with the instructions set forth in such Advance Request pursuant to **Section 2.3(c)** an amount in immediately available funds on the Initial Advance Date equal to such Lender's Aircraft Commitment Percentage of the aggregate amount of such requested Advance.

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(ii) Subject to the terms and conditions of this Loan Agreement and in reliance on the representations and warranties of each of the parties hereto contained herein or made pursuant hereto, upon receipt of an Advance Request, on each Advance Date (other than Initial Advance Date), each Lender shall make an Advance to the Borrower for the payment of the Purchase Price of the Items of Equipment being acquired on such Advance Date by making available to Disbursement Agent by wire transfer in accordance with the instructions set forth in the Advance Request an amount in immediately available funds on such Advance Date equal to (A) such Lender's Gaming Commitment Percentage of the aggregate amount of the requested Advance which represents the Purchase Price of Gaming Equipment and (B) such Lender's Non-Gaming Equipment Commitment Percentage of the aggregate amount of the requested Advance which represents the Purchase Price of Non-Gaming Equipment.

(b) *Notes.* Each Lender's Commitment shall be evidenced by a note (a "Note") issued by the Borrower to such Lender and repayable in accordance with, and with Interest accruing pursuant to, the terms of this Loan Agreement.

(c) *Advances to the Borrower.* (i) Subject to **clauses (ii) and (iii)** below, any Advance required to be made by a Lender pursuant to any Operative Document shall be made by the Lenders depositing funds into the Collection Account (as referenced in Section 2.3.3 of the Disbursement Agreement) in the amount of such Advance to be disbursed by the Borrower or by the Disbursement Agent on behalf of the Borrower to the applicable Seller or, with respect to Transaction Costs, the Persons entitled thereto. Such funding by the Lenders shall be deemed to constitute (A) the required funding from the Lenders pursuant to this Loan Agreement and the Disbursement Agreement and (B) the corresponding Advance to the Borrower.

(ii) Notwithstanding the foregoing, the Advance required to be made by the Lenders on the Initial Advance Date shall be made by the Lenders depositing funds into the account of the Collateral Agent for further distribution to the lender under the Original Aircraft Financing Documents or the Company's Funds Account (as defined in the Disbursement Agreement) as appropriate. Such Funding shall represent a loan to the Borrower which shall be forwarded on behalf of the Borrower's obligation to fund the Intercompany Note and shall be further forwarded in part to the lender under the Original Aircraft Financing a Documents on behalf of World Travel's use of the proceeds of such Intercompany Note.

(iii) Notwithstanding the foregoing, the Advance required to be made by the Lenders pursuant to Section 2.8 of the Disbursement Agreement and which represents the FF&E Reimbursement Advance (as defined in the Disbursement Agreement) shall be made by the Lenders depositing funds into the Company's Funds Account (as defined in the Disbursement Agreement).

(d) *Advances; Limitations and Limits.* In addition to any other provision hereof, Lenders shall not be obligated to make an Advance to the Borrower, and no Lender shall be obligated to fund any Loan to the Disbursement Agent, if, after giving effect to such Advance or Funding, (i) the aggregate outstanding amount of Loans would exceed the Aggregate Commitment Amount, (ii) the aggregate amount of funds so provided by such Lender or Funding would exceed the amount of its Commitment in the aggregate or (iii) the aggregate amount of funds so provided by such Lender or Funding would exceed the amount of its Allocated Commitment with respect to the Type of Equipment or the Aircraft to be funded with such Advance.

There shall be no more than one Advance made during any calendar month, which shall be made on the Advance Date occurring in such month. Each Advance shall be in a minimum amount not less than the lesser of \$1,000,000 or the combined available Commitment of all of the Lenders with respect to such Type of Equipment or such other amount as the Borrower and Collateral Agent shall agree. All remittances made by Lenders for the funding of any Advance (other than on the Initial Advance Date)

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shall be made in immediately available federal funds by wire transfer to the Collection Account for deposit not later than 12:00 p.m. New York time, on the applicable Advance Date. The Funding by each Lender to the Collection Account of its respective portion of an Advance shall constitute authorization and direction by such party to Disbursement Agent to make an advance pursuant to the Operative Documents.

(e) *Termination of Commitments.* Notwithstanding anything in this Loan Agreement to the contrary, the Commitments shall terminate and no Lender shall be obligated to make any fundings in respect of any Advance, and no Advance Date may thereafter occur upon the occurrence of the earlier of (A) 3:00 p.m., New York time on the Commitment Termination Date and (B) a termination of the Lenders' Commitments pursuant to **Section 9.1**.

#### *Section 2.4. Preliminary Notice Review.*

(a) *Preliminary Notice.* Pursuant to the terms of Section 2.4.1(c) of the Disbursement Agreement, the Borrower and/or the Disbursement Agent, as applicable, shall deliver to Collateral Agent a copy of Appendix XI to the preliminary Advance Request and upon receipt thereof, Collateral Agent shall promptly forward such copy of Appendix XI to the preliminary Advance Request to each Lender.

(b) *Review.* The Lenders shall have the right to disapprove any items of Eligible FF&E Collateral (as defined in the Disbursement Agreement) listed by the Borrower in Appendix XI to the Company's preliminary Advance Request as items to be funded in part by the Loans; *provided, however,* that any Lender's failure to so disapprove any items of Eligible FF&E Equipment identified by the Borrower on such Appendix XI within 5 Business Days from the Borrower's delivery thereof shall be deemed to constitute such Lenders' approval thereof and the items of Eligible FF&E Equipment identified on such Appendix XI shall be funded in part by the Loans.

(c) *Approval.* In the event the Collateral Agent shall have received notice of the disapproval by the Required Lenders of all or any portion of the Eligible FF&E Collateral, the Collateral Agent shall so inform the Disbursement Agent pursuant to the terms of Section 2.4.1(e) of the Disbursement Agreement.

#### *Section 2.5. Advance Dates.*

(a) *Notice and Closing.* Pursuant to the terms of Section 2.4.3 of the Disbursement Agreement, the Borrower and/or the Disbursement Agent, as applicable, shall deliver to Collateral Agent an irrevocable and final written notice substantially in the form of Exhibit C-1 to the Disbursement Agreement (an "Advance Request"), (and upon receipt thereof, Collateral Agent shall promptly forward such Advance Request to each Lender) setting forth:

(i) the proposed Advance Date;

(ii) a description of the Items of Equipment to be acquired and the Purchase Price (including a detailed description of the Transaction Costs to be funded by such Advance) applicable to each such Item of Equipment;

(iii) a statement of the amount of the requested Advance;

(iv) a certification by the Borrower that (A) such Advance complies with the limitations and conditions set forth in **Section 2.3(d)**, and (B) all conditions to the making of such Advance under **Section 4** have been satisfied except to the extent previously waived; and

(v) wire transfer instructions for the disbursement of the appropriate amount of funds to the appropriate account for disbursement in the manner described in **Section 2.3**.

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Collateral Agent and the Borrower may agree. On the scheduled Advance Date, and subject to the satisfaction of the conditions set forth in this **Section 2.5(a)** and in **Section 4**, Lenders shall fund the amount of the Advance by wire transfer to the appropriate account for disbursement in the manner described in **Section 2.3**.

(b) *Commitment.* Subject to compliance by the Borrower with the terms of this Loan Agreement and the satisfaction or waiver of the conditions set forth in this **Section 2** and in **Section 4**, the Lenders shall disburse the respective amounts of their Commitments in accordance with the requirements of this Loan Agreement and the other Operative Documents.

(c) *Notes; Notations.* Each Lender is hereby authorized to record the date and amount of each funding made in respect of an Advance, each payment or repayment of principal and the length of each Payment Period with respect thereto on the grid annexed to and constituting a part of each Note issued to such Lender, and any such recordation shall constitute prima facie evidence of the accuracy of the information so recorded; *provided*, that the failure to make any such recordation or any errors in such recordation shall not affect the obligation of the Borrower to pay principal and Interest.

**Section 2.6. Mutilated, Destroyed, Lost or Stolen Notes.** (a) If any Note shall become mutilated, destroyed, lost or stolen, then upon the written request of the affected Lender, the Borrower shall execute and deliver to the affected Lender a new Note. Such new Note shall be: (i) recorded in the name in which such mutilated, destroyed, lost or stolen Note was recorded; (ii) in the same original face amount as such mutilated, destroyed, lost or stolen Note; and (iii) dated the date of such mutilated, destroyed, lost or stolen Note. If the Note being replaced has become mutilated, it shall be surrendered to the Borrower. If the Note being replaced has been destroyed, lost or stolen, the affected Lender shall furnish to the Borrower such security or indemnity as reasonably may be required by it to save the Borrower harmless from any loss and evidence satisfactory to the Borrower of the destruction, loss or theft of such Note and the ownership thereof. Upon request, the Collateral Agent shall advise the affected Lender of: (i) the aggregate principal amount of, and the aggregate accrued Interest on, such mutilated, destroyed, lost or stolen Note that were paid to any Lender thereof at any time prior to the delivery of such new Note; and (ii) the date to which Interest on such mutilated, destroyed, lost or stolen Note had been paid to any Lender thereof at the time of such delivery.

(b) Any duplicate Note issued pursuant to this **Section 2.6** shall constitute complete and indefeasible evidence of ownership of such Note, as if originally issued, whether or not the lost, stolen or destroyed Note shall be found at any time.

**Section 2.7. Fees.** The Borrower agrees to pay the fees set forth below (collectively, the "*Fees*");

(a) on each Payment Date to each Lender, for its own account, a fee in an amount equal to (i) during the period from the Document Closing Date to, but not including, January 1, 2003, the product of 2.50% per annum *multiplied* by the amount of its Commitment that has not been funded on an Advance Date, (ii) during the period from and including January 1, 2003 to, but not including, July 1, 2003, the product of 3.00% per annum *multiplied* by the amount of its Commitment that has not been funded on an Advance Date and (iii) from and after July 1, 2003, the product of 4.00% per annum *multiplied* by the amount of its Commitment that has not been funded on an Advance Date (a "*Commitment Fee*");

(b) on the Document Closing Date, to the Collateral Agent for the benefit of each Lender, a fee in an amount as described in each Lender's respective Participation Fee Letter (the "*Participation Fee*");

(c) to Trust Company, for its own account, the fees set forth in the Collateral Agent Fee Letter, payable in the amounts and on the dates set forth therein; and

(d) on the Document Closing Date, to each Arranger, its respective Arrangement Fee.

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## SECTION 3. OPTIONAL PAYMENTS; INTEREST AND PRINCIPAL PAYMENTS BY THE BORROWER.

### *Section 3.1. Optional Payments of Principal.*

(a) *Prepayment Option.* On any Payment Date occurring after the one year anniversary of the Initial Amortization Date or on any Payment Date in connection with a prepayment following a Disposition permitted by **Section 7.5(e)** or **Section 7.5(p)**, upon at least 30 days' advance written notice from the Borrower to Collateral Agent and the Lenders, the Borrower may prepay (the "*Prepayment Option*") all, or, from time to time, any part, of the Loans, in amount not less than the Minimum Prepayment Amount in the case of a partial prepayment, at a price equal to the sum of (i) the Loan Balance to be so prepaid, *plus* (ii) all accrued but unpaid Interest thereon, *plus* (iii) the Applicable Administrative Charge, if any, *plus* (iv) any fees or other amounts owed under the Operative Documents payable by the Borrower. In the case of any partial prepayment, the Loan Balance to be prepaid shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid Loan Balance thereof and the Loan Balance to be prepaid with respect to any such Note shall be allocated *pro rata* by such Lender between the Allocated Aircraft Value and the Allocated Equipment Value represented by such Note in proportion, as nearly as practicable, to the respective Allocated Aircraft Value and Allocated Equipment Value represented by the unpaid Loan Balance thereof.

(b) *Bank Prepayment Option.* Pursuant solely to the terms of Section 6 of the FF&E Intercreditor Agreement, the Eligible Payor (as defined in the FF&E Intercreditor Agreement) on behalf of the Borrower, may prepay (the "*Bank Prepayment Option*") all of the Loan Balance representing the Allocated Equipment Value, at a price equal to the sum of (i) the Allocated Equipment Value, *plus* (ii) all accrued but unpaid Interest thereon, *plus* (iii) the Applicable Administrative Charge which relates to such Allocated Equipment Value, if any, *plus* (iv) any accrued but unpaid fees or other amounts owed under the Loan Documents payable by the Borrower.

(c) *Completion Prepayment Option.* In the event the Collateral Agent shall receive any remaining funds on deposit in the FF&E Proceeds Account (as defined in the Disbursement Agreement) pursuant to Section 2.9(e) of the Disbursement Agreement, the Collateral Agent shall, on behalf of the Borrower, prepay, to the extent of such remaining funds, the Loans which comprise such remaining funds, together with all accrued and unpaid Interest thereon. In the case of any



such prepayment, the Loan Balance to be prepaid shall be allocated among the Notes held by the Lenders who Advanced such funds in proportion, as nearly as practicable, to the respective unpaid Loan Balance thereof.

*Section 3.2. Scheduled Payments of Principal; Mandatory Prepayments.* (a) The Borrower shall pay to the Collateral Agent for the *pro rata* benefit of the Lenders the Required Prepayments, such payments to be due on each Payment Date in the amounts set forth on **Schedule II** hereto.

(b) The Borrower shall pay the unpaid principal amount of the Loans, in full, together with (i) Interest accrued thereon to the date of payment, and (ii) all other amounts then due and payable by the Borrower hereunder or under the other Operative Documents to the Lenders, including, without limitation, any Applicable Administrative Charge, on the Maturity Date.

(c) Upon the occurrence of a Casualty with respect to a portion of the Collateral that is not replaced pursuant to **Section 8.1** hereof, the Borrower shall pay, subject to the FF&E Intercreditor Agreement and **Section 3.8**, to each Lender its *pro rata* portion of the Casualty Amount of such Collateral, such payment to be due on the date specified for payment with respect to such Casualty in **Section 8.1** hereof.

*Section 3.3. Interest Rates and Payment Dates.* (a) Each Loan shall bear Interest at the Interest Rate then in effect on the Loan Balance thereof.

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(b) If all or a portion of the principal amount of, or accrued Interest on, any Loan, or any other amount payable hereunder, shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall, without limiting the rights of the Lenders under any Operative Document, bear interest at the rate per annum which is the greater of (i) 2% above the applicable Interest Rate then in effect and (ii) 2% above the Base Rate (the "Overdue Rate"), in each case from the date due until payment is made. Such overdue interest shall be payable on demand.

(c) Interest on each Loan shall be payable in arrears on each Payment Date, the Maturity Date and on any other day on which the Loan Balance, or a portion thereof, is to be reduced pursuant to the terms and conditions of this Loan Agreement and the other Loan Documents; *provided* that (i) Interest accruing pursuant to **clause (b)** shall be payable from time to time on demand and (ii) each prepayment of the Loans shall be accompanied by accrued Interest to the date of such prepayment on the amount prepaid, *plus* Applicable Administrative Charge.

*Section 3.4. Pro Rata Treatment and Payments.* Subject to **Sections 3.7** and **3.8**, each payment (including, without limitation, each Required Prepayment and any payment of the Prepayment Option) by the Borrower on account of principal of and Interest on the Loans shall be made by the Borrower to Collateral Agent and allocated by the Collateral Agent *pro rata* among the Lenders according to the respective outstanding principal amounts of the Loans then held by each such Lender and to the extent such payment represents a Required Prepayment or other payment on account of principal of the Loans such payment shall be allocated *pro rata* by such Lender between the Allocated Aircraft Value and Allocated Equipment Value in proportion, as nearly as practicable, to the respective Allocated Aircraft Value and Allocated Equipment Value represented by the unpaid Loan Balance thereof. Subject to **Sections 3.7** and **3.8**, all payments (including, without limitation, each Required Prepayment and any payment of the Prepayment Option) to be made by the Borrower hereunder and under the Notes, whether on account of principal, Interest or otherwise, shall be made without setoff or counterclaim and shall be made by the Borrower to Collateral Agent, for the benefit of the Lenders, prior to 1:00 p.m. New York City time, to Collateral Agent's Payment Office (or to such other office as may be designated by Collateral Agent from time to time in a written notice pursuant to **Section 13.6**) in funds consisting of lawful currency of the United States of America which shall be immediately available on the scheduled date when such payment is due. Payments received after 1:00 p.m., New York City time, on the date due shall be deemed received on the next succeeding Business Day and shall be subject to interest at the Overdue Rate as provided in **Section 3.3(b)**.

*Section 3.5. Computations; Interest Rate Determination; Conclusive Determinations.*

(a) *Computations.* All computations of interest at the Base Rate shall be made on the basis of a year of 365—or 366—days, as the case may be, and actual days elapsed. All other computations of accrued amounts pursuant to the Loan Documents shall be made on the basis of actual number of days elapsed in a 360-day year with respect to any determination. The Collateral Agent shall, as soon as practicable, but in no event later than 12:00 noon New York time, one (1) Business Day prior to the effectiveness of each Interest Rate, calculate such Interest Rate and notify the Borrower and each Lender thereof; *provided* that the failure to give or receive any such notice shall not limit the Borrower's obligations under this Loan Agreement or any other Loan Document.

(b) *Interest Rate Determination.* So long as no Default or Event of Default shall have occurred and be continuing, the Borrower may, by irrevocable written notice delivered to the Collateral Agent and each of the Lenders at least three Business Days prior to the initial day of an Interest Period, specify whether the Interest Rate to be applied during such Interest Period shall be the Adjusted Eurodollar Rate or the Base Rate and in the event that the Adjusted Eurodollar Rate is to so apply, the applicable Interest Period. If the Collateral Agent and each of the Lenders shall not have received such written notice, the Borrower shall be deemed to have selected a rate

6

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per annum equal to the Base Rate. Notwithstanding the foregoing, if a Default or Event of Default shall exist at time such selection is to be made, the applicable Interest Rate specified by the Borrower for such Interest Period shall be deemed to be the Overdue Rate.

(c) *Conclusive Determinations.* Each calculation of the Interest Rate by the Collateral Agent pursuant to any provisions of this Loan Agreement or any of the other Loan Documents shall be prima facie evidence of the amounts owed.

*Section 3.6. Highest Lawful Rate.* It is the intention of the parties hereto to conform strictly to applicable usury laws and, anything herein to the contrary notwithstanding, the obligations of the Borrower to the Lenders under this Loan Agreement and the Notes shall be subject to the limitation that payments of interest or of other amounts constituting interest under any Requirement of Law shall not be required to the extent that receipt thereof would be in excess of the Highest Lawful Rate, or otherwise contrary to provisions of law applicable to the recipient limiting rates of interest which may be charged or collected by the recipient. Accordingly, if the transactions or the amount paid or otherwise agreed to be paid for the use, forbearance or detention of money under this Loan Agreement, the Notes or any other Loan Document would exceed the Highest Lawful Rate or otherwise be usurious under any Requirement of Law (including,

without limitation, the federal and state laws of the United States of America, or of any other jurisdiction whose laws may be mandatorily applicable) with respect to the recipient of any such amount, then, in that event, notwithstanding anything to the contrary in this Loan Agreement, the Notes or any other Loan Document, it is agreed as follows as to the recipient of any such amount:

(i) the provisions of this **Section 3.6** shall govern and control over any other provision in this Loan Agreement, the Notes and any other Loan Document, and each provision set forth therein is hereby so limited;

(ii) the aggregate of all consideration which constitutes interest under any Requirement of Law that is contracted for, charged or received under this Loan Agreement, the Notes or any other Loan Document shall under no circumstances exceed the maximum amount of interest allowed by such Requirement of Law (such maximum lawful interest rate, if any, with respect to such recipient herein called the "*Highest Lawful Rate*"), and all amounts owed under this Loan Agreement, the Notes and any other Loan Document shall be held subject to reduction and: (A) the amount of interest which would otherwise be payable to the recipient hereunder and under the Notes and any other Loan Document shall be automatically reduced to the amount allowed under such Requirement of Law, and (B) any unearned interest paid in excess of the Highest Lawful Rate shall be credited to the payor by the recipient (or, if such consideration shall have been paid in full, refunded to the payor);

(iii) all sums paid, or agreed to be paid for the use, forbearance and detention of the money under this Loan Agreement, the Notes or any other Loan Document shall, to the extent permitted by any Requirement of Law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the actual rate of interest is uniform throughout the full term thereof; and

(iv) if at any time the interest, together with any other fees, late charges and other sums payable pursuant to or in connection with this Loan Agreement, the Notes and any other Loan Document executed in connection herewith or therewith and deemed interest under any Requirement of Law, exceeds that amount which would have accrued at the Highest Lawful Rate, the amount of interest and any such fees, charges and sums to accrue to the recipient of such interest, fees, charges and sums pursuant to the Loan Documents shall be limited, notwithstanding anything to the contrary in the Loan Documents, to that amount which would have accrued at the Highest Lawful Rate for the recipient, but any subsequent reductions, as applicable, shall not reduce the interest to accrue pursuant to the Loan Documents below the recipient's Highest

7

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Lawful Rate until the total amount of interest payable to the recipient (including all consideration which constitutes interest) equals the amount of interest which would have been payable to the recipient (including all consideration which constitutes interest), plus the amount of fees which would have been received but for the effect of this **Section 3.6**.

**Section 3.7. Adjustment.** If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the Loan made by it in excess of its ratable share of payments on account of the Loan made by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participation in the Loans owing to them as shall be necessary to cause such purchasing Lender to share the excess payment ratably, in the proportion that such Lender's Loan to which the payment applies bears to the total of all Loans to which the payment applies, *provided, however*, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and such Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount so recovered. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this **Section 3.7** may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

**Section 3.8. Payments and Distributions.** (a) Subject to **clauses (c) and (d)** below, upon the occurrence of a Casualty, the exercise of the Prepayment Option in connection with a prepayment following a Disposition permitted by **Section 7.5(e)** or **Section 7.5(p)** the exercise of the Bank Prepayment Option, or following the exercise of remedies by any Lender or by the Collateral Agent on its behalf, all payments to be made by Borrower relating thereto, all proceeds of Collateral and all related payments due and payable to the Lenders pursuant to any other Operative Document, shall, to the extent readily attributable to a Type of Equipment or the Aircraft, be distributed by the Collateral Agent as follows:

(i) first,

(A) in the case of any amount which is attributable to the Aircraft, to each of the Lenders an amount equal to such Lender's Aircraft Commitment Percentage of the aggregate amount, until all amounts due and owing each Lender whose Loans were used to refinance the Aircraft, to the extent of such Lender's Allocable Aircraft Value, have been paid in full;

(B) in the case of any amount which is attributable to the Gaming Equipment, to each of the Lenders an amount equal to such Lender's Gaming Equipment Commitment Percentage of the aggregate amount, until all amounts due and owing each Lender whose Loans were used to pay the Purchase Price of Gaming Equipment, to the extent of such Lender's Allocable Equipment Value for Gaming Equipment, have been paid in full;

(C) in the case of any amount which is attributable to the Non-Gaming Equipment, to each of the Lenders an amount equal to such Lender's Non-Gaming Equipment Commitment Percentage of the aggregate amount, until all amounts due and owing each Lender whose Loans were used to pay the Purchase Price of Non-Gaming Equipment, to the extent of such Lender's Allocable Equipment Value for Gaming Equipment, have been paid in full;

(ii) second, to the remaining Lenders pursuant to **clause (b)** below.

(b) Any payments to be made by Borrower relating to the exercise of remedies by any Lender or by the Collateral Agent on its behalf, any proceeds of Collateral, any transfer or assignment of claim relating to the Notes in a bankruptcy and all related payments due and payable to the Lenders pursuant to any other Operative Document, which are not readily attributable to a Type of Equipment

8

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or the Aircraft, shall, to such extent, be distributed by Collateral Agent *pro rata* among the Lenders according to the respective outstanding principal amounts of the Loans then held by each such Lender and to the extent such payment represents a Required Prepayment or other payment on account of principal of the Loans such payment shall be allocated *pro rata* by such Lender between the Allocated Aircraft Value and Allocated Equipment Value in proportion, as nearly as practicable, to the respective Allocated Aircraft Value and Allocated Equipment Value represented by the unpaid Loan Balance thereof.

(c) In case moneys with respect to any Type of Equipment or the Aircraft are insufficient to pay in full the whole amount due, owing or unpaid to the Lenders whose Loans were used to pay the Purchase Price of such Type of Equipment or refinance the Aircraft, as applicable, then application shall be made first to any unpaid accrued Interest, second to any Supplemental Payments and third to the Loan Balances. Any Supplemental Payments received by Collateral Agent shall be paid by Collateral Agent to the Person to whom such Supplemental Payments are payable under the provisions of the Operative Documents.

(d) In the event that at the time of any payment or distribution of proceeds to which this **Section 3.8** applies, a Lender has not Funded its full Commitment with respect to a Type of Equipment or the Aircraft, each Lender's Commitment Percentage with respect to such Type of Equipment or Aircraft shall be adjusted to reflect the percentage amount of Credit Exposure of such Lender compared to the Credit Exposure of all Lenders whose Loans were used to pay the Purchase Price of such Type of Equipment or refinance the Aircraft, as applicable.

#### SECTION 4. CONDITIONS PRECEDENT TO ADVANCES.

*Section 4.1. Conditions Precedent to the Initial Advance.* The obligations of the Lenders to make the related Funding of their Loans on the Initial Advance Date are subject to the satisfaction or waiver on or prior to the Initial Advance Date of the following conditions precedent:

(a) *Notice.* The Borrower shall have delivered to the Collateral Agent the Advance Request and Notices of Funding Request with respect to the Loans requested on the Initial Advance Date and the Disbursement Agent shall have delivered to the Collateral Agent related Advance Confirmation Notice, in each case in the form, at the times and as required under Section 2.4.3 of the Disbursement Agreement and in accordance with the procedures specified in Section 2.4.3 thereof.

(b) *Satisfaction of Disbursement Agreement Conditions Precedent.* All conditions precedent described in Section 3.1 of the Disbursement Agreement shall have been satisfied or waived in accordance with the terms of the Disbursement Agreement.

(c) [Intentionally Omitted.]

(d) *Airworthiness.* With respect to Aircraft, the Collateral Agent shall have received a copy of a certificate of airworthiness issued by the FAA.

(e) *Filings and Recordation.* With respect to the Aircraft, there shall have been duly filed for recordation with the FAA, the Aircraft Security Agreement with respect to the Aircraft; all necessary action has been taken for the Aircraft to be duly registered with the FAA in the name of the Aircraft Trustee.

(f) *Release.* Each of the Collateral Agent and the Lenders shall have received evidence reasonably satisfactory to it and its counsel, that the Original Aircraft Financing Documents, including any Lien thereunder, have been paid in full and released.

9

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(g) *Documents.* Each of the Collateral Agent and the Lenders shall have received copies of the fully executed and delivered Intercompany Note, Aircraft Security Agreement, Borrower Aircraft Assignment, Aircraft Trust Agreement and Aircraft Operating Agreement, and the same shall be in full force and effect.

(h) *Insurance.* Each of the Collateral Agent and the Lenders shall have received evidence reasonably satisfactory to it and its counsel, that the insurance with respect to the Aircraft required by **Section 8.2** has been obtained.

(i) *Opinions.* Each of the Collateral Agent and the Lenders shall have received favorable opinions of McAfee & Taft, special FAA counsel, substantially in the form attached hereto as **Exhibit C**.

(j) *Searches.* Each of the Collateral Agent and the Lenders shall have received copies of FAA lien searches with respect to the Aircraft.

(k) *Appraisal.* Each of the Collateral Agent and the Lenders shall have received a copy of an Appraisal of the Aircraft in form and substance reasonably satisfactory to it and its counsel.

(l) *Consent.* Las Vegas Jet shall have evidenced its consent to the execution and delivery of the Aircraft Security Agreement and Borrower Aircraft Assignment.

(m) *Status and Proceedings.* Each of the Collateral Agent and the Lenders shall have received certificates of existence and good standing with respect to the Aircraft Trustee and a Certificate of the Secretary or Assistant Secretary of the Aircraft Trustee, dated the Closing Date, with respect to the Aircraft Trustee's governing documents, resolutions and incumbent officers.

*Section 4.2. Conditions Precedent to Each Advance.* The obligations of the Lenders to make the related Fundings of their Loans on an Advance Date (other than Initial Advance Date) are subject to satisfaction or waiver on or prior to such Advance Date of the following conditions precedent:

(a) *Notice.* The Borrower shall have delivered to the Collateral Agent the Advance Requests with respect to the Loans and Notices of Funding Requests requested on such Advance Date and the Disbursement Agent shall have delivered to the Collateral Agent related Advance Confirmation Notice, in each case in the form, at the times and as required under Section 2.4.3 of the Disbursement Agreement and in accordance with the procedures specified in Section 2.4.3 thereof.

(b) *Drawdown Frequency for Loans.* No Loan shall have been previously made during such calendar month.

(c) *Satisfaction of Disbursement Agreement Conditions Precedent.* All conditions precedent described in Section 3.3 of the Disbursement Agreement shall have been satisfied or waived in accordance with the terms of the Disbursement Agreement.

## SECTION 5. REPRESENTATIONS AND WARRANTIES.

### [To be updated as the Credit Agreement representations are revised.]

*Section 5.1. Representations and Warranties of the Borrower.* As of the date hereof and the Document Closing Date, the Borrower hereby represents and warrants to each of the other parties hereto as follows:

(a) *Financial Condition.* The restated audited consolidated and consolidating balance sheets of Valvino and its consolidated Subsidiaries as at December 31, 2000 and December 31, 2001 and the related consolidated and consolidating statements of income and of cash flows for the Fiscal Years ended on such dates, reported on by and accompanied by an unqualified report from

10

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Deloitte & Touche LLP, present fairly in all material respects the consolidated and consolidating financial condition of Valvino and its consolidated Subsidiaries as at such date, and the consolidated and consolidating results of its operations and its consolidated and consolidating cash flows for the respective Fiscal Years then ended. The unaudited consolidated and consolidating balance sheets of Valvino and its consolidated Subsidiaries as at June 30, 2002, and the related unaudited consolidated and consolidating statements of income and cash flows for the 6-month period ended on such date, present fairly in all material respects the consolidated and consolidating financial condition of Valvino and its consolidated Subsidiaries as at such date, and the consolidated and consolidating results of its operations and its consolidated and consolidating cash flows for the 6-month period then ended (subject to normal year-end audit adjustments). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the aforementioned firm of accountants and disclosed therein). Valvino and its Subsidiaries (other than the Excluded Entities) do not have any material Guarantee Obligations, contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including, without limitation, any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph or that have not otherwise been disclosed to the Collateral Agent in writing. During the period from January 1, 2002 to and including the Document Closing Date there has been no Disposition by Valvino or any of its Subsidiaries of any material part of its business or Property.

(b) *No Change.* Since December 31, 2001, there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect.

(c) *Corporate/LLC Existence; Compliance with Law.* Each of the Loan Parties and the Completion Guarantor (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the corporate or limited liability company power and authority, and the legal right, to own and operate its Property, to lease the Property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or limited liability company and in good standing under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification, except to the extent the failure to be so qualified or in good standing could not reasonably be expected to have a Material Advance Effect and (d) is in compliance with all Requirements of Law except to the extent that the failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) *Corporate Power; Authorization; Enforceable Obligations.* Each Loan Party and the Completion Guarantor has the corporate or limited liability company power and authority, and the legal right, to make, deliver and perform the Loan Documents and the other Operative Documents to which it is a party and to carry out the transactions contemplated thereby and, in the case of the Borrower, to borrow hereunder. Each Loan Party and the Completion Guarantor has taken all necessary corporate or limited liability company action, as the case may be, to authorize the execution, delivery and performance of the Loan Documents and the other Operative Documents to which it is a party and, in the case of the Borrower and Capital Corp., to authorize the borrowings and issuances of Indebtedness on the terms and conditions of this Loan Agreement and the other Operative Documents. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any Person (other than a Loan Party) is required in connection with the borrowings hereunder or with the execution, delivery, performance, validity or enforceability of this Loan Agreement, any of the Loan Documents or any of the other Operative Documents, except (A) consents, authorizations, filings and notices described in **Schedule 4.4**, which consents, authorizations, filings and notices, unless otherwise

11

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indicated on **Schedule 4.4**, have been obtained or made and are in full force and effect and (B) the filings referred to in **Section 5.1(s)**. Each Loan Document and other Operative Document has been duly executed and delivered on behalf of the Completion Guarantor and each Loan Party thereto. This Loan Agreement constitutes, and each other Loan Document, Project Document and Operative Document upon execution will constitute, a legal, valid and binding obligation of the Completion Guarantor and each Loan Party thereto, enforceable against the Completion Guarantor and each such Loan Party in accordance with its 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) *No Legal Bar.* The execution, delivery and performance of this Loan Agreement, the other Loan Documents and the other Operative Documents, the borrowings hereunder and the use of the proceeds thereof will not violate any Requirement of Law or any Contractual Obligation of the Completion Guarantor or any Loan Party and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such Contractual Obligation (other than the Liens created by the Security Documents and the Other Security Documents). No Requirement of Law or Contractual Obligation applicable to the Completion Guarantor or any Loan Party could reasonably be expected to have a Material Adverse Effect.

(f) *No Material Litigation.* No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened by or against the Completion Guarantor or any Loan Party or against any of their respective properties or revenues

(a) with respect to any of the Financing Agreements or any of the transactions contemplated hereby or thereby, or (b) that could reasonably be expected to have a Material Adverse Effect.

(g) *No Default.* Neither the Completion Guarantor nor any Loan Party is in default under or with respect to any of its Contractual Obligations in any respect that could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

(h) *Ownership of Property; Liens.* Each of the Loan Parties is the sole owner of, legally and beneficially, and has good, marketable and insurable title to, or a valid leasehold interest in, all its Real Estate, and good title to, or has a valid leasehold interest in, all its other Property, and none of such Property is subject to any claims, liabilities, obligations, charges or restrictions of any kind, nature or description (other than claims, liabilities, obligations, charges or restrictions that individually or in the aggregate could not reasonably be expected to materially interfere with the business or assets of any Loan Party), or to any Lien, except for Permitted Liens.

(i) *Intellectual Property.* (i) Each Loan Party owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. No claim has been asserted or is pending by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does the Borrower know of any valid basis for any such claim, except (a) with respect to the Intellectual Property related to or otherwise associated with the Loan Parties' use of the "Le Reve" name, such claims that, if determined adversely to a Loan Party, could not reasonably be expected to have a material adverse effect on such Loan Party's ability to use the "Le Reve" name in its Permitted Business as currently used or contemplated to be used and (b) with respect to all other Intellectual Property, as could not reasonably be expected to have a Material Adverse Effect. The use by each Loan Party (if any) of the Intellectual Property related to or otherwise associated with such Loan Party's use of the "Le Reve" name does not infringe on the rights of any Person, which infringement

12

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could reasonably be expected to have a material adverse effect on such Loan Party's ability to use the "Le Reve" name in its Permitted Business as currently used or contemplated to be used. The use by each Loan Party (if any) of Intellectual Property other than Intellectual Property related to or otherwise associated with such Loan Party's use of the "Le Reve" name, does not infringe on the rights of any Person, which infringement could reasonably be expected to have a Material Adverse Effect.

(ii) As of the Document Closing Date, **Schedule 4.9(b)** (A) identifies each of the trademarks, service marks and trade name applications and registrations registered by, made by or otherwise held, directly or indirectly, by each of the Loan Parties and identifies which such Person registered, made or otherwise holds such Intellectual Property, and (B) specifies as to each, the jurisdiction in which such Intellectual Property has been issued or registered (or, if applicable, in which an application for such issuance or registration has been filed), including the respective registration or application numbers and applicable dates of registration or application and expiration.

(iii) As of the Document Closing Date, **Schedule 4.9(c)**(A) identifies each of the patents and patent applications owned by, made by or otherwise held, directly or indirectly, by each of the Loan Parties and identifies which such Person owns, made or otherwise holds such Intellectual Property, and (B) specifies as to each, the jurisdiction in which such Intellectual Property has been issued or registered (or, if applicable, in which an application for such issuance or registration has been filed), including the respective patent or application numbers and applicable dates of issuance or application and expiration.

(iv) As of the Document Closing Date, **Schedule 4.9(d)** (A) identifies each of the material copyrights and copyright applications and registrations registered by, made by or otherwise held, directly or indirectly, by each of the Loan Parties and identifies which such Person registered, made or otherwise holds such Intellectual Property, and (B) specifies as to each, the jurisdiction in which such Intellectual Property has been issued or registered (or, if applicable, in which an application for such issuance or registration has been filed), including the respective registration or application numbers and applicable dates of registration or application and expiration.

(v) As of the Document Closing Date, **Schedule 4.9(e)** (A) identifies, each of the material trade secrets owned by, claimed by, or otherwise held, directly or indirectly, by each of the Loan Parties and identifies which such Person registered, made or otherwise holds such Intellectual Property, and (B) specifies as to each, the jurisdiction in which such Intellectual Property exists.

(vi) As of the Document Closing Date, **Schedule 4.9(f)** identifies all licenses, sublicenses and other agreements relating to Intellectual Property to which each of the Loan Parties is a party that are material to the conduct of such Loan Party's Permitted Business and pursuant to which (A) any of the Loan Parties is a licensor or sub-licensor or the equivalent or (B) any other Person is authorized to use any Intellectual Property as a licensee, sub-licensee or the equivalent.

(j) *Taxes.* (i) Each of the Completion Guarantor and the Loan Parties has filed, or caused to be filed, all tax and informational returns that are required to have been filed by it in any jurisdiction, and all such tax and informational returns are correct and complete in all material respects. Each of the Completion Guarantor and the Loan Parties has paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by it, to the extent the same have become due and payable (other than (x) those taxes that it is contesting in good faith and by appropriate proceedings, and (y) taxes that are not yet due, with respect to each of

13

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which it has established reserves that are adequate for the payment thereof and as are required by GAAP).

(ii) Neither the Completion Guarantor nor any of the Loan Parties has incurred any material tax liability in connection with the Project or the other transactions contemplated by the Operative Documents which has not been disclosed in writing to the Collateral Agent (including as disclosed in the financial statements delivered to the Lenders hereunder).

(iii) There are no Liens for Taxes on any of the Properties of the Completion Guarantor or any of the Loan Parties other than Liens permitted pursuant to Section 7.3(a).

(k) *Federal Regulations.* No part of the proceeds of the Loans will be used for purchasing or carrying any "margin stock" (within the meaning of Regulation U) or for the purpose of purchasing, carrying or trading in any securities under such circumstances as to involve the Borrower in a violation of Regulation X or to involve any broker or dealer in a violation of Regulation T. No indebtedness being reduced or retired out of the proceeds of the Loans was or will be incurred for the purpose of purchasing or carrying any "margin stock" (within the meaning of Regulation U). Following application of the proceeds of the Loans, "margin stock" (within the meaning of Regulation U) does not constitute more than 25% of the value of the assets of the Borrower and its Subsidiaries. None of the transactions contemplated by this Loan Agreement (including, without limitation, the direct and indirect use of proceeds of the Loans) will violate or result in a violation of Regulation T, Regulation U or Regulation X. If requested by any Lender or the Collateral Agent, the Borrower will furnish to the Collateral Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1 referred to in Regulation U.

(l) *Labor Matters.* There are no strikes, stoppages, slowdowns or other labor disputes against any of the Loan Parties pending or, to the knowledge of the Borrower, threatened that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of the Loan Parties have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. All payments due from any of the Loan Parties on account of employee health and welfare insurance that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect if not paid have been paid or accrued as a liability on the books of the relevant Loan Party.

(m) *ERISA.* Neither a Reportable Event nor an "accumulated funding deficiency" (within the meaning of Section 412 of the Code or Section 302 of ERISA) has occurred during the five-year period prior to the date on which this representation is made or deemed made with respect to any Plan. No termination of a Single Employer Plan has occurred, and no Lien in favor of the PBGC or a Plan has arisen, during such five-year period. The actuarial present value of all benefit liabilities under each Single Employer Plan (based on those assumptions that would be used to determine whether each such Single Employer Plan could be terminated in a standard termination under Section 4041(b) of ERISA) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Plan allocable to such accrued benefits by a material amount. Neither the Borrower, any other Loan Party nor any Commonly Controlled Entity has had a complete or partial withdrawal from any Multiemployer Plan that has resulted or could reasonably be expected to result in a material liability under ERISA, and neither the Borrower, any other Loan Party nor any Commonly Controlled Entity would become subject to any material liability under ERISA if any such Person were to withdraw completely from all Multiemployer Plans as of the most recent valuation date for which each such Multiemployer Plan has furnished data regarding potential

14

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withdrawal liability to the applicable Loan Party. As of the Document Closing Date, no such Multiemployer Plan is in Reorganization or Insolvent.

(n) *Investment Company Act; Other Regulations.* Neither the Completion Guarantor nor any Loan Party is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended. Neither the Completion Guarantor nor any Loan Party is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, or the Interstate Commerce Act or registration under the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness other than the Nevada Gaming Laws or which may otherwise render all or any portion of the Obligations unenforceable. Incurrence of the Obligations by the Completion Guarantor and the Loan Parties under the Loan Documents complies with all applicable provisions of the Nevada Gaming Laws.

(o) *Subsidiaries.* (i) The Persons listed on **Schedule 4.15** constitute all the Subsidiaries of Valvino as of the Document Closing Date. **Schedule 4.15** sets forth as of the Document Closing Date, the name and jurisdiction of formation of each Subsidiary of Valvino and, as to each such Subsidiary, the percentage and number of each class of Capital Stock owned by its requisite parent entity. Each such Subsidiary is a Wholly Owned Subsidiary of Valvino and, if such Subsidiary's direct parent entity is other than Valvino, its direct parent entity.

(ii) There are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Capital Stock of any Subsidiary of Valvino. None of the Subsidiaries of Valvino have issued, or authorized the issuance of, any Disqualified Stock.

(iii) Neither Valvino nor any of its Subsidiaries are engaged in any businesses other than the Permitted Businesses. As of the Closing Date, other than, (i) in the case of the Las Vegas Jet and World Travel, the Aircraft and Collateral related to the operation and maintenance of the Aircraft, (ii) in the case of Palo, the Palo Home Site Land, and in the case of Desert Inn Improvement, the DIIC Water Permits and the Water Utility Land, (iii) in the case of Wynn Design, Property reasonably related to architectural, engineering, design and project management activities, none of the Water Companies or the Wynn Group Entities owns any material Property other than the Capital Stock of its Subsidiaries (if any).

(p) *Use of Proceeds.* The proceeds of the Loans made under this Loan Agreement shall be applied toward the Purchase Price of the Equipment and Transaction Costs and the payment of all sums due and owing under the Original Aircraft Financing Documents.

(q) *Environmental Matters.*

(i) To the knowledge of the Borrower and the Loan Parties: the Borrower and the Loan Parties (A) are, and within the period of all applicable statutes of limitation have been, in material compliance with all applicable Environmental Laws; and (B) reasonably believe that material compliance with all applicable Environmental Laws that is or is expected to become applicable to any of them will be timely attained and maintained.

15

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(ii) To the knowledge of the Borrower, Hazardous Substances are not present at, on, under, in, or about any real property now or formerly owned, leased or operated by any of the Loan Parties, or at any other location (including, without limitation, any location to which Hazardous Substances have been sent for re-use or recycling or for treatment, storage, or disposal) which could reasonably be expected to (A) give rise to liability of any of the Loan Parties under any applicable Environmental Law or otherwise result in costs to any of the Loan Parties that could

reasonably be expected to have a Material Adverse Effect, or (B) materially interfere with any of the Loan Parties' continued operations, or (C) materially impair the fair saleable value of any real property owned or leased by any of the Loan Parties.

(iii) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there is no judicial, administrative, or arbitral proceeding (including any notice of violation or alleged violation) under or relating to any Environmental Law (including, without limitation, any Environmental Claims) to which any of the Loan Parties is, or to the knowledge of the Borrower will be, named as a party that is pending or, to the knowledge of the Borrower, threatened.

(iv) No Loan Party has received any written request for information, or been notified that it is a potentially responsible party, under or relating to the federal Comprehensive Environmental Response, Compensation, and Liability Act or any similar Environmental Law.

(v) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no Loan Party has entered into or agreed to any consent decree, order, or settlement or other agreement, or is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral, or other forum for dispute resolution, relating to compliance with or liability under any Environmental Law or Environmental Claim.

(vi) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no Loan Party has assumed or retained, by contract or operation of law, any liabilities of any kind, fixed or contingent, known or unknown, under any Environmental Law or with respect to any Hazardous Substances.

(vii) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (A) Hazardous Materials Activities are not presently occurring, and have not previously occurred, at, on, under, in, or about any Real Estate now or formerly owned, leased or operated by any of the Loan Parties and (B) none of the Loan Parties have ever engaged in any Hazardous Materials Activities at any location.

(r) *Accuracy of Information, Etc.* No statement or information contained in this Loan Agreement, any other Loan Document, the Confidential Information Memorandum or any other document, certificate or statement furnished to the Arrangers, the Collateral Agent or the Lenders or any of them, by or on behalf of the Completion Guarantor or any Loan Party for use in connection with the transactions contemplated by this Loan Agreement or the other Loan Documents, contained as of the date such statement, information, document or certificate was so furnished (or, in the case of the Confidential Information Memorandum, as of the date of this Loan Agreement), any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements contained herein or therein not misleading. The projections and *pro forma* financial information contained in the materials referenced above (including, without limitation, the Projections) are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. There is no fact known to Valvino or any Loan Party that could reasonably be expected to have a Material

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Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents, in the Confidential Information Memorandum or in any other documents, certificates and written statements furnished to the Arrangers, the Collateral Agent and the Lenders for use in connection with the transactions contemplated hereby and by the other Loan Documents.

(s) *Security Documents.* (i) The Borrower Security Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) (or the Collateral Agent, as the assignee of the Borrower in the case of the Aircraft Security Agreement) a legal, valid, binding and enforceable security interest in the Collateral (or the Aircraft Collateral, in the case of the Aircraft Security Agreement). **Schedule 4.19(a)-2** lists each UCC Financing Statement covering the Collateral or the Aircraft Collateral that (i) names any Loan Party as debtor and (ii) will remain on file after the Document Closing Date.

(ii) [Intentionally Omitted.]

(iii) [Intentionally Omitted.]

(iv) The FF&E Control Agreement is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Accounts described therein and proceeds and products thereof. Upon the execution of the FF&E Control Agreement, the FF&E Control Agreement shall constitute fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Accounts described therein and the proceeds and products thereof, as security for the Obligations, in each case subject only to Permitted Liens and prior and superior in right to any other **Lien** (except Senior Permitted Liens).

(t) *Solvency.* Each Loan Party and the Completion Guarantor is, and, after giving effect to the incurrence of all Indebtedness, (ii) the use of the proceeds of such Indebtedness (including, without limitation, the use of proceeds of the Loans made by the Lenders hereunder) and (iii) obligations being incurred in connection with the Operative Documents, will be and will continue to be, Solvent.

(u) *Senior Indebtedness.* The Obligations (including, without limitation, the guarantee obligations of each Guarantor under the Loan Documents) constitute secured senior debt of each of the Loan Parties and "Permitted Debt" under and as defined in the Mortgage Notes Indenture. The Mortgage Notes, when issued and paid for, will be the legally valid and binding obligations of the Borrower and Capital Corp., enforceable against the Borrower and Capital Corp. in accordance with their terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability. The issuance and sale of Mortgage Notes, either (a) have been registered or qualified under applicable federal and state securities laws or (b) are exempt therefrom.

(v) *Regulation H.* No Mortgage encumbers improved real property which is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968.

(w) *Insurance.* Each of the Loan Parties is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which it is engaged and in any event in accordance with **Section 6.5**; and none of the Loan Parties has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar

(x) *Performance of Agreements; Material Contracts.* Neither the Completion Guarantor nor any Loan Party is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists that, with the giving of notice or the lapse of time or both, would constitute such a default, in each case, except where the consequences of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect. **Schedule 4.24** contains a true, correct and complete list of all the Material Contracts in effect on the Document Closing Date. All Material Contracts (other than Material Contracts described in clause (ii) of the definition thereof) are, to the knowledge of the Borrower, in full force and effect and no material defaults currently exist thereunder.

(y) *Real Estate.* (i) As of the Document Closing Date, **Schedule 4.25(a)** sets forth a true, complete and correct list of all Real Estate, including a brief description thereof, including, in the case of leases, the street address, landlord name, tenant name, guarantor name, current rent amount, lease date and lease expiration date. The Borrower has delivered to the Collateral Agent true, complete and correct copies of all such leases.

(ii) All Real Estate and the current use thereof complies with all applicable Requirements of Law (including building and zoning ordinances and codes) and with all Insurance Requirements, and none of the Loan Parties are non-conforming users of such Real Estate, except where noncompliance or non-conforming use could not reasonably be expected to have a Material Adverse Effect.

(iii) No Taking has been commenced or, to the best of the Borrower's knowledge, is contemplated with respect to all or any portion of any Real Estate or for the relocation of roadways providing access to such Real Estate except, in each case, as could not reasonably be expected to have a Material Adverse effect.

(iv) Except as set forth on **Schedule 4.25(d)**, as of the Document Closing Date there are no current, pending or, to the knowledge of the Borrower, proposed special or other assessments for public improvements or otherwise affecting any Real Estate, nor are there any contemplated improvements to such Real Estate that may result in such special or other assessments. There are no current, pending or, to the knowledge of the Borrower, proposed special or other assessments for public improvements or otherwise affecting any Real Estate, nor are there any contemplated improvements to such Real Estate that may result in such special or other assessments, in any case that could reasonably be expected to result in a material liability to any Loan Party.

(v) None of the Loan Parties has suffered, permitted or initiated the joint assessment of any Real Estate with any other real property constituting a separate tax lot. The Mortgaged Properties have been properly subdivided or entitled to exception therefrom, and for all purposes the Mortgaged Properties may be mortgaged, conveyed and, other than those with respect to leasehold interests, otherwise dealt with as separate legal lots or parcels.

(vi) The use being made of all Real Estate is in conformity with the certificate of occupancy and/or such other permits, licenses, variances and certificates for such Real Estate and any other reciprocal easement agreements, restrictions, covenants or conditions affecting such Real Estate except, in each case, to the extent such non-conformity could not reasonably be expected to materially and adversely affect the ownership, occupancy, use or operation of the Mortgaged Premises in furtherance of the Permitted Business of the applicable Loan Party.

(vii) There are no outstanding options to purchase or rights of first refusal or restrictions on transferability affecting any Real Estate (other than those set forth in the Financing Agreements).

(viii) All Real Estate (other than the Phase II Land) has adequate rights of access to public ways and is served by installed, operating and adequate water, electric, gas, telephone, sewer, sanitary sewer and storm drain facilities, in each case as necessary to permit the Real Estate to be used for its intended purposes. All roads necessary for the full utilization of the Real Estate (other than the Phase II Land) for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities or are the subject of access easements for the benefit of such Real Estate. All reciprocal easement agreements affecting any Real Estate are in full force and effect, and Valvino and the Loan Parties are unaware of any defaults thereunder. Except for public streets and sidewalks, neither Valvino nor any of the Loan Parties uses or occupies any real property other than such Real Estate in connection with the use and operation of any Real Estate.

(ix) Except, in each case, as could not reasonably be expected to have a Material Adverse Effect, no building or structure constituting a Real Estate or any appurtenance thereto or equipment thereon, or the use, operation or maintenance thereof, violates any restrictive covenant or encroaches on any easement or on any property owned by others.

(x) No portion of the Real Estate has suffered any material damage by fire or other casualty loss that has not heretofore been repaired and restored. No portion of the Real Estate is located in a special flood hazard area as designated by any federal governmental authorities.

(z) *Permits.* 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: (A) each of the Loan Parties has obtained and holds all Permits required as of the date this representation is deemed made in respect of all Real Estate and for any other property otherwise operated by or on behalf of, or for the benefit of, such Person and for the operation of its Permitted Businesses, (B) all such Permits are in full force and effect, and each of the Loan Parties has performed and observed all requirements of such Permits (to the extent required to be performed by the date this representation is deemed made), (C) 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, (D) no such Permits contain any restrictions, either individually or in the aggregate, that are burdensome to any of the Loan Parties, or to the operation of its Permitted Business or any Property owned, leased or otherwise operated by such Person, (E) the Borrower has no knowledge that any Governmental Authority is considering limiting, modifying, suspending, revoking or renewing on burdensome terms



any such Permit, and (F) each of the Loan Parties reasonably believes that each such Permit will be timely renewed and complied with, without undue expense or delay, and that any Permit not required to have been obtained by the date this representation is deemed made that may be required of such Person is of a type that is routinely granted on application and compliance with the conditions of issuance (such conditions being ministerial or of a type satisfied in the ordinary course of business, without undue expense or delay) and will be timely obtained and complied with, without undue expense or delay.

(aa) *Sufficiency of Project Documents.* Other than those that can be reasonably expected to be commercially available when and as required, the services to be performed, the materials to be supplied and Real Estate and other rights granted or to be granted pursuant to the Project Documents in effect as of such date (i) comprise all of the property interests necessary to secure any right material to the operation and maintenance of the Project in accordance with all

19

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Requirements of Law, (ii) are sufficient to enable the Project to be located and operated on the Site and (iii) provide adequate ingress and egress from the Site for any reasonable purpose in connection with the operation of the Project.

(bb) *Utilities.* All gas, water and electrical interconnection and utility services necessary for the operation of the Project for its intended purposes are available at the Site.

(cc) *Fiscal Year.* The fiscal year of each of the Loan Parties (including the Borrower) ends on December 31 of each calendar year.

(dd) *Formation.* The Borrower is only formed in the State of Nevada and "Wynn Las Vegas, LLC" is the name as it appears in official filings in the State of Nevada.

(ee) *Private Offering.* The issuance, sale and delivery of the Notes under the circumstances contemplated hereby do not require the registration or qualification of such Notes under the Securities Act, any state securities laws or the Trust Indenture Act of 1939. No Loan Party nor anyone authorized to act on such Person's behalf has, directly or indirectly, solicited any offers to acquire, offered or sold: (i) any interest in the Notes in violation of Section 5 of the Securities Act or any state securities laws, or (ii) any interest in any security or lease the offering of which, for purposes of the Securities Act or any state securities laws, would be deemed to be part of the same offering as the offering of the aforementioned interests. No Loan Party, nor anyone authorized to act on such Person's behalf, was involved in (y) offering or soliciting offers for the Notes (or any similar securities) or (z) selling Notes (or any similar securities) to any Person other than the Lenders and not more than [ ] other institutional investors.

*Section 5.2. Representations and Warranties of Lenders.* Each Lender represents and warrants, severally and only as to itself, to each of the other parties hereto as follows:

(a) *Investment.* The Note being acquired by such Lender is being acquired by such Lender for investment for its own account and not with a view to the resale or distribution of such interest or any part thereof in any manner that would require registration under the Securities Act, but without prejudice, however, to the right of such Lender at all times to sell or otherwise dispose of all or any part of such interest under a registration available under the Securities Act or under an exemption from such registration available under the Securities Act, it being understood that the disposition by the undersigned of the Note to be purchased by such Lender shall, at all times, subject to the assignment provisions of **Section 10** hereof, remain entirely within its control.

(b) *Offer of Securities, Etc.* Neither such Lender nor any Person authorized to act on its behalf has, directly or indirectly, offered to sell the Notes or any other similar securities (the sale or offer of which would be integrated with the sale or offer of the Notes), for sale to, or solicited any offer to acquire any of the same from, any Person.

(c) *No Registration.* Such Lender understands and acknowledges that the Notes have not been and will not be registered under the Securities Act in reliance upon the exemption provided in Section 4(2) of the Securities Act or any other applicable exemption, that the Notes have not and will not be registered or qualified under the securities or "blue sky" laws of any jurisdiction, that the Notes may be resold or otherwise transferred only if so registered or qualified or if an exemption from registration or qualification is available, that the Borrower is not required to register the Notes and that any transfer must comply with the provisions of the Operative Documents relating thereto. Such Lender will comply with all applicable federal and state securities laws in connection with any subsequent resale of the Notes held by it.

20

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(d) *Institutional Investor.* Such Lender is a sophisticated institutional investor and an "accredited investor" as defined in paragraph (1), (2), (3) or (7) of Rule 501(a) of the Securities Act, and has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of its investment in the Notes and is able to bear the economic risk of such investment. Such Lender has been given such information concerning the Notes, the other Operative Documents, the Collateral and the Borrower as it has requested.

(e) *Legend.* Such Lender understands and acknowledges that the Note which it is acquiring will bear a legend as set forth in the form of Note included as **Exhibit A**.

The making of any Loan on an Advance Date, and any assignment of any Loan or this Loan Agreement shall constitute an affirmation by the subject assignee or acquiring Lender of the preceding representations and warranties.

*Section 5.3. Representations and Warranties of Collateral Agent.* Trust Company, in its individual capacity and not in its capacity as Collateral Agent (with the exception of **clause (b)** below and the last sentence of **clause (c)** below, which representation and warranty is made by Wells Fargo Bank Nevada, National Association, solely in its capacity as Collateral Agent), hereby represents and warrants to each of the other parties hereto that:

(a) *Due Organization, Etc.* Trust Company is a national banking association duly organized, validly existing and in good standing under the laws of the United States of America; Trust Company has full banking and trust power and authority to enter into and perform its obligations under the Operative Documents to which it is or is to be a party and each other agreement, instrument and document to be executed and delivered by it on or before the Document Closing Date in connection with or as contemplated by each such Operative Document to which it is or is to be a party; and the Operative Documents to which Trust Company is a party, have been or will be duly executed and delivered by Trust Company.

(b) *Authorization; No Conflict.* The execution and delivery by Trust Company in its individual capacity, and the Trust Company in its capacity as Collateral Agent of the Operative Documents to which it is or is to be a party, and the performance by Trust Company in its individual capacity or as Collateral Agent of its obligations under such Operative Documents, have been duly authorized by all necessary action on its part, and do not and will not: (i) contravene any Federal laws governing the banking powers of Trust Company; (ii) violate any provision of its articles of association or by-laws; (iii) result in a breach of or constitute a default under any indenture, loan or credit agreement, or any other agreement or instrument to which Trust Company is a party or by which it or its properties may be bound or affected, which breaches or defaults would be reasonably likely to materially and adversely affect the ability of Trust Company in its individual capacity or as Collateral Agent to perform its obligations under any Operative Documents to which it is or will be a party; or (iv) require any authorizations, consents, approvals, licenses or formal exemptions from, or any filings, declarations or registrations with, any Governmental Authority governing the banking powers of Trust Company or any consent or approval of any non-governmental Person.

(c) *Enforceability, Etc.* Each Operative Document to which Trust Company is a party constitutes the legal, valid and binding obligation of Trust Company enforceable against it in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights generally and by general equitable principles. Each Operative Document to which the Collateral Agent is a party constitutes the legal, valid and binding obligation of the Collateral Agent enforceable against it in accordance with the terms thereof, except as such enforceability may be limited by the applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of Creditors' rights generally and by general equitable principles.

21

(d) *Litigation.* There is no action, proceeding or investigation known to Trust Company pending or threatened which questions the validity of the Operative Documents to which Trust Company is a party or any action taken or to be taken pursuant to the Operative Documents to which Trust Company is a party, if adversely determined, would be reasonably likely to adversely affect the Trust Company's, in its individual capacity or as Collateral Agent, ability to perform its obligations under the Operative Documents.

## SECTION 6. AFFIRMATIVE COVENANTS.

The Borrower hereby covenants and agrees that the Borrower shall and shall cause each of the other Loan Parties to, directly or indirectly (and by executing the FF&E Guaranty, each such other Loan Party agrees that it will):

*Section 6.1. Financial Statements.* Furnish to the Collateral Agent and each Lender:

(a) as soon as available, but in any event not later than the earlier of (i) 10 days after the filing with the SEC of Wynn Resorts' Annual Report on Form 10-K (or successor form thereto) with respect to each Fiscal Year and (ii) 90 days after the end of each Fiscal Year, a copy of the audited consolidated and consolidating balance sheet of Valvino and its consolidated Subsidiaries (including the consolidated balance sheet of the Borrower and its consolidated Subsidiaries) as at the end of such Fiscal Year and the related audited consolidated statements of income and of cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, by Deloitte & Touche LLP or other independent certified public accountants of nationally recognized standing;

(b) as soon as available, but in any event not later than the earlier of (i) 10 days after the filing with the SEC of Wynn Resorts' Quarterly Report on Form 10-Q (or successor form thereto) with respect to each of the first three quarterly periods of each Fiscal Year and (ii) 45 days after the end of each of the first three quarterly periods of each Fiscal Year, the unaudited consolidated and consolidating balance sheets of Valvino and its consolidated Subsidiaries (including the consolidated balance sheet of the Borrower and its consolidated Subsidiaries) as at the end of such quarter and the related unaudited consolidated and consolidating statements of income and of cash flows for such quarter and the portion of the Fiscal Year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments); and

(c) as soon as available, but in any event not later than 45 days after the end of each month occurring during each Fiscal Year other than the third, sixth, ninth and twelfth such month, the unaudited consolidated and consolidating balance sheets of Valvino and its consolidated Subsidiaries (including the consolidated balance sheet of the Borrower and its consolidated Subsidiaries) as at the end of such month and the related unaudited consolidated and consolidating statements of income and of cash flows for such month and the portion of the Fiscal Year through the end of such month, setting forth in each case in comparative form the figures for the previous year and the figures from the applicable Projections, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments).

All such financial statements shall be complete and correct in all material respects (in the case of financial statements delivered pursuant to **subsections (b) and (c)** of this **Section 6.1**, subject to normal year-end audit adjustments) and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by such accountants or officer, as the case may be, and disclosed therein).

22

*Section 6.2. Certificates; Other Information.* Furnish to the Collateral Agent and each Lender, or, in the case of **subsections (g), (h) and (j)**, to the Collateral Agent, or, in the case of **subsection (l)**, to the relevant Lender:

(a) concurrently with the delivery of the financial statements referred to in **Section 6.1(a)**, a certificate of the independent certified public accountants reporting on such financial statements stating that (i) their audit examination has included a review of the terms of this Loan Agreement and

the other Loan Documents as they relate to accounting matters, (ii) in making the examination necessary therefor no knowledge was obtained of any Default or Event of Default, except as specified in such certificate, and (iii) based on their audit examination nothing has come to their attention that causes them to believe that the information contained in the certificates (including, without limitation, the Compliance Certificate) delivered therewith pursuant to **subsection (b)** below is not correct or stated in accordance with the terms of this Loan Agreement;

(b) concurrently with the delivery of any financial statements pursuant to **Section 6.1**, (A) a certificate of a Responsible Officer stating that, to the best of each such Responsible Officer's knowledge, each Loan Party during such period has observed or performed all of its covenants and other agreements, and satisfied every condition, contained in this Loan Agreement and the other Loan Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate and (B) in the case of quarterly or annual financial statements, a Compliance Certificate containing all information and calculations necessary for determining compliance by the Loan Parties with the provisions of this Loan Agreement referred to therein as of the last day of the applicable fiscal quarter or Fiscal Year, as the case may be and (iii) in the case of monthly financial statements delivered after the Completion Date, a certificate of a Responsible Officer setting forth all payments made by the Borrower with respect to Affiliated Overhead Expenses during the 12-month period ending on the last day of the applicable month (or such shorter period commencing on the Completion Date if the Completion Date occurred during such 12-month period) and stating that all such payments were in reimbursement of Affiliated Overhead Expenses and permitted pursuant to **Section 7.10(d)**;

(c) as soon as available, and in any event no later than the Completion Date and 30 days prior to the beginning of each Fiscal Year thereafter, a detailed consolidated and consolidating budget of Valvino and its consolidated Subsidiaries (including a detailed consolidated budget of the Borrower and its consolidated Subsidiaries) for such Fiscal Year (or portion thereof from the Completion Date through the end of such Fiscal Year) (including a projected consolidated and consolidating balance sheet of Valvino and its consolidated Subsidiaries (including a consolidated balance sheet for the Borrower and its consolidated Subsidiaries) as of the end of such Fiscal Year, and the related consolidated and consolidating statements of projected cash flow, projected changes in financial position and projected income), and, as soon as available, significant revisions, if any, of such budget and projections with respect to such Fiscal Year (collectively, the "Projections"), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect;

(d) within 45 days after the end of each fiscal quarter after the Completion Date, a narrative discussion and analysis of the financial condition and results of operations of each of the Loan Parties for such fiscal quarter and for the period from the beginning of the then current Fiscal Year (or if the then current Fiscal Year is the Fiscal Year in which the Completion Date has occurred, from the Completion Date) to the end of such fiscal quarter, as compared to the portion of the Projections covering such periods and to the comparable periods of the previous Fiscal Year;

23

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(e) within five days after the same are sent, copies of all financial statements and reports that any Loan Party sends to the holders of any class of its debt securities to the extent not previously delivered to the Lenders and, within five days after the same are filed, copies of all financial statements and reports that any Loan Party may make to, or file with, the SEC;

(f) on the date of the occurrence thereof, notice that (i) any or all of the obligations under the Mortgage Notes Indenture or the Wynn Credit Agreement have been or can be accelerated, or (ii) the trustee or the required holders of Mortgage Notes, or the Administrative Agent or required Wynn Banks, as the case may be, has given notice that any or all such obligations are to be or can be accelerated;

(g) promptly, and in any event within ten Business Days after any Material Contract or any other contract or arrangement pursuant to which the Loan Parties are, or any one of them is, reasonably expected to incur obligations or liabilities with a Dollar Value in excess of \$8,000,000 during the term of such contract or arrangement is terminated or amended or any new Material Contract or any other such contract or arrangement is entered into, or upon becoming aware of any material default by any Person under a Material Contract or any other such contract or arrangement, a written statement describing such event with copies of such amendments or new Material Contracts or such other contracts or arrangements, and, with respect to any such terminations or material defaults, an explanation of any actions being taken with respect thereto;

(h) promptly upon receipt, copies of all notices provided to any Loan Party or their Affiliates pursuant to any documents evidencing Other Indebtedness, relating to material defaults or material delays and promptly upon execution and delivery thereof, copies of all amendments to any of the documents evidencing Other Indebtedness;

(i) to the extent not included in **subsections (a)** through **(h)** above, no later than the date the same are required to be delivered thereunder, copies of all agreements, documents or other instruments (including, without limitation, (i) audited and unaudited, pro forma and other financial statements, reports, forecasts, and projections, together with any required certifications thereon by independent public auditors or officers of any Loan Party or otherwise, (ii) press releases, (iii) statements or reports furnished to any other holder of the securities of any Loan Party and (iv) regular, periodic and special securities reports) that any Loan Party is required to provide pursuant to the terms of the Other Indebtedness;

(j) promptly, and in any event within 30 days of the end of each Fiscal Year after the Completion Date, deliver to the Collateral Agent a certificate substantially in the form of **Exhibit M** hereto and otherwise in form and substance satisfactory to the Collateral Agent in consultation with the Insurance Advisor, certifying that the insurance requirements of **Section 8.2** have been implemented and are being complied with in all material respects;

(k) within twenty days after the end of each fiscal quarter of the Borrower, a schedule of all Proceedings involving an alleged liability of, or claims against or affecting, any Loan Party equal to or greater than \$1,000,000, and promptly after request by the Collateral Agent such other information as may be reasonably requested by the Collateral Agent to enable the Collateral Agent and its counsel to evaluate any of such Proceedings; and

(l) promptly, such additional financial and other information as any Lender may from time to time reasonably request.

**Section 6.3. Payment of Obligations.** To the extent not otherwise subject to valid subordination, standstill, intercreditor or similar arrangements, pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate

24

proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the relevant Loan Party.

*Section 6.4. Conduct of Business and Maintenance of Existence, Etc.* (i) Preserve, renew and keep in full force and effect its corporate or limited liability company existence and in each case remain a Wholly Owned Subsidiary of Wynn Resorts and its direct parent entity and (ii) take all reasonable action to maintain all rights, privileges, franchises, Permits and licenses necessary or desirable in the normal conduct of its business, except, in each case, as otherwise permitted by **Section 7.4** and except, in the case of **subsection (ii)** above, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

*Section 6.5. Maintenance of Property; Leases; Insurance.* (a) Keep all Property and systems useful and necessary in its business in good working order and condition, ordinary wear and tear excepted.

(b) Maintain all rights of way, easements, grants, privileges, licenses, certificates, and Permits necessary for the intended use of any Real Estate except any such item the loss of which, individually or in the aggregate, could not reasonably be expected to materially adversely affect or interfere with the Permitted Business of any Loan Party or have a material adverse effect on the Casino Land, the Golf Course Land or the Phase II Land.

(c) Comply with the terms of each lease or other grant of Real Estate, including easement grants, so as to not permit any material uncured default on its part to exist thereunder, except, in each case, where noncompliance therewith could not reasonably be expected to materially adversely affect or interfere with the Permitted Business or Property of any Loan Party.

(d) Maintain with financially sound and reputable insurance companies insurance on all its Property (including, without limitation, all inventory, equipment and vehicles) in accordance with **Section 8.2** and with the Wynn Credit Agreement.

(e) Subject to the Security Documents, preserve and protect the Lien status of each Security Document and, if any Lien (other than unrecorded Liens permitted under **Section 7.3** that arise by operation of law and other Liens permitted under **Section 7.3(f)**) is asserted against the Collateral, promptly and at its expense, give the Collateral Agent a detailed written notice of such Lien and pay the underlying claim in full or take such other action so as to cause it to be released or bonded over in a manner reasonably satisfactory to the Collateral Agent.

*Section 6.6. Inspection of Property; Books and Records; Discussions.* (a) Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and (b) subject to any Nevada Gaming Laws restricting such actions, permit representatives of any Lender to visit and inspect any of its properties and examine and, at the Borrower's expense, make abstracts from any of its books and records at any reasonable time and upon reasonable prior notice and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of Valvino or any Loan Party with officers and employees of Valvino or such Loan Party and with their respective independent certified public accountants.

*Section 6.7. Notices.* Promptly give notice to the Collateral Agent and each Lender, and, in the case of **clause (a)**, to the Administrative Agent and the Mortgage Notes Indenture Trustee, of:

(a) the occurrence of any Default or Event of Default;

(b) any (i) default or event of default (or alleged default) under any Contractual Obligation of any Loan Party or (ii) litigation, investigation or proceeding which may exist at any time between any Loan Party and any Governmental Authority, that in either case, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect;

25

(c) upon any officer of a Loan Party or Wynn Resorts obtaining knowledge thereof, (i) the non-frivolous institution of, or threat of, any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration against or affecting any Loan Party or any Property of a Loan Party (collectively, "*Proceedings*") not previously disclosed in writing by the Borrowers to the Lenders or (ii) any material development in any Proceeding that, in any case (A) if adversely determined, has a reasonable possibility of giving rise to a Material Adverse Effect or (B) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, in each case together with such other information as may be reasonably available to the Loan Parties to enable Lenders and their counsel to evaluate such matters;

(d) the following events, as soon as possible and in any event within 30 days after any Loan Party knows or has reason to know thereof: (i) the occurrence of any Reportable Event with respect to any Plan, a material failure to make any required contribution to a Plan, the creation of any Lien in favor of the PBGC or a Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC, Valvino, the Borrower, any other Loan Party or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the termination, Reorganization or Insolvency of, any Plan; and

(e) any development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the relevant Loan Party proposes to take with respect thereto.

*Section 6.8. Environmental Laws; Permits.* (a) Comply in all material respects with, and use best efforts to ensure compliance in all material respects by all tenants and subtenants, if any, with, all applicable Environmental Laws and Environmental Permits, and obtain, maintain and comply in all material respects with and maintain, and use best efforts to ensure that all tenants and subtenants obtain, maintain and comply in all material respects with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws.

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws related to the Mortgaged Property or the Project.

(d) Deliver to the Collateral Agent (i) as soon as practicable following receipt thereof, copies in any Loan Party's possession or any Loan Party's control of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Valvino or the Loan Parties or by independent consultants, governmental authorities or any other Persons, with respect to Environmental Matters at the Site or the Project or with respect to any Environmental Claims, (ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (A) any Release required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws, (B) any remedial action taken by any Person in response to (1) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims against a Loan Party that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (2) any Environmental Claims against a Loan Party that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (iii) as soon as practicable following the sending or receipt thereof by any Loan Party, a copy of any and all written communications with respect to (A) any Environmental Claims that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (B) any Release required to be reported to any federal, state or local governmental or regulatory agency, and (C) any request for information from any governmental agency indicating that such agency is investigating whether any Loan Party may be potentially responsible for any Hazardous Materials Activity, (iv) prompt written notice describing in reasonable detail (A) any proposed acquisition of stock, assets, or property by Valvino or any Loan Party that could reasonably be expected to (1) expose Valvino or any Loan Party to, or result in, Environmental Claims that could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect or (2) affect the ability of any Loan Party to maintain in full force and effect all material Permits required under any Environmental Laws for their respective operations and (B) any proposed action to be taken by any Loan Party to modify current operations in a manner that could reasonably be expected to subject such Loan Party to any material additional obligations or requirements under any Environmental Laws that could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect, (v) any notice that any Governmental Authority may condition approval of, or any application for, any material Permit held by any Loan Party on terms and conditions that are materially burdensome to such Loan Party, or to the operation of any of its businesses or any property owned, leased or otherwise operated by such Person, (vi) notice of any actions or proceedings of the types described in **Sections 5.1(q)(iii)** through **(v)**, (vii) as soon as practicable, all documents submitted to, filed with or received from any Governmental Authority, including without limitation the Nevada Public Utilities Commission and the State of Nevada, Division of Water Resources, with respect to the Water Permits and (viii) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Collateral Agent in relation to any matters disclosed pursuant to this **Section 6.8(d)**.

*Section 6.9. [Intentionally Omitted].*

*Section 6.10. Additional Subsidiaries and Discharge of Liens.* (a) [Intentionally Omitted].

(b) With respect to any new Subsidiary created or acquired after the Document Closing Date by any Loan Party, subject to compliance with Nevada Gaming Laws, promptly (i) cause such new Subsidiary to become a party to the FF&E Guaranty, (ii) if requested by the Collateral Agent, deliver to the Collateral Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Collateral Agent and (iii) execute and/or deliver such other documents or provide such other information as the Collateral Agent may reasonably request, including delivering documents and taking such other actions which

would have been required under Section 3.1 of the Disbursement Agreement if such new Subsidiary were a Loan Party on the Document Closing Date.

*Section 6.11. Use of Proceeds.* Except as set forth in **Section 6.16**, use the proceeds of the Loans only for the payment of the Purchase Price of the Equipment and Transaction Costs and the payment of all sums due and owing under the Original Aircraft Financing Documents.

*Section 6.12. Compliance with Laws, Project Documents, Etc.; Permits.* (a) Comply with all Requirements of Law, noncompliance with which could reasonably be expected to cause, individually or in the aggregate, a Material Adverse Effect and comply in all material respects with its Governing Documents.

(b) Comply, duly and promptly, in all material respects with its respective obligations and enforce all of its respective rights under all Project Documents, except, in the case of Project Documents other than Material Affiliated Contracts, where the failure to comply could not reasonably be expected to have a Material Adverse Effect.

(c) From time to time obtain, maintain, retain, observe, keep in full force and effect and comply with the terms, conditions and provisions of all Permits as shall now or hereafter be necessary under applicable laws, except any thereof the noncompliance with which could not reasonably be expected to have a Material Adverse Effect. From time to time maintain, retain, observe and keep in full force and effect and comply with the terms, conditions and provisions of all Water Permits.

*Section 6.13. Further Assurances.* From time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take all such actions, as the Collateral Agent or any Lender may reasonably request, for the purposes of implementing or effectuating the provisions of this Loan Agreement and the other Loan Documents, or of more fully perfecting or renewing the rights of the Collateral Agent and the Lenders with respect to the Collateral (or with respect to any additions thereto or replacements or proceeds or products thereof or with respect to any other property or assets hereafter acquired by any Loan Party which may be deemed to be part of the Collateral) pursuant hereto or thereto. Upon the exercise by the Collateral Agent or any Lender of any power, right, privilege or remedy pursuant to this Loan Agreement or the other Loan Documents which requires any consent, approval, recording, qualification or authorization of any Governmental Authority, the Borrower shall, or shall cause any other applicable Loan Party to (and by executing the FF&E Guaranty, each such other Loan Party agrees that it will), execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the Collateral Agent or such Lender may be required to obtain from the Borrower or the applicable Loan Party for such governmental consent, approval, recording, qualification or authorization. In the event that, notwithstanding the covenants contained in **Section 7**, a Lien not otherwise permitted under this Loan Agreement shall encumber the Collateral or any portion thereof, the relevant Loan Party shall promptly discharge or cause to be discharged by payment to the lienor or lien claimant or promptly secure removal by bonding or deposit with the county clerk or otherwise or, at the Collateral Agent's option, and if obtainable promptly obtain title insurance against, any such Lien or mechanics' or materialmen's claims of lien filed or otherwise asserted against the Collateral or any portion thereof within 60 days after the date of notice thereof; *provided*, that the provisions

of this **Section 6.13** (and compliance therewith) shall not be deemed to constitute a waiver of any of the provisions of **Section 7**. Each of the Loan Parties shall fully preserve the Lien and the priority of each of the Security Documents without cost or expense to the Collateral Agent or the Lenders. If any Loan Party fails to promptly discharge, remove or bond off any such Lien or mechanics' or materialmen's claim of lien as described above, which is not being contested by the applicable Loan Party in good faith by appropriate proceedings promptly instituted and diligently conducted, within 30 days after the receipt of notice thereof, then the Collateral Agent may, but shall not be required to, procure the release and discharge of such Lien, mechanics' or materialmen's claim

of lien and any judgment or decree thereon, and in furtherance thereof may, in its sole discretion, effect any settlement or compromise with the lienor or lien claimant or post any bond or furnish any security or indemnity as the Collateral Agent, in its sole discretion, may elect. In settling, compromising or arranging for the discharge of any Liens under this subsection, the Collateral Agent shall not be required to establish or confirm the validity or amount of the Lien. The Borrower agrees that all costs and expenses expended or otherwise incurred pursuant to this **Section 6.13** (including reasonable attorneys' fees and disbursements) by the Collateral Agent shall constitute Obligations and shall be paid by the Borrower in accordance with the terms hereof.

*Section 6.14. [Reserved].*

*Section 6.15. [Reserved].*

*Section 6.16. Use of Proceeds on Initial Advance Date.* On the Initial Advance Date, use the proceeds of the Loans solely (a) to pay all sums due and owing under the Original Aircraft Financing Documents, (b) to pay Transaction Costs and (c) to the extent the proceeds of the Loans exceed the amounts payable pursuant to **clause (a)** and **(b)** hereof, to pay Project Costs.

*Section 6.17. Appraisal.* (a) Prior to the Completion Date, the Borrower shall, at its own cost and expense, cause to be completed and delivered to the Collateral Agent and the Lenders an Appraisal of the Equipment.

(b) The Borrower shall, as required pursuant to the terms of the Disbursement Agreement, promptly cause, additional Items of Equipment to become subject to the first priority security interest of the Borrower Security Agreement.

## SECTION 7. NEGATIVE COVENANTS.

The Borrower hereby covenants and agrees that the Borrower shall not, and shall not permit any of the other Loan Parties to, directly or indirectly (and by executing the FF&E Guaranty, each such other Loan Party agrees that it will not):

*Section 7.1. Financial Condition Covenants.*

(a) *Consolidated Leverage Ratio.* Permit the Consolidated Leverage Ratio of the Borrower as at the last day of any period of four full consecutive fiscal quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first fiscal quarter which begins after the Opening Date) ending on any Quarterly Date set forth below to exceed the ratio set forth below opposite such Quarterly Date:

Quarterly Date	Consolidated Leverage Ratio
First Quarterly Date	6.75:1
Second Quarterly Date	5.75:1
Third Quarterly Date	5.50:1
Fourth, Fifth and Sixth Quarterly Dates	5.25:1
Seventh and Eight Quarterly Dates	5.00:1
Ninth and Tenth Quarterly Dates	4.75:1
Eleventh Quarterly Date	4.50:1
Twelfth and Thirteenth Quarterly Dates	4.25:1
Fourteenth and Fifteenth Quarterly Dates	4.25:1
Sixteenth Quarterly Date and each Quarterly Date thereafter	3.75:1

; provided, that for purposes of calculating Consolidated EBITDA pursuant to this **Section 7.1(a)** for any period which is less than four full fiscal quarters, Consolidated EBITDA shall be calculated on an annualized basis.

(b) *Minimum Consolidated EBITDA.* Permit Consolidated EBITDA of the Borrower for any period of four full consecutive fiscal quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first fiscal quarter which begins after the Opening Date) ending on any Quarterly Date set forth below to be less than the correlative amount set forth below opposite such Quarterly Date.

Quarterly Date	Consolidated EBITDA
First Quarterly Date	\$ 215,000,000
Second and Third Quarterly Dates	\$ 250,000,000
Fourth, Fifth, Sixth, Seventh, Eight and Ninth Quarterly Dates	\$ 260,000,000
Tenth, Eleventh and Twelfth Quarterly Dates	\$ 270,000,000
Thirteenth and Fourteenth Quarterly Dates	\$ 275,000,000
Fifteenth Quarterly Date and each Quarterly Date thereafter	\$ 280,000,000

; provided, that for purposes of calculating Consolidated EBITDA pursuant to this Section 7.1(b) for any period which is less than four full fiscal quarters, Consolidated EBITDA shall be calculated on an annualized basis.

(c) *Consolidated Fixed Charge Coverage Ratio.* Permit the Consolidated Fixed Charge Coverage Ratio of the Borrower for any period of four full consecutive fiscal quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first fiscal quarter which begins after the Opening Date) ending with any Quarterly Date set forth below to be less than the ratio set forth below opposite such Quarterly Date:

Quarterly Date	Consolidated Fixed Charge Coverage Ratio
First, Second, Third, Fourth, Fifth and Sixth Quarterly Dates	1.00:1
Seventh Quarterly Date and each Quarterly Date thereafter	1.05:1

(d) *Maintenance of Net Worth.* Permit the Consolidated Net Worth of the Borrower at any Quarterly Date to be less than \$[ ] plus an amount equal to the sum of 85% of Consolidated Net Income for all periods from the Document Closing Date through such Quarterly Date.

(e) *Consolidated Interest Coverage Ratio.* Permit the Consolidated Interest Coverage Ratio of the Borrower for any period of four full consecutive fiscal quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first fiscal quarter which begins after the Opening Date) ending on any Quarterly Date set forth below to be less than the ratio set forth below opposite such Quarterly Date:

30

Quarterly Date	Consolidated Interest Coverage Ratio
First Quarterly Date	1.55:1
Second Quarterly Date	1.75:1
Third Quarterly Date	1.90:1
Fourth, Fifth and Sixth Quarterly Dates	2.00:1
Seventh, Eighth and Ninth Quarterly Dates	2.10:1
Tenth, Eleventh, Twelfth and Thirteenth Quarterly Dates	2.25:1
Fourteenth Quarterly Date and each Quarterly Date thereafter	2.50:1

*Section 7.2. Limitation on Indebtedness.* Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party created under any Loan Document;

(b) Unsecured Indebtedness of (i) any Loan Party (other than the Water Entities) to the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. and the Completion Guarantor, except with respect to Indebtedness, the proceeds of which are necessary for the corporate maintenance of Capital Corp.), (ii) Valvino to Wynn Resorts Holdings or Wynn Resorts Holdings to Valvino (so long as Wynn Resorts Holdings, on the one hand, or Valvino, on the other hand, is Solvent) and (iii) any Wynn Group Entity to any other Loan Party other than the Water Entities or Capital Corp. (so long as such Loan Party is Solvent); provided, that in each case such Indebtedness is evidenced by, and subject to the terms and conditions of, the Subordinated Intercompany Note and is otherwise subordinated in right of payment to the Obligations under the Loan Documents and the Mortgage Notes Indenture on terms and conditions reasonably satisfactory to the Collateral Agent;

(c) Indebtedness of World Travel to the Borrower represented by the Intercompany Note;

(d) Indebtedness (other than the Indebtedness referred to in **Section 7.2(f)**) of the Loan Parties outstanding on the date hereof and listed on **Schedule 7.2(d)** and any refinancings, refundings, renewals or extensions thereof (without any increase in the principal amount thereof or any shortening of the maturity of any principal amount thereof);

(e) Unsecured Guarantee Obligations made in the ordinary course of business (i) by any Loan Party (other than the Water Entities) of obligations of the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. and the Completion Guarantor), (ii) by Valvino of obligations of Wynn Resorts Holdings or by Wynn Resorts Holdings of obligations of Valvino (so long as Wynn Resorts Holdings, on the one hand, or Valvino, on the other hand, is Solvent) and (iii) any Wynn Group Entity to any other Loan Party other than the Water Entities or Capital Corp. (so long as such Loan Party is Solvent);

(f) (i) Indebtedness of the Borrower and Capital Corp. created under the Mortgage Notes Indenture in respect of the Mortgage Notes in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this **clause (i)**, not to exceed \$340,000,000 (reduced by any principal payments required to be made thereon) and Guarantee Obligations of any Loan Party in respect of such Indebtedness represented by the Mortgage Note Guarantees; provided, that the principal amount of the Indebtedness permitted pursuant to this **clause (i)** may be increased for purposes of, and in an amount equal to, Indebtedness permitted pursuant to **Section 7.2(l)**, and (ii) Indebtedness of the Borrower created under the Wynn Credit Agreement, including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this **clause (ii)**, in an aggregate principal amount, not to exceed (A) at any time prior to the

31

Completion Date, \$1,050,000,000, provided that to the extent such aggregate principal amount exceeds \$1,000,000,000, the Borrower shall have received an amount equal to such excess in the form a capital contribution and (B) at any time after the Completion Date, \$1,050,000,000 (plus, in each case, any

accrued and unpaid interest thereon added to principal) and Guarantee Obligations of any Loan Party in respect of such Indebtedness represented by the Guarantee and Collateral Agreement;

(g) Indebtedness of the Loan Parties (including, without limitation, Capital Lease Obligations) secured by Liens permitted by **Section 7.3(s)** in an aggregate principal amount not to exceed \$10,000,000 at any one time outstanding;

(h) Indebtedness of the Loan Parties to employees of the Loan Parties (or their estates) incurred in connection with any repurchase of employee stock options or stock upon death, disability or termination of such employee in accordance with employment agreements or option plans or agreements, *provided*, that (i) such Indebtedness, when aggregated with any payments made under **Section 7.6(f)**, will not exceed \$2,000,000 in any Fiscal Year and \$6,000,000 during the term of this Loan Agreement, (ii) such Indebtedness shall be unsecured and subordinated on terms and conditions satisfactory to the Initial Arrangers and in any event not less favorable to the Loan Parties and the Lenders than the terms of the Subordinated Intercompany Note, subject to such covenants and events of default as may be acceptable to the Initial Arrangers and expressly provide that payments thereon shall be required only to the extent not restricted by any Financing Agreement;

(i) Subordinated Debt of the Loan Parties not to exceed an aggregate of \$25,000,000 at any one time outstanding; *provided*, that the Net Cash Proceeds of such Subordinated Debt shall be applied within one Business Day of the incurrence of such Subordinated Debt to the prepayment, subject to **Section 7.9**, of the Term Loans and the reduction of the Revolving Credit Commitments as set forth in Section 2.12(a) of the Wynn Credit Agreement;

(j) Indebtedness of the Loan Parties incurred to finance the acquisition of the Additional Land, provided that such Indebtedness shall not exceed the fair market value of the Additional Land (*provided*, that in determining such fair market value consideration will be given to the value of the Additional Land to the Loan Parties in light of their current Property and Permitted Business);

(k) On or prior to the date that the Total Term Loan Extensions of Credit equals the Total Term Loan Commitments, Guarantee Obligations represented by performance bonds, guaranties, commercial letters of credit bankers' acceptances or similar instruments issued by Person other than Wynn Resorts or any Loan Party for the benefit of a trade creditor of any such Loan Party, in an aggregate amount not to exceed \$10,000,000 at any time outstanding so long as (i) such is incurred in the ordinary course of business and (ii) the obligations of any Loan Party, as the case may be, supported by such performance bonds, guaranties, trade letters of credit, bankers' acceptances or similar instruments (1) consist solely of payment obligations with respect to costs incurred in accordance with the Project Budget which would otherwise be permitted to be paid by the applicable Loan Party pursuant to the Disbursement Agreement and (2) are secured, and (3) are secured solely by Liens permitted by **Section 7.3(v)**;

(l) Indebtedness of the Borrower, the proceeds of which are used solely to develop and construct an Entertainment Facility, in an aggregate principal amount (or original accreted value, as applicable) at any time not to exceed the lesser of (a) \$50,000,000 and (b) 200% of the Entertainment Facility Equity Proceeds; and

(m) additional Indebtedness of the Loan Parties in an aggregate principal amount (for all the Loan Parties) not to exceed \$5,000,000 at any one time outstanding.

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**Section 7.3. Limitation on Liens.** Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

(a) Liens for taxes not yet due or which are being contested in good faith by appropriate proceedings, *provided* that adequate reserves with respect thereto are maintained on the books of the applicable Loan Party, as the case may be, in conformity with GAAP;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business for amounts which are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceedings (such contest proceedings conclusively operating to stay the sale of any portion of the Collateral on account of such Lien); *provided*, that adequate reserves with respect thereto are maintained on the books of the applicable Loan Party, as the case may be, in conformity with GAAP;

(c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;

(d) deposits by or on behalf of the Loan Parties to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, appeal bonds and other obligations of a like nature incurred in the ordinary course of business, including, without limitation, deposits permitted pursuant to Section 6.10(c) of the Disbursement Agreement;

(e) easements, rights-of-way, restrictions, encroachments and other similar encumbrances and other minor defects and irregularities in title, in each case incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and which do not in any case materially detract from the value of the Property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Loan Party;

(f) Liens in existence on the date hereof listed on **Schedule 7.3(f)**, securing Indebtedness permitted by **Section 7.2(d)**, *provided* that no such Lien is spread to cover any additional Property (other than proceeds thereof) after the Document Closing Date and that the amount of Indebtedness secured thereby is not increased;

(g) Liens created pursuant to the Security Documents;

(h) leases and subleases permitted under **Section 7.5(f)** and any leasehold mortgage in favor of any party financing the lessee under any lease or sublease permitted under **Section 7.5(f)**; *provided* that (a) no Loan Party is liable for the payment of any principal of, or interest, premiums or fees on, such financing and (b) the affected lease and leasehold mortgage are expressly made subject and subordinate to the Lien of the applicable Mortgage;

(i) Liens created by the Golf Course Lease, the Driving Range Lease, the Building Lease or the Employee Parking Lot Lease (in each case encumbering only the Property covered by such associated lease agreement);



(j) licenses of patents, trademarks and other intellectual property rights granted by a Loan Party in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of such Loan Party;

(k) Liens securing Indebtedness permitted under **Section 7.2(f)(i)**; *provided*, that any such Liens on the Equipment are junior in priority to the Liens securing the Obligations;

(l) Liens securing Indebtedness permitted under **Section 7.2(f)(ii)**; *provided*, that any such Liens on the Equipment are junior in priority to the Liens securing the Obligations;

(m) prior to the Final Completion Date any "Permitted Liens" under the Disbursement Agreement;

33

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(n) any attachment or judgment Lien not constituting an Event of Default under **Section 8.1(h)**;

(o) Permitted Encumbrances;

(p) Liens arising from the filing of UCC financing statements relating solely to leases permitted by this Loan Agreement;

(q) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(r) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any Real Estate;

(s) Liens securing Indebtedness of the Loan Parties incurred pursuant to **Section 7.2(g)** to finance the acquisition of fixed or capital assets, *provided* that (i) such Liens shall be created substantially simultaneously with the acquisition of such fixed or capital assets (or the refinancing of such Indebtedness as otherwise permitted hereunder), (ii) such Liens do not at any time encumber any Property other than the Property (and proceeds thereof) financed by such Indebtedness, (iii) the principal amount of Indebtedness secured thereby is not increased and (iv) the Property financed by such Indebtedness is not of a type that will become affixed to the Project such that the removal thereof could reasonably be expected to materially interfere with the ongoing ordinary course operations of the Project;

(t) Liens securing Indebtedness of the Loan Parties incurred pursuant to **Section 7.2(j)** to finance the acquisition of the Additional Land, *provided* that (i) such Liens shall be created substantially simultaneously with the acquisition of the Additional Land, (ii) such Liens do not at any time encumber any Property other than the Additional Land (and proceeds thereof) and (iii) the principal amount of Indebtedness secured thereby is not increased;

(u) Liens with respect to the Aircraft granted by World Travel to the Borrower securing Indebtedness under the Intercompany Note; and

(v) Liens on cash disbursed pursuant to the Disbursement Agreement and deposited with, or held for the account of, any Loan Party securing reimbursement obligations under performance bonds, guaranties, commercial letters of credit, bankers' acceptances or similar instruments permitted under **Section 7.2(k)** granted in favor of the issuers of such performance bonds, guaranties, commercial letters of credit or bankers' acceptances, so long as (i) any cash disbursed to secure such reimbursement obligations is invested in Permitted Securities only and (ii) the amount of cash and/or Permitted Securities secured by such Liens is not less than the amount of Indebtedness secured thereby and in any event does not exceed 110% of the amount of the Indebtedness secured thereby (ignoring, for purposes of this clause (ii), any interest earned or paid on such cash and any dividends or distributions declared or paid in respect of such Permitted Investments).

**Section 7.4. Limitation on Fundamental Changes.** Enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its Property or business, except that:

(a) (i) any Solvent Loan Party (other than the Water Entities) may be merged or consolidated with or into the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. and the Completion Guarantor), (ii) Valvino may be merged or consolidated with or into Wynn Resorts Holdings and Wynn Resorts Holdings may be merged or consolidated with or into Valvino (in each case so long as each of Wynn Resorts Holdings and Valvino are Solvent) and (iii) any Solvent Wynn Group Entity may be merged or consolidated with or into any other Loan Party other than the Water Entities or Capital Corp. (so long as such Loan Party is Solvent)

34

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(*provided* that in the event any such merger or consolidation involves the Borrower, the Borrower shall be the continuing or surviving entity and, in the event such merger or consolidation involves a Subsidiary of the Borrower (but not the Borrower), a Subsidiary of the Borrower shall be the continuing or surviving entity);

(b) (i) any Solvent Loan Party may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. and the Completion Guarantor), (ii) Valvino may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to Wynn Resorts Holdings and Wynn Resorts Holdings may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to Valvino (in each case so long as each of Wynn Resorts Holdings and Valvino are Solvent) and (iii) any Solvent Wynn Group Entity may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to any other Loan Party other than the Water Entities or Capital Corp. (so long as such Loan Party is Solvent); *provided*, that any permitted Disposition of Capital Stock of a Loan Party pursuant to this **Section 7.4(b)** must be of no less than all Capital Stock of such Loan Party; *provided, further*, that in no event shall (x) Wynn Resorts Holdings be permitted to Dispose of any Capital Stock of the Borrower (other than to the extent such Disposition occurs in connection with the merger of Wynn Resorts Holdings into Valvino as permitted pursuant to **Section 7.4(a)**) or (y) the Borrower or any of its Subsidiaries acquire the Capital Stock of either of the Water Entities (other than to the extent such Disposition occurs in connection with the merger of a Water Entity into the Borrower or a Subsidiary of the Borrower as permitted pursuant to **Section 7.4(a)**); *provided*, that in no event shall Desert Inn Improvement become a Subsidiary of the Borrower); and

(c) any Loan Party may Dispose of any of its Property in accordance with **Section 7.5**.

*Section 7.5. Limitation on Disposition of Property.* Dispose of any of its Property or Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or issue or sell any shares of Capital Stock to any Person, except:

(a) the Disposition in the ordinary course of business of obsolete or worn out Property or Property no longer useful in the business of the applicable Loan Party; *provided*, that either (i) with respect to Property Disposed by reason of it being no longer useful in the business of the applicable Loan Party, such Disposition could not reasonably be expected to materially adversely affect the Project, any of the Mortgaged Properties or any of the Collateral or (ii) with respect to Property Disposed of by reason of its obsolescence or worn out condition prior to or promptly following such Disposition any such Property shall be replaced with other Property of substantially equal or greater utility and either (x) a value at least substantially equal to that of the replaced Property when first acquired or (y) substantially equal or greater quality and, if applicable, prestige and caliber as the replaced Property when first acquired and free from any Lien of any other Person (subject to Permitted Liens) and the applicable Loan Party shall subject such replacement property to the Lien of the Security Documents in favor of the Lenders of at least the same priority as the Property so replaced;

35

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(b) the Disposition of Cash or Cash Equivalents or Permitted Securities (in each case in transactions otherwise permitted hereunder), Investments permitted pursuant to **Section 7.8**, inventory (in the ordinary course of business) and receivables (in connection with the collection thereof and otherwise as customary in gaming operations of the type conducted by the Loan Parties);

(c) Dispositions permitted by **Section 7.4** (including the Disposition of Capital Stock of Loan Parties pursuant to **Section 7.4(b)**);

(d) the sale or issuance of any Loan Party's Capital Stock (other than Disqualified Stock) to its direct parent that is a Loan Party in furtherance of Investments permitted pursuant to **Section 7.8(e)**;

(e) Dispositions of Property having a fair market value not in excess of \$5,000,000 in the aggregate (with respect to all the Loan Parties) in any Fiscal Year following the Completion Date; *provided*, that (i) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof; (ii) the sole consideration received shall be cash; and (iii) to the extent such Asset Sales relate to the Collateral, the proceeds of such Asset Sales shall be applied to either (A) the prepayment of the Loans pursuant to **Section 3.1(a)** or (B) the acquisition of assets which shall become a Substitute Item or Substitute Items pursuant to Section 4.7 of the Borrower Security Agreement;

(f) subject to Section 4.2 of the Borrower Security Agreement, the Borrower may enter into any leases with respect to any Item of Equipment, and subject to Section 4.2 of the Aircraft Security Agreement, the Aircraft Trustee, or World Travel pursuant to the Aircraft Operating Agreement, may enter into any lease with respect to the Aircraft, and Valvino may enter into any commercial office space leases with respect to the Phase II Land Building;

(g) any Loan Party may dedicate space within the Project for the purpose of constructing (i) a mass transit system, (ii) a pedestrian bridge over or a pedestrian tunnel under Las Vegas Boulevard or Sands Avenue or similar structures to facilitate pedestrians or traffic, (iii) a right turn lane or other roadway dedication or (iv) such other structures or improvements reasonably related to and in furtherance of the development, construction and operation of the Project; *provided*, that in each case such dedication does not materially impair or interfere in the use or operation of the Project or any Loan Party or materially detract from the value of the Property subject thereto;

(h) the Loan Parties may license trademarks and trade names in the ordinary course of business;

(i) the incurrence of Liens permitted under **Section 7.3**, *provided* that any leases other than those permitted pursuant to **Section 7.3(i)** (whether or not constituting Permitted Liens) shall be permitted only to the extent provided in **subsection (f)** above and the last paragraph of this **Section 7.5**;

(j) The applicable Golf Course Land Owner(s) shall be permitted to Dispose of the Wynn Home Site Land to Mr. Wynn, and the Lenders hereby consent to such Disposition, on the conditions that (i) no Default or Event of Default has occurred and is continuing at the time of such Disposition, and (ii) such disposition is permitted pursuant to the terms of the Wynn Credit Agreement or the Wynn Banks concurrently consent to such Disposition;

(k) The Golf Course Owner(s) shall be permitted to Dispose of the Golf Course Land and in connection therewith the applicable Loan Parties shall be permitted to Dispose of their ownership in the Capital Stock of Desert Inn Water and Desert Inn Improvement and the DIIC Water Permits (other than the DIIC Casino Water Permit), and the Lenders hereby consent to such Dispositions, on the conditions that (i) no Default or Event of Default has occurred and is

36

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continuing at the time of such Dispositions and (ii) such Disposition is permitted pursuant to the terms of the Wynn Credit Agreement or the Wynn Banks otherwise concurrently consent to such Disposition;

(l) The applicable Golf Course Land Owner(s) shall be permitted to Dispose of the Home Site Land, and the Lenders hereby consent to such Disposition, on the conditions that (i) no Default or Event of Default has occurred and is continuing at the time of such Disposition and (ii) such Disposition is permitted pursuant to the terms of the Wynn Credit Agreement or the Wynn Banks otherwise concurrently consent to such Disposition;

(m) Valvino shall be permitted to Dispose of the Phase II Land, and the Lenders hereby consent to such Disposition, on the conditions that (i) no Default or Event of Default has occurred and is continuing at the time of such Disposition and (ii) such Disposition is permitted pursuant to the terms of the Wynn Credit Agreement or the Wynn Banks otherwise concurrently consent to such Disposition;

(n) any Event of Eminent Domain, *provided*, that the requirements of **Section 8.1** are complied with in connection therewith; and

(o) Dispositions of Items of Equipment which are replaced pursuant to Section 4.7 of the Borrower Security Agreement.

(p) the Disposition of the Existing Aircraft so long as (i) within three (3) Business Days after such Disposition, World Travel or a trust of which World Travel is the beneficial interest holder acquires the Replacement Aircraft, (ii) the aggregate Net Disposition Proceeds from such Disposition are applied to the acquisition of the Replacement Aircraft and no Loan Party applies any other amounts to such acquisition other than (x) proceeds of equity capital contributions from Wynn Resorts (or another Loan Party to the extent acting as an intermediary for purposes of contributing equity capital contributions from Wynn Resorts) and (y) proceeds from Advances hereunder and (iii) such Disposition of the Existing Aircraft and the acquisition of the Permitted Aircraft is permitted pursuant to the Other Indebtedness; and

(q) Valvino shall be permitted to effectuate the Valvino Water Permit Transfer (or any portion thereof) and DIIC shall be permitted to effectuate the DIIC Water Transfer (or any portion thereof).

**Section 7.6. Limitation on Restricted Payments.** Declare or pay any dividend (other than dividends payable solely in common stock (excluding Disqualified Stock) of the Person making such dividend) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of any Loan Party, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any Loan Party, or enter into any derivatives or other transaction with any financial institution, commodities or stock exchange or clearinghouse (a "*Derivatives Counterparty*") obligating any Loan Party to make payments to such Derivatives Counterparty as a result of any change in market value of any such Capital Stock (collectively, "*Restricted Payments*"), except that:

(a) any Loan Party may pay a dividend or other distribution to Wynn Resorts, through any intermediate Wholly Owned Subsidiaries of Wynn Resorts, of amounts necessary to repurchase Capital Stock or Indebtedness of Wynn Resorts (other than Capital Stock held by the Existing Stockholders) to the extent required by the Nevada Gaming Authorities for not more than the fair market value thereof in order to avoid the suspension, revocation or denial by the Nevada Gaming Authorities of a gaming license necessary for the ownership, construction, maintenance, financing or operation of the Project, in any event to the extent such suspension, revocation or denial would have a Material Adverse Effect; *provided*, that so long as such efforts do not jeopardize any such

37

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gaming license necessary for the ownership, construction, maintenance, financing or operation of the Project, Wynn Resorts and its Subsidiaries shall have diligently and in good faith attempted to find a third-party purchaser(s) for such Capital Stock or Indebtedness and no third-party purchaser(s) acceptable to the Nevada Gaming Authorities was willing to purchase such Capital Stock or Indebtedness within a time period acceptable to the Nevada Gaming Authorities;

(b) on the Completion Guaranty Release Date, the Completion Guarantor may pay a dividend or other distribution to Wynn Resorts, through any intermediate Wholly Owned Subsidiaries of Wynn Resorts, in an amount equal to the amount on deposit in the Completion Guaranty Deposit Account after application of amounts on deposit therein in accordance with **Section 2.10** of the Disbursement Agreement;

(c) to the extent constituting Restricted Payments, (i) any Loan Party may consummate a transaction permitted pursuant to **Section 7.4**, (ii) any Loan Party may make Dispositions permitted pursuant to **Section 7.5**, (iii) any Loan Party may make Investments permitted pursuant to **Section 7.8**, (iv) any Loan Party may pay Management Fees to Wynn Resorts permitted pursuant to **Section 7.22** and (v) any Loan Party may take actions expressly permitted pursuant to **Section 7.10**;

(d) (i) any Subsidiary of the Borrower may declare and pay cash dividends to the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. or the Completion Guarantor), (ii) Wynn Resorts Holdings may declare and pay cash dividends to Valvino (so long as Valvino is Solvent) and (iii) any Wynn Group Entity may declare and pay cash dividends to any other Loan Party (so long as such Loan Party is Solvent);

(e) any Loan Party may make distributions to the direct or indirect owners of such Loan Party with respect to any period during which such Loan Party is a Pass Through Entity or a Consolidated Member, such distributions in an aggregate amount not to exceed such owners' Tax Amounts for such period;

(f) so long as no Default or Event of Default shall have occurred and be continuing and no Material Adverse Effect shall have occurred and be continuing (or, in either case, would result therefrom), the Loan Parties may pay dividends to other Loan Parties to permit such other Loan Parties to (i) repurchase common stock or common stock options from present or former employees of the Loan Parties (or their estates) upon the death, disability or termination of employment of such employees in accordance with employment agreements or option plans or agreements; *provided*, that the aggregate amount of payments under this subsection (f), when aggregated with any Indebtedness incurred by the Loan Parties pursuant to **Section 7.2(h)**, will not exceed \$2,000,000 in any Fiscal Year and \$6,000,000 during the term of this Agreement;

(g) on and after the Completion Date and so long as no Default or Event of Default shall have occurred and be continuing and no Material Adverse Effect shall have occurred and be continuing (or, in either case, would result therefrom), the Loan Parties may make Restricted Payments not otherwise permitted under any other subsection of this **Section 7.6** in an amount not to exceed an aggregate of \$5,000,000, *plus*, for each Fiscal Year occurring after the Fiscal Year in which the Completion Date occurs, \$2,000,000;

(h) to the extent constituting Restricted Payments, on or prior to the Final Completion Date the Borrower may pay Project Costs as permitted pursuant to the Disbursement Agreement; and

(i) until the earlier of (i) 12 months following the acquisition of the Replacement Aircraft with the Replacement Aircraft Indebtedness, and (ii) the sale by World Travel or the Aircraft Trustee, as the case may be, of the Existing Aircraft, the payment to Wynn Resorts of amounts necessary to pay interest then due and payable on the Replacement Aircraft Indebtedness in an aggregate amount not to exceed \$1,000,000.

38

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**Section 7.7. Limitation on Capital Expenditures.** Make, commit to make or incur Capital Expenditures, in any Fiscal Year indicated below, in an aggregate amount among all Loan Parties in excess of the corresponding amounts set forth below opposite such Fiscal Year; *provided*, that other than Capital

Expenditures (x) necessary to keep all associated Property and systems reasonably related to the operation of the Golf Course Land and improvements thereon and the Phase II Land and improvements thereon in good and working order and condition or (y) funded by the proceeds of equity capital contributions from Wynn Resorts (or another Loan Party to the extent acting as an intermediary for purposes of contributing equity capital contributions from Wynn Resorts for such Capital Expenditures) no event shall any Loan Party commit to make or incur Capital Expenditures with respect to the Golf Course or the Golf Course Land or improvements thereon in excess of (A) \$3,000,000 during the period from the Completion Date through the 18 month anniversary thereof and (B) \$5,000,000 in any 12 month period thereafter, and in no event shall any Loan Party commit to make or incur Capital Expenses with respect to the Phase II Land or improvements thereon in excess of \$5,000,000 in any Fiscal Year; provided, further, that other than Capital Expenditures (x) necessary or advisable to keep all associated Property and systems reasonably related to the operation of the Aircraft in good and working order and condition, in each case whether pursuant to manufacturer requirements or suggestions, Requirements of Law, good aircraft maintenance practices or otherwise, or (y) funded by the proceeds of equity capital contributions from Wynn Resorts (or another Loan Party to the extent acting as an intermediary for purposes of contributing equity capital contributions from Wynn Resorts for such Capital Expenditures), in no event shall any Loan Party commit to make or incur Capital Expenditures with respect to the Aircraft.

Fiscal Year	Maximum Capital Expenditures
Fiscal Year 2005	\$ 25,000,000
Fiscal Year 2006	\$ 50,000,000
Fiscal Year 2007	\$ 60,000,000
Fiscal Year 2008	\$ 65,000,000
Fiscal Year 2009	\$ 52,500,000

**Section 7.8. Limitation on Investments.** Make any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting an ongoing business from, or make any other investment in, any other Person (all of the foregoing, "Investments"), except:

- (a) extensions of trade credit in the ordinary course of business (including, without limitation, advances to patrons of the Project's casino operation consistent with ordinary course gaming operations);
- (b) (i) prior to the Completion Date, Investments in Permitted Securities and (ii) on or after the Completion Date, Investments in Cash Equivalents;
- (c) to the extent constituting Investments, the incurrence of Indebtedness permitted by **Sections 7.2(b), 7.2(c)** and/or **7.2(d)**;
- (d) loans and advances to employees of the Loan Parties in the ordinary course of business (including, without limitation, for travel, entertainment and relocation expenses) in an aggregate amount for all Loan Parties not to exceed \$1,000,000 at any one time outstanding;
- (e) Investments (other than those relating to the incurrence of Indebtedness permitted by **Section 7.8(c)**) (i) by any Loan Party (other than the Water Entities) in the Borrower or any Solvent Subsidiary of the Borrower (other than Capital Corp. except with respect to Investments, the proceeds of which are necessary for the corporate maintenance of Capital Corp.), (ii) by

39

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Valvino in Wynn Resorts Holdings or by Wynn Resorts Holdings in Valvino (so long as Wynn Resorts Holdings, on the one hand, or Valvino, on the other hand, is Solvent) and (iii) by any Group 1 Entity in any other Loan Party other than the Water Entities or Capital Corp. (so long as such Loan Party is Solvent);

- (f) Investments consisting of securities received in settlement of debt created in the ordinary course of business and owing to any Loan Party or in satisfaction of judgments;
- (g) nominal capital contributions in connection and in furtherance of the formation of new Subsidiaries in accordance with Section 7.17;
- (h) to the extent constituting Investments, (i) any Loan Party may consummate a transaction permitted pursuant to **Section 7.4**, (ii) any Loan Party may make Dispositions permitted pursuant to **Section 7.5**, (iii) any Loan Party may make Restricted Payments permitted pursuant to **Section 7.8** and (iv) any Loan Party may take actions expressly permitted pursuant to **Section 7.10**; and
- (i) in addition to Investments otherwise expressly permitted by this **Section 7.8**, so long as no Event of Default or Default shall have occurred and be continuing or would result therefrom and no Material Adverse Effect shall have occurred and be continuing or would result therefrom, Investments by the Loan Parties in an aggregate amount (valued at cost) not to exceed \$10,000,000 at any one time outstanding.

**Section 7.9. Limitation on Optional Payments and Modifications of Governing Documents.** (a) Make or offer to make any optional or voluntary payment, prepayment, repurchase or redemption of, or otherwise voluntarily or optionally defease, any Indebtedness, or segregate funds for any such payment, prepayment, repurchase, redemption or defeasance, or enter into any derivative or other transaction with any Derivatives Counterparty obligating any Loan Party to make payments to such Derivatives Counterparty as a result of any change in market value of such Indebtedness, other than the prepayment of Indebtedness incurred hereunder or the prepayment of the Other Indebtedness with the proceeds of the Permitted Refinancing Indebtedness; *provided*, that the Borrower may voluntarily prepay the Term Loans or the Revolving Credit Loans, with a corresponding permanent reduction of the Revolving Credit Commitment, so long as the Loans under this Loan Agreement are prepaid on a pro rata basis; *provided, further*, that the foregoing limitations shall not restrict the ability of the Borrower to (a) make payments under any Revolving Credit Loans to the extent such payments are not accompanied by a permanent reduction in the Revolving Credit Commitment, (b) amend or permit the amendment of its Governing Documents in any manner determined by the Collateral Agent not to be adverse to the Lenders or (c) amend, modify or otherwise change the provisions of Article IV of its limited liability company agreement relating to conduct) or any comparable provisions contained in its other charter documents (or, in each case, to the extent the relevant Loan Party is not a limited liability company, any comparable provisions contained in its Governing Documents), or fail to include provisions corresponding to those contained in Article IV of the limited liability company agreement of Valvino, as in effect on the Closing Date, in its limited liability company agreement or other applicable Governing Documents.

40

**Section 7.10. Limitation on Transactions with Affiliates.** Enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than such transactions solely between the Borrower and its Subsidiaries or solely between Subsidiaries of the Borrower) unless such transaction is:

(a) on terms that are not less favorable to that Loan Party than those that might be obtained at the time in a comparable arm's length transaction with Persons who are not Affiliates of such Loan Party and the Borrower has delivered to the Collateral Agent (1) with respect to any transaction involving an amount in excess of \$1,000,000, a certificate signed by a Responsible Officer certifying that such transaction complies with this **Section 7.10**, (2) with respect to any transaction involving an amount in excess of \$5,000,000, a resolution of the Board of Directors of the applicable Loan Party(ies) certifying that such transaction complies with this **Section 7.10** and that such transaction has been approved by a majority of the Independent Directors of the applicable Loan Party(ies) and (3) with respect to any such transaction that involves aggregate payments in excess of \$10,000,000 (or, with respect to Qualified Affiliate Transactions, \$25,000,000), an opinion as to the fairness to the applicable Loan Party at the time such transaction is entered into from a financial point of view issued by an independent financial advisor satisfactory to the Collateral Agent;

; *provided*, that, in no such case shall such a transaction consist of, contain, or provide for the payment of (i) Affiliated Overhead Expense or (ii) any fee, profit or similar component benefiting any Loan Party or Affiliate of a Loan Party, all payments under such transactions to represent only the payment or reimbursement of actual costs and expenses, except (x) transactions where the Borrower or a Subsidiary of the Borrower is the recipient of such payments or (y) transactions where a Loan Party is the recipient of such payments and such payments are being made by a Person other than a Loan Party; *provided, however*, that (x) the Borrower shall be permitted to lease space at the Project for the development and operation of a Ferrari and Maserati automobile dealership to an Affiliate of the Borrower pursuant to the Dealership Lease Agreement at below market rent and (y) the Borrower shall be permitted to sublease space at the Phase II Building to Affiliates of the Borrower at below market rents;

(b) a Disposition permitted pursuant to **Section 7.5** (*provided*, the requirements of **subsection (a)** above shall apply to leases of the Project by the Borrower permitted pursuant to **Section 7.5(f)** (other than the Dealership Lease and subleases of the Phase II Land Building) and Dispositions permitted pursuant to **Section 7.5(b)**), an Investment permitted pursuant to **Section 7.8** or a Restricted Payment permitted pursuant to **Section 7.6**;

(c) so long as no Default or Event of Default shall have occurred and be continuing and no Material Adverse Effect shall have occurred and be continuing (or, in either case, would result therefrom), expressly contemplated by the Tax Indemnification Agreement;

(d) on and after the Completion Date, the reimbursement by the Borrower and its Subsidiaries to the other Loan Parties and Wynn Resorts of Allocable Overhead to the extent incurred by the other Loan Parties and Wynn Resorts; *provided*, that the amount of Allocable Overhead reimbursable by the Borrower and its Subsidiaries pursuant to this **Section 7.10(d)** during any 12-month period shall not exceed, in the aggregate, the greater of (x) \$21,500,000 and (y) if the Consolidated Leverage Ratio of the Borrower for the period of four full consecutive fiscal quarters ending on the Quarterly Date immediately prior to the commencement of such 12 month period is 3.5 to 1.0 or less, 1.29% of Net Revenues of the Borrower and its consolidated Subsidiaries for such four full consecutive fiscal quarter period; or

(e) expressly contemplated by the Golf Course Lease, the Driving Range Lease, the Employee Parking Lot Lease, the Art Rental and Licensing Agreement, the Water Supply

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Agreement, the Management Agreement (but only to the extent payments thereunder do not constitute Management Fees (payments of such amounts being governed pursuant to **Section 7.22**)), the Building Lease, the WDD Agreement and the Aircraft Operating Agreement; *provided, however*, any amendments, modifications or supplements thereto after the Closing Date shall comply with **Section 7.10(a)**; and

(f) on or prior to the Final Completion Date, the payment of Project Costs as permitted pursuant to the Disbursement Agreement.

**Section 7.11. Limitation on Sales and Leasebacks.** Enter into any arrangement with any Person providing for the leasing by any Loan Party of Property which has been or is to be sold or transferred by any Loan Party to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such Property or rental obligations of any Loan Party.

**Section 7.12. Limitation on Changes in Fiscal Periods.** Permit the fiscal year of any Loan Party to end on a day other than December 31 or change any Loan Party's method of determining fiscal quarters.

**Section 7.13. Limitation on Negative Pledge Clauses.** Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of a Loan Party to create, incur, assume or suffer to exist any Lien upon any of its Property or revenues, whether now owned or hereafter acquired, to secure the Obligations or, in the case of any Guarantor, its obligations under the FF&E Guaranty other than (i) this Loan Agreement and the other Financing Agreements, (ii) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibiting or limitation shall only be effective against the assets financed thereby and proceeds thereof); *provided*, that the principal amount of Indebtedness thereunder shall exceed 75% of the original purchase price of the assets financed thereby, and (iii) as required by applicable law or any applicable rule or order of any Nevada Gaming Authority.

**Section 7.14. Limitation on Restrictions on Subsidiary Distributions, Etc.** Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Loan Party to (i) make Restricted Payments in respect of any Capital Stock of such Loan Party held by, or pay or subordinate any Indebtedness owed to, any other Loan Party, (ii) make Investments in any other Loan Party or (iii) transfer any of its assets to any other Loan Party, except for such encumbrances or restrictions existing under or by reason of (A) any restrictions existing under the Loan Documents or the Wynn Credit Documents, (B) any restrictions under the Mortgage Notes Indenture, and (C) as required by applicable law or any applicable rule or order of any Nevada Gaming Authority.

**Section 7.15. Limitation on Lines of Business.** Subject to **Sections 7.24** and **7.25**, enter into any business or investment activities, whether directly or indirectly, other than Permitted Businesses; *provided, however*, that (a) Capital Corp. shall not hold any material Property, incur any Indebtedness or become liable for any obligations or engage in any business activities (other than as co-obligor with respect to the Other Indebtedness and Other Security Documents with respect to the Mortgage Notes Indenture), or have any Subsidiaries and (b) the Water Entities shall not hold any material Property other than the DIBC Water

Permits and other Property reasonably related to the provision of water services to the Golf Course and the Additional Land or engage in any business activities other than the provision of water services to the Golf Course and surrounding properties.

*Section 7.16. Restrictions on Changes.* (a) Agree to any amendment to, assignment or termination of, or waive any of its rights under, any Permit or Project Document or enter into any new Project Document or Permit (it being understood that any Material Contracts which are covered by **subsection (c)** of this **Section 7.16** shall also be subject to the restrictions set forth therein) without in each case obtaining the prior written consent of the Required Lenders if in any such case such amendment or waiver or new Project Document or Permit could reasonably be expected to have a

42

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Material Adverse Effect or otherwise adversely affect the Lenders in any material respect (taking into consideration any viable replacements or substitutions therefore at the time such determination is made).

(b) Amend or otherwise change the terms of any Financing Agreements (other than the Loan Documents) or permit the termination thereof (other than in accordance with the terms thereof), or enter into any new Financing Agreements or make any payment consistent with an amendment thereof or change thereto, if the effect of such amendment, change or new Financing Agreement is to increase the interest rate or fees on the Indebtedness evidenced thereby, change (to earlier or more frequent dates) any dates upon which payments of principal or interest are due thereon, change the redemption, prepayment or defeasance provisions thereof or change the subordination provisions thereof (or of any guaranty thereof); *provided*, that the Borrower may amend the terms of any other Financing Agreement to increase the principal amount thereof if such interest is otherwise expressly permitted by the Intercreditor Agreements and this Loan Agreement.

(c) Amend, waive or otherwise change, or permit any amendment or waiver of, the terms of either the Intercompany Note or the Aircraft Security Agreement or permit the termination thereof.

(d) Agree to any amendment to, assignment or termination of, or waive any of its rights under, any Material Contract (other than Material Contracts described in clause (ii) of the definition thereof) or enter into a new Material Contract (other than Material Contracts described in clause (ii) of the definitions thereof) without in each case obtaining the prior written consent of the Collateral Agent, which consent shall not be unreasonably withheld or delayed. Notwithstanding anything to the contrary contained in this **Section 7.16(d)**, this **Section 7.16(d)** shall not apply to Construction Contracts.

*Section 7.17. Limitation on Formation and Acquisition of Subsidiaries and Purchase of Capital Stock.* Except as otherwise permitted pursuant to Section 7.4, form, create or acquire any direct or indirect Subsidiary, except so long as no Event of Default or Default shall have occurred and be continuing or would result therefrom, the Borrower and its Subsidiaries may form, create or acquire new Domestic Subsidiaries (in the event of an acquisition of a new Domestic Subsidiary, so long as such new Domestic Subsidiary is Solvent); *provided*, that (a) no such new Subsidiary shall own or operate or possess any material license, franchise or right used in connection with the ownership or operation of the Project or any material Project assets, (b) any such new Subsidiary shall be a Wholly Owned Subsidiary of its requisite parent entity, and (c) any such new Subsidiary shall become a Loan Party hereunder and otherwise comply with the requirements of **Section 6.10**. Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Loan Party own any Capital Stock other than that of its Wholly Owned Subsidiaries.

*Section 7.18. Limitation on Hedge Agreements.* Enter into any Hedge Agreement other than Hedge Agreements entered into in the ordinary course of business, and not for speculative purposes, and to protect against changes in interest rates or foreign exchange rates.

*Section 7.19. Limitation on Sale or Discount of Receivables.* Except as permitted pursuant to **Section 7.5(b)**, directly or indirectly, sell with recourse, or discount or otherwise sell for less than the face value thereof, any of its notes or accounts receivable other than an assignment for purposes of collection in the ordinary course of business.

*Section 7.20. Limitation on Zoning and Contract Changes and Compliance.* Initiate, consent to or acquiesce to (a) any zoning downgrade of the Mortgaged Properties or seek any material variance under any existing zoning ordinance except, in each case, to the extent such downgrade or variance could not reasonably be expected to materially and adversely affect the occupancy, use or operation of the Golf Course Land, the Phase II Land or the Casino Land, (b) use or permit the use of the Mortgaged Properties in any manner that could result in such use becoming a non-conforming use (other than a non-conforming use otherwise in compliance with applicable land use laws, rules and

43

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regulations by virtue of a variance or otherwise) under any zoning ordinance or any other applicable land use law, rule or regulation or (c) any change in any laws, requirements of Governmental Authorities or obligations created by private contracts which now or hereafter could reasonably be likely to materially and adversely affect the occupancy, use or operation of the Golf Course Land, the Phase II Land or the Casino Land or Collateral.

*Section 7.21. No Joint Assessment; Separate Lots.* Suffer, permit or initiate the joint assessment of any Mortgaged Property with any other real property constituting a separate tax lot.

*Section 7.22. Restrictions on Payments of Management Fees.* Pay to Wynn Resorts any Management Fees unless:

(a) no Default or Event of Default shall have occurred and be continuing or would result from such payment and no Material Adverse Effect shall have occurred and be continuing or would result from such payment;

(b) the Consolidated Leverage Ratio of the Borrower and its consolidated Subsidiaries for the most recently ended four full consecutive fiscal quarter period of the Borrower immediately preceding the date on which such Management Fee is proposed to be paid is no greater than 3.5 to 1.0 calculated on a pro forma basis, giving effect to the payment of the Management Fees proposed to be paid and any Indebtedness proposed to be incurred to finance the payment of such Management Fees as if the same was paid and/or incurred during such prior period; and

(c) such Management Fees in the aggregate not to exceed, during any 12-month period 1.5% of the Net Revenues of the Borrower and its consolidated Subsidiaries for the period of four full consecutive fiscal quarters of the Borrower most recently ended prior to the commencement of such 12-month period.

Any Management Fees not permitted to be paid during a particular 12-month period, pursuant to this **Section 7.22** shall be deferred and shall accrue. Such accrued and unpaid Management Fees may be paid in any subsequent 12-month period to the extent such payment would be permitted under this **Section 7.22** and the Management Fees Subordination Agreement.

**Section 7.23. Additional Material Contracts.** Enter into or become a party to any Additional Material Contract except upon delivery to the Administrative Agent of each Delivery Requirement with respect to such Additional Material Contract; *provided, however*, that the requirements of this **Section 7.23** shall not apply to Construction Contracts.

**Section 7.24. Lease Terminations.** Terminate or permit the termination of, or reduce or permit the reduction of the Real Estate or other Property covered by, (i) the Driving Range Lease, the Building Lease or the Parking Lot Lease, in each case until such time as (A) the Phase II Land is Disposed of in accordance with **Section 7.5(m)** and (B) with respect to the Parking Lot Lease, the Borrower has entered into such agreements or otherwise obtained such Property which in the reasonable opinion of the Majority Arrangers provides a satisfactory alternative to the Parking Lot Lease with respect to the provision of parking services for the Borrower's employees or (ii) the Golf Course Lease until such time as the Golf Course Land is Disposed of in accordance with **Section 7.5(k)** (*provided*, that the Real Estate or other Property subject to the Golf Course Lease may be reduced in connection with the Disposition of the Wynn Home Site Land pursuant to **Section 7.5(j)**) or the Disposition of the Home Site Land in accordance with **Section 7.5(l)**, in either case so long as such reduction is only with respect to such Real Estate or other Property being Disposed of pursuant to such Disposition).

[ADDITIONAL COVENANTS TO COME BASED ON DILIGENCE, INCLUDING WITH RESPECT TO OKADA]

44

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## SECTION 8. RISK OF LOSS; INSURANCE.

**Section 8.1. Casualty.** Upon the occurrence of (i) a Casualty or a series of Casualties with respect to an Item or Items of Equipment with a Purchase Price aggregating in excess of \$1,000,000 or (ii) a Casualty with respect to the Airframe or an Engine, the Borrower shall give Lenders and Collateral Agent prompt notice thereof (a "*Casualty Notice*"). The Casualty Notice shall specify whether the Borrower will:

(a) pay to Lenders (i) the Casualty Amount of the Item or Items of Equipment, Airframe or Engine suffering such Casualty or series of Casualties, together with (ii) all Interest then due and owing, (iii) any amounts then due and owing and (iv) if such amount is paid on a date which is not a Payment Date an amount equal to the sum of the Applicable Administrative Charge with respect to such Casualty Amount (the "*Casualty Settlement Date*"); or

(b) replace, or cause to be replaced, the Item or Items of Equipment, Airframe or Engine with respect to which the Casualty or series of Casualties has occurred pursuant to the following provisions of this **Section 8.1**, *provided* that upon the occurrence and during the continuance of a Default or an Event of Default or in the event such Casualty is pursuant to the last sentence of the definition thereof, the Borrower shall be obligated, at the option of the Required Lenders, to make the payments referred to in **clause (a)** above and shall not be entitled to exercise any right or election of replacement pursuant to this **clause (b)**.

If the Borrower has elected, or is required, to pay the Casualty Amount pursuant to **clause (a)** above, the Borrower shall continue to make all payments of Interest and Required Prepayments due under this Loan Agreement until and including the Casualty Settlement Date. Upon payment of the Casualty Amount in respect of any Item of Equipment, Airframe or Engine suffering Casualty on such Casualty Settlement Date together with all Interest then due and owing, the remaining scheduled Required Prepayments and Interest under this Loan Agreement shall be reduced such that the remaining Required Prepayments, when aggregated with all other Required Prepayments, shall fully amortize the outstanding Loan Balance by the Majority Date.

**Equipment Replacements**—If the Borrower has given notice that it intends to replace the Item or Items of Equipment suffering such Casualty or series of Casualties, and such replacement is permitted under the foregoing **clause (b)**, the Borrower may make subject to this Loan Agreement, not later than the Casualty Settlement Date with respect to such Item or Items of Equipment, a replacement for such Item or Items of Equipment meeting the suitability standards hereinafter set forth (a "*Replacement Item*"). To be suitable as a Replacement Item of Equipment, an item (or items) must (i) be of the same general type, (ii) have the same or better remaining economic useful life, state of repair and operating condition (immediately preceding the Casualty or series of Casualties assuming that such Item or Items of Equipment had been maintained in accordance with the terms of Section 4 of the Borrower Security Agreement) as the Item or Items of Equipment, taken as a whole, suffering the Casualty or series of Casualties, (iii) have a Fair Market Value of not less than the Fair Market Value (immediately preceding the Casualty or series of Casualties assuming that such Item or Items of Equipment had been maintained in accordance with the terms of Section 4 of the Borrower Security Agreement) of the Item or Items of Equipment, taken as a whole, suffering the Casualty or series of Casualties and (iv) be free and clear of any Liens other than Permitted Liens. In the event any Replacement Item of Equipment is of an earlier year of construction than the replaced Item or Items of Equipment, the Borrower shall deliver an appraisal in form and substance satisfactory to the Required Lenders from an appraiser selected by the Required Lenders confirming that such Replacement Item or Items of Equipment meet the standards set forth in **clause (ii)** and **(iii)** of the immediately preceding sentence. The Borrower shall cause a Borrower Security Agreement Supplement to be executed and delivered to Collateral Agent and Lenders in order to subject such replacement item or items to the Borrower Security Agreement, and upon such execution and delivery and the receipt by Collateral Agent and the

45

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Lenders of (i) evidence reasonably satisfactory to them of the Borrower's compliance with the insurance provisions of **Section 8.2** with respect to such replacement item or items, and (ii) an opinion of counsel to the Borrower opining as to the authorization, execution and delivery of a Borrower Security Agreement Supplement, the enforceability of the Borrower Security Agreement Supplement and the filing and recording of the Borrower Security Agreement Supplement and UCC financing statements with respect thereto and, in each case, consistent with the opinions delivered on any Advance Date covering such matters, such replacement item or items shall be deemed an "*Item of Equipment*" or "*Items of Equipment*" for all purposes hereof.

Airframe Replacements—If the Borrower has given notice that it intends to replace, or permit to be replaced, an Airframe suffering a Casualty, and such replacement is permitted under the foregoing **clause (b)**, the Borrower may make, or permit, subject to this Loan Agreement, not later than the Casualty Settlement Date with respect to such Airframe, a replacement for such Airframe meeting the suitability standards hereinafter set forth (a "Replacement Airframe"). To be suitable as a Replacement Airframe, an airframe must (i) be a passenger aircraft, (ii) have the same or better remaining economic useful life, state of repair and operating condition (immediately preceding the Casualty assuming that such Airframe had been maintained in accordance with the terms of Section 4 of the Aircraft Security Agreement) as the Airframe suffering the Casualty, (iii) have a Fair Market Value of not less than the Fair Market Value (immediately preceding the Casualty assuming that such Airframe had been maintained in accordance with the terms of Section 4 of the Aircraft Security Agreement) of the Airframe suffering the Casualty and (iv) be free and clear of any Liens other than Permitted Liens. The Borrower shall deliver an appraisal in form and substance satisfactory to the Required Lenders from an appraiser selected by the Required Lenders confirming that such Replacement Airframe meets the standards set forth in **clause (ii)** and **(iii)** of the immediately preceding sentence. The Borrower shall cause the Aircraft Trustee to cause an Aircraft Security Agreement Supplement to be executed and delivered to the Borrower in order to subject such Replacement Airframe to the Aircraft Security Agreement, and upon such execution and delivery and the receipt by Lenders of:

(i) evidence reasonably satisfactory to Lenders of the Borrower's or World Travel's, as the case may be, compliance with the insurance provisions of **Section 8.2** with respect to such Replacement Airframe;

(ii) an opinion of counsel of the Aircraft Trustee and, as applicable, World Travel opining as to the authorization, execution and delivery of the Aircraft Security Agreement Supplement, the enforceability of the Aircraft Security Agreement Supplement and the filing and recording of the Aircraft Security Agreement Supplement and UCC financing statements with respect thereto and, in each case, consistent with the opinions delivered on any Advance Date covering such matters;

(iii) such documents and evidence with respect to the Borrower, the Aircraft Trustee and, as applicable, and World Travel as Lenders or their counsel may reasonably request in order to establish the consummation of the transactions contemplated hereby, the taking of all corporate proceedings in connection with and compliance with the conditions set forth herein, in each case in form and substance reasonably satisfactory to such party, including evidence that the Replacement Airframe has been duly certificated by the FAA as to type and airworthiness in accordance with the terms of the Aircraft Security Agreement and application for registration of the Replacement Airframe in the name of the Aircraft Trustee has been duly made with the FAA and World Travel has temporary or permanent authority to operate the Replacement Airframe; and

(iv) an appraisal from an independent appraiser setting forth the Fair Market Value and remaining useful life with respect to such Replacement Airframe, which amount shall be at least equal to the Fair Market Value and remaining useful life of the Airframe being replaced;

such Replacement Airframe shall be deemed an "Airframe" for all purposes hereof.

46

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Engine Replacements—If the Borrower has given notice that it intends to replace, or permit to be replaced, an Engine suffering a Casualty, and such replacement is permitted under the foregoing **clause (b)**, the Borrower may make subject to this Loan Agreement, not later than the Casualty Settlement Date with respect to such Engine, a replacement for such Engine meeting the suitability standards hereinafter set forth (a "Replacement Engine"). To be suitable as a Replacement Engine, an engine must be (i) the same general type and of the same Manufacturer, (ii) have the same or better remaining economic useful life, state of repair and operating condition (immediately preceding the Casualty assuming that such Engine had been maintained in accordance with the terms of Section 4 of the Aircraft Security Agreement) as the Engine suffering the Casualty, (iii) have a Fair Market Value of not less than the Fair Market Value (immediately preceding the Casualty assuming that such Engine had been maintained in accordance with the terms of Section 4 of the Aircraft Security Agreement) of the Engine suffering the Casualty and (iv) be free and clear of any Liens other than Permitted Liens. In the event any Replacement Engine is of an earlier year of construction than the replaced Engine, the Borrower shall deliver an appraisal in form and substance satisfactory to the Required Lenders from an appraiser selected by the Required Lenders confirming that such Replacement Engine meets the standards set forth in **clause (ii)** and **(iii)** of the immediately preceding sentence. The Borrower shall cause World Travel to cause an Aircraft Security Agreement Supplement to be executed and delivered to the Borrower in order to subject such Replacement Engine to the Aircraft Security Agreement, and the Borrower shall cause a Borrower Security Agreement Supplement to be executed and delivered to the Collateral agent on behalf of the Lenders in order to subject the Borrower's interest in such Replacement Engine to the Borrower Security Agreement, and upon such execution and delivery and the receipt by Lenders of (i) evidence reasonably satisfactory to them of the Borrower's compliance with the insurance provisions of **Section 8.2** with respect to such Replacement Engine, and (ii) an opinion of counsel to the Borrower and World Travel opining as to the authorization, execution and delivery of the Borrower Security Agreement Supplement and the Aircraft Security Agreement Supplement, the enforceability of the Borrower Security Agreement Supplement and the Aircraft Security Agreement Supplement and UCC financing statements with respect thereto and, in each case, consistent with the opinions delivered on any Advance Date covering such matters, such Replacement Engine shall be deemed an "Engine" for all purposes hereof.

If (i) Lenders have received the amount payable with respect to the Casualty or series of Casualties and all other amounts due hereunder, or (ii) the Item or Items of Equipment, Airframe or Engine have been substituted in accordance herewith, and, in each case, no Default or Event of Default exists, the Borrower shall be entitled to receive from the Collateral Agent the proceeds of any recovery in respect of the Item or Items of Equipment, Airframe or Engine from insurance or otherwise, to the extent recovered by Collateral Agent ("*Casualty Recoveries*"), and Collateral Agent, subject to the rights of any insurer insuring the Items of Equipment, Airframe or Engine as provided herein, shall execute and deliver to the Borrower, or to its assignee or nominee, a release for the Item or Items of Equipment, Airframe or Engine, and such other documents as may be required to release the Item or Items of Equipment, Airframe or Engine from the terms of the Borrower Security Agreement, in such form as may reasonably be requested by the Borrower. All fees, costs and expenses relating to a substitution as described herein shall be borne by the Borrower. Except as otherwise provided in this **Section 8.1**, the Borrower shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty to any Item of Equipment, Airframe or Engine prior to or during the term of this Loan Agreement and thereafter until all of the Borrower's obligations hereunder are fully performed.

Any payments (including, without limitation, insurance proceeds) received at any time by Collateral Agent, Lenders or the Borrower from any Authority or other party with respect to any loss or damage to any Item or Items of Equipment, Airframe or Engine not constituting a Casualty (i) up to

47



\$1,000,000, shall be paid to the Borrower, so long as no Default or Event of Default shall have occurred and be continuing, for application to repair or replacement of property in accordance with **Section 8.1** and Section 4.3 of the Borrower Security Agreement or Section 4.3 of the Aircraft Security Agreement, as the case may be, or (ii) in excess of \$1,000,000, shall be held by Collateral Agent and applied directly in payment of repairs or for replacement of property in accordance with the provisions of **Section 6.1** and Section 4.3 of the Borrower Security Agreement or Section 4.3 of the Aircraft Security Agreement, as the case may be, if not already paid by the Borrower, or if already paid by the Borrower and no Default or Event of Default shall have occurred and be continuing, shall be applied to reimburse the Borrower for such payment, and any balance remaining after compliance with said Sections with respect to such loss or damage shall be retained by or disbursed to (as applicable) the Borrower.

THE BORROWER HEREBY ASSUMES ALL RISK OF LOSS, DAMAGE, THEFT, TAKING, DESTRUCTION, CONFISCATION, REQUISITION, COMMANDEERING, TAKING BY EMINENT DOMAIN OR CONDEMNATION, PARTIAL OR COMPLETE, OF OR TO EACH ITEM OF EQUIPMENT, AIRFRAME AND ENGINE, HOWEVER CAUSED OR OCCASIONED, SUCH RISK TO BE BORNE BY THE BORROWER WITH RESPECT TO EACH ITEM OF EQUIPMENT, AIRFRAME AND ENGINE. THE BORROWER AGREES THAT NO OCCURRENCE SPECIFIED IN THE PRECEDING SENTENCE SHALL IMPAIR, IN WHOLE OR IN PART, ANY OBLIGATION OF THE BORROWER UNDER THIS LOAN AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE OBLIGATION TO PAY INTEREST.

*Section 8.2. Insurance Coverages.* In addition to the requirements set forth in Exhibit O to the Disbursement Agreement, the Borrower shall at all times, at its expense, cause to be carried and maintained with financially sound and reputable insurers, insurance against loss or damage to the Items of Equipment, Airframe and Engine, of the kinds and in the amounts customarily maintained by similar corporations engaged in similar operations in similar jurisdictions and carry such other insurance as is usually carried by such corporations, *provided* that in any event the Borrower will maintain

(I) with respect to Equipment:

(a) Casualty Insurance—insurance against risks of physical loss or damage with respect to the Items of Equipment with deductibles and in such minimum amounts as are consistent with industry standards; *provided, however*, that at no time shall the amount of coverage, on a replacement cost basis, be less than the outstanding Loan Balance as shall be applicable to the Items of Equipment;

(b) Comprehensive General Liability Insurance—combined single limit comprehensive general liability insurance against claims for bodily injury, death or property damage in amounts at least equal to \$50,000,000 per occurrence, with such deductibles as are carried by similarly situated companies operating similar facilities and equipment; and

(c) Other Insurance—such other insurance, including comprehensive and worker's compensation insurance, in each case, generally carried by owners of equipment similar to the Items of Equipment and properties in each jurisdiction where the Items of Equipment are located, in such amounts and against such risks as are then customary for equipment and property similar in use;

(II) with respect to Aircraft:

(a) Casualty Insurance—all risk aircraft hull insurance against risks of physical loss or damage with respect to the Aircraft, and all-risk coverage with respect to any Engines or Parts while removed from the Aircraft (including, without limitation, war risk, confiscation and hijacking insurance, if and to the extent the same is maintained by the Borrower or World Travel with respect to other aircraft or engines owned or operated by the Borrower or World Travel on the same routes that the Aircraft is regularly operated on or where the custom in the industry is to

48

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carry war risk insurance on aircraft operated on routes flown by the Aircraft), with deductibles and in such minimum amounts as are consistent with industry standards; *provided, however*, that at no time shall the amount of coverage, on a replacement cost basis, be less than the outstanding Loan Balance as shall be applicable to the Aircraft;

(b) Comprehensive General Liability Insurance—combined single limit comprehensive general liability insurance against claims for bodily injury, death or property damage (including, without limitation, contracted liability, cargo liability, passenger legal liability and property damage coverage but excluding manufacturer's product liability coverage) in amounts at least equal to \$50,000,000 per occurrence, with such deductibles as are carried by similarly situated companies operating similar equipment; and

(c) Other Insurance—such other insurance, including worker's compensation insurance, in each case as generally carried by owners of equipment similar to the Aircraft in each jurisdiction where the Aircraft are operated and located, in such amounts and against such risks as are then customary for equipment similar in use.

Such insurance shall be written by reputable insurance companies that are financially sound and solvent, rated in Best's Insurance Guide or any successor thereto (or if there be none, an organization having a similar national reputation) with a general policyholder rating of "A-" and a size rating of at least "VIII" or otherwise acceptable to the Lenders. All such insurance shall name Collateral Agent and Lenders as additional insureds or as loss-payees, as their respective interests may appear pursuant to the terms and conditions of this Loan Agreement. Each policy referred to in this **Section 8.2** shall provide that (i) it will not be cancelled or its limits reduced, or allowed to lapse without renewal, except after not less than 30 days written notice to Lenders, (ii) the interests of Collateral Agent and Lenders shall not be invalidated by any act or negligence of, or breach of representation or warranty by, the Borrower or any Person having an interest in any Item of Equipment, Airframe or Engine (other than the Borrower's failure to pay premiums), (iii) such insurance is primary with respect to any other insurance carried by or available to Collateral Agent and/or Lenders, (iv) the insurer shall waive any right of subrogation, setoff, counterclaim, or other deduction, whether by attachment or otherwise, against Collateral Agent or Lenders; (v) the insurer shall waive any right to claim any premiums or commission against Collateral Agent or Lenders; and (vi) such policy shall contain a severability of interests clause providing for coverage of Collateral Agent and Lenders as if separate policies had been issued to each of them except with respect to the limit of such insurance which shall in no event increase as a result of such additional language. The Borrower will notify Collateral Agent and Lenders promptly of any policy cancellation, reduction in policy limits, modification or amendment.

Nothing in this **Section 8.2** shall prohibit Lenders or Collateral Agent from obtaining insurance for its own account and at its own expense and any proceeds payable thereunder shall be payable as provided in the insurance policy relating thereto, *provided* that no such insurance may be obtained which would limit or otherwise adversely affect the coverage or payment of any insurance required to be obtained or maintained by the Borrower pursuant to this **Section 8.2**.

*Section 8.3. Insurance Certificates.* Prior to each Advance Date, and thereafter not less than 12 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to **Section 8.2**, the Borrower shall deliver to Collateral Agent and the Lenders certificates and copies of policies issued by the

insurer(s) or insurance broker(s) for the insurance maintained pursuant to **Section 8.2**; *provided, however*, that if the delivery of any certificate is delayed, the Borrower shall not be deemed to be in violation of the obligation to deliver such certificate if, within such 12 day period, the Borrower delivers an executed binder with respect thereto and thereafter delivers the certificate upon receipt thereof.

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**SECTION 9. EVENTS OF DEFAULT AND REMEDIES.**

*Section 9.1. Events of Default.* If any of the following events shall occur and be continuing:

(a) (i) The Borrower shall fail to pay any principal of any Loan when due in accordance with the terms hereof; or (ii) the Borrower shall fail to pay any interest on any Loan; or (iii) within five days after any such interest or other amount becomes due in accordance with the terms hereof Valvino or any Loan Party shall fail to pay any other amount payable hereunder or under any other Loan Document; *provided*, that the failure to pay any amount due under the Disbursement Agreement (and not otherwise due hereunder) shall constitute an Event of Default hereunder only to the extent such failure to pay constitutes a Disbursement Agreement Event of Default; or

(b) Any representation or warranty made or deemed made by Wynn Resorts, or any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Loan Agreement or any such other Loan Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made; *provided*, that the inaccuracy of any representation or warranty contained only in the Disbursement Agreement shall constitute an Event of Default hereunder only to the extent such inaccuracy constitutes a Disbursement Agreement Event of Default; or

(c) (i) Any Loan Party shall default in the observance or performance of any agreement contained in Section 2 or Section 4 of the FF&E Guaranty or Section of the Wynn Resorts FF&E Guaranty Agreement (*provided*, that with respect to those covenants incorporated by reference from this Loan Agreement into the FF&E Guaranty and made the direct obligations of the Loan Parties pursuant to Section 4.1 of the FF&E Guaranty, no Event of Default shall occur from a Loan Party's default in the observance or performance of such covenants until expiration of the notice and cure periods, if any, set forth under this **Section 9** that are applicable to the corresponding covenants in this Loan Agreement), (ii) Wynn Resorts shall default in the observance or performance of any agreement contained in the Wynn Resorts FF&E Agreement (and, to the extent executed and delivered pursuant to the Wynn Resorts FF&E Agreement, Section of the Wynn Resorts FF&E Guaranty, (iii) the Borrower shall default in the observance or performance of any provision, covenant or agreement contained in Section 4 of the Borrower Security Agreement, (iv) the Aircraft Trustee shall default in the observance or performance of any provision, covenant or agreement contained in Section 4 or Section 7 of the Aircraft Security Agreement or (v) a Disbursement Agreement Event of Default shall have occurred and be continuing; or

(d) Wynn Resorts or any Loan Party or the Aircraft Trustee shall default in the observance or performance of any other covenant or agreement contained in this Loan Agreement or any other Loan Document to which it is a party (other than as provided in **subsections (a)** through **(c)** of this Section but subject to the proviso set forth in **Section 9.1(c)**), and such default shall continue unremedied for a period of 30 days after the earlier of (i) the Borrower or any other Loan Party becoming aware of such default or (ii) receipt by the Borrower or any other Loan Party of notice from the Administrative Agent or any Lender of such default; *provided*, that the failure to perform or comply with any such provision of the Disbursement Agreement shall constitute an Event of Default hereunder only to the extent such failure to perform or to comply constitutes a Disbursement Agreement Event of Default; or

(e) The Borrower or any other Loan Party shall (i) default in making any payment of any principal of any Indebtedness (including, without limitation, any Guarantee Obligation, but excluding the Loans) on the scheduled or original due date with respect thereto; or (ii) default in making any payment of any interest on any such Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or

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(iii) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause immediately such Indebtedness to become due prior to its stated maturity or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable; *provided*, that a default, event or condition described in **subsection (i)**, **(ii)** or **(iii)** of this **subsection (e)** shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in **subsections (i)**, **(ii)** and **(iii)** of this **subsection (e)** shall have occurred and be continuing with respect to Indebtedness the outstanding principal amount of which exceeds in the aggregate \$5,000,000; or

(f) (i) Wynn Resorts, the Borrower or any other Loan Party shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Wynn Resorts, the Borrower or any other Loan Party shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Wynn Resorts, the Borrower or any other Loan Party any case, proceeding or other action of a nature referred to in **subsection (i)** above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of 60 days; or (iii) there shall be commenced against Wynn Resorts, the Borrower or any other Loan Party any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) Wynn Resorts, the Borrower or any other Loan Party shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in **subsection (i)**, **(ii)**, or **(iii)** above; or (v) Wynn Resorts, the Borrower or any other Loan Party shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) (i) Any Person shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan shall arise on the assets of any Loan Party or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Required Lenders, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA other than in a standard termination under Section 4041(b) of ERISA, (v) Valvino or any Loan Party or any Commonly Controlled Entity shall, or in the reasonable opinion of the Required Lenders is likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan, (vi) any Loan Party, or any of their Subsidiaries or any Commonly Controlled Entity shall be required to make during any Fiscal Year payments pursuant to any employee welfare benefit plan (as defined in Section 3(1) of ERISA) that provides benefits to retired employees (or their dependents), other than as required by Sections 601 *et. seq.* of ERISA, Section 4980B of the Code,

51

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or the corresponding provisions of applicable state law or (vii) any Loan Party, or any of their Subsidiaries or any Commonly Controlled Entity shall be required to make during any Fiscal Year contributions to any defined benefit pension plan subject to Title IV of ERISA (including any Multiemployer Plan); and in each case in **subsections (i) through (vii)** above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect; or

(h) One or more judgments or decrees shall be entered against any Loan Party involving for the Loan Parties taken as a whole a liability (not paid or fully covered by insurance as to which the relevant insurance company has acknowledged coverage) of \$5,000,000 or more, and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within 45 days from the entry thereof; or

(i) Any of the Security Documents, the guarantee contained in Section 2 of the FF&E Guaranty or, to the extent executed and delivered pursuant to the Wynn Resorts FF&E Agreement, the Wynn Resorts FF&E Guaranty, shall cease, for any reason (other than pursuant to the terms thereof), to be in full force and effect, or any Loan Party or any Affiliate of any Loan Party shall so assert or shall assert that any provision of any Loan Document is not in full force and effect, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby; or

(j) Any of the Loan Documents or Project Documents shall terminate or be terminated or canceled, become invalid or illegal or otherwise cease to be in full force and effect prior to its stated expiration date or Wynn Resorts, the Borrower, any other Loan Party, any Affiliate of the Borrower or any other Person shall breach or default under any term, condition, provision, covenant, representation or warranty contained in any Project Document (after the giving of any applicable notice and the expiration of any applicable grace period); *provided*, that the occurrence of any of the foregoing events with respect to any Project Document (other than any Material Affiliated Contract) shall constitute an Event of Default hereunder only if the same could reasonably be expected to result in a Material Adverse Effect and the same shall continue unremedied for thirty (30) days after the earlier of (i) the Borrower or any other Loan Party becoming aware of such occurrence or (ii) receipt by the Borrower or any other Loan Party of notice from the Collateral Agent or any Lender of such occurrence; *provided, however*, that in the case of any such Project Document, if the occurrence is the result of actions or inactions by a party other than a Loan Party, then no Event of Default shall be deemed to have occurred as a result thereof if the Borrower provides written notice to the Collateral Agent immediately upon (but in no event more than two (2) Business Days after) the Borrower or any Loan Party becoming aware of such occurrence that the relevant Loan Party intends to replace such Project Document and (x) such Loan Party obtains a replacement obligor or obligors for the affected party, (y) such Loan Party enters into a replacement Project Document on terms no less beneficial to such Loan Party and the Secured Parties in any material respect than the Project Document being replaced within sixty (60) days of such occurrence; *provided, however*, that the replacement Project Document may require the applicable Loan Party to pay amounts under the replacement Project Document in excess of those that would have been payable under the replaced Project Document and (z) such occurrence, after considering any replacement obligor and replacement Project Document and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect; *provided, further*, that a breach, default or termination under any "Construction Contract" prior to the Completion Date shall constitute an Event of Default hereunder only to the extent such breach, default or termination constitutes a Disbursement Agreement Event of Default; or

52

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(k) An "event of default" under and as defined in any of the Financing Agreements (other than the Loan Documents) (in any event, after the expiration of any applicable cure periods); or

(l) (i) A Change of Control shall occur; or (ii) a Specified Change of Control shall occur; or

(m) The Liens on the Property of the Borrower permitted pursuant to **Section 7.3(k) and (l)**, shall cease, for any reason, to be validly subordinated and junior in right to the Liens of the Collateral Agent on the Equipment under the Loan Documents; or

(n) Any Subordinated Debt or the Management Fees payable under the Management Agreement shall cease, for any reason, to be validly subordinated to the Obligations of the Loan Parties as provided in the Management Agreement, the Management Fee Subordination Agreement and the documentation, instruments or other agreements related to the Subordinated Debt, as the case may be; or

(o) A License Revocation that continues for three consecutive calendar days affecting gaming operations accounting for five percent or more of the consolidated gross revenues (calculated in accordance with GAAP) of the Borrower related to gaming operations; or

(p) The Borrower or any other Loan Party shall fail to observe, satisfy or perform, or there shall be a violation or breach of, any of the terms, provisions, agreements, covenants or conditions attaching to or under the issuance to such Person of any Permit or any such Permit or any provision thereof shall be suspended, revoked, cancelled, terminated or materially and adversely modified or fail to be in full force and effect or any Governmental Authority shall challenge or seek to revoke any such Permit if such failure to perform violation, breach, suspension, revocation, cancellation, termination or modification could reasonably be expected to have a Material Adverse Effect; or

(q) The Completion Date shall not have occurred by the Scheduled Completion Date; or

(r) World Travel shall fail to pay any principal or interest on the Intercompany Note in accordance with the terms thereof or any default shall occur thereunder; or

(s) The occurrence of an "Event of Default" under the Wynn Credit Agreement; or

(t) The Aircraft Trustee shall fail to maintain the registration of the Aircraft as required by Section 4.1 of the Aircraft Security Agreement;

then, and in any such event, (A) if such event is an Event of Default specified in **subsection (i)** or **(ii)** of **subsection (f)** above with respect to Wynn Resorts or any Loan Party, automatically the Commitments shall immediately terminate and the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Loan Agreement and the other Loan Documents shall immediately become due and payable, and (B) if such event is any other Event of Default, either or both of the following actions may be taken: (i) with the consent of the Required Lenders, the Collateral Agent may, or upon the request of the Required Lenders, the Collateral Agent shall, by notice to the Borrower, declare the Commitments to be terminated forthwith, whereupon the Commitments shall immediately terminate; and (ii) with the consent of the Required Lenders, the Collateral Agent may, or upon the request of the Required Lenders, the Collateral Agent shall, by notice to the Borrower, declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Loan Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable. Upon the occurrence and during the continuation of an Event of Default, the Collateral Agent and the Lenders shall be entitled to exercise any and all remedies available under the FF&E Guaranty and the Security Documents (subject to applicable Nevada Gaming Laws and securing any required Nevada Gaming Approvals), including, without limitation, the Borrower Security Agreement, or otherwise available under applicable law or otherwise, including, without limitation, the right to enter into possession of the Collateral and

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perform any and all work and labor necessary to complete the Project or to operate and maintain the Collateral, and all sums expended by the Collateral Agent or any other Secured Party in so doing, together with interest on such total amount at the highest default rate provided hereunder, shall be repaid by the Borrower to the Collateral Agent or such Secured Party upon demand and shall be secured by the Loan Documents, notwithstanding that such expenditures may, together with amounts advanced under this Loan Agreement, exceed the total amount of the Commitments. Notwithstanding anything to the contrary contained in this Loan Agreement, in the event the consent of the Lenders is required in connection with the exercise of remedies pursuant to this **Section 9**, for purposes of determining the required lender consent pursuant to the applicable definitions thereto, the Commitments of the Lenders shall be deemed terminated.

*Section 9.2. Remedies on Default.* In case any one or more Events of Default shall occur and be continuing, (i) the Collateral Agent and the Required Lenders may exercise any rights of the Borrower under and with respect to the Intercompany Note and the Aircraft Security Agreement, (ii) any Lender may proceed to protect and enforce the rights of such Lender by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Loan Document, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise, and (iii) the Collateral Agent and any Lender may exercise any rights or remedies in their respective capacities under the Operative Documents in accordance with the provisions thereof. No course of dealing and no delay on the part of any Lender in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such Lender's rights, powers or remedies. No right, power or remedy conferred by this Loan Agreement or by any Note upon any holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise.

*Section 9.3. Remedies on Aircraft Default.* Notwithstanding any waiver or amendment delivered under this Loan Agreement by the Collateral Agent acting at the direction of the Required Lenders to the contrary, in case any one or more Events of Default specified in (i) **subsection (a)** above, (ii) **subsection (b)** above with respect to World Travel, the Aircraft or the Aircraft Trustee, (iii) **subsection (iv)** of **subsection (c)** above, (iv) **subsection (d)** above with respect to World Travel, the Aircraft or the Aircraft Trustee, (v) **subsection (i)** above with respect to World Travel, the Aircraft or the Aircraft Trustee, (vi) **subsection (f)** above, (vii) **subsection (r)** above, (viii) **subsection (t)** above shall occur and be continuing, the Collateral Agent, acting at the direction of the Lenders holding more than 50% of the aggregate amount of Credit Exposure of the Lenders whose Loans were used to refinance the Aircraft, shall (A) declare that portion of the Loans hereunder (with accrued interest thereon) that were used to refinance the Aircraft to be due and payable forthwith, whereupon the same shall immediately become due and payable, (B) exercise any rights of the Borrower under and with respect to the Intercompany Note and the Aircraft Security Agreement and (C) exercise any of its rights under the Borrower Aircraft Assignment.

With the exception of the foregoing, unless the Required Lenders have consented in writing, no such Lender shall proceed to protect and enforce the rights of such Lender under this Loan Agreement or the other Loan Documents, by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any other Loan Document, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

## SECTION 10. ASSIGNMENT BY LENDERS; PARTICIPATIONS.

*Section 10.1. Assignments.* (a) Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Loan Agreement, the other Loan Documents, the Collateral or the Notes; *provided* that (i) each partial assignment shall be made as an

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assignment of a proportionate part of all the assigning Lender's rights and obligations under this Loan Agreement and the other Loan Documents; and (ii) the parties to each assignment shall execute and deliver to the Collateral Agent an Assignment and Assumption Agreement in the form attached hereto as **Exhibit F**, together with a processing and recordation fee of \$500.00. Subject to acceptance and recording thereof by the Collateral Agent pursuant to **paragraph (b)** of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Loan Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Loan Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Loan Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Loan Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of **Section 12** with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Loan Agreement that does not comply with this

paragraph shall be treated for purposes of this Loan Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 10.2**.

(b) The Collateral Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at its office listed in **Schedule IB** a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "*Register*"). The entries in the Register shall be conclusive, and the Borrower, the Collateral Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Loan Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. Any assignment or transfer by a Lender of rights or obligations as a Lender under this Loan Agreement that does not comply with this paragraph shall be treated for purposes of this Loan Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 10.2**.

*Section 10.2. Participations.* Any Lender may at any time, without the consent of, or notice to, the Borrower or the Collateral Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "*Participant*") in all or a portion of such Lender's rights and/or obligations under this Loan Agreement, the other Loan Documents, the Collateral or the Notes; (including all or a portion of the Loans owing to it); *provided that* (i) such Lender's obligations under this Loan Agreement and the other Loan Documents shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Collateral Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Loan Agreement and the other Loan Documents. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Loan Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Loan Agreement and the other Loan Documents. Subject to **paragraph (b)** of this Section, the Company agrees that each Participant shall be entitled to the benefits of **Section 12** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 10.1**.

(b) A Participant shall not be entitled to receive any greater payment under **Section 12** than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a foreign Lender if it were a Lender shall not be entitled

55

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to the benefits of **Section 12.2** unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower to comply with **Section 12.2** as though it were a Lender.

*Section 10.3. Pledges.* Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Loan Agreement or the other Loan Documents to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided that* no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

## SECTION 11. THE COLLATERAL AGENT.

*Section 11.1. Appointment.* Each Lender hereby irrevocably designates and appoints the Trust Company as the Collateral Agent under this Loan Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Collateral Agent, in such capacity, to take such action on its behalf under the provisions of this Loan Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Loan Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Loan Agreement, the Trust Company shall not have any duties or responsibilities, except those expressly set forth herein and in the other Loan Documents, or any fiduciary relationship with any Lender or any other party to the Loan Documents, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Loan Agreement or any other Loan Document or otherwise exist against the Trust Company.

*Section 11.2. Delegation of Duties.* The Collateral Agent may execute any of its duties under this Loan Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Collateral Agent shall not be responsible for the acts or omissions including, specifically the negligence or willful misconduct of agents or attorneys-in-fact selected by it with reasonable care.

*Section 11.3. Exculpatory Provisions.* Neither the Trust Company nor the Collateral Agent (in its capacity as such) nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by the Collateral Agent or such Person under or in connection with this Loan Agreement or any other Loan Document, except for the Collateral Agent's or such Person's own willful misconduct or gross negligence (or negligence in the handling of funds by the Collateral Agent in such capacity) or (b) responsible in any manner to any of the Lenders or any other party to the Loan Documents for any recitals, statements, representations or warranties made by the Borrower or any other party or any officer thereof contained in this Loan Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Collateral Agent under or in connection with, this Loan Agreement or any other Loan Document, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Loan Agreement or any other Loan Document or for any failure of the Borrower to perform its obligations hereunder or thereunder. The Collateral Agent shall not be under any obligation to any Lender or any other party to the Loan Documents to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Loan Agreement or any other Loan Document, or to inspect the properties, books or records of the Borrower.

*Section 11.4. Reliance by Collateral Agent; Indemnity.* The Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any Note, writing, resolution, notice, consent, certificate, affidavit, letter, facsimile message, statement, order or other document or other written communication believed by it to be genuine and correct and to have been signed, sent or made by the

56

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proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Borrower), independent accountants and other experts selected by the Collateral Agent. The Collateral Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Collateral Agent, in accordance with this Loan Agreement. The Collateral Agent shall be fully justified in failing or refusing to take any action under this Loan Agreement or any other Loan Document unless it shall first receive the advice or concurrence of the Required Lenders or it shall first be indemnified to its satisfaction by the applicable Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Loan Agreement and the other Loan Documents in accordance with a request of the Required Lenders, and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the applicable Notes. Wherever in the Loan Documents the consent or approval of the Collateral Agent is required, in giving any such consent or approval the Collateral Agent may rely upon, or make its approval subject to, the directions of or consent or approval from the Required Lenders. The Lenders agree to indemnify the Collateral Agent (to the extent not reimbursed under **Section 12** hereof but without limiting the obligations of the Borrower under **Section 12** or of the Guarantors) ratably in accordance with their respective Commitments, for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including reasonable attorneys' fees) or disbursements of any kind and nature whatsoever that may at any time (including at any time following the final payment of all of the obligations of the Borrower hereunder and under the other Loan Documents) be imposed on, incurred by or asserted against the Collateral Agent (including by any Lender) in any way relating to or arising out of this Loan Agreement or any Loan Document or the transactions contemplated thereby or any action taken or omitted by the Collateral Agent under this Loan Agreement or any Loan Document; *provided* that no Lender shall be liable for any of the foregoing to the extent they arise from the gross negligence (or negligence in the handling of funds by the Collateral Agent in such capacity) or willful misconduct of the Person to be indemnified. Without limitation of the foregoing, each Lender agrees to reimburse the Collateral Agent promptly upon demand for its ratable share of any costs or expenses payable by the Borrower under **Section 12**, to the extent that the Collateral Agent is not promptly reimbursed for such costs and expenses by the Borrower or a Guarantor.

**Section 11.5. Notice of Default.** The Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Collateral Agent has received notice from a Lender referring to this Loan Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Collateral Agent receives such a notice, the Collateral Agent shall promptly give notice thereof to the Lenders, the Borrower, the Administrative Agent and the Mortgage Notes Indenture Trustee. The Collateral Agent shall take such action with respect to such Default or Event of Default as shall be directed by the Required Lenders; *provided, however*, that unless and until the Collateral Agent shall have received such directions, the Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

57

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**Section 11.6. Non-Reliance on Collateral Agent and Other Lenders.** Each Lender expressly acknowledges that neither the Collateral Agent, the Arranger nor any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates, has made any representations or warranties to it and that no act by the Collateral Agent, or the Arranger hereinafter taken, including any review of the affairs of the Borrower, shall be deemed to constitute any representation or warranty by the Collateral Agent or the Arranger to any Lender. Each Lender represents to the Collateral Agent that it has, independently and without reliance upon the Collateral Agent or the Arranger or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Borrower and made its own decision to enter into this Loan Agreement. Each Lender also represents that it will, independently and without reliance upon the Collateral Agent, the Arranger or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Loan Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Borrower. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Collateral Agent hereunder, neither the Collateral Agent nor the Arranger shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Borrower which may come into the possession of the Collateral Agent, the Arranger or any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates.

**Section 11.7. Indemnification.** Other than with respect to indemnification provided to the Collateral Agent in accordance with **Section 11.4**, the Collateral Agent agrees to look solely to the Borrower under **Section 12**, and not to any other party hereto, for any claim for indemnification which may arise hereunder or under any other Loan Document.

**Section 11.8. Collateral Agent in Its Individual Capacity.** Each Lender acknowledges that Wells Fargo Bank Nevada, National Association, is acting as Collateral Agent hereunder. Wells Fargo Bank Nevada, National Association, and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Borrower and its Affiliates as though it was not the Collateral Agent hereunder and under the other Loan Documents and without notice to or consent of the Lenders. Each Lender acknowledges that, pursuant to such activities, Wells Fargo Bank Nevada, National Association, or its Affiliates may receive information regarding the Borrower or its Affiliates (including information that may be subject to confidentiality obligations in favor of the Borrower or its Affiliates) and acknowledges that such Persons shall be under no obligation to provide such information to them.

**Section 11.9. Successor Collateral Agent.** The Collateral Agent may resign at any time by giving written notice thereof to the Lenders and the Borrower and may be removed at any time with or without cause by the Required Lenders. Upon any such resignation or removal, the Required Lenders, with the consent of the Borrower, such consent not to be unreasonably withheld, shall have the right to appoint a successor Collateral Agent. If no successor Collateral Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within sixty (60) days after the retiring Collateral Agent's giving of notice of resignation or the Required Lenders' removal of the retiring Collateral Agent, then the retiring Collateral Agent may, on behalf of the Lenders, appoint a successor Collateral Agent, which shall be a commercial bank described in clause (i) or (ii) of the definition of "Eligible Assignee" and having a combined capital and surplus of at least \$150,000,000. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, such successor Collateral Agent shall thereupon succeed to and become vested with all the

58

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rights, powers, privileges and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties and obligations under this Loan Agreement. After any retiring Collateral Agent's resignation or removal hereunder as Collateral Agent, the provisions of this **Section 11** shall inure to

its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent under this Loan Agreement. Notwithstanding the foregoing if no Event of Default and no Default, shall have occurred and be continuing, then no successor Collateral Agent shall be appointed under this **Section 11.9** without the prior written consent of the Borrower, which consent shall not be unreasonably withheld or delayed.

**Section 11.10. Action upon Instructions.** Subject to the terms of **Sections 11.3, 11.4 and 11.7** and the Operative Documents, upon the written instructions at any time and from time to time of the Required Lenders (for any action not requiring the consent of all of the Lenders), Collateral Agent shall take such of the following actions as may be specific in such instructions:

- (a) give such notice or direction or exercise such right or power under this Loan Agreement or any other Loan Document as shall be specified in such instructions;
- (b) approve as satisfactory to it all matters required by the terms of any Loan Document to be satisfactory to Collateral Agent; and
- (c) any other action as specified by the Required Lenders.

## SECTION 12. INDEMNITY.

**Section 12.1. General Indemnification.** Whether or not the transactions contemplated hereby are consummated, to the fullest extent permitted by any Requirements of Law, the Borrower hereby:

- (x) waives and releases any Claims now or hereafter existing against any Indemnitee on account of, and
  - (y) assumes liability for and agrees to indemnify, protect, defend, save and keep harmless each Indemnitee on an after-tax basis (in accordance with **Section 12.3**) from and against, any and all Claims of every kind and nature whatsoever that may be imposed on, incurred by, or asserted against any Indemnitee, which are not caused by the gross negligence or willful misconduct (or negligence in the handling of funds by the Collateral Agent in such capacity) of the Indemnitee (*provided* that the indemnification provided under this **Section 12.1** shall specifically include matters based on or arising from the negligence of any Indemnitee), whether or not such Indemnitee shall also be indemnified as to any such Claim by any other Person and whether or not such Claim arises or accrues prior to the Document Closing Date or after the Maturity Date, and which relates in any way to or arises in any way out of:
    - (a) any of the Operative Documents or any of the transactions contemplated thereby, or any investigation, litigation or proceeding in connection therewith, and any amendment, modification or waiver in respect thereof;
    - (b) the Collateral or any Part thereof or interest therein;
    - (c) with respect to the Collateral or Part thereof, the acquisition, mortgaging, design, manufacture, re-manufacture, construction, preparation, installation, inspection, delivery, non-delivery, acceptance, rejection, purchase, ownership, possession, rental, lease, sublease, repossession, maintenance, repair, alteration, modification, addition or substitution, storage, titling or retitling, transfer of title, registration or re-registration, redelivery, use, operation, condition, financing, refinancing, sale, return or other application or disposition or the imposition of any Lien (or incurring of any liability to refund or pay over any amount as a result of any Lien) on any of the Collateral, including, without limitation, (i) Claims or penalties arising from any violation of any Requirements of Law or in tort (strict liability or

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otherwise), (ii) loss of or damage to the environment (including, without limitation, investigation costs, cleanup costs, response costs, remediation and removal costs, costs of corrective action, costs of financial assurance, and all other damages, costs, fees and expenses, fines and penalties, including natural resource damages), or death or injury to any Person, and any mitigative action required by or under Environmental Laws, (iii) latent or other defects, whether or not discoverable, and (iv) any Claim for patent, trademark or copyright infringement;

- (d) the sale or other disposition of the Collateral, including, without limitation, any disposition as a result of the exercise of remedies;
- (e) the offer, issuance, sale or delivery of the Notes in accordance with the Operative Documents;
- (f) the breach by the Borrower or a Guarantor of any representation or warranty made by it or deemed made by it in any Operative Document;
- (g) the transactions contemplated hereby or by any other Operative Document in respect of the application of Parts 4 and 5 of Subtitle B of Title I of ERISA and any Prohibited Transaction described in Section 4975(c) of the Code;
- (h) any Claims related to the release from the Collateral of any substance into the environment, including (without limitation) Claims arising out of the use of the Collateral for the transportation or storage of any Hazardous Substances;
- (i) any Claims related to any Indemnitee being alleged to be an owner or operator of the Collateral or the land on which the Collateral is situated, in each case prior to taking possession thereof, under any Environmental Law;
- (j) any failure on the part of the Borrower or any Guarantor to perform or comply with any of the terms of any Operative Document to which it is a party; or
- (k) any other agreement entered into or assumed by the Borrower in connection with the Collateral.

It is expressly understood and agreed that this **Section 12.1** shall not apply to Claims in respect of:

- (A) Taxes (such Claims being subject to **Section 12.2**), except with respect to (1) taxes or penalties included in Claims described in **clause (g)** above, and (2) any payment necessary to make payments under this **Section 12.1** in accordance with **Section 12.3**;

- (B) as to an Indemnitee, Lender Liens which such Indemnitee is responsible for discharging under the Operative Documents;
- (C) the gross negligence or willful misconduct of such Indemnitee or any Affiliate, agents, officers directors, servants or employees thereof; and
- (D) the breach by an Indemnitee of any representation, warranty or covenant under any Operative Document.

*Section 12.2. General Tax Indemnity.* (a) The Borrower shall pay, defend and indemnify and hold each Indemnitee harmless from any and all Taxes imposed on or with respect to or in connection with any Indemnitee, the Collateral or any Part thereof, any Operative Document, the Borrower or any lessee or user of the Collateral, howsoever imposed, including Taxes imposed:

(i) with respect to the Collateral or Part thereof, the acquisition, mortgaging, design, manufacture, re-manufacture, construction, preparation, installation, inspection, delivery, non-delivery, acceptance, rejection, purchase, ownership, possession, rental, lease, sublease

60

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agreement, repossession, maintenance, repair, alteration, modification, addition or substitution, storage, titling or retitling, transfer of title, registration or re-registration, redelivery, use, operation, condition, financing, refinancing, sale, return or other application or disposition or the imposition of any Lien (other than Permitted Liens related to Taxes) or incurrence of any liability to refund or pay over any amount as a result of any Lien thereon;

(ii) Interest or Supplemental Payments or the receipts or earnings arising from or received with respect to the Collateral or any Part thereof, or any interest therein or any applications or dispositions thereof,

(iii) any other amount paid or payable pursuant to this Loan Agreement, the Notes or any other Operative Document;

(iv) the Collateral or any Part thereof or any interest therein;

(v) all or any of the Operative Documents, any other documents contemplated thereby and any amendments and supplements thereto; and

(vi) otherwise with respect to or in connection with the transactions contemplated by the Operative Documents;

*provided, however*, the indemnification obligation of this **Section 12.2(a)** shall not apply to Taxes (1) which are based upon or measured by the Indemnitee's net income or which are expressly in substitution for, or relieve Indemnitee from, any tax based upon or measured by Indemnitee's net income (including the United States backup withholding tax)(other than any State or local taxes imposed by means of withholding, taxes incurred solely as a result of the location of the Collateral, the operations, state of formation, or place of payment of the Borrower, and taxes necessary to pay the obligations under this paragraph on an after-tax basis); (2) characterized under local law as franchise, net worth, or shareholder's capital taxes; and (3) that are the U.S. withholding taxes under Sections 1441 or 1442 of the Code with respect to any payment to an Indemnitee that is not a U.S. Person as defined in Section 7701(a)(3) of the Code (a "Non-U.S. Indemnitee"). Notwithstanding the proviso of the preceding sentence of this **Section 12.2(a)**, the Borrower shall pay or reimburse, and indemnify and hold harmless, on an after-tax basis, any Non-U.S. Indemnitee (i) if such Non-U.S. Indemnitee, in compliance with **Section 12.2(c)**, has established that it is entitled to receive payments pursuant to the Operative Documents without any such deduction or withholding, from any deduction or withholding of any U.S. federal income tax, or (ii) if such Non-U.S. Indemnitee, in compliance with **Section 12.2(c)**, has established that it is entitled to receive payments pursuant to the Operative Documents at a reduced rate of withholding, from any deduction or withholding of any United States federal income tax in excess of such reduced rate, or (iii) if such Non-U.S. Indemnitee, in compliance with **Section 12.2(c)** or otherwise, has validly established that it is a foreign person or a corporation thereby entitled to an exemption from United States backup withholding taxes, from such backup withholding taxes.

Payments to any Indemnitee under this **Section 12.2(a)** shall be made within ten (10) Business Days from the date such Indemnitee makes written demand therefor, which demand shall set forth in reasonable detail the basis and calculations of the amounts demanded. Any Indemnitee claiming any indemnity payment or additional amounts payable pursuant to this **Section 12.2(a)** shall use reasonable efforts to file any certificate or document reasonably requested in writing by the Borrower or the Collateral Agent if the making of such a filing would avoid the need for or reduce the amount of any such indemnity payment or the withholding amount that may thereafter accrue.

All of the indemnities contained in this **Section 12.2** shall continue in full force and effect notwithstanding the expiration or earlier termination of this Loan Agreement in whole or in part, including the termination of this Loan Agreement with respect to the Collateral, and are expressly made for the benefit of, and shall be enforceable by, each Indemnitee.

61

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(b) The Borrower will, promptly upon learning thereof, notify the Collateral Agent and the Indemnitees of all reports or returns required to be made with respect to any Tax with respect to which the Borrower is required to indemnify hereunder, and will, if permitted by any Requirement of Law, file the same. If the Borrower is not permitted to so file, the Borrower shall prepare such reports or returns for signature by the Collateral Agent or the applicable Indemnitee and shall forward the same, together with immediately available funds for payment of any Tax due, to the Collateral Agent or such Indemnitee, no later than later of ten (10) Business Days in advance of the date such payment is to be made or five (5) Business Days upon learning of such filing requirement. The Borrower shall furnish the Collateral Agent or such Indemnitee with copies of all paid receipts or other appropriate evidence of payment for all Taxes paid by the Borrower pursuant to this **Section 12.2**.

(c) Each Non-U.S. Indemnitee shall deliver to the Borrower and the Collateral Agent two original copies of IRS Form W-8BEN or W-8ECI or successor applicable form or forms, properly and duly executed, establishing in either case that such Non-U.S. Indemnitee is entitled to receive payments pursuant to the this Loan Agreement without deduction or withholding of any U. S. federal income taxes (or at a reduced rate, if applicable) and is a foreign person or a corporation thereby entitled to an exemption from United States backup withholding taxes. Each such Non-U.S. Indemnitee covenants that (i) it will provide to the Borrower and the Collateral Agent a new IRS Form W-8BEN or W8-ECI and any such additional forms (or any successor form or forms) in accordance with applicable United States laws and regulations and amendments, duly executed and completed by such Non-U.S. Indemnitee on the expiration or obsolescence of any previously delivered forms or after the occurrence of any event requiring a change in the most recent forms delivered by it, in either case within ten (10) Business Days of receipt from the Borrower or the Collateral Agent of (1) written notice that the existing forms are to expire or become obsolete, (2) the



appropriate new forms, and (ii) it will otherwise comply from time to time with all applicable United States laws and regulations with regard to such withholding tax exemption or entitlement to reduced rate withholding.

(d) If any Indemnitee receives a refund of any Tax for which a payment has been made by the Borrower or the Collateral Agent pursuant to this **Section 12.2**, which refund in the good faith judgment of such Indemnitee is attributable to such payment made by the Borrower or Collateral Agent, then such Indemnitee shall reimburse the Borrower or Collateral Agent for such amount as such Indemnitee determines in good faith to be the proportion of the refund as will leave it, after such reimbursement, in the same position it would have been in if the payment of such Tax and any payment by the Borrower or a Collateral Agent under this **Section 12.2** had not been made. Subject to this **Section 12.2(d)**, upon the reasonable request of the Borrower or Collateral Agent, the Indemnitee shall use reasonable efforts to cooperate with the Borrower or a Collateral Agent with a view to obtaining a refund of any Taxes with respect to which the Borrower or a Collateral Agent has paid any amounts pursuant to this **Section 12.2** and which the Borrower or the Collateral Agent, on advice of counsel, reasonably believes were not correctly or legally asserted by the relevant Governmental Authority.

(e) If any Taxes that are imposed on the Indemnitee and excluded from the indemnification provided for under **Section 12.2(a)** are required by any Governmental Authority to be paid (other than through withholding from payments made to the affected Indemnitee) by the Borrower, then the Borrower shall provide notice to the affected Indemnitee within a reasonable time after paying such amounts, together with an explanation in reasonable detail explaining the nature and circumstances of such payment. Within a reasonable time after receipt thereof, the affected Indemnitee shall reimburse the Borrower for any payment of such Taxes, on an after-tax basis in accordance with principles set forth in **Section 12.3** taking into account any deduction, credits or other Tax benefits available to Borrower on its payment of the Taxes.

**Section 12.3. Gross Up.** To the extent an Indemnitee shall not be entitled to a corresponding and equal deduction or credit with respect to any payment or Tax which Borrower is required to pay or reimburse under any other provision of this **Section 12** (each such payment or reimbursement under

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this **Section 12**, an "Original Payment") and which Original Payment constitutes income to such Indemnitee, then the Borrower shall pay to such Indemnitee on demand the amount of such Original Payment on a grossed-up basis such that, after subtracting all Taxes imposed on such Indemnitee with respect to such Original Payment (including any Taxes otherwise excluded from the indemnification provided under **Section 12.2** and assuming for this purpose that such Indemnitee were subject to taxation at the highest Federal, state or local marginal rates applicable to widely held corporations for the year in which such income is taxable), such payments shall be equal to the Original Payment to be received (net of any credits, deductions or other Tax benefits then actually recognized that arise from the payment by such Indemnitee of any amount, including Taxes, for which the payment to be received is made).

**Section 12.4. Increased Capital Costs.** If any change in, or the introduction, adoption, effectiveness, interpretation, reinterpretation or phase-in of, any law or regulation, directive, guideline, decision or request (whether or not having the force of law) of any court, central bank regulator or other Governmental Authority affects or would affect the amount of capital required or expected to be maintained by any Lender directly or by its parent company (including, without limitation, any reserve requirements specified under regulations issued from time to time by the Board and then applicable to assets or liabilities consisting of and including "Eurocurrency Liabilities" as defined in Regulation D of such Board) as determined by such Lender (in its sole and absolute discretion), then, in any such case, upon written notification from time to time by such Lender to the Borrower, the Borrower shall, within five (5) Business Days following receipt of the statement referred to in the next sentence, pay directly to such Lender, as Supplemental Payment, additional amounts sufficient to compensate such Lender or its parent for such increased cost to such Lender (subject to **Section 12.3**). A statement of a Lender as to any such additional amount or amounts (including calculations thereof in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower. In determining such amount, each Lender shall use any method of averaging or attribution that it (in its reasonable discretion) shall deem applicable. Notwithstanding any provision of this **Section 12.4** to the contrary, no amount shall be payable by the Borrower with respect to any such increased costs or reduced returns incurred more than 180 days before the date such Lender first notifies the Borrower of its intention to demand compensation under this **Section 12.4**.

**Section 12.5. Environmental Indemnity.** Without limitation of the other provisions of this **Section 12**, the Borrower hereby agrees to indemnify, hold harmless and defend each Indemnitee from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings (including informal proceedings) and orders, judgments, remedial action, requirements, enforcement actions of any kind, and all reasonable and documented costs and expenses incurred in connection therewith (including reasonable and documented attorneys', expert consultants', expert witnesses', and/or paralegals' fees and expenses), including all costs incurred in connection with any investigation or monitoring of the condition of the Site or any clean-up, remedial, removal or restoration work by any Governmental Authority (collectively, "Environmental Claims"), arising in whole or in part, out of:

(a) the presence on, under or around the Collateral or any portion thereof of any Hazardous Substances, or any releases or discharges of any Hazardous Substances on, under, from, onto or around the Collateral or any portion thereof;

(b) any activity, including, without limitation, construction carried on or undertaken on or off the Collateral or any portion thereof, and whether by the Borrower or any of its Affiliates or any predecessor in title or any employees, agents, sublessees, contractors or subcontractors of the Borrower, any of its Affiliates or any predecessor in title, or any other Persons (including such Indemnitee), in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Substances that at any time are located or present on, under or around, or that at any time migrate, flow, percolate, diffuse or in any way move onto or under the Collateral or any portion thereof;

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(c) loss of or damage to any property or the environment arising from, or in any way related to, the Collateral or the Borrower or any of its Affiliates (including, without limitation, clean-up costs, response costs, remediation and removal costs, cost of corrective action, costs of financial assurance, fines and penalties and natural resource damages), or death or injury to any Person, and all expenses associated with the protection of wildlife, aquatic species, vegetation, flora and fauna, and any mitigative action required by or under Environmental Laws, in each case arising from, or in any way related to, the Collateral, the Borrower or the transactions contemplated by the Operative Documents or any portion thereof;

(d) any claim concerning lack of compliance with Environmental Laws in connection with the Collateral (including, without limitation, any claim arising from the failure or alleged failure to obtain or comply with any permit required by any Environmental Laws for the construction or operation of the Collateral), or any act or omission causing an environmental condition that requires remediation or would allow any Governmental Authority to record a Lien against the Collateral or any portion thereof; or

(e) any residual contamination on or under any of the Collateral, or adversely affecting any natural resources, and any contamination of any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Substances, in each case arising from, or in any way related to, the Collateral, the Borrower or the transactions contemplated by the Operative Documents or any portion thereof, and irrespective of whether any of such activities were or will be undertaken in accordance with all Requirements of Law.

*Section 12.6. Eurodollar Rate Illegal, Unavailable or Impracticable.* If any Lender shall determine in good faith (which determination shall, upon notice thereof to Collateral Agent and the Borrower, be conclusive and binding on the Borrower) that:

(a) a change in law makes it unlawful, or the central bank or other Governmental Authority asserts that it is unlawful, for such Lender to make, continue or maintain any amount of such Lender's investment hereunder on a Eurodollar Rate basis,

(b) deposits in Dollars (in the applicable amounts) are not being offered to such Lender in the relevant market for the applicable Interest Period, or that by reason of circumstances affecting the interbank eurodollar market adequate and reasonable means do not exist for ascertaining the applicable Eurodollar Rate, or

(c) the Eurodollar Rate, as determined by such Lender, will not adequately and fairly reflect the cost to such Lender of maintaining or funding its investments for the applicable Interest Period, or that the making or funding of such Lender's investment hereunder on a Eurodollar Rate basis has become impracticable as a result of an event occurring after the date of this Loan Agreement which in the opinion of such Lender materially changes such investment,

then the obligations of such Lender to make, continue or maintain any such investment shall, upon such determination, forthwith be suspended until such Lender shall notify Collateral Agent and the Borrower that such circumstances no longer exist, and all Interest allocable to such Lender shall automatically be determined on a Base Rate basis beginning on the next immediately succeeding Payment Date with respect thereto or sooner, if required by such law, assertion or determination. In the event of the occurrence of the conditions described in **clause (c)** above, no Applicable Administrative Charge shall be assessed against any of the Loan Parties.

*Section 12.7. Funding Losses.* The Borrower agrees to reimburse any Lender for any loss or expense incurred as a result of (i) the failure of the transaction contemplated hereby to occur on the Document Closing Date or (ii) any payment of all or any portion of the Loan Balance for any reason on a date other than a Payment Date. Any affected Lender shall promptly notify the Borrower in

64

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writing of the amount of any claim under this **Section 12.7**, the reason or reasons therefor and the additional amount required fully to compensate such Lender for such loss or expense. Such written notice (which shall include calculations in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower.

*Section 12.8. Actions of Lenders.* Each Lender shall use reasonable efforts (including reasonable efforts to change the booking office for this transaction) to avoid or minimize any amounts which might otherwise be payable pursuant to **Sections 12.3 and 12.4**; *provided, however*, that such efforts shall not be deemed by such Lender, in its sole discretion, to be disadvantageous to it.

## SECTION 13. GENERAL CONDITIONS.

*Section 13.1. Payment of Transaction Costs and Other Costs.* If the transactions contemplated hereby are consummated, the Borrower shall pay all Transaction Costs and all Fees in accordance with **Section 2.7** and Section 3.1 of the Disbursement Agreement (or upon such later date as agreed to by the Lenders), and in the event the transactions contemplated hereby do not close, the Borrower shall pay such Transaction Costs promptly upon receipt of invoices therefor. In addition, the Borrower shall pay or reimburse Collateral Agent, Trust Company, Arrangers and the Lenders for all other Transaction Costs and Fees and all other out-of-pocket costs and expenses (including reasonable attorneys fees) reasonably incurred in connection with: (a) entering into, or the giving or withholding of, any future amendments, supplements, waivers or consents with respect to the Operative Documents; (b) any Casualty or termination of this Loan Agreement or any other Operative Document; (c) the negotiation and documentation of any restructuring or "workout", whether or not consummated, of any Operative Document; (d) the enforcement of the rights or remedies under the Operative Documents; (e) further assurances requested pursuant to any Operative Documents; (f) any transfer by Collateral Agent or a Lender of any interest in the Operative Documents during the continuance of an Event of Default or pursuant to the syndication of the Notes by the Arrangers; and (g) the ongoing fees and expenses of Collateral Agent and Trust Company under the Operative Documents.

*Section 13.2. Effect of Waiver.* No delay or omission to exercise any right, power or remedy accruing to Collateral Agent or any Lender upon any breach or default of the Borrower hereunder shall impair any such right, power or remedy nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein or of or in any similar breach or default thereafter occurring, nor shall any single or partial exercise of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of the Lenders or Collateral Agent of any breach or default under this Loan Agreement must be specifically set forth in writing and must satisfy the requirements set forth in **Section 13.5** with respect to approval by the Lenders and Collateral Agent.

*Section 13.3. Survival of Covenant.* All representations, warranties and covenants of the Borrower under **Sections 2, 3 and 5.1** shall survive the expiration or termination of this Loan Agreement to the extent arising prior to any such expiration or termination.

*Section 13.4. Applicable Law.* **THIS LOAN AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES (OTHER THAN TITLE 14 OF ARTICLE V OF THE NEW YORK GENERAL OBLIGATIONS LAW).**

*Section 13.5. Effect and Modification.* (a) This Loan Agreement and the other Loan Documents exclusively and completely state the rights of the Lenders and the Borrower with respect to the Loans and the Collateral and supersedes all prior agreements, oral or written, with respect thereto. No Loan Document nor any of the terms thereof may be terminated, amended, supplemented, waived or

65

modified without the written agreement or consent of Collateral Agent, the Borrower and the Required Lenders, and in the case of the FF&E Guaranty, or any definition used therein, the Guarantors affected thereby; *provided, however*, that **Sections 13.1 and 13.16** hereof may not be terminated, amended, supplemented, waived or modified without the written agreement or consent of the Arrangers; and *provided, further*, that any termination, amendment, supplement, waiver or modification shall require the written agreement or consent of each Lender if such termination, amendment, supplement, waiver or modification would:

- (i) modify any of the provisions of this **Section 13.5**, change the definition of "Required Lenders" or modify or waive any provision of a Loan Document requiring action by each Lender;
- (ii) amend, modify, waive or supplement any of the provisions of **Section 3.2, 3.3, 3.4, 3.5 or 3.8** of this Loan Agreement;
- (iii) reduce, modify, amend or waive any Fees or indemnities in favor of any Lender (other than increases thereof), including without limitation amounts payable pursuant to **Section 12** (except that any Person may consent to any reduction, modification, amendment or waiver of any indemnity payable to it);
- (iv) modify (other than increases thereof), postpone, reduce or forgive, in whole or in part, any payment of principal or Interest (other than pursuant to the terms of the Loan Documents), or any Loan, Loan Balance or Commitment Fee (except that any Person may consent to any modification, postponement, reduction or forgiveness of any payment of any Fee payable to it) or, subject to **clause (c)** above, any other amount payable to it under this Loan Agreement, or modify the definition or method of calculation of Interest (other than pursuant to the terms of the Loan Documents), Loans, Loan Balances, Commitment, Maturity Date, Commitment Period, Interest Rate Applicable Lender Margin or any other definition which would affect the amounts to be advanced or which are payable under the Loan Documents or extend, modify or amend the Loan Term;
- (v) release of any Lien granted by the Borrower, the Aircraft Trustee or World Travel under the Loan Documents or release the FF&E Guaranty, except as provided in the Loan Documents; or
- (vi) increase the Commitment of any Lender or subject such Lender to additional obligations.

Notwithstanding the foregoing, neither the FF&E Guaranty nor any of the terms thereof may be amended, modified or waived, unless such amendment, modification or waiver is in writing entered into by, or approved in writing by the Required Lenders, the Collateral Agent and the Guarantors.

(b) The Borrower will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security, to any Lender as consideration for or as an inducement to the entering into by any Lender of any waiver or amendment of any of the terms and provisions hereof unless such remuneration is concurrently paid, or security is concurrently granted, on the same terms, ratably to each Lender then outstanding even if such Lender did not consent to such waiver or amendment.

**Section 13.6. Notices.** All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or one Business Day after being sent by overnight delivery service or three days after being deposited in the mail, certified mail postage prepaid, or when sent by facsimile transmission, if confirmed by mechanical confirmation and if a copy thereof is promptly thereafter personally delivered, sent by overnight delivery service or so deposited in the mail, addressed to: (A) the Borrower, a Guarantor or Collateral Agent at the

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address set forth below, or at such other address as may hereafter be furnished in accordance with this **Section 13.6** by either party to the other and (B) each Lender at its address set forth in **Schedule IB**:

(i) if to the Borrower:

Wynn Las Vegas, LLC  
c/o Wynn Resorts Holdings, LLC  
3145 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
Attention: Ron Kramer  
Telecopy: (702) 733-4123  
Telephone: ( )

With a copy to

Irell & Manella LLP  
1800 Avenue of the Stars, Suite 900  
Los Angeles, California 90067  
Attention: C. Kevin McGeehan, Esq.  
Telecopy: (310) 282-5610  
Telephone: (310) 203-7110

(ii) if to Guarantor:

c/o

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Telephone: \_\_\_\_\_

(iii) if to the Collateral Agent:

Wells Fargo Bank Nevada,  
National Association  
299 South Main Street, 12th Floor  
MAC U1228-120  
Salt Lake City, Utah 84111

*Section 13.7. Consideration for Consents to Waivers and Amendments.* The Borrower hereby agrees that it will not, and that it will not permit any of its Affiliates to, offer or give any consideration or benefit of any kind whatsoever to Collateral Agent or any Lender in connection with, in exchange for, or as an inducement to, Collateral Agent or such Lender's consent to any waiver in respect of, any modification or amendment of, any supplement to, or any other consent or approval under, any Loan Document unless such consideration or benefit is offered ratably to all Lenders.

67

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*Section 13.8. Severability.* Whenever possible, each provision of this Loan Agreement shall be interpreted in such manner as to be effective and valid under any Requirements of Law; but if any provision of this Loan Agreement shall be prohibited by or invalid under any Requirements of Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Loan Agreement.

*Section 13.9. Successors and Assigns.* This Loan Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

*Section 13.10. No Third-Party Beneficiaries.* Other than as set forth in **Section 13.16**, nothing in this Loan Agreement or the other Loan Documents shall be deemed to create any right in any Person not a party hereto or thereto (other than the permitted successors and assigns of Lenders and the Borrower), and such agreements shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

*Section 13.11. Brokers.* None of the parties has engaged or authorized any broker, finder, investment banker or other third party to act on its behalf, directly or indirectly, as a broker, finder, investment banker, agent or any other like capacity in connection with this Loan Agreement or the transactions contemplated hereby, except that the Borrower has engaged Arrangers pursuant to the Arrangement Fee Letter.

*Section 13.12. Captions; Table of Contents.* Section captions and the table of contents used in this Loan Agreement (including the Schedules, Exhibits and Annexes hereto) are for convenience of reference only and shall not affect the construction of this Loan Agreement.

*Section 13.13. Schedules and Exhibits.* The Schedules, Annexes and Exhibits hereto, along with all attachments referenced in any of such items are incorporated herein by reference and made a part hereof.

*Section 13.14. Submission to Jurisdiction.* Any suit by Collateral Agent or any Lender to enforce any claim arising out of the Loan Documents may be brought in any state or Federal court located in New York having subject matter jurisdiction, and with respect to any such claim, each party to this Loan Agreement hereby irrevocably: (a) submits to the jurisdiction of such courts; (b) consents to the service of process out of said courts in the manner provided for notices in **Section 13.6**; and (c) the Borrower hereby (i) irrevocably appoints CT Corporation System, with an address on date hereof at 111 Eighth Avenue, 13th Floor, New York, New York 10011 (the "New York Process Agent"), as process agent in its name, place and stead to receive and forward service of any and all writs, summonses and other legal process in any suit, action or proceeding brought in the State of New York, (ii) agrees that such service in any such suit, action or proceeding may be made upon the New York Process Agent and (iii) agrees to take all such action as may be necessary to continue said appointment in full force and effect or to appoint another agent so that the Borrower will at all times have an agent in the State of New York for service of process for the above purposes. The Borrower irrevocably waives, to the fullest extent permitted by law: (A) any claim, or any objection, that it now or hereafter may have, that venue is not proper with respect to any such suit, action or proceeding brought in such a court located in New York including, without limitation, any claim that any such suit, action or proceeding brought in such court has been brought in an inconvenient forum; and (B) any claim that the Borrower is not subject to personal jurisdiction or service of process in such forum. The Borrower agrees that any suit to enforce any claim arising out of the Loan Documents or any course of conduct or dealing of Collateral Agent or any Lender shall be brought and maintained exclusively in any state or Federal court located in New York. Nothing in this **Section 13.14** shall affect the right of Collateral Agent or any Lender to bring any action or proceeding against Borrower or the Collateral in the courts of any other jurisdiction. The Borrower agrees that a final judgment in any action or proceeding in a state or

68

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Federal court within the United States may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

*Section 13.15. Jury Trial.* The Borrower, each Lender and Collateral Agent waives any right to a trial by jury in any action or proceeding to enforce or defend any rights under this Loan Agreement or any other Loan Document or under any amendment, instrument, document or agreement delivered or which may in the future be delivered in connection herewith or therewith or arising from any relationship existing in connection with this Loan Agreement or any other Loan Document and agrees that any such action or proceeding shall be tried before a court and not before a jury.

*Section 13.16. Role of Banc of America Leasing & Capital, LLC and Deutsche Bank Securities Inc.* Each party hereto acknowledges hereby that it is aware of the fact that Banc of America Leasing & Capital, LLC and Deutsche Bank Securities Inc. have acted and are acting as "joint arrangers" with respect to the overall transaction. The parties hereto acknowledge and agree that the Arrangers and their respective Affiliates, including each of Bank of America and Deutsche Bank, have not made any representations or warranties concerning, and that they have not relied upon the Arrangers as to, the tax, accounting or legal characterization or validity of (i) the Loan Documents or (ii) any aspect of the overall transaction. The parties hereto acknowledge and agree that the Arrangers have no duties, express or implied, under the Loan Documents in their capacity as Arrangers. The parties hereto further agree that **Section 13.1**, **Section 13.11** and this **Section 13.16** are for the express benefit of the Arrangers, and each of the Arrangers shall be entitled to rely thereon as if it were a party hereto.

*Section 13.17. Confidentiality.* Subject to **Section 13.18**, each of the Lenders agrees to keep confidential all non-public information provided to it by any Loan Party pursuant to this Loan Agreement that is designated by such Loan Party as confidential; *provided*, that nothing herein shall prevent any Lender from disclosing any such information (a) to any Arranger, any other Lender or any affiliate of any thereof, (b) to any Participant or assignee (each, a "Transferee") or prospective Transferee that agrees to comply with the provisions of this Section, (c) to any of its employees, directors, agents, attorneys, accountants and other professional advisors, (d) to any financial institution that is a direct or indirect contractual counterparty in swap agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section), (e) upon the request or demand of any Governmental Authority having jurisdiction over it, (f) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law, (g) if requested or required to do so in connection with any litigation or similar proceeding, (h) that has been publicly disclosed other than in breach of this Section, (i) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender or (j) in connection with the exercise of any remedy hereunder or under any other Loan Document.

*Section 13.18. Gaming Authorities.* Each Lender agrees to cooperate with the Nevada Gaming Authorities in connection with the administration of their regulatory jurisdiction over Wynn Resorts, the Borrower and the other Loan Parties, including, without limitation, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, the provision of such documents or other information as may be requested by any such Nevada Gaming Authorities relating to any of the Lenders, Wynn Resorts or the Borrower or any other Loan Party, or to the Loan Documents. Notwithstanding any other provision of this Agreement, the Borrower expressly authorizes, and will cause each other Loan Party to authorize, each Lender to cooperate with the Nevada Gaming Authorities as described above.

*Section 13.19. Trust Agreement.* Notwithstanding anything to the contrary in this Loan Agreement, each party hereto acknowledges that this Loan Agreement shall not impair, postpone,

69

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waive or otherwise affect any of the rights of the Aircraft Trustee pursuant to that certain Trust Agreement dated as of May 10, 2002 between the Aircraft Trustee and World Travel.

Executed and delivered as of this            day of            , 2002.

WYNN LAS VEGAS, LLC,  
a Nevada limited liability company,  
as the Borrower

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

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

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

By:

\_\_\_\_\_  
Name:  
Title:

70

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Accepted and agreed to as of the date last above written.

BANK OF AMERICA, N.A., as Lender

By

\_\_\_\_\_  
Name: Scott Faber  
Title: Managing Director

71

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Accepted and agreed to as of the date last above written.

BANK OF AMERICA, N.A., as Lender

By \_\_\_\_\_

Name: Peter J. Vitale  
Title: Vice President

72

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Accepted and agreed to as of the date last above written.

SOCIETE GENERALE, as Lender

By \_\_\_\_\_

Name:  
Title:

73

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Accepted and agreed to as of the date last above written.

GENERAL ELECTRIC CAPITAL CORPORATION, as Lender

By \_\_\_\_\_

Name: Richard J. O'Neill  
Title: Vice President

74

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Accepted and agreed to as of the date last above written.

THE CIT GROUP/EQUIPMENT FINANCING, INC., as Lender

By \_\_\_\_\_

Name:  
Title:

75

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Accepted and agreed to as of the date last above written.

DEUTSCHE BANK TRUST COMPANY AMERICAS, as Lender

By \_\_\_\_\_

Name:  
Title:

76

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Accepted and agreed to as of the date last above written.

BEAR, STEARNS CORPORATE LENDING INC., as Lender

By \_\_\_\_\_

Name:

Title:

77

WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION, as Collateral Agent

By \_\_\_\_\_

Name:

Title:

78

**SCHEDULE IA1 TO LOAN AGREEMENT  
DATED AS OF OCTOBER , 2002**

**LENDERS' COMMITMENT PERCENTAGE**

[to be completed to reflect each Lenders Commitment allocated appropriately by Type of Equipment and the Aircraft]

Lender	Aircraft Commitment Percentage	Gaming Equipment Commitment Percentage	Non-Gaming Equipment Commitment Percentage
Bank of America, N.A.	%	%	%
SG Cowen Securities Corporation	%	%	%
General Electric Capital Corporation	%	%	%
GMAC Commercial Mortgage Corporation	0%	0%	%
The CIT Group/Equipment Financing, Inc.	%	%	%
Deutsche Bank Securities, Inc.	%	%	%
Bear, Stearns & Co. Inc.	%	%	%
	100%	100%	100%
<b>AGGREGATE COMMITMENT</b>	<b>[\$ 38,000,000]</b>		<b>\$ 188,500,000</b>

**SCHEDULE IA2 TO LOAN AGREEMENT  
DATED AS OF OCTOBER , 2002**

**LENDERS' ALLOCATED COMMITMENT AMOUNT**

Lender	Aircraft Commitment Amount	Gaming Equipment Commitment Amount	Non-Gaming Equipment Commitment Amount	Commitment
Bank of America, N.A.	\$	\$	\$	\$ 48,500,000
SG Cowen Securities Corporation	\$	\$	\$	\$ 35,000,000
General Electric Capital Corporation	\$ 25,000,000	\$ 0	\$ 0	\$ 25,000,000
GMAC Commercial Mortgage Corporation	\$ 0	\$ 0	\$	\$ 20,000,000
The CIT Group/Equipment Financing, Inc.	\$ 5,000,000	\$ 15,000,000	\$ 0	\$ 20,000,000
Deutsche Bank Securities, Inc.	\$	\$	\$	\$ 20,000,000
Bear, Stearns & Co. Inc.	\$	\$	\$	\$ 20,000,000
	<b>[\$ 38,000,000]</b>			<b>[\$ 188,500,000.00]</b>

**SCHEDULE IB  
TO LOAN AGREEMENT  
DATED AS OF OCTOBER , 2002**

**ADDRESS FOR NOTICE AND PAYMENT**

1. Collateral Agent:

WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION

Address for all communications:

299 South Main Street, 12th Floor  
MAC U1228-120  
Salt Lake City, Utah 84111  
Attn: Corporate Trust Department

ABA #: 121-000-248  
Account No. **[PLEASE COMPLETE]**  
Reference: Wynn Las Vegas, LLC

Contact: **[PLEASE COMPLETE]**  
Phone: **[PLEASE COMPLETE]**

2. Lender:

BANK OF AMERICA, N.A.

Address:

555 South Flower Street  
Mail Code: CA9-706-17-54  
Los Angeles, California 90071

Credit contact:

Scott Faber  
Managing Director  
Phone: 213-345-1196  
Fax: 213-345-1215  
Email: scott.faber@bankofamerica.com

Business contact:

William S. Newby  
Managing Director  
Phone: 213-345-1194  
Fax: 213-345-1214  
Email: bill.newby@bankofamerica.com

Operations contact:

Bank of America, N.A.  
1850 Gateway Boulevard  
Mail Code: CA4-706-05-11  
Concord, California 94520  
Attention: Nina Lemmer  
Credit Services Representative  
Phone: 925-675-7478  
Fax: 888-969-9281  
Email: nina.l.lemmer@bankofamerica.com

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Address for wire transfers:

Bank of America, N.A.  
Dallas, Texas  
ABA #111-000012  
Account Number: 37508-36479  
Account Name: Concord, FTA- **BW [PLEASE CONFIRM]**  
Reference 1: Wynn Las Vegas, LLC  
Reference 2: Identify the purpose of wire  
Attention: Nina Lemmer



3. Lender:

BANK OF AMERICA, N.A.

Address:

300 South 4<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89101

Credit contact:

Peter J. Vitale  
Vice President  
Phone: 702-654-3062  
Fax: 702-654-7158  
Email: peter.j.vitale@bankofamerica.com

Operations contact:

Ann Laczkowski  
Credit Support Specialist  
Phone: 702-654-8364  
Fax: 702-654-7158  
Email: ann.laczkowski@bankofamerica.com

Address for wire transfers:

Bank of America, N.A.  
300 South 4<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89101  
ABA #122400724  
Account Number: 000990106395  
Account Name: Bank of America ICA  
Reference 1: Wynn Las Vegas, LLC  
Reference 2: Identify the purpose of wire  
Attention: Ann Laczkowski

4. Lender:

GENERAL ELECTRIC CAPITAL CORPORATION

Address:

401 Merritt Seven, Suite 23  
Norwalk, Connecticut 06856

2

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Credit contact:

Patrick Walsh  
Senior Vice President  
Phone: 203-229-1922  
Fax: 203-229-1992  
Email: pat.walsh@gecapital.com

Operations contact:

Joseph Campopiano  
Phone: 203-229-1861  
Fax: 203-229-1989  
Email: joseph.campopiano@gecapital.com

Address for wire transfers:

Deutsche Bank Trust Company Americas  
New York, New York  
ABA #021-001-033  
Account Number: 50-202-962  
Account Name: GECC/CAF Depository  
Reference 1: Wynn Las Vegas, LLC  
Reference 2: Identify the purpose of wire

5. Lender:

Address:

1540 W. Fountainhead Pkwy  
Tempe, Arizona 85282

Credit contact:

David Dobbs  
Phone: 800-553-8778 ext. 1881  
Fax: 480-858-1496  
Email: david.dobbs@cit.com

Post Funding Operations contact:

Scott Fry  
Phone: 800-553-8778 ext. 2347  
Fax: 480-858-1465  
Email: scott.fry@cit.com

Legal Counsel:

Robert Itkin  
Phone: 800-553-8778 ext. 1466  
Fax: 480-858-1460  
Email: robert.itkin@cit.com

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Draft Documentation Contact:

Phone: 800-553-8778 ext. 2732  
Fax: 480-858-1496  
Email: brenda.vankeuren@cit.com

Address for wire transfers:

**[PLEASE COMPLETE THIS SECTION]**

ABA #  
Account Number:  
Account Name:  
Reference 1:  
Reference 2: Identify the purpose of wire

6. Lender:

DEUTSCHE BANK TRUST COMPANY AMERICAS

Credit contact:

Deutsche Bank Trust Company Americas  
31 West 52<sup>nd</sup> Street  
New York, New York 10019  
Attention: Richard Grellier, Vice President  
Phone: 646-324-2116  
Fax: 664-324-7450  
Email: richard.grellier@db.com

Operations contact:

Deutsche Bank Trust Company Americas  
90 Hudson Street  
Jersey City, New Jersey 07302  
Mail Stop JCY050511  
Attention: Wendy Williams, Assistant Vice President  
Phone: 201-593-2170  
Fax: 201-593-2309  
Email: wendy.b.williams@db.com

Address for wire transfers:

Deutsche Bank Trust Company Americas  
ABA #021-001-033  
Account Number: 99-401-268

Account Name: Commercial Loan Division  
Reference 1: Wynn Las Vegas—FF & E facility  
Reference 2: Identify the purpose of wire  
Attention: Mary Hong

4

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7. Lender:

BEAR STEARNS CORPORATE LENDING INC.

Notice Instructions:

Bear Stearns & Co. Inc.  
383 Madison Avenue, 8<sup>th</sup> Floor  
New York, New York 10179  
Attention: Gloria Dombrowski  
Phone: 212-272-6043  
Fax: 212-272-4844  
Email: gdombrowski@bear.com

Administrative and Funding Contact:

Gloria Dombrowski  
Phone: 212-272-6043  
Fax: 212-272-4844

Credit contact and Copy of Documents to:

Bear Stearns & Co. Inc.  
383 Madison Avenue, 8<sup>th</sup> Floor  
New York, New York 10179  
Attention: Stephen O'Keefe  
Phone: 212-272-9430  
Fax: 212-272-9184  
Email: sokeefe@bear.com

Address for wire transfers:

Citibank, N.A.  
ABA #0210-00089  
Account Number: 0925-3186  
Favor of: Bear Stearns Securities, Corp.  
Further Credit to Account Number 096-00220-28  
Reference 1: Wynn Las Vegas, LLC **[Please Confirm]**  
Reference 2: Identify the purpose of wire  
Attention: Steve Resnick  
Phone: 609-951-2300  
Fax: 609-951-2354

8. Lender:

SOCIETE GENERALE

Credit contact:

Societe Generale  
Four Embarcadero, Suite 1200  
San Francisco, California 94111  
Attention: Mary Brockley, Director  
Phone: 415-646-7328  
Fax: 415-989-9922  
Email: mary.brockley@us.socgen.com

5

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Operations contact:

Societe Generale  
2001 Ross Avenue, Suite 4800  
Dallas, Texas 75201  
Attention: Deborah McNealy, Portfolio Manager  
Phone: 214-979-2762

Fax: 214-979-1104  
Email: deborah.mcnealy@us.socgen.com

Legal Counsel:

Bracewell & Patterson, LLP  
711 Louisiana, Suite 2900  
Houston, Texas 77002  
Attention: David Locascio  
Phone: 713-221-1396  
Fax: 713-221-2134  
Email: dlocascio@bracepatt.com

Address for wire transfers:

Societe Generale  
New York, New York  
ABA #026004226  
Account Number: LSA9051449  
Reference 1: Wynn Las Vegas, LLC  
Reference 2: Identify the purpose of wire

Loan advance instructions:

Deutsche Bank Trust Company Americas  
New York, New York  
ABA #021-001-033

For the Account of Commercial Loan Division:

A/C #99-401-268  
Re: Wynn Resorts  
Attention: Wendy Williams

Operations contact:

Wendy Williams  
Phone: 201-593-2170  
Fax: 201-593-2308

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**SCHEDULE II  
TO LOAN AGREEMENT  
DATED AS OF OCTOBER , 2002**

**REQUIRED PREPAYMENTS**

<b>Date</b>	<b>Total Payment</b>	<b>Interest</b>	<b>Aircraft Principal</b>	<b>Gaming Equipment Principal</b>	<b>Non-Gaming Equipment Principal</b>
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**EXHIBIT A  
TO LOAN AGREEMENT  
FORM OF PROMISSORY NOTE**

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES OR "BLUE SKY" LAW, AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT OR LAWS.

**WYNN LAS VEGAS, LLC**

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FOR VALUE RECEIVED, the undersigned, WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "Borrower"), promises to pay to the order of (the "Lender") on the Maturity Date for the Loans the principal sum of DOLLARS (\$) or such lesser amount thereof as shall be outstanding, as recorded either on the grid attached to this Note or in the records of Lender (and such recordation shall constitute prima facie evidence of the information as recorded; *provided, however*, that the failure to make any such recordation shall not in any way affect the Borrower's obligation to repay this Note). The principal amount of the Loan evidenced hereby shall be payable on or prior to the Maturity Date as provided in that certain Loan Agreement, dated as of October , 2002 (together with all amendments and other modifications, if any, from time to time thereafter made thereto, the "Loan Agreement"), among the Borrower, Wells Fargo Bank Nevada, National Association, as Collateral Agent, and the various financial institutions (including the Lender) as are, or may from time to time become, parties thereto.

The Borrower also promises to pay interest on the unpaid principal amount hereof from time to time outstanding from the date hereof until maturity (whether by acceleration or otherwise) and, after maturity, until paid, at the rates per annum and on the dates specified in the Loan Agreement.

Payments of both principal and interest are to be made without setoff or counterclaim in lawful money of the United States of America in same day or immediately available funds to the Payment Office of the Collateral Agent specified in the Loan Agreement (or to such other account as the Collateral Agent may from time to time designate in a written notice to the Borrower).

This Note is one of the Notes referred to in, and evidences indebtedness incurred under, the Loan Agreement, to which reference is made for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments and repayments of principal of the indebtedness evidenced by this Note and on which such indebtedness may be declared to be or automatically become immediately due and payable. This Note is secured pursuant to the Borrower Security Agreement and reference is made to the Borrower Security Agreement for a statement of the terms and provisions of such security.

The transfer, assignment or pledge of this Note or any interest herein is subject to the provisions of the Loan Agreement.

Capitalized terms used but not otherwise defined herein have the respective meanings specified in the Loan Agreement.

All parties hereto, whether as makers, endorsers, or otherwise, severally waive presentment for payment, demand, protest and notice of dishonor.

**[END OF PAGE]  
[SIGNATURE PAGES FOLLOW]**

THIS NOTE HAS BEEN DELIVERED IN NEW YORK, NEW YORK AND SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES (EXCEPT TITLE 14 OF ARTICLE 5 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

WYNN LAS VEGAS, LLC,  
a Nevada limited liability company,  
as the Borrower

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

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

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

By:

\_\_\_\_\_  
Name:

Title:

**GRID ATTACHED TO NOTE  
DATED \_\_\_\_\_, OF  
WYNN LAS VEGAS, LLC  
PAYABLE TO THE ORDER OF  
[ ]**

Loans made by the Lender to the Borrower, and payments of principal of such Loans.

Date of Funding or Payment	Amount of Funding or Payment	Outstanding Principal Balance (after such Funding or Payment)	Notation Made By

(WYNN LAS VEGAS, LLC, AS BORROWER)

In the Loan Agreement and each other FF&E Financing Document (other than the Disbursement Agreement), unless the context otherwise requires:

- (a) any term defined below by reference to another instrument or document shall continue to have the meaning ascribed thereto whether or not such other instrument or document remains in effect;
- (b) words importing the singular include the plural and vice versa;
- (c) a reference to a part, clause, section, article, exhibit or schedule is a reference to a part, clause, section and article of, and exhibit and schedule to, such FF&E Financing Document (other than the Disbursement Agreement);
- (d) a reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, ordinances or laws amending, supplementing, supplanting, varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations and ordinances issued or otherwise applicable under that statute;
- (e) a reference to a document includes any amendment or supplement to, or replacement or novation of, that document;
- (f) a reference to a party to a document includes that party's successors and permitted assigns; and
- (g) references to "*including*" means including without limiting the generality of any description preceding such term and for purposes hereof the rule of *ejusdem generis* shall not be applicable to limit a general statement followed by or referable to an enumeration of specific matters to matters similar to those specifically mentioned.

Further, each of the parties to the FF&E Financing Documents (other than the Disbursement Agreement) and their counsel have reviewed and revised the FF&E Financing Documents (other than the Disbursement Agreement), or requested revisions thereto, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall be inapplicable in construing and interpreting the FF&E Financing Documents (other than the Disbursement Agreement).

"*Account*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Additional Completion Period*" shall mean the period, if any, commencing on the Scheduled Completion Date and ending on the Completion Date.

"*Additional Land*" shall mean, collectively, the real property and fixtures represented as of the Document Closing Date by the following Assessor's Parcel Numbers: 162-16-510-019, 162-16-510-020, 162-16-510-023, 162-16-510-026, 162-16-510-027, 162-16-610-020, 162-16-610-023, 162-16-610-024, 162-16-610-025, 162-16-610-026, 162-16-610-027 and 162-16-610-031.

"*Additional Project Documents*" shall mean any document or agreement entered into after the Document Closing Date relating to the development, construction, maintenance or operation of the Project.

"*Adjusted Eurodollar Rate*" shall mean the Eurodollar Rate *plus* the Applicable Lender Margin.

"*Administrative Agent*" shall mean Deutsche Bank Trust Company Americas, in its capacity as administrative agent for the Wynn Banks under the Wynn Credit Agreement.

"*Administrative Charge*" shall mean an amount equal to the amount, if any, required to compensate each Lender for any losses (including, without limitation, any loss, cost or expense incurred by reason

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of the liquidation or reemployment of deposits or funds acquired by such Lender to fund its obligations under the Loan Documents) that may incur as a result of (i) the Borrower's payment of principal or interest on the Notes on any date other than on a Payment Date, (ii) the Borrower's payment of the Loan Balance on any date other than a Payment Date, or (iii) any condition described in **Section 12** of the Loan Agreement. Unless the Borrower's payment to which the Administrative Charge is applicable is readily attributable to a Type of Equipment or the Aircraft, the Administrative Charge shall be allocated *pro rata* by the Lender receiving such payment to Allocated Aircraft Value and Allocated Equipment Value represented by its Note.

"*Advance*" shall mean an advance of funds by the Lenders pursuant to **Section 2.3** of the Loan Agreement.

"*Advance Confirmation Notice*" shall have the meaning set forth in the Disbursement Agreement.

"*Advance Date*" shall mean each of the actual dates on or prior to the Commitment Termination Date on which an Advance occurs.

"*Advance Request*" shall have the meaning set forth in **Section 2.5(a)** of the Loan Agreement.

"*Aeronautics Authority*" shall mean, where applicable, the United States Department of Transportation, the Federal Aviation Administration and/or the administrator of the Federal Aviation Administration, or any Person or Authority succeeding to the functions of any of the foregoing or having the functions of any of the foregoing in any foreign jurisdictions in which the Aircraft, the Borrower, World Travel, the Aircraft Trustee or lessee of the Aircraft may be subject.

"*Affiliate*" shall mean, 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.

"*Affiliated Overhead Expenses*" for any period, the reasonable expenses of, and actually incurred by, Wynn Resorts and the other Loan Parties (other than the Borrower and its Subsidiaries), for salary and benefits, office operations, development, advertising, insurance and other organizational overhead, for such period calculated on a consolidated basis, after the elimination of intercompany transactions, and in accordance with GAAP; *provided*, that Affiliated Overhead Expenses shall not include any fee, profit or similar component payable to Wynn Resorts or any other Affiliate of Wynn Resorts (other than with respect to the salary of Mr. Wynn) and shall represent only the payment or reimbursement of actual costs and expenses incurred by Wynn Resorts and the Loan Parties (other than the Borrower and its Subsidiaries).

"*Aggregate Commitment Amount*" shall mean \$188,500,000.

"*Aircraft*" shall mean the Existing Aircraft and, after the Disposition of the Existing Aircraft in accordance with **Section 7.5(p)** of the Loan Agreement, the Replacement Aircraft.

"*Aircraft Appraiser*" shall mean TeleTech, Inc., or such other Person as may be selected by the Collateral Agent.

"*Aircraft Casualty Notice*" shall have the meaning assigned to such term in Section 7.1 of the Aircraft Security Agreement.

"*Aircraft Collateral*" shall have the meaning assigned to such term in Section 2.1 of the Aircraft Security Agreement.

2

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"*Aircraft Commitment Percentage*" shall mean, as to any Lender, the percentage set forth opposite such Lender's name under the heading "Aircraft Commitment Percentage" on **Schedule IA1** to the Loan Agreement.

"*Aircraft Contracts*" shall mean Contracts relating to the Aircraft.

"*Aircraft Event of Default*" shall mean any of the events specified in Section 8.1 of the Aircraft Security Agreement.

"*Aircraft Financing Document*" shall mean financing documents entered into by the Borrower or its Affiliates in connection with the purchase of the Replacement Aircraft.

"*Aircraft Lease*" shall have the meaning assigned to such term in Section 4.2 of the Aircraft Security Agreement.

"*Aircraft Manufacturer*" shall mean Bombardier Inc.

"*Aircraft Operating Agreement*" shall mean that certain Amended and Restated Aircraft Operating Agreement dated as of October , 2002 by and between the Aircraft Trustee, as owner and World Travel, as operator.

"*Aircraft Part*" shall have the meaning assigned to such term in Section 4.4 of the Aircraft Security Agreement.

"*Aircraft Security Agreement*" shall mean the Aircraft Security Agreement to be executed and delivered by the Aircraft Trustee and World Travel, substantially in the form of **Exhibit K** to the Loan Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the Loan Agreement.

"*Aircraft Security Agreement Supplement*" shall mean each supplement to the Aircraft Security Agreement, substantially in the form of Exhibit A thereto.

"*Aircraft Trust Agreement*" shall mean that certain Trust Agreement dated as of May 10, 2002 between World Travel and the Aircraft Trustee.

"*Aircraft Trustee*" shall mean Wells Fargo Bank Northwest, National Association, not in its individual capacity but solely as trustee of that certain trust created under the Aircraft Trust Agreement.

"*Airframe*" shall mean and include: (i) the airframe, which, together with the two Engines relating to such airframe, is to be refinanced pursuant to the Loan Documents and has the Federal Aviation Administration Registration Number and manufacturer's serial number specified in the Aircraft Security Agreement Supplement delivered on the Initial Advance Date covering such airframe; and (ii) any and all appliances, parts, instruments, appurtenances, accessories, furnishings, improvements, additions or other equipment of whatever nature (except Engines or engines) so long as the same shall be incorporated or installed in or attached to such airframe, or, so long as World Travel shall, directly or indirectly, continue to have an interest therein in accordance with the terms of the Loan Documents, after removal from such Airframe. The term "*Airframe*" shall also include any Replacement Airframe in replacement for the Airframe financed thereunder.

"*Allocable Overhead*" shall mean, for any period, an amount equal to (x) the amount of Affiliated Overhead Expenses for such period divided by (y) the number of gaming and/or hotel projects of Wynn Resorts and its Subsidiaries which were operating during such period or for which debt and/or equity financing has been obtained to finance, in whole or in part, the development, construction and/or opening thereof; *provided*, that amounts allocated to any such project shall be prorated based on the period within such period that such project was in operation or financing therefor was obtained] [TO BE INCLUDED IF INCLUDED IN BONDS].

3

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"*Allocated Aircraft Value*" shall mean the aggregate amount of Advances made by the Lenders on the Initial Advance Date for purposes of refinancing the Aircraft and the allocated share of Fees and Transaction Costs, less any prepayment of the Loan Balance pursuant to **Section 3** or **8.1** of the Loan Agreement allocated to the Aircraft.

"*Allocated Commitment*" shall mean, with respect to each Lender, the amount set forth opposite such Lender's name on **Schedule IA2** to the Loan Agreement under the column designated as "*Aircraft Commitment*," "*Gaming Commitment*" or "*Non-Gaming Commitment*," as applicable to the Type of

Equipment or the Aircraft to be funded by proceeds of the requested Advance.

"Allocated Equipment Value" shall mean the aggregate amount of Advances made by the Lenders on the Advance Dates for purposes of financing the Purchase Price of the Equipment, less any prepayment of the Loan Balance pursuant to **Section 3** or **8.1** of the Loan Agreement allocated to the Equipment.

"Applicable Administrative Charge" shall mean, as of any date of determination in respect of any event, any Administrative Charge determined to be due and owing in respect of such event.

"Applicable Lender Margin" shall mean, (a) at any time of determination of the Eurodollar Rate, 4.00% per annum, and (b) at any time of determination of the Base Rate, 4.00% per annum.

"Appraisal" shall mean any appraisal of the Collateral from an Appraiser received pursuant to the terms of **Section 6.17** of the Loan Agreement.

"Appraised Value" shall mean, with respect to the Collateral, or any part thereof, as of any date of determination, the Fair Market Value of the Collateral as set forth in the Appraisal therefor.

"Appraiser" shall mean the Aircraft Appraiser or the Equipment Appraiser, as the case may be.

"Arrangement Fees" shall mean the amount referred to in the Arrangement Fee Letters.

"Arrangement Fee Letters" shall mean that certain letter agreement between the Arrangers and the Borrower dated June 25, 2002.

"Arrangers" shall mean each of (i) Deutsche Bank Securities Inc. and (ii) Banc of America Leasing & Capital, LLC and their respective successors.

"Art Rental and Licensing Agreement" shall have the meaning set forth in the Wynn Credit Agreement.

"Asset Sale" shall mean any Disposition of Property or series of related Dispositions of Property (other than (i) the granting of any Lien permitted by **Section 7.3**, (ii) any Disposition permitted by **Section 7.4** and (iii) any Disposition permitted by **subsections (a), (b), (c), (d), (f), (h), (i), (j), (k), (l), (m), (n)** or **(o)** of **Section 7.5**, in each case of the Loan Agreement (*provided*, that in the case of **Section 7.5(a)**, Dispositions of Property thereunder shall be considered "Asset Sales" to the extent of any proceeds thereof not applied to the replacement of Property pursuant to **Section 7.5(a)(ii)**).

"Assignment and Acceptance" shall have the meaning set forth in Section 10.6(c) of the Wynn Credit Agreement.

"Assignment and Assumption" shall mean an Assignment and Assumption Agreement substantially in the form of **Exhibit F** to the Loan Agreement or otherwise acceptable to the Collateral Agent entered into pursuant to **Section 10.1** of the Loan Agreement.

"Authority" or "Authorities" shall mean "Governmental Agency" or "Governmental Agencies" as defined herein.

"Bank Company Collateral Account Agreement" shall have the meaning set forth in the Disbursement Agreement.

4

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"Bank Completion Guaranty Collateral Account Agreement" shall have the meaning set forth in the Disbursement Agreement.

"Bank Local Company Collateral Account Agreement(s)" shall have the meaning set forth in the Disbursement Agreement.

"Bank of America" shall mean Bank of America, National Association, a national banking association, and its successors.

"Bank Prepayment Option" shall have the meaning assigned to such term in **Section 3.1(b)** of the Loan Agreement.

"Bankruptcy Code" shall mean the Federal Bankruptcy Reform Act of 1978 (11 U.S.C. §101, *et seq.*), as applicable to the relevant case.

"Base Rate" shall mean, on any day with respect to the Loan Balance, the rate per annum equal to the sum of (a) higher of (i) the Federal Funds Rate for such day *plus* one-half of one percent (0.50%) and (ii) the Prime Rate for such day *plus* (b) the Applicable Lender Margin. Any change in the Base Rate due to a change in the Federal Funds Rate or the Prime Rate shall be effective on the effective date of such change in the Federal Funds Rate or the Prime Rate, without notice to the Borrower or any Guarantor.

"Beneficial Owner" shall mean as defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The term "Beneficially Owned" has a corresponding meaning.

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Board of Directors" shall mean (i) with respect to a corporation, the board of directors of the corporation; (ii) with respect to a partnership, the board of directors of the general partner of the partnership; and (iii) with respect to any other Person, the board or committee of such Person serving a similar function.

"Borrower" shall mean Wynn Las Vegas, LLC, a Nevada limited liability company and a Wholly-Owned Subsidiary of Wynn Resorts, or any successor thereto.

"Borrower Aircraft Assignment" shall mean the Assignment and Assumption Agreement dated as of October , 2002 by and between the Borrower and the Collateral Agent, as the same may be amended, supplemented, replaced or otherwise modified from time to time.



"Borrower Collateral" is defined in Section 2.1 of the Borrower Security Agreement.

"Borrower Security Agreement" shall mean the Borrower Security Agreement dated as of October , 2002 between the Borrower and Collateral Agent, as the same may be amended, supplemented, replaced or otherwise modified from time to time, which does not encumber the Aircraft.

"Borrower Security Agreement Supplement" means each supplement to the Borrower Security Agreement, substantially in the form of Exhibit A thereto.

"Building Lease" shall mean that certain Lease Agreement, dated as of October , 2002, by and between Valvino, as lessor, and the Borrower, as lessee, with respect to the lease of space in the Phase II Land Building.

5

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"Business Day" shall mean (i) for all purposes other than as covered by **clause (ii)** below, a day other than a Saturday, Sunday or other day on which commercial banks in New York City, New York or Las Vegas, Nevada or Salt Lake City, Utah are authorized or required by law to close and (ii) with respect to all notices and determinations in connection with, and payments of principal and interest on, Loans on which interest is paid at the Adjusted Eurodollar Rate, any day which is a Business Day described in **clause (i)** above and which is also a day for trading by and between banks in Dollar deposits in the [New York] [TO CONFIRM WITH DB] interbank eurodollar market.

"Capital Corp." shall mean Wynn Las Vegas Capital Corp., a Nevada corporation.

"Capital Expenditures" shall mean for any period, with respect to any Person, the aggregate of all expenditures by such Person and its Subsidiaries for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) which should be capitalized under GAAP on a consolidated balance sheet of such Person and its Subsidiaries; *provided*, that the amount of Capital Expenditures in respect of fixed or capital assets or additions to equipment in any Fiscal Year shall be net of (a) to the extent applied during such Fiscal Year to the replacement of Property pursuant to **Section 7.5(a)(ii)** the Net Disposition Proceeds received by any such Person from the Disposition of Property pursuant to **Section 7.5(a)** by reason of such Property's obsolescence or worn out condition and (b) the Insurance Proceeds and/or Eminent Domain Proceeds received by any such Person for any casualties to, or Taking of, fixed or capital assets and applied during such Fiscal Year to the repair or replacement of fixed or capital assets in accordance with **Section 2.24**. Notwithstanding the foregoing, any Project Costs, any expenditures in furtherance of the construction of the Entertainment Facility and any expenditures with respect to the purchase of the Replacement Aircraft in accordance with **Section 7.5(o)**, in each case that otherwise would have constituted Capital Expenditures by virtue of the foregoing, shall be excluded from this definition.

"Capital Lease" shall mean a capital lease as determined in accordance with GAAP.

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

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

"Cash Equivalents" shall mean (a) United States dollars; (b) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (as long as the full faith and credit of the United States, is pledged in support of those securities) having maturities of not more than six months from the date of acquisition; (c) interest-bearing demand or time deposits (which may be represented by certificates of deposit banks having general obligations rated (on the date of acquisition thereof) at least "A" or the equivalent by S&P or Moody's or, if not so rated, secured at all times, in the manner and to the extent provided by law, by collateral security in clause (a) or (b) of this definition, of a market value of no less than the amount of monies so invested; (d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (b) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above; (e) paper having the highest rating obtainable from Moody's or S&P and in each case maturing within six months after the date of acquisition; (f) money market funds or mutual at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (d) of this definition; and (g) to the extent not permitted in clauses (a) through (f) of this definition, Permitted Securities.

6

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"Casino Land" the land owned by the Borrower as described in Exhibit T-4 to the Disbursement Agreement.

"Casualty" or "Casualties" shall mean any of the following events in respect of any Item of Equipment, Airframe or Engine: (a) the total loss of such Item of Equipment, Airframe or Engine, the total loss of use thereof due to theft, disappearance, destruction, damage beyond repair or the rendering of such Item of Equipment, Airframe or Engine permanently unfit for normal use for any reason whatsoever (other than obsolescence); (b) any damage to such Item of Equipment, Airframe or Engine which results in an insurance settlement with respect to such Item of Equipment, Airframe or Engine on the basis of a total loss or a constructive total loss; (c) the permanent condemnation, confiscation or seizure of, or the requisition of title to or use of, such Item of Equipment, Airframe or Engine; or (d) as a result of any Requirement of Law or other action by any Governmental Agency, the use of such Item of Equipment, Airframe or Engine in the normal course of the Borrower's or any Affiliate's business shall have been prohibited, directly or indirectly, for a period equal to the lesser of 180 consecutive days and the remaining Loan Term. Additionally in the event the transactions contemplated hereby are rescinded pursuant to Regulation 8.130 of the Nevada Gaming Commission, a Casualty with respect to all of the Gaming Equipment shall be deemed to occur on the date of such rescission.

"Casualty Amount" shall mean, with respect to any Item of Equipment, Airframe or Engine as of any date specified for payment thereof, a portion of the Loan Balance relating to such Item of Equipment, Airframe or Engine equal to the product obtained by multiplying the outstanding Loan Balance as of the Casualty Settlement Date by the Item Value Fraction of such Item of Equipment.

"Casualty Notice" shall have the meaning assigned to such term in **Section 8.1** of the Loan Agreement.

"Casualty Proceeds" shall have the meaning assigned to such term in **Section 8.1(f)** of the Loan Agreement.

"Casualty Recoveries" shall have the meaning assigned to such term in **Section 8.1(e)** of the Loan Agreement.

"Casualty Settlement Date" shall have the meaning assigned to such term in **Section 8.1** of the Loan Agreement.

"Change of Control" the occurrence of any of the following: (i) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Loan Parties, taken as a whole, or of the Borrower and its Subsidiaries, taken as a whole, to any "person" (as that term is used in Section 13(d)(3) of the Exchange Act), other than to Mr. Wynn or a Related Party of Mr. Wynn; (ii) the adoption of a plan relating to the liquidation or dissolution of the Borrower or any successor thereto, (iii) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that (a) any "person" (as defined in clause (i) above), other than Mr. Wynn and any of his Related Parties becomes the Beneficial Owner, directly or indirectly, of more than 50% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of equity interests, (b) any "person" (as defined in clause (i) above) (other than Kazuo Okada, Aruze USA and Aruze Corp., so long as (1) the Stockholders Agreement, as in effect on the Closing Date, remains in full force and effect, (2) a majority of the Board of Directors of Wynn Resorts is constituted of Persons named on any slate of directors chosen by Mr. Wynn and Aruze USA pursuant to the Stockholders Agreement, as in effect on the Closing Date, and (3) Kazuo Okada and his Related Parties either (A) "control" (as that term is used in Rule 405 under the Securities Act) Aruze Corp. and Aruze USA or (B) otherwise remain the direct or indirect Beneficial Owners of the Voting Stock of Wynn Resorts held by Aruze Corp.) becomes the Beneficial Owner, directly or indirectly, of a

7

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greater percentage of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of equity interests, than is at that time Beneficially Owned by Mr. Wynn and his Related Parties as a group, (c) Mr. Wynn and his Related Parties as a group own less than 20% of the outstanding voting stock of Wynn Resorts, measured by voting power rather than number of equity interests (excluding, for purposes of calculating the outstanding voting stock of Wynn Resorts pursuant to this clause (iii)(c), shares of voting stock issued in a primary issuance by Wynn Resorts in one or more bona fide public offerings of additional Voting Stock of Wynn Resorts (other than the IPO)); or (d) Mr. Wynn and his Related Parties as a group own less than 10% of the outstanding voting stock of Wynn Resorts, measured by voting power rather than number of equity interests, (iv) the first day on which Mr. Wynn does not act as either the Chairman of the Board of Directors of Wynn Resorts or the Chief Executive Officer of Wynn Resorts, other than (1) as a result of death or disability or (2) if the Board of Directors of Wynn Resorts, exercising their fiduciary duties in good faith, removes or fails to re-appoint the Principal as Chairman of the Board of Directors of Wynn Resorts or Chief Executive Officer of Wynn Resorts, (v) the first day on which a majority of the members of the board of directors of Wynn Resorts or the Borrower are not Continuing Directors, (vi) the first day on which Wynn Resorts ceases to own, directly or indirectly, 100% of the outstanding Capital Stock of the Borrower or (vii) Wynn Resorts consolidates with, or merges with or into, any Person or sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of its assets to any Person, or any Person consolidates with, or merges with or into, Wynn Resorts, in any such event pursuant to a transaction in which any of the outstanding voting stock of Wynn Resorts is converted into or exchanged for cash, securities or other property, other than any such transaction where the voting stock of Wynn Resorts outstanding immediately prior to such transaction is converted into or exchanged for voting stock (other than Disqualified Stock) of the surviving or transferee Person constituting a majority of the outstanding shares of such voting stock of such surviving or transferee Person (immediately after giving effect to such issuance).

"Claims" shall mean liabilities, obligations, damages, losses, demands, penalties, fines, claims, actions, suits, judgments, settlements, utility charges, costs, fees, expenses and disbursements (including, without limitation, legal fees and expenses and costs of investigation which, in the case of counsel or investigators retained by an Indemnitee, shall be reasonable) of any kind and nature whatsoever.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" shall mean the Aircraft Collateral and the Borrower Collateral.

"Collateral Agent" shall mean Wells Fargo Bank Nevada, National Association, not in its individual capacity, but solely as Collateral Agent, and any successor or replacement Collateral Agent expressly permitted hereunder.

"Collateral Agent Fee Letter" shall mean the fee letter dated as of the date hereof between the Borrower and Trust Company.

"Commitment" shall mean, with respect to each Lender, the amount set forth opposite such Lender's name on **Schedule IA2** to the Loan Agreement under the column designated as "Commitment."

"Commitment Fees" shall have the meaning assigned to such term in **Section 2.9** of the Loan Agreement.

"Commitment Percentage" shall mean, as to any Lender and any Type of Equipment or the Aircraft, the percentage set forth opposite such Lender's name under the applicable "Commitment Percentage" heading on **Schedule IA1** to the Loan Agreement.

8

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"Commitment Termination Date" shall mean the earliest of (i) Completion Date, (ii) the Outside Date, (iii) the Final Advance Date and (iv) the date on which the Commitments of the Lenders shall have been fully utilized.

"Commonly Controlled Entity" shall mean an entity, whether or not incorporated, which is under common control with the Borrower or any other Loan Party within the meaning of Section 4001 of ERISA or is part of a group that includes such Person and that is treated as a single employer under Section 414 of the Code.

"Company" shall mean the Borrower.

"Completion Date" shall have the meaning assigned to such term in the Disbursement Agreement.

"Completion Guarantor" shall mean Wynn Completion Guarantor, LLC, a Nevada limited liability company.

"Completion Guaranty" shall mean that certain Completion Guaranty, dated as of October , 2002 by the Completion Guarantor in favor of the Administrative Agent on behalf of the Secured Parties and the Mortgage Notes Indenture Trustee.

"Completion Guaranty Release Date" shall have the meaning assigned to such term in the Disbursement Agreement.

"Compliance Certificate" shall mean a certificate duly executed by a Responsible Officer substantially in the form of **Exhibit E-6** to the Loan Agreement.

"Confidential Information Memorandum" shall mean the Confidential Information Memorandum dated July, 2002 and furnished to the initial Lenders.

"Consents" shall have the meaning assigned to such term in the Disbursement Agreement.

"Consolidated Current Assets" shall mean, at any date, all amounts (other than cash and Cash Equivalents) which would, in conformity with GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a consolidated balance sheet of the Borrower and its Subsidiaries at such date.

"Consolidated Current Liabilities" shall mean, at any date, all amounts that would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a consolidated balance sheet of the Borrower and its Subsidiaries at such date, but excluding (a) the current portion of any Funded Debt of the Borrower and its Subsidiaries and (b) without duplication of **clause (a)** above, all Indebtedness consisting of Revolving Credit Loans or Swing Line Loans to the extent otherwise included therein.

"Consolidated EBITDA" shall mean, of any Person for any period, Consolidated Net Income of such Person and its Subsidiaries for such period plus, without duplication and to the extent reflected as a charge in the statement of such Consolidated Net Income for such period, the sum of (a) income tax expense or the Tax Amount (whether or not paid during such period), (b) Consolidated Interest Expense of such Person and its Subsidiaries, amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness (including, in the case of the Borrower, the Loans), (c) depreciation and amortization expense, (d) amortization of intangibles (including, but not limited to, goodwill) and (e) any extraordinary, unusual or non-recurring expenses or losses (including, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, non-cash losses on sales of assets outside of the ordinary course of business and pre-opening expenses related to the initial opening of the Project (such pre-opening expenses to be no greater than that set forth in the Project Budget) and the opening of the Entertainment Facility (such pre-opening expenses in the aggregate to be no greater than \$5,000,000)) and minus, to the extent included in the statement of such

9

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Consolidated Net Income for such period, the sum of (a) interest income (except to the extent deducted in determining Consolidated Interest Expense) and (b) any extraordinary income or gains (and whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, non-cash gains on the sales of assets outside of the ordinary course of business) and (c) any other non-cash income, all as determined on a consolidated basis in accordance with GAAP;

"Consolidated Fixed Charge Coverage Ratio" shall mean, as to any period, the ratio of (a) Consolidated EBITDA of the Borrower and its Subsidiaries to (b) Consolidated Fixed Charges of the Borrower and its Subsidiaries for such period.

"Consolidated Fixed Charges" shall mean, as to any Person for any period, the sum (without duplication) of (a) Consolidated Interest Expense of such Person and its Subsidiaries for such period, (b) provision for cash income taxes made by such Person or any of its Subsidiaries on a consolidated basis in respect of such period and the payment of any Tax Amount during such period, (c) scheduled payments made during such period on account of principal of Indebtedness of such Person or any of its Subsidiaries (including, without limitation, with respect to the Borrower, scheduled principal payments in respect of the Term Loans or any other Indebtedness under the Financing Agreements, (d) the aggregate amount actually paid by the Borrower and its Subsidiaries in cash during such period on account of Capital Expenditures, and (e) Consolidated Lease Expense of such Person and its Subsidiaries for such period.

"Consolidated Interest Expense" shall mean, as to any Person for any period, total cash interest expense (including that attributable to Capital Lease Obligations) of such Person and its Subsidiaries for such period with respect to all outstanding Indebtedness of such Person and its Subsidiaries (including, without limitation, all commissions, discounts and other fees and charges owed by such Person with respect to letters of credit and bankers' acceptance financing and net costs of such Person under Hedge Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP).

"Consolidated Lease Expense" shall mean for any period, the aggregate amount of fixed and contingent rentals payable by the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP, for such period with respect to leases of real and personal property.

"Consolidated Leverage Ratio" shall mean, for any period, the ratio of (a) Consolidated Total Debt on the last day of such period to (b) Consolidated EBITDA of the Borrower and its Subsidiaries for such period.

"Consolidated Member" shall mean a corporation, other than the common parent, that is a member of an affiliated group (as defined in Section 1504 of the Code) of which Wynn Resorts or any of the Loan Parties is the common parent.

"Consolidated Net Income" shall mean, as to any Person for any period, the consolidated net income (or loss) of such Person and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP and before any reduction in respect of preferred equity dividends, but giving effect to, without duplication, any amounts paid or distributed by such Person or its Subsidiaries as a Tax Amount or Allocable Overhead if and to the same extent that such amounts would have been included in the calculation of net income if incurred by such Person or its Subsidiaries directly; *provided*, that in calculating Consolidated Net Income of a Person (for purposes of this definition only, the "Parent") and its consolidated Subsidiaries for any period, there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary of the Parent or is merged into or consolidated with the Parent or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary of the Parent) in which the Parent or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Parent or such Subsidiary

in the form of dividends or similar distributions, (c) the undistributed earnings of any Subsidiary of the Parent to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any Contractual Obligation (other than under any Financing Agreement) or Requirement of Law applicable to such Subsidiary; *provided* that the Consolidated Net Income of the Borrower and its Subsidiaries shall be deemed to include any Wynn Resorts Holdings Capital Contributions during the applicable measurement period, (d) to the extent not reflected as a charge in the statement of such Consolidated Net Income, any Management Fees paid during such period and (e) the cumulative effect of a change in accounting principles.

"*Consolidated Net Worth*" shall mean, at any date, all amounts that would, in conformity with GAAP, be included on a consolidated balance sheet of the Borrower and its Subsidiaries under stockholders' equity at such date.

"*Consolidated Total Debt*" shall mean, at any date, the aggregate principal amount of all Indebtedness of the Borrower and its Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP.

"*Construction Consultant*" shall mean Inspection & Valuation International, Inc. or such successor construction consultant of recognized national standing, as may be appointed in accordance with the Disbursement Agreement.

"*Construction Contract*" shall mean a "Contract" as defined in the Disbursement Agreement.

"*Continuing Directors*" shall mean, as of any date of determination, with respect to any Person, any member of the Board of Directors of such Person who (i) was a member of such Board of Directors on the Document Closing Date, (ii) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board at the time of such nomination or election or (iii) in the case of a limited liability company, was nominated by the direct or indirect Board of Directors of its managing member or sole member.

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

"*Control Agreements*" shall mean collectively, (i) the Bank Completion Guaranty Collateral Account Agreement, (ii) the Bank Company Collateral Account Agreement, (iii) the Bank Local Company Collateral Account Agreement(s) and (iv) each Control Agreement to be executed and delivered by each Loan Party pursuant to the Guarantee and Collateral Agreement, substantially in the form of Exhibit B, Exhibit C or Exhibit D, as the case may be, thereto, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the Wynn Credit Agreement.

"*Credit Exposure*" shall mean, with respect to any Lender, the aggregate outstanding amount of Loans made by such Lender.

"*Dealership Lease Agreement*" shall mean that certain Lease Agreement to be entered into between the Borrower, as lessor, and an Affiliate of the Borrower, as lessee, with respect to the lease of space at the Casino Land for the development and operation of a Ferrari and Maserati automobile dealership.

"*Default*" shall mean any event, act, or condition which with notice or lapse of time or both, would constitute an Event of Default.

"*Defaulting Lender*" shall mean, at any time, (i) any Lender with respect to which a Lender Default is in effect, (ii) any Lender that is the subject (as a debtor) of any action or proceeding (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy,

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insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, (iii) any Lender that shall make a general assignment for the benefit of its creditors or (iv) any Lender that shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

"*Derivatives Counterparty*" shall have the meaning assigned to such term in **Section 7.6** of the Loan Agreement.

"*Desert Inn Improvement*" shall mean Desert Inn Improvement Co., a Nevada corporation.

"*Desert Inn Water*" shall mean Desert Inn Water Company, LLC, a Nevada limited liability company.

"*DIIC Casino Water Permit*" shall mean the Permit identified as of the Closing Date as Permit No. 13393 (Cert. 4731) as shown in the records of the State of Nevada, Division of Water Resources, in Carson City Nevada (and any successor or replacement Permit thereto).

"*DIIC Water Permits*" shall mean, collectively, the DIIC Casino Permit and the permits identified as of the Closing Date as Permit No. 16938 (Cert. 4765), Permit No. 16939 (Cert. 4766), Permit No. 24558 (Cert. 7828), Permit No. 24560 (Cert. 7827), Permit No. 24561 (Cert. 7829), and Permit No. 25223 (Cert. 7830), in each case as shown in the records of the State of Nevada, Division of Water Resources, in Carson City Nevada (and any successor or replacement Permits thereto).

"*DIIC Water Transfer*" shall mean a transfer by Desert Inn Improvement at no cost and in accordance with all Requirements of Law and pursuant to all necessary consents of Governmental Authorities (including, if applicable, the Nevada Public Utilities Commission and the State of Nevada, Division of Water Resources) of (a) the fee ownership of the Water Utility Land to Wynn Resorts Holdings and (b) the DIIC Water Permits to (x) in the case of the DIIC Casino Water Permit, the Borrower and (y) in the case of all other DIIC Water Permits, Wynn Resorts Holdings.

"*Disbursement Agent*" shall mean Deutsche Bank Trust Company Americas, in its capacity as Disbursement Agent under the Disbursement Agreement, and any successor Disbursement Agent appointed pursuant to the terms of the Disbursement Agreement.

"Disbursement Agreement" shall mean that certain Master Disbursement Agreement dated as of the date hereof among the Borrower, Capital Corp., Wynn Design & Development, the Administrative Agent, the Mortgage Notes Indenture Trustee, the Collateral Agent and the Disbursement Agent.

"Disbursement Agreement Event of Default" shall mean an "Event of Default" as defined in the Disbursement Agreement.

"Disposition" shall mean with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, grant of restriction, transfer or other disposition thereof; and the terms "Dispose" and "Disposed of" shall have correlative meanings.

"Disqualified Stock" shall mean any Capital Stock or other ownership or profit interest of any Loan Party that any Loan Party is or, upon the passage of time or the occurrence of any event, may become obligated to redeem, purchase, retire, defease or otherwise make any payment in respect of in consideration other than Capital Stock (other than Disqualified Stock).

"Document Closing Date" shall mean October , 2002.

"Dollars" and "\$" shall mean dollars in lawful currency of the United States of America.

12

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"Domestic Subsidiary" shall mean any Subsidiary of the Borrower organized under the laws of any jurisdiction within the United States of America.

"Driving Range" shall mean the driving range for the Golf Course to be located on the Phase II Land and leased to the Borrower pursuant to the Driving Range Lease.

"Driving Range Lease" shall mean that certain Lease Agreement, dated as of , by and between Valvino, as lessor, and the Borrower, as lessee, with respect to the lease of land on which the driving range for the Golf Course is to be located.

"ECF Percentage" shall mean, with respect to any Fiscal Year, 75%; provided, that, if the Consolidated Leverage Ratio as of the last day of any such Fiscal Year is not greater than 3.5 to 1.0, 50% with respect to such Fiscal Year.

"Eligible Assignee" shall mean (i) a commercial bank organized under the laws of the United States, or any State thereof; (ii) a commercial bank organized under the laws of any other country that is a member of the OECD or has concluded special lending arrangements with the International Monetary Fund associated with its General Arrangements to Borrow, or a political subdivision of any such country, provided, that such bank is acting through a branch or agency located in the United States; (iii) a finance company, leasing company, insurance company or other financial institution or fund (whether a corporation, partnership or other entity) engaged generally in making, purchasing or otherwise investing in commercial loans or leasing property or equipment in the ordinary course of its business; (iv) the central bank of any country that is a member of the OECD; or (v) any Lender; provided, however, that (A) any such Person shall also have combined capital and surplus (as established in its most recent report of condition to its primary regulator) of not less than \$50,000,000 (or its equivalent in foreign currency), or if such Person does not meet the foregoing requirements in this proviso, such Person furnishes a guaranty of an Affiliate, which Affiliate meets the requirements of this proviso, of such Person's obligations under the Operative Documents and (B) any Person described in **clause (ii), (iii), (iv) or (v)** above shall, on the date on which it is to become a Lender hereunder, be entitled to receive payments hereunder without deduction or withholding of any United States Federal income taxes.

"Eminent Domain Proceeds" shall mean all amounts and proceeds (including instruments) received in respect of any Event of Eminent Domain relating to the Project.

"Employee Parking Lot" shall mean the parking lot structure located on the Phase II Land that will be used for parking for the employees of the Borrower pursuant to the Employee Parking Lot Lease.

"Employee Parking Lot Lease" shall mean that certain Lease Agreement, dated as of October , 2002, by and between Valvino, as lessor, and the Borrower, as lessee, with respect to the lease of land on which the parking lot structure for use by the Borrower's employees is to be located.

"Engagement Letter" shall mean the engagement letter dated June 25, 2002 between the Borrower and the Arrangers.

"Engine" shall mean and include: (i) each of the two engines for the Aircraft listed by manufacturer's serial number in a Aircraft Security Agreement Supplement delivered on the Initial Advance Date, whether or not from time to time installed on an Airframe or installed on any other airframe; (ii) any Replacement Engine; and (iii) any and all appliances, parts, instruments, appurtenances, accessories, improvements, additions or other equipment of whatever nature, so long as the same shall be incorporated or installed in or attached to any Engine subject to the Aircraft Security Agreement, or, so long as title thereto shall remain vested in the Aircraft Trustee in accordance with the terms of that certain Trust Agreement dated as of May 10, 2002 between the Aircraft Trustee and World Travel, after removal from such Engine.

13

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"Entertainment Facility" shall mean a showroom or entertainment facility located on the Casino Land and the Phase II Land, adjoining and connected directly to the Le Rêve hotel and casino.

"Entertainment Facility Equity Proceeds" shall mean to the extent used solely and exclusively for the development and construction of an Entertainment Facility, the aggregate net cash proceeds received by the Borrower from any Person other than another Loan Party (except to the extent another Loan Party is acting as an intermediary for purposes of contributing equity capital contributions from such other Persons), directly or indirectly, as a contribution to its common equity capital.

"Environmental Claim" shall mean any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any governmental authority or any other Person, arising (a) pursuant to or in connection with any actual or alleged

violation of any Environmental Law, (b) in connection with any Hazardous Materials or any actual or alleged Hazardous Materials Activity, or (c) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"*Environmental Laws*" shall mean any and all laws, rules, orders, regulations, statutes, ordinances, guidelines, codes, decrees, or other legally enforceable requirements (including, without limitation, common law) of any international authority, foreign government, the United States, or any state, local, municipal or other Governmental Authority, regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or of human health, or employee health and safety, as has been, is now, or may at any time hereafter be, in effect.

"*Environmental Matter*" shall mean any:

- (a) release, emission, entry or introduction into the air including, without limitation, the air within buildings and other natural or man-made structures above ground;
- (b) discharge, release or entry into water including, without limitation, into any river, watercourse, lake, or pond (whether natural or artificial or above ground or which joins or flows into any such water outlet above ground) or reservoir, or the surface of the riverbed or of other land supporting such waters, ground waters, sewer or the sea;
- (c) deposit, disposal, keeping, treatment, importation, exportation, production, transportation, handling, processing, carrying, manufacture, collection, sorting or presence of any Hazardous Substance (including, without limitation, in the case of waste, any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process or activity (including making it re-usable or reclaiming substances from it) and any substance or article which is required to be disposed of as being broken, worn out, contaminated or otherwise spoiled);
- (d) nuisance, noise, defective premises, health and safety at work, industrial illness, industrial injury due to environmental factors, environmental health problems (including, without limitation, asbestosis or any other illness or injury caused by exposure to asbestos) or genetically modified organisms;
- (e) conservation, preservation or protection of the natural or man made environment or any living organisms supported by the natural or man made environment; or
- (f) other matter howsoever directly affecting the environment or any aspect of it.

"*Environmental Permits*" shall mean any and all permits, licenses, approvals, registrations, notifications, exemptions and any other authorization required under any Environmental Law.

"*Equipment*" shall mean, individually, each Item of furniture, fixtures or equipment (including Gaming Equipment) described as Equipment on Schedule A to the Borrower Security Agreement and

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each Schedule A to each Borrower Security Agreement Supplement delivered on an Advance Date, and, collectively, each of the foregoing Items of Equipment.

"*Equipment Appraiser*" shall mean an appraiser as may be selected by the Collateral Agent.

"*Equipment Collateral*" is defined in Section 2.1 of the Borrower Security Agreement.

"*Equipment Contracts*" shall mean Contracts relating to the Equipment.

"*Equipment Manufacturer*" shall mean the original manufacturer of the applicable Type of Equipment.

"*ERISA*" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"*Eurocurrency Reserve Requirements*" means for any day as applied to a Eurodollar Loan, the then stated maximum rate of all reserve requirements (including, without limitation, any marginal, emergency, supplemental, special or other reserves under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto or otherwise required by applicable law) applicable to any member bank of the Federal Reserve System in respect of eurocurrency funding or liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D).

"*Eurodollar Loans*" means Loans the rate of interest applicable to which is based upon the Eurodollar Rate.

"*Eurodollar Rate*" shall mean with respect to each day during each Interest Period pertaining to a Eurodollar Loan, a rate per annum equal to (a) the offered quotation to first-class banks in the New York interbank Eurodollar market by the Administrative Agent for Dollar deposits of amounts in immediately available funds comparable to the outstanding principal amount of such Eurodollar Loan of the Administrative Agent (in its capacity as a Lender) with maturities comparable to the Interest Period applicable to such Eurodollar Loan commencing two Business Days thereafter as of 10:00 A.M. (New York time) on the first day of such Interest Period, divided (and rounded upward to the nearest  $\frac{1}{16}$  of 1%) by (b) a percentage equal to 100% minus the Eurocurrency Reserve Requirements.

"*Event of Default*" shall mean any of the events specified in **Section 9** of the Loan Agreement, *provided* that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"*Event of Eminent Domain*" shall mean with respect to any Property, (i) any compulsory transfer or taking by condemnation, seizure, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking or confiscation of such Property or the requisition of the use of such Property, by any agency, department, authority, commission, board, instrumentality or political subdivision of any state, the United States or another Governmental Authority having jurisdiction or (ii) any settlement in lieu of **clause (i)** above.

"Existing Aircraft" shall mean that certain Bombardier Global Express aircraft, Serial No. 9065, owned by a trust of which World Travel is the beneficial interest holder.

"Existing Stockholders" shall mean, collectively, Mr. Wynn, Aruze USA, Inc., a Nevada corporation, Baron Asset Fund, a Massachusetts business trust and the Kenneth R. Wynn Family Trust.

"Facility" shall mean each of (a) the Term Loan Commitments and the Term Loans made thereunder (the "Term Loan Facility") and (b) the Revolving Credit Commitments and the extensions of credit made thereunder (the "Revolving Credit Facility").

"Fair Market Value" shall mean, with respect to the Collateral or a portion thereof as of any date, the price which a purchaser would pay to purchase such Collateral in an arm's-length transaction between a willing buyer and a willing seller, neither of them being under any compulsion to buy or sell. In making any determination of Fair Market Value, Appraiser shall assume such Collateral has been

15

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maintained in accordance with the requirements of the Loan Agreement and that such Collateral is in the condition in which it is required to be hereunder as of the date for which such determination is made. Appraiser shall use such reasonable methods of appraisal as are satisfactory to the Lenders. Notwithstanding the foregoing, "Fair Market Value" with respect to any Appraisals delivered pursuant to **Section 6.17** of the Loan Agreement shall be made by the Appraiser with the assumptions that such Collateral is in its brand new condition (and without giving effect to depreciation caused by the fact that such Collateral may have been delivered and or installed prior to such Appraisal).

"Federal Aviation Administration" or "FAA" shall mean the Federal Aviation Administration and any successor agency.

"Federal Funds Rate" shall mean, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to the Collateral Agent on such day on such transactions as determined by the Collateral Agent.

"Fee Letters" shall mean the Arrangement Fee Letters, the Participation Fee Letters and the Collateral Agent Fee Letter.

"Fees" shall have the meaning assigned to such term in **Section 2.7** of the Loan Agreement.

"FF&E Collateral Account Agreement" shall mean that certain FF&E Collateral Account Agreement dated as October , 2002 among the Borrower, the Collateral Agent, the Securities Intermediary (as defined in the Disbursement Agreement) and the other parties thereto.

"FF&E Financing Documents" shall mean the Loan Agreement, the Disbursement Agreement, the Security Documents, the Intercompany Note, the Aircraft Security Agreement, the Aircraft Operating Agreement, the FF&E Collateral Account Agreement, the Borrower Aircraft Assignment, the FF&E Guaranty and the FF&E Intercreditor Agreement and any future guarantees, guarantee and collateral agreements, or joinder agreements thereto executed and delivered by Affiliates of the Borrower.

"FF&E Guaranty" shall mean that certain Guaranty Agreement dated as of October , 2002 from the Guarantors in favor of the Secured Parties and, if the Wynn Resorts FF&E Guaranty has been executed and delivered pursuant to the Wynn Resorts FF&E Guaranty Agreement, the Wynn Resorts FF&E Guaranty.

"FF&E Intercreditor Agreement" shall mean that certain Intercreditor Agreement dated as of the Document Closing Date among the Administrative Agent, the Mortgaged Notes Indenture Trustee and the Collateral Agent, in substantially the form of **Exhibit** to the Loan Agreement.

"Final Advance Date" shall mean the Advance Date specified by the Borrower in writing to be the final Advance Date under the Loan Agreement.

"Final Completion Date" shall have the meaning set forth in the Disbursement Agreement.

"Financing Agreements" shall mean, collectively, the FF&E Financing Documents, the Mortgage Notes Indenture, Mortgage Note Guarantees, the Other Security Documents, the Mortgage Notes, the Wynn Credit Agreement and any other loan, security, support or similar agreements entered into on, prior to or after the Document Closing Date to finance the development, construction and/or operation of the Project, whether with respect to Other Indebtedness or otherwise and including, without limitation, any agreements with respect to Permitted Refinancing Indebtedness.

16

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"Fiscal Year" shall mean the fiscal year of the Borrower and the other Loan Parties ending on December 31 of each calendar year.

"Fund," "Funded" or "Funding" shall mean each funding by a Lender of a portion of the principal under its Note constituting a portion of any Advance as described in **Section 2** of the Loan Agreement.

"Funded Debt" shall mean, as to any Person, all Indebtedness of such Person of the types described in **clauses (a) through (e)** of the definition of "Indebtedness" in this **Appendix I**.

"GAAP" shall mean generally accepted accounting principles in the United States of America as in effect from time to time, except that for purposes of **Sections 7.1, 7.5(k), 7.5(l), 7.5(m), 7.10** and **7.22** of the Loan Agreement, GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements delivered pursuant to **Section 6.1** of the Loan Agreement.

"Gaming Board" or "Gaming Authority" shall mean, collectively, the Nevada Gaming Commission, the Nevada State Gaming Control Board, and any other Governmental Agency that holds regulatory, licensing or permit authority over gambling, gaming or casino activities conducted by the Borrower or any of its Affiliates.

"Gaming Commitment Percentage" shall mean, as to any Lender, the percentage set forth opposite such Lender's name under the heading "Gaming Commitment Percentage" on **Schedule IA1** to the Loan Agreement.

"Gaming Equipment" shall mean, individually, each slot machine and other device which constitutes a gaming device (as defined in the Gaming Laws) along with any related equipment with respect thereto, together with any substitutions therefor, replacements thereof, improvements thereto and additions thereto pursuant to the terms of the Loan Documents, and, collectively, each of the foregoing items of Gaming Equipment.

"Gaming Facility" shall mean any building or other structure used or expected to be used to enclose space in which a gaming operation is conducted and (a) is wholly or partially owned, directly or indirectly, by the Borrower or an Affiliate of the Borrower or (b) any portion or aspect of which is managed or used, or expected to be managed or used, by the Borrower or an Affiliate of the Borrower.

"Gaming Laws" shall mean the Nevada Gaming Control Act, as amended from time to time, and the regulations promulgated thereunder, together with any other laws, rules, regulations or ordinances applicable to gambling, gaming or casino activities conducted by Guarantor or any of its Affiliates, including, all Requirements of Law pursuant to which any Gaming Board possesses regulatory, licensing or permit authority over gambling, gaming or casino activities conducted by Guarantor and its Affiliates within their respective jurisdictions.

"Golf Course" shall mean Le Reve's Tom Fazio/Stephen A. Wynn designed 18-hole golf course to be situated on the Golf Course Land, as more particularly described in Exhibit T-4 to the Disbursement Agreement.

"Golf Course Land" shall mean the land owned by Wynn Resorts Holdings, Palo and Desert Inn Improvement on which the Golf Course is to be located, as described in Exhibit T-4 to the Disbursement Agreement. The Golf Course Land shall include (a) the Wynn Home Site Land until such time (if ever) as the Wynn Home Site Land has been Disposed of in accordance with Section 7.5(j), (b) the Home Site Land until such time (if ever) as the Home Site Land has been Disposed of in accordance with Section 7.5(l), the Palo Home Site Land, (c) the Water Utility Land and (d) if at any time acquired by a Loan Party, the Additional Land (or any part thereof).

"Golf Course Land Owners" collectively, Wynn Resorts Holdings, Desert Inn Improvement, Palo and, to the extent the Additional Land (or any part thereof) is acquired by one or more Loan Parties, such Loan Parties.

17

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"Golf Course Lease" shall mean that certain Lease Agreement, dated as of October , 2002, by and between Wynn Resorts Holdings, as lessor, and the Borrower, as lessee, with respect to the lease of land on which the Golf Course is to be located.

"Governing Documents" shall mean, collectively, as to any Person, the articles or certificate of incorporation and bylaws, any shareholders agreement, certificate of formation, limited liability company agreement, partnership agreement or other formation or constituent documents of such Person.

"Governmental Action" shall mean all applicable permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Agency, or required by any Requirement of Law.

"Governmental Agency" or "Authority" shall mean 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.

"Guarantee and Collateral Agreement" shall mean the Guarantee and Collateral Agreement to be executed and delivered by the Borrower and each other Loan Party (other than Desert Inn Improvement), substantially in the form of Exhibit A to the Wynn Credit Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the Loan Agreement.

"Guarantee Obligation" shall mean, as to any Person (the "guaranteeing person"), any obligation of (a) the guaranteeing person or (b) another Person (including, without limitation, any bank under any letter of credit) to induce the creation of which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof or (v) under Hedge Agreements; *provided, however*, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

18

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"Guarantors" shall mean each of the Loan Parties (other than Desert Inn Improvement and the Borrower) and, if the Wynn Resorts FF&E Guaranty has been executed and delivered pursuant to the Wynn Resorts FF&E Guaranty Agreement, Wynn Resorts.



"*Hazardous Materials Activity*" shall mean any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Substances, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Substances and any corrective action or response action with respect to any of the foregoing.

"*Hazardous Substances*" shall mean (statutory acronyms and abbreviations having the meaning given them in the definition of "Environmental Laws") substances defined as "hazardous substances," "pollutants" or "contaminants" in Section 101 of the CERCLA; those substances defined as "hazardous waste," "hazardous materials" or "regulated substances" by the RCRA; those substances designated as a "hazardous substance" pursuant to Section 311 of the CWA; those substances defined as "hazardous materials" in Section 103 of the HMTA; those substances regulated as a hazardous chemical substance or mixture or as an imminently hazardous chemical substance or mixture pursuant to Section 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 40 C.F.R. Part 1910; in any other Environmental Laws; and in the regulations adopted and publications promulgated pursuant to said laws, whether or not such regulations or publications are specifically referenced herein.

"*Hedge Agreements*" shall mean all interest rate swaps, caps or collar agreements or similar arrangements entered into by the Borrower providing for protection against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies.

"*Highest Lawful Rate*" shall have the meaning assigned to such term in **Section 3.6** of the Loan Agreement.

"*Home Site Land*" shall mean a tract of land not greater than 20 acres located on the Golf Course Land where residential and non-gaming related developments may, after Disposition of the Home Site Land in accordance with **Section 7.5(l)**, be built.

"*Indebtedness*" shall mean, as to any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of Property or services (other than trade payables incurred in the ordinary course of such Person's business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property), (e) all Capital Lease Obligations or Synthetic Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party under acceptance, letter of credit, completion guaranties, performance bonds or similar facilities, (g) all obligations of such Person,

19

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contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Capital Stock of such Person, (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in **clauses (a)** through **(g)** above; (i) all obligations of the kind referred to in **clauses (a)** through **(h)** above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, (j) for the purposes of **Section** of the Loan Agreement only, all obligations of such Person in respect of Hedge Agreements and (k) the liquidation value of any preferred Capital Stock of such Person or its Subsidiaries held by any Person other than such Person and its Wholly Owned Subsidiaries. All obligations under the Financing Agreements shall constitute Indebtedness.

"*Indemnitee*" shall mean the Arranger, any Lender, the Collateral Agent, the Trust Company and their respective Affiliates, successors, permitted assigns, permitted transferees, invitees, contractors, servants, employees, officers, directors, shareholders, partners, participants, representatives agents and their respective designees or nominees.

"*Indemnity Agreements*" collectively, each of the Indemnity Agreements executed by a Loan Party with respect to its Mortgaged Properties in favor of the Administrative Agent substantially in the form of Exhibit F to the Wynn Credit Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the Wynn Credit Agreement.

"*Initial Advance Date*" shall mean the first date on which an Advance occurs.

"*Initial Amortization Date*" shall mean [the earlier of (i) the Completion Date and (ii) the Outside Date] December 31, 2005.

"*Initial Arrangers*" shall have the meaning assigned thereto in the Wynn Credit Agreement.

"*Insolvency*" shall mean, with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

"*Insolvent*" shall mean pertaining to a condition of Insolvency.

"*Insurance Advisor*" shall mean Marsh USA, Inc., or its successor, appointed by the Administrative Agent.

"*Insurance Proceeds*" shall mean all amounts and proceeds (including instruments) paid under any insurance policy maintained by a Loan Party (including, without limitation, any insurance policy required to be maintained by a Loan Party under any Operative Document).

"*Insurance Requirements*" shall mean all terms and conditions of any insurance policy required by any Operative Document to be maintained or caused to be maintained by the Borrower, and all requirements of the issuer of any such policy.

"*Intellectual Property*" shall mean the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, state, multinational or foreign laws or otherwise, including, without limitation, copyrights, patents, trademarks, service-marks, technology, know-how and processes, recipes, formulas, trade secrets, or licenses (under which the applicable Person is licensor or licensee) relating to any of the foregoing and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"*Intellectual Property Security Agreement*" shall mean the Intellectual Property Security Agreement to be executed and delivered by each Loan Party, substantially in the form of Exhibit C to the Guarantee and Collateral Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the Wynn Credit Agreement.

20

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"*Intercompany Note*" shall mean, individually, that certain intercompany note from World Travel to the Borrower dated October , 2002 and secured by the Aircraft Security Agreement.

"*Intercreditor Agreements*" shall mean, collectively, the FF&E Intercreditor Agreement and the Project Lender Intercreditor Agreement.

"*Interest*" shall mean, with respect to each Interest Period, an amount equal to interest accrued on the Loan Balance outstanding during such period at the Interest Rate.

"*Interest Period*" shall mean (i) as to any Loan to which the Base Rate applies, initially the period commencing on (and including) the Advance Date for such Loan and ending on (but excluding) the next succeeding Payment Date thereafter, and thereafter, each period commencing on (and including) a Payment Date and ending on (but excluding) the next succeeding Payment Date and (ii) as to any Loan to which the Adjusted Eurodollar Rate applies, initially, the period commencing on the borrowing or selection date, as the case may be, with respect to such Loan and ending one, two, three or six months thereafter, as selected by the Borrower in its Advance Request or notice of interest rate selection, as the case may be, given with respect thereto and thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Loan and ending one, two, three or six months thereafter, as selected by the Borrower by irrevocable notice to the Collateral Agent not less than three Business Days prior to the last day of the then current Interest Period with respect thereto; *provided* that, all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period that would otherwise extend beyond the Maturity Date, shall end on the Maturity Date, as applicable;

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; and

(iv) the Borrower shall select Interest Periods so as not to require a payment or prepayment of any Loan during an Interest Period for such Loan.

"*Interest Rate*" shall mean, for each day during each Interest Period with respect thereto, (a) if no Default or Event of Default shall then exist, (i) if the Base Rate is in effect pursuant to **Section 3.5** or **Section 12.6** of the Loan Agreement, a rate per annum equal to the Base Rate, or (ii) if the Adjusted Eurodollar Rate is in effect pursuant to **Section 3.5** of the Loan Agreement, a rate per annum equal to the Adjusted Eurodollar Rate or (b) if at any time a Default or Event of Default shall occur during such Interest Period then for so long as such Default or Event of Default shall exist or until a new Interest Rate is selected, or deemed to have been selected, pursuant to **Section 3.5** of the Loan Agreement, a rate per annum equal to the Overdue Rate.

"*Investments*" shall have the meaning assigned to such term in **Section** of the Loan Agreement.

"*IRS*" shall mean the Internal Revenue Service, and any Governmental Authority succeeding to any of its principal functions under the Code.

"*Item*" or "*Item of Equipment*" shall mean a particular item of Equipment, as the context may require, and "*Items of Equipment*" shall mean collectively each item of Equipment.

"*Item Value Fraction*" shall mean, with respect to any Item of Equipment, Airframe or Engine a fraction, the numerator of which is the Purchase Price for such Item of Equipment or Allocated

21

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Aircraft Value, as the case may be, and the denominator of which is the aggregate Purchase Price of all Items of Equipment and the Allocated Aircraft Value, including such Item of Equipment, Airframe or Engine.

"*Las Vegas Jet*" shall mean Las Vegas Jet, LLC, a Nevada limited liability company.

"*Las Vegas Jet Lease*" shall mean that certain Aircraft Lease dated as of January 29, 2002 by and between World Travel and Las Vegas Jet.

"*Lease*" shall have the meaning assigned to such term in Section 4.2 of the Borrower Security Agreement.

"*Lender Addendum*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Lender Default*" shall mean the failure or refusal (which has not been retracted in writing) of a Lender to make available its portion of any Loan required to be made by such Lender under **Section 2.3** of the Loan Agreement at or prior to such time that the same is required to be so made by such Lender.

"*Lender Liens*" shall mean Liens on or against the Collateral (a) which result from any act of, or any Claim against, any Lender or any agent unrelated to the transactions contemplated by the Operative Documents or (b) which result from any Tax owed by any such Person, except any Tax for which the Borrower is obligated to indemnify.

"*Lenders*" shall mean the Persons set forth on **Schedule IA1**, as amended, to the Loan Agreement, together with any permitted successors and assigns.

"*Letters of Credit*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Liabilities*" shall have the meaning assigned to such term in Section 2.1 of the Borrower Security Agreement.

"*License Revocation*" the revocation, failure to renew or suspension of, or the appointment of a receiver or similar official with respect to, any casino, gambling or gaming license, including, without limitation, any Nevada Gaming Approvals, covering any portion of the Project.

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

"*Liquidated Damages*" shall mean any proceeds or liquidated damages paid pursuant to any obligation, default or breach under the Project Documents (net of arm's length costs incurred by a Loan Party pursuant to arm's length transactions in connection with adjustment or settlement thereof and taxes paid with respect thereto). For purposes of this definition, so-called "liquidated damages" insurance policies shall be deemed to be Project Documents.

"*Loan*" shall mean any loan made by the Lenders to the Borrower pursuant to the terms of the Loan Agreement.

"*Loan Agreement*" shall mean that certain Loan Agreement dated as of October , 2002 among the Borrower, the Collateral Agent and the Lenders, as the same may be amended from time to time.

"*Loan Balance*" shall mean, as of any time, the aggregate principal amount outstanding on the Notes at such time.

22

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"*Loan Conversion Date*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Loan Documents*" shall mean the Loan Agreement, the Security Documents, the Disbursement Agreement, the FF&E Intercreditor Agreement, the Management Fee Subordination Agreement, the FF&E Guaranty, the Wynn Resorts FF&E Agreement (and the Wynn Resorts FF&E Guaranty if executed and delivered pursuant thereto), the Indemnity Agreements, the Notes, the Intercompany Note, the Las Vegas Jet Lease and the Aircraft Operating Agreement.

"*Loan Parties*" shall mean the Borrower, Valvino, Capital Corp., Palo, Wynn Resorts Holding, Desert Inn Water, Desert Inn Improvement, Wynn Design, World Travel, Las Vegas Jet and each other Subsidiary of Valvino other than the Completion Guarantor (including any such Subsidiaries that become party to a Loan Document pursuant to **Section 6.10**).

"*Loan Term*" shall mean the period from the Document Closing Date to, and including, the Maturity Date.

"*Loss Proceeds*" shall have the meaning set forth in the Disbursement Agreement.

"*Management Agreement*" shall mean the Management Agreement, dated as of October , 2002 between the Loan Parties, on the one hand and Wynn Resorts, on the other hand.

"*Management Fee Subordination Agreement*" shall mean the Management Fee Subordination Agreement, dated as of the date hereof, among the Loan Parties, Wynn Resorts, the Mortgage Notes Indenture Trustee and the Administrative Agent.

"*Management Fees*" shall have the meaning as defined in the Management Agreement.

"*Manufacturer*" shall mean, individually, the Aircraft Manufacturer or the Equipment Manufacturer, as the case may be, and "*Manufacturers*" shall mean collectively each Manufacturer.

"*Material Adverse Effect*" shall mean (i) 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 Borrower and the other Loan Parties taken as a whole, (b) the Project, (c) the validity or enforceability of the Loan Agreement or any of the other Loan Documents, (d) the validity, enforceability or priority of the Liens purported to be created by the Security Documents or (e) the rights or remedies of any Secured Party hereunder or under any of the other Loan Documents or (ii) any event or circumstance that calls into question in any material respect the Projections or any of the material assumptions on which the Projections were prepared.

"*Material Affiliated Contracts*" shall mean any Material Contract to which a Loan Party, on the one hand, and an Affiliate of such Loan Party (including any other Loan Party), on the other hand, are parties.

"*Material Contract*" shall mean (i) the Golf Course Lease, the Driving Range Lease, the Employee Parking Lot Lease, the Management Agreement, the Tax Indemnification Agreement, the WDD Agreement, the Building Lease, the Water Supply Agreements and the Water Show Entertainment and Production Agreement and (ii) any other contract or arrangement to which (a) a Loan Party, on the one hand, and an Affiliate of such Loan Party (including any other Loan Party), on the other hand, are parties, pursuant to which the Loan Parties are, or any one of them is reasonably expected to incur obligations or liabilities with a Dollar value in excess of \$1,000,000 during the term of such contract or arrangement or (b) any Loan Party is a party (other than the Financing Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect (taking into consideration any viable replacements or substitutions therefor at the time such determination is made).

"Maturity Date" shall mean [October ,] 2009, or such earlier date on which: (i) the Borrower is required to pay the Casualty Amount pursuant to **Section 8.1** of the Loan Agreement or the Payoff

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Amount pursuant to **Section 3.1** of the Loan Agreement or (ii) the principal and interest on the Notes have become due and payable pursuant to **Section 9.1** of the Loan Agreement.

"Maximum Consolidated Capital Expenditures Amount" shall have the meaning set forth in **Section 7.7** of the Loan Agreement.

"Minimum Lease Amount" shall mean \$5,000,000.

"Minimum Prepayment Amount" shall mean \$10,000,000 of the aggregate principal amount of the Loans then outstanding.

"Moody's" shall mean Moody's Investors Service, Inc., a Delaware corporation, or any successor thereto.

"Mortgage Note Guarantee" shall mean Guarantee and Collateral Agreement dated as of October , 2002 among each Loan Party (other than Desert Inn Improvement) and the Mortgage Notes Indenture Trustee..

"Mortgage Notes" shall mean the % Mortgage Notes due 2010 issued by the Borrower and Capital Corp. pursuant to the Mortgage Notes Indenture.

"Mortgage Notes Indenture" shall mean that certain Indenture, dated as of October , 2002, among the Borrower, Capital Corp., certain guarantors named therein and the Mortgage Notes Indenture Trustee.

"Mortgage Notes Indenture Trustee" shall mean Wells Fargo Bank, National Association in its capacity as the trustee under the Mortgage Notes Indenture and its successors in such capacity.

"Mortgaged Properties" shall mean the real properties and leasehold estates listed on Schedule 1.1 to the Wynn Credit Agreement or otherwise as to which the Administrative Agent for the benefit of the Wynn Credit Parties shall be granted a Lien pursuant to the Mortgages (including at such time, if any, as Desert Inn Improvement executes the Water Property Mortgage, the Water Utility Land).

"Mortgages" shall mean each of the mortgages, deeds of trust and deeds to secure obligations made by any Loan Party in favor of, or for the benefit of, the Administrative Agent for the benefit of the Wynn Credit Parties under the Wynn Credit Documents (including at such time, if any, as Desert Inn Improvement executes the Water Property Mortgage, the Water Property Mortgage), substantially in the form of Exhibit D to the Wynn Credit Agreement (with such changes thereto as shall be advisable under the law of the jurisdiction in which such mortgage or deed of trust is to be recorded), as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the Wynn Credit Agreement.

"Mr. Wynn" shall mean Stephen A. Wynn, an individual.

"Multiemployer Plan" shall mean a Plan that is a multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA.

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"Net Cash Proceeds" shall mean (a) in connection with any Asset Sale, the proceeds thereof in the form of cash and Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received) of such Asset Sale, net of arm's length attorneys' fees, accountants' fees, investment banking fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset which is the subject of such Asset Sale (other than any Lien pursuant to a Security Document or an Other Security Document (other than a Lien securing obligations under the Wynn Credit Documents to the extent that (i) such payment is not prohibited under the Intercreditor Agreements or this Agreement and (ii) such Lien on the Collateral subject to such Asset Sale is a Senior Permitted Lien with respect to such Collateral)) and other arm's length fees and expenses, in each case, to the extent actually incurred in connection therewith and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any tax credits or deductions and any tax sharing arrangements, in each case reducing the amount of taxes so paid or estimated to be payable) and (b) in connection with any issuance or sale of debt securities or instruments or the incurrence of loans, the cash proceeds received from such issuance or incurrence, net of arm's length attorneys' fees, investment banking fees, accountants' fees, underwriting discounts and commissions and other arm's length fees and expenses, in each case, to the extent actually incurred by the Borrower or another Loan Party in connection therewith.

"Net Revenues" shall mean for any period, the net revenues of the Borrower and its consolidated Subsidiaries, as set forth on the Borrower's income statement for the relevant period under the line item "net revenues," calculated in accordance with GAAP and with Regulation S-X under the Securities Act and in a manner consistent with that customarily utilized in the gaming industry.

"Nevada Gaming Laws" shall mean the Nevada Gaming Control Act, as codified in Chapter 463 of the NRS 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 promulgated by the Nevada Gaming Authorities and applying to gaming operations in the State of Nevada.

"Non-Defaulting Lender" shall mean any Lender other than a Defaulting Lender.

"Non-Gaming Commitment Percentage" shall mean as to any Lender, the percentage set forth opposite such Lender's name under the heading "Non-Gaming Equipment Commitment Percentage" on **Schedule IA1** to the Loan Agreement.

"Non-Gaming Equipment" shall mean all Items of Equipment other than Gaming Equipment.

"Note" shall have the meaning assigned to such term in **Section 2.3(b)** of the Loan Agreement.

"Notice of Funding Requests" shall have the meaning set forth in the Disbursement Agreement.

"NRS" shall mean the Nevada Revised Statutes, as amended from time to time.

"Obligations" shall mean the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Loans 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) the Loans and all other obligations and liabilities of the Loan Parties, Valvino or Wynn Resorts to any Arranger, to any Agent or to any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, fees, indemnities, costs, expenses (including, without limitation, all fees, charges and disbursements of counsel to any Arranger, to any Agent or to any Lender that are required to be paid by any Loan Party or Valvino pursuant hereto or to any other Loan Document) or otherwise.

25

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"Office Building Lease" shall mean that certain Lease Agreement, dated as of \_\_\_\_\_, by and between Valvino, as lessor, and the Borrower, as lessee, with respect to the lease of space in the Phase II Land Building.

"Officer's Certificate" shall mean as to any Person; a certificate signed by a Responsible Officer of such Person.

"On-Site Cash" shall mean amounts held in cash at the Site in connection with and necessary for the ordinary course operations of the Project.

"Opening Date" shall have the meaning set forth in the Disbursement Agreement.

"Operating Lease" shall mean an operating lease determined in accordance with GAAP.

"Operative Documents" shall mean the Financing Agreements and the Project Documents.

"Original Aircraft Financing Documents" shall mean that certain Amended and Restated Business Loan Agreement dated as of May 30, 2002 between Bank of America, N.A. and World Travel, that certain Mortgage, Security Agreement and Assignment dated as of February 28, 2002 between World Travel and Bank of America, N.A., and the other documents, certificates and agreements delivered in connection therewith.

"Original Aircraft Part" shall have the meaning assigned to such term in Section 4.4 of the Aircraft Security Agreement.

"Original Part" shall have the meaning assigned to such term in Section 4.4 of the Borrower Security Agreement.

"Other Indebtedness" shall mean (i) the Indebtedness of Valvino or any Loan Party evidenced by the Mortgage Notes or the Mortgage Note Guarantees and (ii) the Indebtedness of Valvino or any Loan Party evidenced by the Wynn Credit Documents.

"Other Security Documents" shall mean any agreement, document, instrument or deed granting, creating or evidencing any security or lien for any Other Indebtedness, including, without limitation, the "Security Documents" as defined in the Disbursement Agreement, other than the Security Documents.

"Outside Date" shall mean September 30, 2005, as extended pursuant to Section 6.4 of the Disbursement Agreement.

"Overall Transaction" shall mean all the transactions and activities referred to in or contemplated by the Operative Documents.

"Overdue Rate" shall have the meaning assigned to such term in **Section 3.3(b)** of the Loan Agreement.

"Palo" shall mean Palo, LLC, a Delaware limited liability company.

"Part" shall have the meaning assigned to such term in Section 4.4 of the Borrower Security Agreement.

"Participation Fee" shall have the meaning assigned to such term in **Section 2.7** of the Loan Agreement.

"Participation Fee Letter" shall mean each letter between the Borrower and the respective Lender relating to fees payable to such Lender in respect of its Commitment.

"Pass Through Entity" shall mean any of (1) a grantor trust for federal or state income tax purposes or (2) an entity treated as a partnership or a disregarded entity for federal or state income tax purposes.

26

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"Payment Date" shall mean (i) as to any Loan to which the Base Rate applies the last day of each March, June, September and December to occur while such Loan is outstanding, (ii) as to any Loan to which the Adjusted Eurodollar Rate applies and which has an Interest Period of three months or less, the last day of such Interest Period, (iii) as to any Loan to which the Adjusted Eurodollar Rate applies and which has an Interest Period longer than three months, each day which is three months, or a whole multiple thereof, after the first day of such Interest Period and (iv) in any case, the Maturity Date.

"Payoff Amount" shall mean, as of any date of determination, the sum of (a) the Loan Balance as of the date of payment, plus (b) all accrued but unpaid interest, plus (c) the Applicable Administrative Charge, if any, plus (d) all other sums then due and payable under the Loan Documents by the Borrower, a

Guarantor or any of their Affiliates.

"PBG" shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA and any successor thereto.

"Pension Plan" shall mean any "employee pension benefit plan" (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA, other than a Multiemployer Plan, which Valvino or any of its Subsidiaries or any of their respective ERISA Affiliates sponsors, maintains, or to which it makes, is making, or is obligated to make contributions, or in the case of a multiple employer plan (as described in Section 4064(a) of ERISA) has made contributions at any time during the immediately preceding five (5) plan years.

"Permits" shall mean the collective reference to (i) Environmental Permits, and (ii) any and all other franchises, licenses, leases, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, variances, qualifications, easements, rights of way, Liens and other rights, privileges and approvals required under any Requirement of Law (including Nevada Gaming Laws).

"Permitted Aircraft Modification" shall have the meaning assigned to such term in Section 4.4 of the Aircraft Security Agreement.

"Permitted Businesses" shall mean (i) the gaming business, (ii) the development, construction, ownership and operation of a Gaming Facility, (iii) all businesses, whether or not licensed by the Nevada Gaming Authorities, which are necessary for, incident to, useful to, arising out of, supportive of or connected to the development, construction, ownership or operation of a Gaming Facility, (iv) any development, construction or operation of lodging, retail, restaurant or convention facilities, sports or entertainment facilities, food and beverage distribution operations, transportation services (including operation of the Aircraft and chartering thereof), parking services, sales and marketing services or other activities related to the foregoing, (v) any business (including any related internet business) that is a reasonable extension, development or expansion of any of the foregoing or incidental thereto and/or (vi) the ownership by a Person of Capital Stock in its directly Wholly Owned Subsidiaries other than, with respect to the ownership and operation of the Aircraft only, World Travel and Las Vegas Jet; *provided, however*, that with respect to the Borrower and its Subsidiaries, the foregoing shall only be Permitted Businesses to the extent related to the Project or furtherance of the Project's development, construction, ownership or operation; *provided, further*, that, notwithstanding the foregoing, the Borrower shall be permitted to sublease space within the Phase II Building to Persons not related to the development, construction, ownership or operation of the Project.

"Permitted Encumbrances" shall have the meaning assigned to such term in the Disbursement Agreement.

"Permitted Liens" shall mean the collective reference to in the case of Collateral, Liens permitted by Section 7.3 of the Loan Agreement (but only of the priority and to the extent of coverage expressly set forth in Section 7.3 of the Loan Agreement and subject to the provisions of the FF&E Intercreditor Agreement); *provided*, that for purposes of **Section 8** "Permitted Liens" shall not include Liens permitted by **Section 7.3(c), (e), (i), (o), (r), (t), and (v)**.

27

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"Permitted Modification" shall have the meaning assigned to such term in Section 4.4 of the Borrower Security Agreement.

"Permitted Mortgage Note Refinancing Debt" shall mean [ ]

"Permitted Refinancing Indebtedness" shall mean any Indebtedness of the Borrower and, with respect to the Mortgage Notes, Capital Corp. (and, with respect to Guaranty Obligations in support thereof, the other Loan Parties) issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund the Mortgage Notes or Indebtedness under the Wynn Credit Agreement; *provided* that (i) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded (plus all accrued interest on such Indebtedness and the amount of all expenses and premiums incurred in connection therewith), (ii) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded, (iii) the restrictions on the Loan Parties contained in the agreements governing such Permitted Refinancing Indebtedness are no more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded, (iv) if such Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Loan Documents, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Loan Documents on terms at least as favorable to the Lenders as those contained in the applicable documents reflecting such subordination (whether the Intercreditor Agreements or otherwise), (v) the relevant holders of such Permitted Refinancing Indebtedness become party to the Intercreditor Agreements, as applicable, and (vi) all agreements, instruments, documentation and other arrangements associated with such Permitted Refinancing Indebtedness is in form and substance satisfactory to the Required Lenders. In the event Permitted Refinancing Indebtedness is used to extend, refinance, renew, replace, amend and restate, restate, defease or refund the Mortgage Notes or the Indebtedness under the Wynn Credit Agreement, all relevant definitions and provisions of the Loan Documents related to the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded shall be amended, as necessary, to reflect such Permitted Refinancing Indebtedness and related documentation and/or arrangements.

"Permitted Securities" shall mean (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 18 months from the date of acquisition; or (b) shares of money market, mutual or similar funds which invest exclusively in assets satisfying the requirements of **clause (a)** of this definition.

"Permitted Taking" shall mean a Taking that is permitted by Section 7.5 of the Wynn Credit Agreement.

"Person" shall mean an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"Phase II Land" shall mean the approximately 20-acre tract of land adjacent to the Le Rêve hotel and casino resort owned by Valvino, as more particularly described in Exhibit T-4 to the Disbursement Agreement.

"Phase II Land Building" shall mean the building existing on the Phase II Land as of the Closing Date that is subject to the Building Lease.

"Plan" shall mean, at a particular time, any employee benefit plan that is subject to the requirements of Section 412 of the Code or that is a Single Employer Plan and which Valvino, the

Borrower or any other Loan Party or any Commonly Controlled Entity maintains, administers, contributes to or is required to contribute to or under which the Borrower or any Commonly Controlled Entity could incur any liability.

"*Pledged Stock*" shall have the meaning set forth in the Guarantee and Collateral Agreement or the Valvino Guarantee and Collateral Agreement, as applicable.

"*Prepayment Option*" shall have the meaning assigned to such term in **Section 3.1** of the Loan Agreement.

"*Presumed Tax Liability*" shall mean, for any Person that is not a Pass Through Entity for any period, an amount equal to the product of (a) the Taxable Income allocated or attributable to such Person (directly or through one or more tiers of Pass Through Entities) (net of taxable losses allocated to such Person with respect to any Loan Party that (i) are, or were previously, deductible by such Person and (ii) have not previously reduced Taxable Income), and (b) the Presumed Tax Rate.

"*Presumed Tax Rate*" shall mean, with respect to any Person for any period, the highest effective combined Federal, state and local income tax rate applicable during such period to a corporation organized under the laws of the State of Nevada, taxable at the highest marginal Federal income tax rate and the highest marginal Nevada and Las Vegas income tax rates (after giving effect to the Federal income tax deduction for such state and local income taxes, taking into account the effects of the alternative minimum tax, such effects being calculated on the assumption that such Person's only taxable income is the income allocated or attributable to such Person for such period (directly or through one or more tiers of Pass Through Entities) with respect to its equity interest in any of the Loan Parties that is a Pass Through Entity.) In determining the Presumed Tax Rate, the character of the items of income and gain comprising Taxable Income (e.g. ordinary income or long term capital gain) shall be taken into account.

"*Pricing Grid*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Prime Rate*" shall mean the per annum rate of interest established from time to time by Deutsche Bank Trust Company Americas as its prime rate, which rate may not be the lowest rate of interest charged by Deutsche Bank Trust Company Americas to its customers.

"*Proceedings*" shall have the meaning assigned thereto in **Section 6.7(c)** of the Loan Agreement.

"*Prohibited Transaction*" shall mean a transaction that is prohibited under Code Section 4975 or ERISA Section 406 and not exempt under Code Section 4975 or ERISA Section 408.

"*Project*" shall mean the Le Rêve Casino Resort, a large scale luxury hotel and destination casino resort, with related parking structure and golf course facilities to be developed on the Project Site, all as more particularly described in Exhibit T-1 to the Disbursement Agreement.

"*Project Costs*" shall have the meaning set forth in the Disbursement Agreement.

"*Project Document Consents*" shall mean, collectively, the Consents to the collateral assignment by the Loan Parties of Project Documents as required pursuant to Section \_\_\_\_\_ of the Disbursement Agreement and Section 7.25 of the Wynn Credit Agreement.

"*Project Documents*" shall mean any and all "Project Documents" as defined in the Disbursement Agreement (including, without limitation, the Project Documents set forth in clause (i) of the definition of "Material Contracts") and any other document or agreement entered into on, prior to or after the Closing Date (including Material Contracts and Additional Material Contracts) relating to the design, engineering, development, construction, installation, maintenance or operation of the Project (including any Guarantee Obligations in furtherance thereof).

"*Project Lender Intercreditor Agreement*" shall mean that certain Intercreditor Agreement dated as of the Document Closing Date among the Administrative Agent and the Mortgage Notes Indenture Trustee.

"*Project Liquidity Reserve Account*" shall have the meaning as set forth in the Disbursement Agreement.

"*Project Revenues*" shall mean all income and receipts of the Loan Parties, including, without limitation, those derived from the ownership or operation of the Project or the Permitted Businesses, including payments received by the Loan Parties under any Project Document or Additional Material Contract, net payments, if any, received under Hedge Agreements, Liquidated Damages, Insurance Proceeds, Eminent Domain Proceeds, together with any receipts derived from the sale of any property pertaining to the Project or the Permitted Businesses or incidental to the operation of the Project or the Permitted Businesses, all as determined in conformity with cash accounting principles, the proceeds of any condemnation awards relating to the Project or the Permitted Businesses.

"*Projections*" shall have the meaning set forth in **Section 6.2(c)** of the Loan Agreement.

"*Property*" shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

"*Purchase Price*" shall mean, for an Item of Equipment, the invoiced price or required contract payment for such Item plus the allocated pro rata share of any Fees and Transaction Costs, delivery costs or installation costs financed by the Lenders through Advances, but not to exceed 75% of the invoiced price or required gross contract payment for such Item of Equipment, and the aggregate Purchase Price of all Items of Equipment shall be the aggregate invoice price or required contract payments plus any Fees and Transaction Costs, delivery costs or installation costs financed by the Lenders through Advances but not to exceed 75% of the aggregate of the invoiced price or required gross contract payment for all of the Items of Equipment; *provided* that the aggregate Purchase Price for all of the Items of Equipment shall in no event exceed the Aggregate Commitment Amount.

"*Qualified Affiliate Transaction*" shall mean any transaction by or among one or more of the Loan Parties, on the one hand, and one or more of Wynn Resorts or any of its Subsidiaries, on the other hand, for the provision of goods, rights and/or services to be used in Permitted Businesses related to or in connection with and, in any event for the benefit of, the Project.

"*Quarterly Date*" shall mean (i) with respect to the first Quarterly Date, the first full fiscal quarter of the Borrower after the Opening Date and (ii) with respect to each subsequent Quarterly Date, the last day of the next succeeding fiscal quarter of the Borrower

"*Real Estate*" shall mean all real property held or used by Valvino and the Loan Parties, which Valvino or the relevant Loan Party owns in fee or in which it holds a leasehold interest as a tenant or in which it holds an easement right as an easement holder or otherwise occupies, including, without limitation, the real property more particularly identified in **Schedule 4.25(a)** and includes, without limitation, the Site and the Site Easements.

"*Reimbursement Obligation*" shall mean the obligation of the Borrower to reimburse the Issuing Lender pursuant to Section 3.5 of the Wynn Credit Agreement for amounts drawn under Letters of Credit.

"*Related Party*" shall mean either (i) any 80% (or more) owned Subsidiary, heir, estate, lineal descendent or immediate family member of Mr. Wynn; or (ii) any trust, corporation, partnership or other entity, the beneficiaries, equity holders, partners, owners or Persons beneficially holding an 80% or more controlling interest of which consist of Mr. Wynn and/or such other Persons referred to in the immediately preceding clause (i).

30

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"*Release*" shall mean any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Substances into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Substances), including the movement of any Hazardous Substances through the air, soil, surface water or groundwater.

"*Removable Aircraft Part*" shall have the meaning assigned to such term in Section 4.4 of the Aircraft Security Agreement.

"*Removable Part*" shall have the meaning assigned to such term in Section 4.4 of the Borrower Security Agreement.

"*Reorganization*" shall mean, with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

"*Repair Plan*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Replaced Aircraft Part*" or "*Replaced Aircraft Parts*" shall have the meaning assigned to such term in Section 4.7 of the Aircraft Security Agreement.

"*Replaced Item*" or "*Replaced Items*" shall have the meaning assigned to such term in Section 4.7 of the Borrower Security Agreement.

"*Replacement Aircraft*" shall mean that certain aircraft to be acquired with the proceeds of the Replacement Aircraft Indebtedness.

"*Replacement Aircraft Indebtedness*" shall mean Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations incurred by Wynn Resorts or a direct Wholly Owned Subsidiary (which may be a trust) of Wynn Resorts (other than any Loan Party) for the purpose of financing all or part of the purchase price of a Replacement Aircraft, so long as: (a) the principal amount of such Indebtedness does not exceed the cost (including sales and excise taxes, installation and delivery charges and other direct costs of, and other direct expenses paid or charged in connection with, such purchase) of the Replacement Aircraft purchased with the proceeds thereof, (b) the aggregate principal amount of such Indebtedness does not exceed \$55.0 million at any time outstanding, and (c) no Loan Party (i) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) as to such Indebtedness, (ii) is directly or indirectly liable as a guarantor or otherwise as to such Indebtedness, or (iii) constitutes the lender of such Indebtedness.

31

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"*Replacement Aircraft Part*" or "*Replacement Aircraft Parts*" shall have the meaning assigned to such term in Section 4.4 of the Aircraft Security Agreement.

"*Replacement Airframe*" shall have the meaning assigned to such term in **Section 8.1** of the Loan Agreement.

"*Replacement Engine*" shall have the meaning assigned to such term in **Section 8.1** of the Loan Agreement.

"*Replacement Item*" or "*Replacement Items*" shall have the meaning provided in **Section 8.1** of the Loan Agreement.

"*Replacement Parts*" shall have the meaning assigned to such term in Section 4.4 of the Borrower Security Agreement.

"*Reportable Event*" shall mean any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the 30-day notice period is waived under subsection .27, .28, .29, .30, .31, .32, .34 or .35 of PBGC Reg. Section 4043.

"*Required Aircraft Alteration*" shall have the meaning assigned to such term in Section 4.4 of the Aircraft Security Agreement.

"*Required Alteration*" shall have the meaning assigned to such term in Section 4.4 of the Borrower Security Agreement.

"*Required Lenders*" shall mean at any time, Lenders holding more than 50% of the aggregate amount of Credit Exposure of all Lenders outstanding at such time; *provided, however*, that prior to the Final Completion Date any determination of "*Required Lenders*" at a time at which no Default or Event of Default exists, shall mean Non-Defaulting Lenders holding more than 50% of the Commitments (less the aggregate Commitments of Defaulting Lenders) of all Lenders



at such time; *provided, further*, that for purposes of **Sections 2.4, 6.17 and 8.1** of the Loan Agreement any determination of "Required Lenders" shall only include that portion of the Lenders' Commitment or Credit Exposure, as the case may be, which relates to the relevant Type of Equipment or Aircraft; *provided, further*, that for purposes of Sections 4.8, 5 and 9.2 of the Aircraft Security Agreement and for the Aircraft Operating agreement any determination of "Required Lenders" shall only include that portion of the Lenders' Commitment or Credit Exposure, as the case may be, which relates to the Aircraft.

"Required Prepayment" shall mean, for any Interest Period, a portion of the Loan Balance in the amount set forth on **Schedule II** to the Loan Agreement for such Interest Period.

"Requirement of Law" shall mean, as to any Person, the Governing Documents of such Person, and any law, treaty, order, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"Responsible Officer" shall mean, as to any Person, the chief executive officer, president or chief financial officer of such Person, but in any event, with respect to financial matters, the chief financial officer of such Person. Unless otherwise qualified, all references to a "Responsible Officer" shall refer to a Responsible Officer of the Borrower or Wynn Resorts.

"Responsible Officer's Certificate" shall mean a certificate signed by an applicable Responsible Officer, which certificate shall certify as true and correct the subject matter being certified to in such certificate.

"Revolving Credit Commitment" shall have the meaning set forth in the Wynn Credit Agreement.

"Revolving Credit Lender" shall have the meaning set forth in the Wynn Credit Agreement.

32

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"Revolving Credit Loans" shall have the meaning set forth in the Wynn Credit Agreement.

"Revolving Credit Percentage" shall have the meaning set forth in the Wynn Credit Agreement.

"Revolving Extensions of Credit" shall have the meaning set forth in the Wynn Credit Agreement.

"S&P" shall mean Standard & Poor's Ratings Group, a New York corporation or any successor thereof.

"Scheduled Completion Date" shall mean as defined in the Disbursement Agreement. As of the Closing Date, the Scheduled Completion Date is April 30, 2005.

"SEC" shall mean the Securities and Exchange Commission (or successors thereto or an analogous Governmental Authority).

"Secured Parties" shall mean, collectively, the Collateral Agent and the Lenders.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Security Agreement Event of Default" shall mean any of the events specified in Section 8.1 of the Borrower Security Agreement.

"Security Documents" shall mean, as the context requires, the collective reference to (i) the Borrower Security Agreement and all other pledge and security documents hereafter delivered to the Collateral Agent for the benefit of the Lenders granting a Lien on the Collateral (or associated with such a grant) to secure the obligations and liabilities of the Borrower to the Lenders under any Loan Document, (ii) the Aircraft Security Agreement and all other pledge and security documents hereafter delivered to the Borrower granting a Lien on the Aircraft Collateral to secure the obligations and liabilities of World Travel under any Loan Document, (iii) the Borrower Aircraft Assignment and (iv) the FF&E Collateral Account Agreement.

"Seller" or "Sellers" shall mean, with respect to one or more Items of Equipment, Airframe or Engine; any of the Manufacturers, any vendors or the Borrower.

"Single Employer Plan" shall mean any Plan that is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

"Site" shall mean all or any portion of the Real Estate, as described in Exhibit T-4 to the Disbursement Agreement. The Site includes, without limitation, the Wynn Home Site Land (until such time (if ever) as such Property has been Disposed of in accordance with Section 7.5(j) of the Loan Agreement), the Golf Course Land (until such time (if ever) as such Property has been Disposed of in accordance with Section 7.5(k) of the Loan Agreement), the Home Site Land (until such time (if ever) as such Property has been Disposed of in accordance with Section 7.5(l) of the Loan Agreement), the Phase II Land (until such time (if ever) as such Property has been Disposed of in accordance with Section 7.5(m) of the Loan Agreement) and any other Real Estate which is subject to a lien under any Mortgage.

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

33

liability on a "claim", and (ii) "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

"Specified Change of Control" shall mean a "change of control" or similar event (howsoever defined) as defined (i) in the Mortgage Notes Indenture or (ii) the Wynn Credit Agreement.

"Specified Hedge Agreement" shall have the meaning set forth in the Wynn Credit Agreement.

"Subordinated Debt" Indebtedness that (i) does not have any scheduled principal payment, mandatory principal prepayment, sinking fund payment or similar payment due prior to the Scheduled Term Loan Termination Date, (ii) is not secured by any Lien on any Property, (iii) is subordinated on terms and conditions reasonably satisfactory to the Initial Arrangers and in any event not less favorable to the Lenders than the terms of the Subordinated Intercompany Note and (iv) is subject to such covenants and events of default as may be reasonably acceptable to the Initial Arrangers; *provided*, that Permitted Refinancing Indebtedness or Indebtedness permitted pursuant to **Section 7.2(d)** shall not be deemed Subordinated Debt.

"Subordinated Intercompany Note" shall mean the Subordinated Intercompany Note to be executed and delivered by the Borrower and each of the other Loan Parties, substantially in the form of Exhibit L to the Wynn Credit Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the Wynn Credit Agreement.

"Subsidiary" shall mean, 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 the Loan Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Substitute Aircraft Part" or "Substitute Aircraft Parts" shall have the meaning assigned to such term in Section 4.7 of the Aircraft Security Agreement.

"Substitute Item" or "Substitute Items" shall have the meaning assigned to such term in Section 4.7 of the Borrower Security Agreement.

"Supplemental Payment" shall mean any and all amounts, liabilities and obligations other than Interest and Required Prepayments which the Borrower assumes or agrees or is otherwise obligated to pay under the Loan Agreement or any other Operative Document (whether or not designated as Supplemental Payment) to the Collateral Agent, any Lender or any other Person, including, without limitation, any Administrative Charge, indemnities and damages for breach of any covenants, representations, warranties or agreements.

"Swing Line Loans" shall have the meaning set forth in the Wynn Credit Agreement.

"Syndication Agent" shall mean Banc of America Securities, LLC, in its capacity as syndication agent under the Wynn Credit Agreement.

"Synthetic Lease Obligations" shall mean all monetary obligations of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations which do not appear on the balance sheet of such Person but which, upon

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the insolvency or bankruptcy of such Person, would be characterized as the Indebtedness of such Person (without regard to accounting treatment).

"Taking" shall mean a taking or voluntary conveyance during the term of the Loan Agreement of all or part of any Mortgaged Property or Collateral, or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any condemnation or other eminent domain proceeding by any Governmental Authority affecting a Mortgaged Property or Collateral or any portion thereof, whether or not the same shall have actually been commenced.

"Tax Amount" shall mean, with respect to any period, (i) in the a case of any direct or indirect member of a Loan Party that is a Pass Through Entity, the Presumed Tax Liability of such direct or indirect member, and (ii) with respect to any of the Loan Parties that are Consolidated Members, the aggregate federal income tax liability such Persons would owe for such period if each was a corporation filing federal income tax returns on a stand alone basis at all times during its existence and, if any of the Consolidated Members files a consolidated or combined state income tax return such that it is not paying its own state income taxes, then Tax Amount shall also include the aggregate state income tax liability such Consolidated Members would have paid for such period if each was a corporation filing state income tax returns on a stand alone basis at all times during its existence.

"Taxable Income" shall mean, with respect to any Person for any period, the taxable income or loss of such Person for such period for federal income tax purposes as a result of such Person's equity ownership of one or more Loan Parties that are Pass Through Entities for such period; *provided, however*, that all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss.

"Taxes" and "Tax" shall mean any and all fees (including, without limitation, documentation, recording, license and registration fees), taxes (including, without limitation, income (whether net, gross or adjusted gross) taxes; gross and net receipts taxes; taxes that are or are in the nature of franchise, value added, privilege or doing business taxes, license and registration fees; real and personal property (including intangibles) taxes; sales, use and similar taxes (including rent taxes); any excise taxes; real estate transfer taxes, mortgage taxes, conveyance taxes, turnover taxes, value-added taxes; stamp taxes and documentary recording taxes and fees), levies, imposts, duties, charges, assessments or withholdings of any nature whatsoever, in each case imposed or required by the Governmental Authority to be paid, together with any penalties, fines or interest thereon or additions thereto.

"Tax Indemnification Agreement": that certain Tax Indemnification Agreement, dated as of October , 2002 among the Existing Stockholders, Valvino and Wynn Resorts, as in effect as of the date hereof.

"Term Loan Commitment" shall have the meaning set forth in the Wynn Credit Agreement.

"Term Loan Extensions of Credit" shall have the meaning set forth in the Wynn Credit Agreement.

"Term Loan Lender" shall have the meaning set forth in the Wynn Credit Agreement.

"Term Loans" shall have the meaning set forth in the Wynn Credit Agreement.

"Total Revolving Credit Commitments" shall have the meaning set forth in the Wynn Credit Agreement.

"Total Term Loan Commitments" shall have the meaning set forth in the Wynn Credit Agreement.

"Total Term Loan Extensions of Credit" shall have the meaning set forth in the Wynn Credit Agreement.

35

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"Transaction Costs" shall mean:

(i) the reasonable fees and expenses of Chapman and Cutler incurred in connection with the negotiation, execution and delivery of the term sheet, the commitment letters, the Operative Documents, the syndication of the Notes and any amendments to the Operative Documents in connection therewith and the transactions contemplated thereby;

(ii) the reasonable fees and expenses of the Arrangers, including, without limitation, the fees and expenses of any insurance consultant hired by the Arrangers and any fees and expenses incurred in connection with the syndication of the Notes;

(iii) the actual and ongoing fees and expenses of the Collateral Agent;

(iv) the reasonable counsel fees of the Collateral Agent;

(v) the fees and expenses of the Appraiser;

(vi) all costs of searching and perfecting a first priority Lien and security interest in the Equipment and the Aircraft;

(vii) costs and expenses for     ;

(viii) the Commitment Fees;

(ix) the Participation Fees;

(x) the Arrangement Fees; and

(xi) all other documented fees and expenses incurred by Collateral Agent or any Lender in connection with the Operative Documents and the transactions contemplated hereby.

"Trust Company" shall mean Wells Fargo Bank Nevada, National Association, or any successor financial institution acting as Collateral Agent under the Loan Documents, in each case, in its individual capacity.

"Type of Equipment" shall mean Gaming Equipment or Non-Gaming Equipment.

"UCC" shall mean the Uniform Commercial Code, as in effect from time to time in any jurisdiction.

"Valvino" shall mean Valvino Lamore, LLC, a Nevada limited liability company.

"Valvino Water Permits" shall mean collectively, the Permits identified as of the Closing Date as Permit No. 60164 (Cert. 15447) and Permit No. 60165 (Cert. 15448), in each case as shown in the records of the State of Nevada, Division of Water Resources, in Carson City Nevada (and any successor or replacement Permits thereto).

"Voting Stock" shall mean with respect to any Person as of any date, the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"Water Entities" shall mean Desert Inn Water and Desert Inn Improvement.

"Water Permits" shall mean collectively the DIIC Water Permits and the Valvino Water Permits.

"Water Property Mortgage" shall have the meaning set forth in the Wynn Credit Agreement.

"Water Show Entertainment and Production Agreement" shall mean the Agreement, dated January 25, 2001, between Wynn Resorts Holdings and Calitri Services and Licensing Limited Liability Company..

"Water Supply Agreements" that certain Water Supply Agreement dated as of October , 2002 among Desert Inn Improvement, Wynn Resorts Holdings and the Borrower.

36

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"*Water Utility Land*" shall mean the approximately .17 acre tract of land located on the Golf Course owned by Desert Inn Improvement, as more particularly described in Exhibit T-4 of the Disbursement Agreement; *provided*, that the Water Utility Land shall not include any improvements thereon utilized by Desert Inn Improvement as of the Closing Date for the transportation of water to non-Affiliates of the Borrower.

"*WDD Agreement*" shall mean the Wynn Design Agreement, dated as of October , 2002 between the Borrower and Wynn Design.

"*Weighted Average Life to Maturity*" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one—twelfth) that will elapse between such date and the making of such payment; by

(2) the then outstanding principal amount of such Indebtedness.

"*Wholly Owned Subsidiary*" shall mean, as to any Person, any other Person all of the Capital Stock of which (other than directors' qualifying shares required by law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

"*World Aircraft Part*" shall have the meaning assigned to such term in Section 4.4 of the Aircraft Security Agreement.

"*World Liabilities*" shall have the meaning assigned to such term in Section 2 of the Aircraft Security Agreement.

"*World Travel*" shall mean World Travel, LLC, a Nevada limited liability company, or any successor thereto.

"*Wynn Banks*" shall mean and the other lenders that are parties to the Wynn Credit Agreement.

"*Wynn Credit Agreement*" shall mean that certain Credit Agreement, dated as of [ , 2002], among the Borrower, the several lenders from time to time party thereto, Duetsche Bank Securities Inc., as lead arranger and joint book running manager, Deutsche Bank Securities Trust Company Americas, as administrative agent and swingline lender, Bank of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending, Inc., as joint documentation agent and Dresdner Bank AG, New York Branch, as arranger and joint documentation agent.

"*Wynn Credit Documents*" shall mean the Wynn Credit Agreement and the notes issued thereunder, the Other Security Documents, the Disbursement Agreement, [the Completion Guaranty,] the Wynn Resorts Guaranty Agreement (and the Wynn Resorts Guaranty if entered into pursuant thereto), the Applications, the Environmental Indemnity Agreements.

"*Wynn Design*" shall mean Wynn Design & Development, LLC, a Nevada limited liability company, or any successor thereto.

"*Wynn Group Entities*" shall mean collectively, Palo and Wynn Design, World Travel and Las Vegas Jet.

"*Wynn Home Site Land*" shall mean an approximately two-acre tract of land located on the Golf Course Land where Mr. Wynn's personal residence may, after Disposition of the Wynn Home Site Land in accordance with **Section 7.5(j)**; of the Loan Agreement, be built.

37

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"*Wynn Resorts*" shall mean Wynn Resorts, Limited, a Nevada corporation, or any successor thereto.

[ "*Wynn Resorts FF&E Guaranty*" shall mean that certain Guaranty Agreement, dated as of October , 2002, made by Valvino, Capital Corp., Palo, Wynn Resorts Holdings, LLC, Desert Inn Water, Wynn Design, World Travel, Las Vegas Jet and the other Guarantors from time to time party thereto in favor of the Secured Parties (as defined therein).

"*Wynn Resorts FF&E Agreement*" shall mean that certain Wynn Resorts Agreement, dated as of October , 2002 among Wynn Resorts and the Collateral Agent.

"*Wynn Resorts Guaranty*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Wynn Resorts Guaranty Agreement*" shall have the meaning set forth in the Wynn Credit Agreement.

"*Wynn Resorts Holdings*" shall mean Wynn Resorts Holdings, LLC, a Nevada limited liability company, or any successor thereto.

"*Wynn Resorts Holdings Capital Contributions*" shall mean, with respect to any period, amounts contributed by Wynn Resorts Holdings to the Borrower as common equity capital contributions during such period to the extent directly attributable to the Consolidated Net Income of Wynn Resorts Holdings.

"*Wynn Resorts Security Agreement*" shall mean any agreement or other instrument executed by Wynn Resorts in favor of the Administrative Agent on behalf of the Lenders pursuant to the Wynn Resorts Agreement.

38

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FOR VALUE RECEIVED, WORLD TRAVEL, LLC, a Nevada limited liability company (the "Payor"), hereby promises to pay on demand to the order of WYNN LAS VEGAS, LLC, a Nevada limited liability company, or its registered assigns (the "Payee"), a principal sum equal to [\$38,000,000] in lawful money of the United States of America in same day or immediately available funds, at such location in the United States of America as the Payee shall from time to time designate, or such lesser principal amount as shall remain outstanding on the loan made by the Payee to the Payor.

On demand, the Payor promises to pay interest to the Payee on the outstanding principal hereof for the period from the date hereof until payment in full thereof and, to the extent permitted by law, overdue interest from their due dates, in each case at the rate per annum equal to the interest rate in effect under Section 3.5 of the Loan Agreement dated October , 2002 (the "Loan Agreement") among the Payee, Wells Fargo Bank Nevada, National Association, not in its individual capacity, but solely as Collateral Agent (the "Collateral Agent") and the lenders named in Schedule IA1 thereto.

This Note is the "Intercompany Note" referred to in the Aircraft Security Agreement, dated as of October , 2002 (the "Aircraft Security Agreement") from Wells Fargo Bank Northwest, National Association, not in its individual capacity, but solely as Trustee of that certain trust created under the Trust Agreement dated as of May 10, 2002 (in such capacity, the "Owner") and the Payor to the Payee, and evidences indebtedness incurred by the Payor to the Payee. This Note is secured pursuant to the terms of the Aircraft Security Agreement and reference is made to the Aircraft Security Agreement for a statement of certain provisions relating to this Note.

The outstanding principal balance of the loan evidenced by this Note shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are expressly waived by the Payor, upon the occurrence of an "Event of Default" under and as defined in either the Loan Agreement or the Aircraft Security Agreement.

The Payee is hereby authorized (but not required) to record all repayments or prepayments hereof, in its books and records, and any such recordation shall constitute *prima facie* evidence of the accuracy of the information so recorded, absent manifest error.

Payments of both principal and interest are to be made without setoff, counterclaim or deduction of any kind.

This Note is also the "Intercompany Note" referred to in the Assignment and Assumption Agreement, dated as of October , 2002 executed by the Payee in favor of the Collateral Agent (as amended, modified or supplemented from time to time, the "Borrower Aircraft Assignment") to secure the obligations of the Payee under the Loan Agreement. This Note and the Aircraft Security Agreement have been assigned by the Payee pursuant to such Borrower Aircraft Assignment. The Payor hereby acknowledges and agrees that the Collateral Agent, pursuant to the Borrower Aircraft Assignment, may exercise all rights provided therein with respect to this Note and the Aircraft Security Agreement. The Payor further agrees that all rights of the Payee hereof in, to and under this Note and the Aircraft Security Agreement shall pass to and may be exercised by the Collateral Agent pursuant to the Borrower Aircraft Assignment; and the Payor will not set up any claim against the Payee hereof as a defense, counterclaim or setoff to any action brought by the Collateral Agent for the unpaid balance owed hereunder and also agrees to so pay the unpaid balance owed hereunder directly to the Collateral Agent upon receipt by it of written notice to do so by the Collateral Agent.

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THE PAYOR AGREES THAT ANY CLAIM BROUGHT BY THE PAYEE OR ITS ASSIGNEE OR PLEDGEE ARISING OUT OF THIS NOTE SHALL BE SUBJECT TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK. THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

WORLD TRAVEL, LLC,  
a Nevada limited liability company, as the Payor

By: WYNN LAS VEGAS, LLC,  
a Nevada limited liability company,  
its sole member

By: WYNN RESORTS HOLDINGS, LLC,  
a Nevada limited liability company,  
its sole member

By: VALVINO LAMORE, LLC,  
a Nevada limited liability company,  
its sole member

By: WYNN RESORTS, LIMITED,  
a Nevada corporation,  
its sole member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TO LOAN AGREEMENT  
FORM OF FF&E GUARANTY**

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GUARANTY AGREEMENT

made by

VALVINO LAMORE, LLC,

WYNN LAS VEGAS CAPITAL CORP.,

PALO, LLC,

WYNN RESORTS HOLDINGS, LLC,

DESERT INN WATER COMPANY, LLC,

WYNN DESIGN & DEVELOPMENT, LLC,

WORLD TRAVEL LLC,

LAS VEGAS JET, LLC

and

THE OTHER GUARANTORS FROM TIME TO TIME PARTY HERETO

in favor of

SECURED PARTIES (as defined herein)

Dated as of October , 2002

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**TABLE OF CONTENTS**

Section	Heading	Page
<b>SECTION 1.</b>	<b>DEFINED TERMS</b>	<b>1</b>
Section 1.1.	Definitions	1
Section 1.2.	Other Definitional Provisions	2
<b>SECTION 2.</b>	<b>GUARANTEE</b>	<b>2</b>
Section 2.1.	Guarantee	2
Section 2.2.	Rights of Reimbursement, Contribution and Subrogation	3
Section 2.3.	Amendments, etc. with Respect to the Borrower Obligations	4
Section 2.4.	Guarantee Absolute and Unconditional	4
Section 2.5.	Reinstatement	5
Section 2.6.	Payments	5
<b>SECTION 3.</b>	<b>REPRESENTATIONS AND WARRANTIES</b>	<b>5</b>
Section 3.1.	Representations in Loan Agreement; Guarantor Representations	5
<b>SECTION 4.</b>	<b>COVENANTS</b>	<b>5</b>
Section 4.1.	Covenants in Loan Agreement	5
Section 4.2.	Further Documentation	5
<b>SECTION 5.</b>	<b>THE COLLATERAL AGENT</b>	<b>5</b>
Section 5.1.	Authority of Collateral Agent	5
Section 5.2.	Appointment of Co-Collateral Agents	6
<b>SECTION 6.</b>	<b>MISCELLANEOUS</b>	<b>6</b>
Section 6.1.	Amendments in Writing	6
Section 6.2.	Notices	6
Section 6.3	No Waiver by Course of Conduct; Cumulative Remedies	6
Section 6.4.	Enforcement Expenses; Indemnification	6
Section 6.5.	Successors and Assigns	7
Section 6.6.	Set-Off	7

Section 6.7.	Counterparts	7
Section 6.8.	Severability	7
Section 6.9.	Section Headings	7
Section 6.10.	Integration	7
Section 6.11.	Governing Law	8
Section 6.12.	Submission to Jurisdiction; Waivers	8
Section 6.13.	Acknowledgments	8
Section 6.14.	Additional Guarantors	8
Section 6.15.	Releases	8
Section 6.16.	WAIVER OF JURY TRIAL	9
Section 6.17.	Regulatory Matters	9

This GUARANTY AGREEMENT, dated as of October , 2002, is made by each of the signatories hereto (together with any other entity that may become a party hereto as provided herein, the "Guarantors"), in favor of the Secured Parties (as hereinafter defined).

**RECITALS:**

WHEREAS, pursuant to the Loan Agreement dated as of October , 2002 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement") by and among Wynn Las Vegas, LLC, a Nevada limited liability company (the "Borrower"), Wells Fargo Bank Nevada, National Association, not in its individual capacity but solely as Collateral Agent (the "Collateral Agent") and the Persons listed on Schedule IA thereto, as Lenders (the "Lenders"), the Lenders have severally agreed to make loans to the Borrower on each Advance Date upon the terms and subject to the conditions set forth therein;

WHEREAS, the Borrower is a member of an affiliated group of companies that includes each Guarantor;

WHEREAS, the Borrower and the other Guarantors are engaged in related businesses, and each Guarantor will derive substantial direct and indirect benefit from the making of the loans under the Loan Agreement; and

WHEREAS, it is a condition precedent to the obligation of the Lenders to make their respective loans to the Borrower under the Loan Agreement that the Guarantors shall have executed and delivered this Agreement (as hereinafter defined) to the Secured Parties (as hereinafter defined);

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent and the Lenders to enter into the Loan Agreement and to induce the Lenders to make their respective loans to the Borrower thereunder, each Guarantor hereby agrees with the Secured Parties (as hereinafter defined), as follows:

**SECTION 1. DEFINED TERMS.**

*Section 1.1. Definitions.* (a) Any capitalized terms used in this Agreement which are not otherwise defined herein shall have the meaning ascribed to such terms in the Disbursement Agreement (as defined below) and, if not defined therein, the meaning ascribed to such terms in the Loan Agreement; *provided*, that upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement immediately prior to such termination.

(b) The following terms shall have the following meanings:

"Agreement": this Guaranty Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"Borrower Obligations": the collective reference to the Obligations (as defined in the Loan Agreement).

"Disbursement Agreement": that certain Master Disbursement Agreement dated as of October , 2002 among the Borrower, the Collateral Agent and the other parties signatory thereto, as the same may hereafter be amended or modified in accordance with its terms and the terms of the Loan Agreement.

"Guarantor Obligations": with respect to any Guarantor, all obligations and liabilities of such Guarantor which may arise under or in connection with this Agreement (including, without limitation, under **Section 2**) or any other Loan Document to which such Guarantor is a party, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to any

Secured Party that are required to be paid by such Guarantor pursuant to the terms of this Agreement or any other Loan Document).

"Obligations": (i) in the case of the Borrower, the Borrower Obligations, and (ii) in the case of each Guarantor, its Guarantor Obligations.

"Secured Parties": collectively, the Arrangers, the Collateral Agent and the Lenders.

*Section 1.2. Other Definitional Provisions.* (a) The words "hereof", "herein", "hereto" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) The expressions "payment in full," "paid in full" and any other similar terms or phrases when used herein with respect to the Borrower Obligations or the Guarantor Obligations shall mean the unconditional, final and irrevocable payment in full, in immediately available funds, of all of the Borrower Obligations or

the Guarantor Obligations, as the case may be.

## SECTION 2. GUARANTEE.

*Section 2.1. Guarantee.* (a) Each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Secured Parties, and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Borrower when due (whether at the stated maturity, by acceleration or otherwise) of the Borrower Obligations.

(b) If and to the extent required in order for the Obligations of any Guarantor to be enforceable under applicable federal, state and other laws relating to the insolvency of debtors, the maximum liability of such Guarantor hereunder shall be limited to the greatest amount which can lawfully be guaranteed by such Guarantor under such laws, after giving effect to any rights of contribution, reimbursement and subrogation arising under **Section 2.2**. Each Guarantor acknowledges and agrees that, to the extent not prohibited by applicable law, (i) such Guarantor (as opposed to its creditors, representatives of creditors or bankruptcy trustee, including such Guarantor in its capacity as debtor in possession exercising any powers of a bankruptcy trustee) has no personal right under such laws to reduce, or request any judicial relief that has the effect of reducing, the amount of its liability under this Agreement, (ii) such Guarantor (as opposed to its creditors, representatives of creditors or bankruptcy trustee, including such Guarantor in its capacity as debtor in possession exercising any powers of a bankruptcy trustee) has no personal right to enforce the limitation set forth in this **Section 2.1** or to reduce, or request judicial relief reducing, the amount of its liability under this Agreement and (iii) the limitation set forth in this **Section 2.1** may be enforced only to the extent required under such laws in order for the obligations of such Guarantor under this Agreement to be enforceable under such laws and only by or for the benefit of a creditor, representative of creditors or bankruptcy trustee of such Guarantor or other Person entitled, under such laws, to enforce the provisions thereof.

(c) Each Guarantor agrees that the Borrower Obligations may at any time and from time to time be incurred or permitted in an amount exceeding the maximum liability of such Guarantor under **Section 2.1** without impairing the guarantee contained in this **Section 2** or affecting the rights and remedies of any Secured Party hereunder.

(d) The guarantee contained in this **Section 2** shall remain in full force and effect until payment in full of the Obligations, notwithstanding that from time to time during the term of the Loan Agreement the Borrower may be free from any Borrower Obligations.

2

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(e) No payment made by the Borrower, any of the Guarantors, any other guarantor or any other Person or received or collected by any Secured Party from the Borrower, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which Guarantor shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Obligations or any payment received or collected from such Guarantor in respect of the Obligations), remain liable for the Obligations up to the maximum liability of such Guarantor hereunder until the Guarantor Obligations are paid in full.

*Section 2.2. Rights of Reimbursement, Contribution and Subrogation.* In case any payment is made on account of the Obligations by any Guarantor or is received or collected on account of the Obligations from any Guarantor or its property:

(a) If such payment is made by a Guarantor or from its property, such Guarantor shall be entitled, subject to and upon payment in full of the Obligations, (A) to demand and enforce reimbursement for the full amount of such payment from the Borrower and (B) to demand and enforce contribution in respect of such payment from each other Guarantor which has not paid its fair share of such payment, as necessary to ensure that (after giving effect to any enforcement of reimbursement rights provided hereby) each Guarantor pays its fair share of the unreimbursed portion of such payment. For this purpose, the fair share of each Guarantor as to any unreimbursed payment shall be determined based on an equitable apportionment of such unreimbursed payment among all Guarantors based on the relative value of their assets and any other equitable considerations deemed appropriate by the court.

(b) All rights and claims arising under this **Section 2.2** or based upon or relating to any other right of reimbursement, indemnification, contribution or subrogation that may at any time arise or exist in favor of any Guarantor as to any payment on account of the Obligations made by it or received or collected from its property shall be fully subordinated in all respects to the prior payment in full of all of the Obligations. Until payment in full of the Obligations, no Guarantor shall demand or receive any payment or distribution whatsoever (whether in cash, property or securities or otherwise) on account of any such right or claim. If any such payment or distribution is made or becomes available to any Guarantor in any bankruptcy case or receivership, insolvency or liquidation proceeding, such payment or distribution shall be delivered by the person making such payment or distribution directly to the Secured Parties, for application to the payment of the Obligations. If any such payment or distribution is received by any Guarantor, it shall be held by such Guarantor in trust, as trustee of an express trust for the benefit of the Secured Parties, and shall forthwith be transferred and delivered by such Guarantor to the Secured Parties, in the exact form received and, if necessary, duly endorsed.

(c) The obligations of the Guarantors under the Loan Documents, including their liability for the Obligations and the enforceability of the security interests granted thereby, are not contingent upon the validity, legality, enforceability, collectibility or sufficiency of any right of reimbursement, contribution or subrogation arising under this **Section 2.2**. The invalidity, insufficiency, unenforceability or uncollectibility of any such right shall not in any respect diminish, affect or impair any such obligation or any other claim, interest, right or remedy at any time held by any Secured Party against any Guarantor or its property. The Secured Parties make no representations or warranties in respect of any such right and shall have no duty to assure, protect, enforce or ensure any such right or otherwise relating to any such right.

(d) Each Guarantor reserves any and all other rights of reimbursement, contribution or subrogation at any time available to it as against any other Guarantor, but (i) the exercise and

3

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enforcement of such rights shall be subject to this **Section 2.2** and (ii) no Secured Party shall ever have any duty or liability whatsoever in respect of any such right.

**Section 2.3. Amendments, etc. with Respect to the Borrower Obligations.** Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Borrower Obligations made by any Secured Party may be rescinded by such Secured Party and any of the Borrower Obligations continued, and the Borrower Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, increased, extended, amended, modified, accelerated, compromised, waived, surrendered or released by any Secured Party, and the Loan Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Collateral Agent (or the requisite Lenders under the Loan Agreement or all Lenders, as the case may be) may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by any Secured Party for the payment of the Borrower Obligations may be sold, exchanged, waived, surrendered or released. No Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Borrower Obligations or for the guarantee contained in this **Section 2** or any property subject thereto.

**Section 2.4. Guarantee Absolute and Unconditional.** Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Borrower Obligations and notice of or proof of reliance by any Secured Party upon the guarantee contained in this **Section 2** or acceptance of the guarantee contained in this **Section 2**; the Borrower Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this **Section 2**; and all dealings between the Borrower and any of the Guarantors, on the one hand, and the Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this **Section 2**. Each Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower or any of the Guarantors with respect to the Borrower Obligations. Each Guarantor understands and agrees that the guarantee contained in this **Section 2** shall be construed as a continuing, absolute and unconditional guarantee of payment and performance without regard to (a) the validity or enforceability of the Loan Agreement or any other Loan Document, any of the Borrower Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by any Secured Party, (b) any defense, set-off or counterclaim (other than a defense of payment or performance hereunder) which may at any time be available to or be asserted by the Borrower or any other Person against any Secured Party, or (c) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower for the Borrower Obligations, or of such Guarantor under the guarantee contained in this **Section 2**, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, any Secured Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for the Borrower Obligations or any right of offset with respect thereto, and any failure by any Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or

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available as a matter of law, of any Secured Party against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

**Section 2.5. Reinstatement.** The guarantee contained in this **Section 2** shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by any Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

**Section 2.6. Payments.** Each Guarantor hereby guarantees that payments hereunder will be paid to the Secured Parties without set-off or counterclaim in Dollars in immediately available funds at the office of the respective Secured Party specified in Schedule IB of the Loan Agreement.

### SECTION 3. REPRESENTATIONS AND WARRANTIES.

To induce the Collateral Agent and the Lenders to enter into the Loan Agreement and to induce the Lenders to make their respective loans to the Borrower thereunder, each Guarantor hereby represents and warrants to the Secured Parties that:

**Section 3.1. Representations in Loan Agreement; Guarantor Representations.** The representations and warranties set forth in Section 5 of the Loan Agreement as they relate to such Guarantor or to the Loan Documents to which such Guarantor is a party, each of which is hereby incorporated herein by reference and shall apply to each Guarantor *mutatis mutandis*, are true and correct, and the Secured Parties shall be entitled to rely on each of them as if they were fully set forth herein, provided that each reference in each such representation and warranty to the Borrower's knowledge shall, for the purposes of this **Section 3.1**, be deemed to be a reference to such Guarantor's knowledge.

### SECTION 4. COVENANTS.

Each Guarantor covenants and agrees with the Secured Parties that, from and after the date of this Agreement until the Obligations shall have been paid in full:

**Section 4.1. Covenants in Loan Agreement.** Each Guarantor shall take, or shall refrain from taking, as the case may be, each action that is necessary to be taken or not taken, as the case may be, so that no Default or Event of Default is caused by the failure to take such action or to refrain from taking such action by such Guarantor or any of its Subsidiaries and each provision of the Loan Agreement that relates to such Guarantor (whether directly, indirectly, through the Borrower's obligation to cause such Guarantor to take or not take actions or otherwise) is hereby incorporated herein by reference and shall apply to such Guarantor *mutatis mutandis* to the same extent as if the Loan Agreement had been executed by such Guarantor and such provisions had been made the direct obligations of such Guarantor.

*Section 4.2. Further Documentation.* At any time and from time to time, upon the written request of the Collateral Agent, and at the sole expense of such Guarantor, such Guarantor will promptly and duly execute and deliver such further instruments and documents and take such further actions as the Collateral Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted.

## SECTION 5. THE COLLATERAL AGENT.

*Section 5.1. Authority of Collateral Agent.* Each Guarantor acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the

5

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Collateral Agent or the exercise or non-exercise by the Collateral Agent of any request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Collateral Agent and the other Secured Parties, be governed by the Loan Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Collateral Agent and the Guarantors, the Collateral Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Guarantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

*Section 5.2. Appointment of Co-Collateral Agents.* At any time or from time to time, in order to comply with any Requirement of Law, the Collateral Agent may appoint another bank or trust company or one of more other persons, either to act as co-agent or agents on behalf of the Secured Parties with such power and authority as may be necessary for the effectual operation of the provisions hereof and which may be specified in the instrument of appointment (which may, in the discretion of the Collateral Agent, include provisions for indemnification and similar protections of such co-agent or separate agent).

## SECTION 6. MISCELLANEOUS.

*Section 6.1. Amendments in Writing.* None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 13.5 of the Loan Agreement.

*Section 6.2. Notices.* All notices, requests and demands to or upon the Secured Parties or any Guarantor hereunder shall be effected in the manner provided for in Section 13.6 of the Loan Agreement; *provided* that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on **Schedule 1**.

*Section 6.3. No Waiver by Course of Conduct; Cumulative Remedies.* No Secured Party shall by any act (except by a written instrument pursuant to **Section 6.1**), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

*Section 6.4. Enforcement Expenses; Indemnification.* (a) Each Guarantor agrees to pay or reimburse each Secured Party for all its costs and expenses incurred in collecting against such Guarantor under the guarantee contained in **Section 2** or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents to which such Guarantor is a party, including, without limitation, the fees and disbursements of counsel to each Secured Party.

(b) Each Guarantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable in connection with any of the transactions contemplated by this Agreement.

6

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(c) Each Guarantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Borrower would be required to do so pursuant to Section 12 of the Loan Agreement.

(d) The agreements in this Section shall survive repayment of the Borrower Obligations and all other amounts payable under the Loan Agreement and the other Loan Documents.

(e) Each Guarantor agrees that the provisions of Section 12.3 of the Loan Agreement are hereby incorporated herein by reference, *mutatis mutandis*, and each Secured Party shall be entitled to rely on each of them as if they were fully set forth herein.

*Section 6.5. Successors and Assigns.* This Agreement shall be binding upon the successors and assigns of each Guarantor and shall inure to the benefit of the Secured Parties and their successors and assigns; *provided* that no Guarantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Secured Parties.

*Section 6.6. Set-Off.* Each Guarantor hereby irrevocably authorizes each Secured Party at any time and from time to time while an Event of Default shall have occurred and be continuing, without notice to such Guarantor or any other Guarantor, any such notice being expressly waived by each Guarantor, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Secured Party to or for the credit or the account of such Guarantor, or any part thereof in such amounts as such Secured Party may elect, against and on account of the obligations and liabilities of such Guarantor to such Secured Party hereunder and claims of every nature and description of such Secured Party against such Guarantor, in any currency, whether arising hereunder, under the Loan Agreement, any other Loan Document or otherwise, as such Secured Party may elect, whether or not any Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. Each Secured Party shall

notify such Guarantor promptly of any such set-off and the application made by such Secured Party of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Secured Party under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Secured Party may have.

*Section 6.7. Counterparts.* This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

*Section 6.8. Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

*Section 6.9. Section Headings.* The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

*Section 6.10. Integration.* This Agreement and the other Loan Documents represent the agreement of the Guarantors and the Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Secured Party

7

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relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Loan Documents.

*Section 6.11. Governing Law.* SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

*Section 6.12. Submission to Jurisdiction; Waivers.* Each Guarantor hereby irrevocably and unconditionally: (a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Guarantor at its address referred to in **Section 6.2** or at such other address of which the Secured Parties shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

*Section 6.13. Acknowledgments.* Each Guarantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) no Secured Party has any fiduciary relationship with or duty to any Guarantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Guarantors, on the one hand, and the Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Guarantors and the Secured Parties.

*Section 6.14. Additional Guarantors.* Each Subsidiary of Valvino that is required to become a party to this Agreement pursuant to Section 6.11 of the Loan Agreement shall become a Guarantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of an Assumption Agreement in the form of **Annex 1** hereto.

*Section 6.15. Releases.* (a) At such time as the Guarantor Obligations shall have been paid in full, this Agreement and all obligations (other than those expressly stated to survive such termination) of each Guarantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party.

(b) At the request and sole expense of the Borrower, a Guarantor shall be released from its obligations hereunder in the event that all the Capital Stock of such Guarantor shall be Disposed of in

8

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a transaction permitted by the Loan Agreement; *provided*, that the Borrower shall have delivered to the Collateral Agent and the Lenders, at least ten Business Days prior to the date of the proposed release, a written request for release identifying the relevant Guarantor and the terms of the Disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by each Borrower stating that such transaction is in compliance with the Loan Agreement and the other Loan Documents and that the Proceeds of such Disposition will be applied in accordance therewith.

Section 6.16. *Waiver of Jury Trial.* (a) EACH GUARANTOR AND THE SECURED PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

Section 6.17. *Regulatory Matters.* Each Secured Party acknowledges and agrees that the approval by the applicable Nevada Gaming Authorities of this Agreement shall not act or be construed as the approval, either express or implied, for such Secured Party to take any actions or steps provided for in this Agreement for which prior approval of the Gaming Board is required, without first obtaining such prior and separate approval of the applicable Nevada Gaming Authorities to the extent then required applicable Nevada Gaming Laws.

IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee and Collateral Agreement to be duly executed and delivered as of the date first above written.

VALVINO LAMORE, LLC,  
a Nevada limited liability company,

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WYNN LAS VEGAS CAPITAL CORP.,  
a Nevada corporation,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PALO, LLC,  
a Delaware limited liability company,

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

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

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_  
\_\_\_\_\_

11

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

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

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

12

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WORLD TRAVEL, LLC,  
a Nevada limited liability company,

WYNN LAS VEGAS, LLC,  
a Nevada limited liability company, as the Borrower

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

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

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

By: Wynn Resorts, Limited,

a Nevada corporation, its sole member

By:

Name:

Title:

**NOTICE ADDRESSES OF GUARANTORS**

SCHEDULE 1

ASSUMPTION AGREEMENT, dated as of \_\_\_\_\_, 200\_\_\_\_, made by \_\_\_\_\_, a \_\_\_\_\_ (the "Additional Guarantor"), in favor of Wells Fargo Bank Nevada, National Association, not in its individual capacity, but solely as collateral agent (in such capacity, the "Collateral Agent") for (i) the banks and other financial institutions and entities (the "Lenders") parties to the Loan Agreement referred to below, and (ii) the other Secured Parties (as defined in the FF&E Guaranty (as hereinafter defined)). All capitalized terms not defined herein shall have the meaning ascribed to them in such Loan Agreement.

**RECITALS:**

WHEREAS, Wynn Las Vegas, LLC (the "Borrower"), the Lenders and the Collateral Agent have entered into a Loan Agreement, dated as of September \_\_\_\_\_, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "Loan Agreement");

WHEREAS, in connection with the Loan Agreement, the Affiliates (other than the Additional Guarantor) have entered into the Guaranty Agreement, dated as of October \_\_\_\_\_, 2002 (as amended, supplemented or otherwise modified from time to time, the "FF&E Guaranty") in favor of the Collateral Agent for the benefit of the Secured Parties;

WHEREAS, the Loan Agreement requires the Additional Guarantor to become a party to the FF&E Guaranty; and

WHEREAS, the Additional Guarantor has agreed to execute and deliver this Assumption Agreement in order to become a party to the FF&E Guaranty;

NOW, THEREFORE, It Is Agreed:

Section 1. *FF&E Guaranty.* By executing and delivering this Assumption Agreement, the Additional Guarantor, as provided in Section 6.14 of the FF&E Guaranty hereby becomes a party to the FF&E Guaranty as a Guarantor thereunder with the same force and effect as if originally named therein as a Guarantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Guarantor thereunder. The information set forth in Annex 1-A hereto is hereby added to the information set forth in Schedules \_\_\_\_\_ to the FF&E Guaranty. The Additional Guarantor hereby represents and warrants that each of the representations and warranties contained in Section 3 of the FF&E Guaranty is true and correct on and as the date hereof (after giving effect to this Assumption Agreement) as if made on and as of such date.

Section 2. *GOVERNING LAW.* SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GUARANTOR]

By:

Name:

Title:

ANNEX 1 TO  
FF&E Guaranty

**Exhibit J**

**BORROWER SECURITY AGREEMENT**

Dated as of October \_\_\_\_\_, 2002

Between

WYNN LAS VEGAS, LLC,

WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION,  
as Collateral Agent for the Lenders

**TABLE OF CONTENTS**

Section	Heading	Page
Parties		1
Preamble		1
<b>SECTION 1.</b>	<b>DEFINITIONS</b>	<b>1</b>
Section 1.1.	Loan Agreement Definitions	1
Section 1.2.	UCC Definitions	1
<b>SECTION 2.</b>	<b>SECURITY INTEREST</b>	<b>1</b>
Section 2.1.	Grant of Security	1
Section 2.2.	Continuing Security Interest	2
Section 2.3.	Borrower Remains Liable	2
Section 2.4.	Equipment Collateral Release	2
<b>SECTION 3.</b>	<b>WARRANTIES</b>	<b>3</b>
<b>SECTION 4.</b>	<b>COVENANTS WITH RESPECT TO THE BORROWER COLLATERAL</b>	<b>3</b>
Section 4.1.	Possession and Use of Borrower Collateral; Compliance with Laws	3
Section 4.2.	Leases and Assignments	3
Section 4.3.	Maintenance	4
Section 4.4.	Alterations, Modifications, etc	5
Section 4.5.	Identifying Numbers and Registration; Legend; Changes; Inspection	6
Section 4.6.	Liens	6
Section 4.7.	Replacements and Substitutions	6
<b>SECTION 5.</b>	<b>CERTIFICATE, SCHEDULES AND REPORTS</b>	<b>7</b>
<b>SECTION 6.</b>	<b>ADDITIONAL AGREEMENTS OF BORROWER</b>	<b>7</b>
<b>SECTION 7.</b>	<b>[RESERVED]</b>	<b>8</b>
<b>SECTION 8.</b>	<b>DEFAULTS AND REMEDIES</b>	<b>8</b>
Section 8.1.	Defaults	8
Section 8.2.	Sale of Borrower Collateral	10
Section 8.3.	Application of Sale Proceeds	10
Section 8.4.	Power of Attorney	10
Section 8.5.	Remedies Cumulative; Consents	10
Section 8.6.	Allocation of Borrower Collateral	11
Section 8.7.	Compensation and Indemnity	11
<b>SECTION 9.</b>	<b>GENERAL PROVISIONS</b>	<b>11</b>
Section 9.1.	Document	11
Section 9.2.	Amendments; Etc.	11
Section 9.3.	Notices	11
Section 9.4.	Section Captions	12
Section 9.5.	Severability; No Waiver	12
Section 9.6.	Governing Law	12
Section 9.7.	Counterparts	12
Signature		13
EXHIBIT A — Form of the Borrower Security Agreement Supplement		
SCHEDULE A — Description of the Borrower Collateral		

## BORROWER SECURITY AGREEMENT

THIS BORROWER SECURITY AGREEMENT (this "*Security Agreement*") made as of October , 2002, by WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "*Borrower*"), in favor of WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION, a national banking association, as Collateral Agent (being referred to herein, together with any successor(s) thereto in such capacity, as the "*Collateral Agent*") for the Lenders under the Loan Agreement referenced below.

### WITNESSETH:

WHEREAS, pursuant to the terms of the Loan Agreement dated as of October , 2002 (as amended from time to time, the "*Loan Agreement*"), among the Borrower, the Collateral Agent and the several lenders listed in Schedule IA attached thereto (together with each successive and additional lender thereunder, the "*Lenders*"), the Borrower has agreed to borrow, and the Initial Lenders have agreed to lend, subject to certain conditions, the funds necessary to acquire the Borrower Collateral (as hereinafter defined);

WHEREAS, as a condition precedent to making their loans, the Lenders have required that the Borrower and the Collateral Agent enter into this Security Agreement; and

WHEREAS, therefore, the Borrower wishes to execute, deliver and perform, and has duly authorized the execution, delivery and performance of, this Security Agreement.

NOW, THEREFORE, the Borrower and the Collateral Agent hereby agree as follows:

### SECTION 1. DEFINITIONS.

*Section 1.1. Loan Agreement Definitions.* Unless otherwise defined herein or the context otherwise requires, terms used in this Security Agreement, including its preamble and recitals, have the meanings provided in Appendix I to the Loan Agreement.

*Section 1.2. UCC Definitions.* Unless otherwise defined herein (including those terms defined in the Loan Agreement) or the context otherwise requires, terms for which meanings are provided in the UCC in effect in the State of New York are used in this Security Agreement, including its preamble and recitals, with such meanings, subject to those mandatory provisions of Nevada Law governing perfection, the effect of perfection or non-perfection, and the priority of a security interest in the Borrower Collateral.

### SECTION 2. SECURITY INTEREST.

*Section 2.1. Grant of Security.* As security for the payment and performance of all Obligations of the Borrower under the Loan Agreement, the Notes and any other Loan Document or agreement or document related to any Loan Document (hereinafter, collectively, the "*Liabilities*"), the Borrower hereby transfers, assigns and pledges to the Collateral Agent, for the ratable benefit of the Lenders, and grants to the Collateral Agent for the ratable benefit of the Lenders, a continuing first and prior security interest (subject to the FF&E Intercreditor Agreement) in and to all of the Borrower's right, title and interest in (i) the Items of Equipment listed on **Schedule A** hereto and each Schedule A to each Borrower Security Agreement Supplement executed pursuant to Sections 4.2 and 6.17(b) of the Loan Agreement, whether now or hereafter existing or acquired by the Borrower or in which the Borrower now has or at any time in the future may acquire any right, title or interest, (ii) the Equipment Contracts, (iii) contracts and warranties necessary to operate and maintain the Items of Equipment or otherwise specifically related to the Items of Equipment, (iv) any rights to Liquidated Damages, rebates, offset or other warranty payments, or assignment under a purchase order, invoice or purchase agreement with any manufacturer of or contractor for any portion of the foregoing, including any general contractor, (v) all insurance policies relating to the foregoing required to be maintained pursuant to any Loan Document, (vi) all books, records, writings, databases, information and other property relating to, used or useful in connection with, evidencing, embodying, incorporating or

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referring to, any of the foregoing and (vii) all proceeds from the sale of and from any or all of the foregoing, and to the extent not otherwise included, all payments under insurance (whether or not the Borrower is the loss payee hereof) or any indemnity, warranty or guarantee payable by reason of loss or damage to or otherwise with respect to any of the foregoing (collectively, the "*Borrower Collateral*"). Notwithstanding anything to the contrary in this Security Agreement, the term ("*Borrower Collateral*") shall not include any items in which a security interest may not be granted under Gaming Laws, or other applicable law, or under the terms of any license, permit or authorization issued by a Nevada Gaming Authority or other Governmental Agency, or which would require a finding of a suitability or other similar approval or procedure by a Nevada Gaming Authority or other Governmental Agency prior to being given as collateral security.

*Section 2.2. Continuing Security Interest.* Subject to **Section 2.4**, this Security Agreement shall create a continuing security interest in the Borrower Collateral and shall (a) remain in full force and effect until indefeasible payment in full of all Liabilities, (b) be binding upon the Borrower, its successors, transferees and assigns, and (c) inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent and each Lender. Without limiting the generality of the foregoing **clause (c)**, any Lender may, subject to Section 10 of the Loan Agreement, assign or otherwise transfer (in whole or in part) any Note or Loan held by it to any other Person, and such other Person shall thereupon become vested with all the rights and benefits in respect thereof granted to such Lenders under any Loan Document (including this Security Agreement) or otherwise, subject, however, to any contrary provisions in the Loan Agreement.

Upon the payment in full of all Liabilities, the security interest granted herein shall terminate and all rights to the Borrower Collateral granted thereby shall revert to the Borrower, without the delivery of any instrument or performance of any act by any party. Upon any such termination, the Collateral Agent will, at the request and at the sole expense of the Borrower, execute and deliver to the Borrower such documents as the Borrower shall reasonably request to evidence such termination.

*Section 2.3. Borrower Remains Liable.* Anything herein to the contrary notwithstanding:



(a) The Borrower shall remain liable under the contracts and agreements included in the Borrower Collateral to the extent set forth therein, and shall perform all of their duties and obligations under such contracts and agreements to the same extent as if this Security Agreement had not been executed,

(b) the exercise by the Collateral Agent of any of its rights hereunder shall not release the Borrower from any of its duties or obligations under any such contracts or agreements included in the Borrower Collateral, and

(c) neither the Collateral Agent nor any Lender shall have any obligation or liability under any such contracts or agreements included in the Borrower Collateral by reason of this Security Agreement, nor shall the Collateral Agent or any Lender be obligated to perform any of the obligations or duties of the Borrower thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

*Section 2.4. Equipment Collateral Release.* (a) Upon payment of the Bank Prepayment Option pursuant to Section 3.1(b) of the Loan Agreement, the security interest granted herein shall terminate. Upon any such termination, the Collateral Agent will, at the direction of the Required Lenders and at the sole expense of the Borrower, execute and deliver to the Eligible Payor (as defined in the FF&E Intercreditor Agreement) such documents as the Eligible Payor (as defined in the FF&E Intercreditor Agreement) shall reasonably request to evidence such termination.

(b) Pursuant to the terms of the Disbursement Agreement, following the delivery of an Appraisal pursuant to Section 6.17 of the Loan Agreement, the security interests granted herein shall terminate with respect to those Items of Equipment which are to be released in connection therewith. Upon any

2

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such termination, the Collateral Agent will, at the direction of the Required Lenders and the sole expense of the Borrower, execute and deliver to the Borrower such documents as the Borrower shall reasonably request to evidence such termination.

### SECTION 3. WARRANTIES.

The Borrower hereby represents and warrants to the Collateral Agent and each Lender that:

(a) the Borrower is and will be the lawful owner of all of the Borrower Collateral, free of all liens and claims whatsoever, other than Permitted Liens, with full power and authority to execute this Security Agreement and perform the obligations of the Borrower hereunder and to subject the Borrower Collateral to the security interest hereunder;

(b) this Security Agreement creates a valid first priority security interest in the Borrower Collateral securing payment and performance of the Liabilities and that all filings and other action necessary to perfect such security interest have been taken; and

(c) all information with respect to the Borrower Collateral and the Borrower set forth in any schedule, certificate or other writing at any time heretofore or hereafter furnished by the Borrower to the Collateral Agent or any Lender and all other written information heretofore or hereafter furnished by the Borrower to the Collateral Agent or any Lender, is and will be true and correct in all material respects as of the date furnished, unless it refers by its terms to a specific date, then as of that date.

### SECTION 4. COVENANTS WITH RESPECT TO THE BORROWER COLLATERAL.

The Borrower covenants and agrees as follows:

*Section 4.1. Possession and Use of Borrower Collateral; Compliance with Laws.* The Borrower agrees that the Borrower Collateral will be used and operated in compliance with all applicable Requirements of Law. The Borrower shall not use any Item of Equipment or any part thereof for any purpose or in any manner that would materially adversely affect the Fair Market Value, the utility of the Item of Equipment or the remaining useful life of such Item of Equipment, ordinary wear and tear and depreciation excepted. The Borrower shall procure and maintain in effect all material licenses, registrations, certificates, permits, approvals and consents required by any Requirement of Law or by any Governmental Authority necessary for the ownership, delivery, installation, maintenance, repair, use and operation of the Borrower Collateral. The Borrower shall not (a) use, operate, or maintain the Borrower Collateral or any portion thereof in violation of **Section 4.3** or any Insurance Requirement; (b) lease, assign or otherwise permit the use of any of the Borrower Collateral except as may be permitted by **Section 4.2**; or (c) except as set forth in **Section 4.2** or the Loan Agreement, sell, assign or transfer any of its rights or in any of the Borrower Collateral, or directly or indirectly create, incur or suffer to exist any Lien on any of its rights hereunder or in any of the Borrower Collateral, except for Permitted Liens or (d) except in connection with any maintenance or repair thereof, permit any Item of Gaming Equipment or any Part relating to such Item of Gaming Equipment to be located at any location other than the Project.

*Section 4.2. Leases and Assignments.* Except for leases permitted by this **Section 4.2**, the Borrower may not assign, lease, mortgage, pledge or otherwise transfer to any Person, at any time, in whole or in part, any of its rights, title or interest in, or obligations to or under this Security Agreement, any other Loan Document or to any portion of the Borrower Collateral, other than Liens permitted by Section 7.3 of the Loan Agreement. Each lease entered into in accordance with this **Section 4.2** shall be referred to as a "Lease." The Borrower may, so long as no Security Agreement Event of Default exists, lease all or any portion of the Borrower Collateral to one or more of its Affiliates, so long as in connection with any Lease of a portion of the Borrower Collateral, such

3

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portion shall include Items of Equipment with an aggregate Purchase Price of at least the Minimum Lease Amount. With respect to any Lease permitted under this **Section 4.2**, the Borrower shall not lease any portion of the Borrower Collateral to any Person who shall then be engaged in any proceedings for relief under any bankruptcy or insolvency law or laws relating to the relief of debtors.

No Lease hereunder will (a) discharge or diminish any of the Borrower's obligations to Collateral Agent or any Lender hereunder or the Borrower's or any Guarantor's obligations to any other Person under any other Loan Document, and the Borrower shall remain directly and primarily liable under this Security Agreement and any other Loan Document to which it is a party with respect to all of the Borrower Collateral or (b) extend beyond the last day of the Loan Term. Each Lease permitted hereby shall be made and shall expressly provide that it is subject and subordinate to this Security Agreement and the rights of Collateral

Agent thereunder, and shall expressly provide for the surrender of the Borrower Collateral leased by the applicable lessee at the election of Collateral Agent after a Security Agreement Event of Default.

The Borrower shall give the Collateral Agent prompt, and in any event within 5 Business Days thereof, written notice of any Lease permitted under this **Section 4.2**, and shall promptly provide the Collateral Agent with a fully executed copy of each document evidencing such Lease, together with a Certificate of a Responsible Officer of the Borrower that such Lease complies with this **Section 4.2**.

*Section 4.3. Maintenance.* At all times, the Borrower shall, at its own cost and expense:

(a) keep, repair, maintain and preserve the Borrower Collateral in good order and operating condition and repair as existing on the Advance Date to which such Borrower Collateral relates, ordinary wear and tear excepted, and in conformance with (i) prudent industry maintenance and repair standards, (ii) such maintenance and repair standards used by the Borrower or any of its Affiliates for similar property owned or leased by it, and (iii) all material Requirements of Law and Insurance Requirements, and in the event that any Requirement of Law requires any alteration, replacement or addition of or to any Part of the Borrower Collateral, the Borrower will conform therewith at its own expense;

(b) (i) conduct all scheduled maintenance of the Borrower Collateral in conformity with the Borrower's and its Affiliates' past practices, and prudent industry maintenance and repair standards, (including, without limitation, the Borrower's and its Affiliates' maintenance program for such equipment) and (ii) maintain such Borrower Collateral so as to preserve its remaining economic useful life, utility and residual value; and

(c) cause the Borrower Collateral to continue to have at all times the capacity and functional ability to perform, on a continuing basis (subject to normal interruption in the ordinary course of business for maintenance, inspection, service, repair and testing) and in commercial operation, the functions for which it was specifically designed, other than any Casualty pursuant to which the Borrower has paid the Casualty Amount or is rebuilding the affected portion of the Borrower Collateral pursuant to Section 8.1 of the Loan Agreement.

The Borrower shall prepare and deliver to Collateral Agent and the Lenders within 30 Business Days prior to the required date of filing (or, to the extent permissible, file on behalf of Collateral Agent and the Lenders) any and all material reports to be filed by Collateral Agent or any Lender with any Governmental Authority by reason of the security interest of the Collateral Agent or any Lender in the Borrower Collateral. Each Lender agrees to inform promptly the Borrower of any request for such reports received by it. The Borrower shall maintain or cause to be maintained, all records, logs and other materials required by any Governmental Authority having jurisdiction over the Borrower Collateral. Subject to the provisions of Section 13.17 of the Loan Agreement and applicable Gaming Laws, the Borrower shall permit Collateral Agent and each Lender to inspect, during normal business hours and upon notice within 5 Business Days, the Borrower Collateral and any and all records, logs

4

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and other materials maintained by the Borrower or any of its Affiliates in respect of the Borrower Collateral; *provided* that from and after the occurrence of a Security Agreement Event of Default, all costs and expenses of Collateral Agent or any Lender in connection with such inspection shall be borne by the Borrower. The Borrower hereby waives any right now or hereafter conferred by law to make repairs on the Borrower Collateral at the expense of Collateral Agent or any Lender.

*Section 4.4. Alterations, Modifications, etc.* In case the Borrower Collateral, or any item of equipment, part or appliance therein (each, a "Part") is required to be altered, added to, replaced or modified in order to comply with any Requirements of Law (a "Required Alteration") pursuant to **Section 4.1** or **4.3** hereof, the Borrower agrees to make such Required Alteration at its own expense. The Borrower shall have the right to make any modification, alteration or improvement to the Borrower Collateral (herein referred to as a "Permitted Modification"), or to remove any Part which has become worn out, broken or obsolete, *provided* in each case that the Borrower continues to be in compliance with **Sections 4.1** and **4.3** hereof and that such action will not, in the Borrower's reasonable judgment, materially decrease the economic value of the Borrower Collateral or impair its originally intended use or function or decrease its economic useful life and in any event, will not decrease the Fair Market Value of the Borrower Collateral throughout the Loan Term. In the event any Permitted Modification (i) is readily removable without impairing the value or use which the Borrower Collateral would have had at such time had such Part not been affixed or placed to or on such Borrower Collateral (a "Removable Part"), (ii) is not a Required Alteration and (iii) is not a Part which replaces any Part originally incorporated or installed in or attached to such Borrower Collateral on the date on which such Borrower Collateral became subject to this Security Agreement, or any Part in replacement of or substitution for any such original Part (each an "Original Part"), any such Permitted Modification, if no Security Agreement Event of Default is continuing, shall be and remain the property of the Borrower that is not subject to the Lien of this Security Agreement and may be removed by the Borrower (a "Borrower Part"). To the extent such Permitted Modification is not a Removable Part, or is a Required Alteration or an Original Part, and, to the extent a Removable Part is not the property of the Borrower that is not subject to the Lien of this Security Agreement because of the continuance of a Security Agreement Event of Default, the same shall immediately and automatically be and become subject to the Lien of this Security Agreement. Any Required Alterations, and any Parts installed or replacements made by the Borrower upon any Borrower Collateral pursuant to its obligation to maintain and keep the Borrower Collateral in good order, operating condition and repair under **Section 4.3** (collectively, "Replacement Parts") and all other Parts which become the property of the Borrower shall be considered, in each case, accessions to such Borrower Collateral and a security interest therein shall be immediately and automatically vested in Collateral Agent for the benefit of the Lenders. All Replacement Parts shall be free and clear of all Liens (other than Permitted Liens) and shall be in as good an operating condition as, and shall have a value and utility at least equal to, the Parts replaced, assuming such replaced Parts and the Borrower Collateral were immediately prior to such replacement or the event or events necessitating such replacement in the condition and repair required to be maintained by the terms hereof. Any Part at any time removed from any of the Borrower Collateral shall remain subject to the interests of Collateral Agent and the Lenders under the Loan Documents, no matter where located, until such time as such Part shall be replaced by a Part which has been incorporated or installed in or attached to such Borrower Collateral and which meets the requirements for a Replacement Part specified above. No later than 30 days after the end of each fiscal quarter of the Borrower, the Borrower shall deliver to Collateral Agent for the benefit of the Lenders, a Borrower Security Agreement Supplement evidencing the grant by the Borrower of a security interest in such Replacement Part to Collateral Agent for the benefit of the Lenders, for each Replacement Part not previously evidenced by a Borrower Security Agreement Supplement and such other documents in respect of such Part or Parts and to the extent, as Collateral Agent may reasonably request in order to confirm that a security interest to such Part or Parts has passed to Collateral Agent for the benefit of the Lenders, as hereinabove provided. Any such Replacement Part, regardless of

5

whether evidenced by a Borrower Security Agreement Supplement, shall become subject to this Security Agreement and shall be deemed part of the Borrower Collateral, for all purposes thereof to the same extent as the Parts originally incorporated or installed in the Borrower Collateral, and a security interest to such Replacement Part shall thereupon vest in the Collateral Agent. All replacements pursuant to this **Section 4.4** shall be purchased by the Borrower with its own funds. There shall be no obligation on the part of any Lender to pay for or otherwise finance any such replacement.

**Section 4.5. Identifying Numbers and Registration; Legend; Changes; Inspection.** (a) The Borrower, at its own expense, will cause each Item of Gaming Equipment to be kept numbered with the identification number as shall be set forth on Schedule A to the applicable Security Agreement Supplement.

(b) The Borrower will not change the identification number of any Item of Equipment unless and until (i) a statement of new number or numbers to be substituted therefor shall have been delivered to the Collateral Agent and filed, recorded and deposited by the Borrower in all public offices where the Security Agreement shall have been filed, recorded and deposited or any financing statement has been filed in respect thereof and (ii) the Borrower shall have furnished the Collateral Agent an opinion of counsel in form and substance reasonably satisfactory to the Collateral Agent to the effect that such statement has been so filed, recorded and deposited and that no other filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to perfect the rights and interests of the Collateral Agent in such Items of Equipment. The Equipment may be lettered with the names or initials or other insignia used by the Borrower or any lessee. Upon the request of Collateral Agent and subject to applicable Gaming Laws, the Borrower shall make the Items of Equipment available to Collateral Agent, its agents, representatives or assignees for inspection at their then location and shall also make the Borrower's books, manuals, logs, records and other information pertaining to the Items of Equipment available for inspection and permit such parties to make copies thereof, in each case, upon reasonable notice, at any time during regular business hours and as often as requested (but not so as to materially interfere with the business of the Borrower), *provided* that all costs and expenses of Collateral Agent in connection with such inspection shall be borne by the inspecting party unless a Security Agreement Event of Default has occurred and is continuing at the time of such inspection, in which case all such costs and expenses shall be borne by the Borrower.

**Section 4.6. Liens.** The Borrower will not directly or indirectly create, incur, assume or suffer to exist any Lien (other than Permitted Liens) on or with respect to the Borrower Collateral or any Part thereof. The Borrower, at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep the Borrower Collateral free and clear of, and to duly discharge or eliminate or bond in a manner satisfactory to Collateral Agent, any such Lien not excepted above if the same shall arise at any time. The Borrower will notify Collateral Agent and each Lender in writing within 5 Business Days upon becoming aware of any Tax or other Lien (other than any Lien excepted above) that shall attach to the Borrower Collateral, and of the full particulars thereof. Without limiting the foregoing, the Borrower shall not assign or pledge any of its rights under any Lease to any Person other than Collateral Agent for the benefit of the Lenders.

**Section 4.7. Replacements and Substitutions.** (a) In addition to the rights of the Borrower under **Section 4.4**, the Borrower shall have the option at any time to replace any Item or Items of Equipment (a "Replaced Item" or "Replaced Items") with a substitute Item or Items of Equipment (a "Substitute Item" or "Substitute Items"), subject to the following conditions:

- (i) no Security Agreement Event of Default shall have occurred and be continuing;
- (ii) with respect to Gaming Equipment, the Substitute Item or Substitute Items shall be located at the Project;

6

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(iii) the Substitute Item or Substitute Items shall be the same general type, year of construction (or a later year of construction), useful life, function, utility, state of repair and operating condition as the portion of the Replaced Item or Replaced Items, must have a Fair Market Value of not less than the Fair Market Value of the Replaced Item or Replaced Items and be free and clear of any Liens other than Permitted Liens assets, as described in the Appraisal delivered pursuant to **Section 6.17** of the Loan Agreement; and

(iv) prior to the date of any such substitution, the Borrower shall replace such Replaced Item or Replaced Items by complying with the terms of Section 8.1 of the Loan Agreement to the same extent as if a Casualty or a series of Casualties had occurred with respect to such Replaced Item or Replaced Items, and the Collateral Agent shall release its Lien on the Replaced Item or Replaced Items in the same manner as provided in said Section 8.1 of the Loan Agreement.

(b) All replacements pursuant to **Section 4.7(a)** shall be purchased by the Borrower with its own funds. There shall be no obligation on the part of the Collateral Agent or any Lender to pay for or otherwise finance any such replacement. No termination of this Security Agreement with respect to any Item of Equipment as contemplated by this **Section 4.7** shall result in any reduction of the Borrower's obligation to pay the Loan Balance or any Interest thereon.

## SECTION 5. CERTIFICATE, SCHEDULES AND REPORTS.

The Borrower will from time to time, as the Collateral Agent or any Lender may reasonably request, deliver to the Collateral Agent and the Lenders such schedules, certificates and reports respecting all or any of the Borrower Collateral at the time subject to the security interest hereunder, and the items or amounts received by the Borrower in full or partial payment or otherwise as proceeds of any of the Borrower Collateral, all to such extent as the Collateral Agent may request. Any such schedule, certificate or report shall be executed by a duly authorized officer of Borrower and shall be in such form and detail as the Collateral Agent, at the direction of the Required Lenders, may reasonably specify.

## SECTION 6. ADDITIONAL AGREEMENTS OF BORROWER.

The Borrower agrees, that, until all of the Liabilities are paid in full, the Borrower will perform and fulfill each of the following agreements:

(a) The Borrower (1) hereby authorizes the filing of such financing statements, continuation statements or amendments thereof or supplements thereto and other documents (and will pay the cost of filing or recording the same in all public offices deemed necessary by the Lenders) and the doing of such other acts and things, all as any Lender or the Collateral Agent may from time to time request, to establish and maintain a valid first security interest in the Borrower Collateral to secure the payment of the Liabilities, including, without limitation, deposit with the Collateral Agent of any certificate of title issuable with respect to any of the Borrower Collateral and notation thereon of the security interest hereunder (and any carbon, photographic or other reproduction of this Security Agreement or of any such financing statement shall be sufficient for filing as a financing statement) and (2) will, at the time of each Advance and contemporaneously with the Responsible Officer's certificate required pursuant to Section 6.2 of the Loan Agreement prepared with

respect to the annual financial statements referenced in Section 6.1(a) of the Loan Agreement provide to the Lenders and the Collateral Agent an opinion of counsel (which may be the opinion of the general counsel/chief legal officer of the Borrower) stating that, in the opinion of such counsel, this Security Agreement and the UCC filings and other agreements or documents executed in connection with this Security Agreement have been, and remain, properly recorded or filed for record so as to make effective of record the lien intended to be created hereby and thereby.

7

(b) The Borrower will keep or cause to be kept all of the Gaming Equipment at the Project unless the Collateral Agent, upon being directed to do so by the Required Lenders, shall otherwise consent in writing and all necessary licenses and permits shall have been obtained.

(c) The Borrower will not change its name, state of organization, legal form or do business under any other name without at least 30 days' prior written notice thereof to the Lenders and the Collateral Agent and will not change the location of its principal executive offices or places of business, except for a change to another location within the continental limits of the United States of America and within a jurisdiction in which the UCC is in effect, of which the Lenders and the Collateral Agent shall have been given at least 30 days' prior written notice.

(d) The Borrower will reimburse the Collateral Agent and Lenders upon demand for all reasonable costs and expenses, including reasonable attorney's fees and legal expenses (including allocated costs of internal counsel), incurred by the Collateral Agent in seeking to collect or enforce any right under this Security Agreement or the Borrower Collateral and, in case of a Security Agreement Event of Default, in seeking to collect payments of principal, premium, if any, and interest on any Note and all other Liabilities and to enforce rights hereunder, including expenses of any repairs to any realty or other property to which any of the Borrower Collateral may be affixed or be a part.

(e) The Borrower shall cause each insurance policy required to be maintained pursuant to the Loan Agreement to be in full force and effect.

SECTION 7. [RESERVED].

SECTION 8. DEFAULTS AND REMEDIES.

*Section 8.1. Defaults.* (a) The occurrence, or the existence of any Event of Default under the Loan Agreement, shall constitute an "Security Agreement Event of Default" hereunder.

(b) With respect to all of the Borrower Collateral, upon the occurrence and during the continuation of any Security Agreement Event of Default hereunder, the Collateral Agent shall, subject to the FF&E Intercreditor Agreement, have, in addition to all other rights provided herein or by law, the rights and remedies of a secured party under the UCC (regardless of whether the UCC is the law of the jurisdiction where the rights or remedies are asserted and regardless of whether the UCC applies to the affected Borrower Collateral), and further the Collateral Agent may, without demand and without advertisement, notice, hearing or process of law, all of which the Borrower hereby waives, at any time or times, sell and deliver any or all Borrower Collateral held by or for it at public or private sale, for cash, upon credit or otherwise, at such prices and upon such terms as the Collateral Agent deems advisable, in its sole discretion, *provided* that said disposition complies with any and all Requirements of Law. In addition to all other sums due the Collateral Agent or any Lender hereunder, the Borrower shall pay the Collateral Agent and any Lender all costs and expenses incurred by the Collateral Agent or such Lender, including a reasonable allowance for attorneys' fees and court costs, in obtaining, liquidating or enforcing payment of the Borrower Collateral or Liabilities or in the prosecution or defense of any action or proceeding by or against the Collateral Agent such Lender or the Borrower concerning any matter arising out of or connected with this Agreement or the Borrower Collateral or Liabilities, including without limitation any of the foregoing arising in, arising under or related to a case under the United States Bankruptcy Code (or any successor statute). Any requirement of reasonable notice shall be met if such notice is personally served on or mailed, postage prepaid, to the Borrower in accordance with **Section 9.3** hereof at least 10 days before the time of sale or other event giving rise to the requirement of such notice; however, no notification need be given to the Borrower if the Borrower has signed, after an Security Agreement Event of Default hereunder has

8

occurred, a statement renouncing any right to notification of sale or other intended disposition. The Collateral Agent shall not be obligated to make any sale or other disposition of the Borrower Collateral regardless of notice having been given. The Collateral Agent or any Lender may be the purchaser at any such sale. To the extent permitted by applicable law, Borrower hereby waives all of its rights of redemption from any such sale. Subject to the provisions of applicable law, the Collateral Agent may postpone or cause the postponement of the sale of all or any portion of the Collateral by announcement at the time and place of such sale, and such sale may, without further notice, be made at the time and place to which the sale was postponed or the Collateral Agent may further postpone such sale by announcement made at such time and place.

(c) With respect to all of the Borrower Collateral, without in any way limiting the foregoing, the Collateral Agent shall, upon the occurrence and during the continuation of any Security Agreement Event of Default hereunder, have the right, in addition to all other rights provided herein or by law, subject to applicable Gaming Laws, to take physical possession of any and all of the Borrower Collateral and anything found therein, the right for that purpose to enter without legal process any premises where such Borrower Collateral may be found (provided such entry be done lawfully), and the right to maintain such possession on the Borrower's premises (the Borrower hereby agreeing to lease such premises without cost or expense to the Collateral Agent or its designee if the Collateral Agent so requests) or to remove the Borrower Collateral or any part thereof to such other places as the Collateral Agent may desire. Upon the occurrence and during the continuation of any Security Agreement Event of Default hereunder, the Borrower shall, upon the Collateral Agent's demand, assemble the Borrower Collateral and make it available to the Collateral Agent at a place reasonably designated by the Collateral Agent. If the Collateral Agent exercises its right to take possession of the Borrower Collateral, the Borrower shall also at its expense perform any and all other steps reasonably requested by the Collateral Agent to preserve and protect the security interest hereby granted in such Borrower Collateral, such as placing and maintaining signs indicating the security interest of the Collateral Agent, appointing overseers for such Borrower Collateral and maintaining inventory records.

(d) If Collateral Agent elects to require the Borrower to assemble and deliver each Item of Equipment, the Borrower shall, at its own expense, forthwith deliver (to the extent permitted under any Requirements of Law) exclusive possession of such Items of Equipment to Collateral Agent, at a location or locations reasonably designated by Collateral Agent (subject to the approval of the Nevada State Gaming Control Board if such location is outside the State of Nevada) in the 48 contiguous United States, (*provided, however*, that the Borrower shall not be required to deliver Items of Equipment consisting of gaming devices to a location in a jurisdiction where possession of such Items of Equipment is unlawful) together with a copy of an inventory list of such Items of Equipment then subject to the Borrower Security Agreement, all then current plans, specifications and operating, maintenance and repair manuals in the possession of the

Borrower and its Affiliates and relating to such Items of Equipment that have been received or prepared by the Borrower, appropriately protected and in the condition required by **Section 4** (and in any event in condition to be placed in immediate revenue service) and free and clear of all Liens other than Permitted Liens. In addition, the Borrower shall, for 90 days after delivery of such Items of Equipment, cause to be (i) maintained such Items of Equipment in the condition required by **Section 4** and free and clear of all Liens other than Permitted Liens, (ii) stored such Items of Equipment without cost to Collateral Agent or any Lender, and (iii) kept all of such Items of Equipment insured in accordance with Section 8.2 of the Loan Agreement. This paragraph shall survive termination of this Security Agreement.

(e) Failure by the Collateral Agent to exercise any right, remedy or option under this Agreement or any other agreement between the Borrower and the Collateral Agent or provided by law, or delay by the Collateral Agent in exercising the same, shall not operate as a waiver; no waiver hereunder shall be effective unless it is in writing, signed by the party against whom such waiver is sought to be enforced and then only to the extent specifically stated. Neither the Collateral Agent nor any party

acting as attorney for the Collateral Agent shall be liable hereunder for any acts or omissions or for any error of judgment or mistake of fact or law other than their gross negligence or willful misconduct. The rights and remedies of the Collateral Agent and the Lenders under this Agreement shall be cumulative and not exclusive of any other right or remedy which the Collateral Agent or the Lenders may have.

**Section 8.2. Sale of Borrower Collateral.** In addition to the remedies set forth in **Section 8.1**, if any Security Agreement Event of Default shall occur, subject to the Gaming Laws, Collateral Agent may, but is not required to, sell the Borrower Collateral in one or more sales. Any Lender or the Collateral Agent may purchase all or any part of the Borrower Collateral at such sale. The Borrower acknowledges that sales for cash or on credit to a wholesaler, retailer or user of such Borrower Collateral, or at public or private auction, are all commercially reasonable. Any notice required by law of intended disposition by Collateral Agent shall be deemed reasonably and properly given if given at least 10 days before such disposition.

**Section 8.3. Application of Sale Proceeds.** All payments received and amounts held or realized by Collateral Agent at any time when a Security Agreement Event of Default shall be continuing as well as all payments or amounts then held or thereafter received by Collateral Agent and the proceeds of sale pursuant to **Section 8.2** shall be distributed to the Collateral Agent for distribution in accordance with Section 3.8 of the Loan Agreement.

**Section 8.4. Power of Attorney.** The Borrower unconditionally and irrevocably appoints Collateral Agent as its true and lawful attorney-in-fact, with full power of substitution, to the extent permitted by Requirements of Law, in its name and stead and on its behalf, solely for the purpose of effectuating any sale, assignment, transfer or delivery under this **Section 8**, if a Security Agreement Event of Default occurs and is continuing, whether pursuant to foreclosure or power of sale or otherwise, and in connection therewith and during a Security Agreement Event of Default to execute and deliver all such deeds, bills of sale, assignments, releases (including releases of this Agreement on the records of any Authority) and other proper instruments as Collateral Agent may reasonably consider necessary or appropriate. The Borrower ratifies and confirms all that such attorney or any substitute shall lawfully do by virtue hereof. If requested by Collateral Agent or any purchaser, the Borrower shall ratify and confirm any such lawful sale, assignment, transfer or delivery by executing and delivering to Collateral Agent or such purchaser, all deeds, bills of sale, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

**Section 8.5. Remedies Cumulative; Consents.** To the extent permitted by, and subject to the mandatory requirements of, any Requirements of Law, each and every right, power and remedy herein specifically given to Collateral Agent or otherwise in this Agreement shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by Collateral Agent, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any right, power or remedy. Collateral Agent's or the Lenders' consent to any request made by the Borrower shall not be deemed to constitute or preclude the necessity for obtaining Collateral Agent's or the Lenders' consent in the future to all similar requests. To the extent permitted by any Requirements of Law, the Borrower hereby waives any rights now or hereafter conferred by statute or otherwise that may require Collateral Agent or the Lenders to sell, lease or otherwise use the Equipment, any Item of Equipment or any Part thereof in mitigation of Collateral Agent's, or the Lenders' damages upon the occurrence of a Security Agreement Event of Default or that may otherwise limit or modify any of Collateral Agent's or the Lenders' rights hereunder.

**Section 8.6. Allocation of Borrower Collateral.** All cash proceeds received by the Collateral Agent in respect of any sale of, collection from, or other realization upon all or any part of the Borrower Collateral shall be held by the Collateral Agent, and shall be promptly paid over (after payment of any amounts payable to the Collateral Agent pursuant to **Section 8.7**) by the Collateral Agent to the Lenders, in accordance with Section 3.8 of the Loan Agreement. Any surplus of such cash or cash proceeds held by the Collateral Agent and remaining after payment in full of all the Liabilities shall be paid over to the Borrower or to whosoever may be lawfully entitled to receive such surplus.

**Section 8.7. Compensation and Indemnity.** The Borrower shall pay to the Collateral Agent such compensation as set forth in the Loan Agreement. The Borrower shall reimburse the Collateral Agent upon request for all reasonable disbursements, expenses and advances incurred or made by the Collateral Agent without negligence or bad faith on its part. Such expenses shall include the reasonable compensation and expenses of the Collateral Agent's agents, experts and counsel.

The Borrower shall indemnify the Collateral Agent, its directors, officers, agents and employees for, and hold each of them harmless against, any loss or liability, cost or expense incurred by them without negligence or bad faith on their part in connection with the acceptance or administration of this Security Agreement and its duties under this Security Agreement and the Notes, including, without limitation, the costs and expenses of defending itself against any claim or liability and of complying with any process served upon it or any of its officers in connection with the exercise or performance of any of its powers or duties under this Security Agreement and the Notes.

To secure the Borrower's payment obligations in this **Section 8.7**, the Collateral Agent shall have a lien prior to the Lenders on all money or property held or collected by the Collateral Agent, in its capacity as Collateral Agent, except money or property held in trust to pay principal of, premium, if any, and interest on particular Notes.

If the Collateral Agent incurs expenses or renders services after the occurrence of a Security Agreement Event of Default, the expenses and the compensation for the services will be intended to constitute expenses of administration under Title 11 of the United States Bankruptcy Code or any applicable federal or state law for relief of debtors.

The provisions of this **Section 8.7** shall survive the resignation or removal of the Collateral Agent and termination of this Security Agreement.

**SECTION 9. GENERAL PROVISIONS.**

*Section 9.1. Document.* This Security Agreement is executed pursuant to the Loan Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof; *provided, however,* that unless expressly provided otherwise, the duties and obligation of the Collateral Agent shall be determined solely by this Security Agreement and the Collateral Agent shall have no responsibility or obligation to perform any duties or obligations under, or to monitor the performance of the duties or obligations of the Borrower under, the Loan Agreement.

*Section 9.2. Amendments; Etc.* No amendment to or waiver of any provision of this Security Agreement nor consent to any departure by the Borrower herefrom, shall in any event be effective unless the same shall be in writing and signed by the Collateral Agent, at the direction of the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

*Section 9.3. Notices.* All notices and other communications provided for hereunder shall be in writing (including telegraphic and facsimile communication) and, if to the Lenders, delivered in accordance with Section 13.6 of the Loan Agreement, or in the case of the Collateral Agent or the

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Borrower, delivered to the respective addresses as set forth beneath each party's name on the signature pages hereto.

*Section 9.4. Section Captions.* Section captions used in this Security Agreement are for convenience of reference only, and shall not affect the construction of this Security Agreement.

*Section 9.5. Severability; No Waiver.* Wherever possible each provision of this Security Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Security Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Security Agreement. No delay on the part of the Collateral Agent in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Collateral Agent of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy.

*Section 9.6. Governing Law.* THIS SECURITY AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED BY, THE LAW OF THE STATE OF NEW YORK EXCLUDING CHOICE-OF-LAW PRINCIPLES OF THE LAW OF SUCH STATE THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE, SUBJECT TO THOSE MANDATORY PROVISIONS OF NEVADA LAW GOVERNING PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION, AND THE PRIORITY OF A SECURITY INTEREST IN THE BORROWER COLLATERAL.

*Section 9.7. Counterparts.* This Security Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall together constitute but one and the same agreement.

[Signature Pages Begin on Next Page]

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IN WITNESS WHEREOF, this Security Agreement has been duly executed as of the day and year first above written.

WYNN LAS VEGAS, LLC,  
a Nevada limited liability company,  
as the Borrower

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

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

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

By:

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Name:  
Title:

Accepted as of the date first written above

for Lenders

By

Its

Notice Address:

Attention:

Telephone:

Telefacsimile:

**SCHEDULE A TO  
SECURITY AGREEMENT**

**DESCRIPTION OF THE BORROWER COLLATERAL**

**EXHIBIT A TO  
SECURITY AGREEMENT**

**FORM OF THE BORROWER SECURITY AGREEMENT SUPPLEMENT**

Security Agreement Supplement No. (this "Security Agreement Supplement No. ") dated , 20 , by Wynn Las Vegas, LLC, a Nevada limited liability company (the "Borrower"), in favor of Wells Fargo Bank Nevada, National Association, a national banking association, as Collateral Agent (being referred to herein, together with any successor(s) thereto in such capacity, as the "Collateral Agent") for the Lenders. Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Security Agreement dated as of October , 2002, between the Borrower and the Collateral Agent, a copy of which is attached hereto.

**WITNESSETH:**

The Loan Agreement provides for the execution and delivery from time to time of supplements to the Security Agreement substantially in the form hereof which shall particularly describe the Borrower Collateral and shall specifically grant a security interest in the Borrower Collateral to the Collateral Agent.

The Security Agreement relates to the Borrower Collateral described in **Schedule A** hereto, Schedule A to the Security Agreement and each Schedule A attached to each other Security Agreement Supplement attached to the attached Security Agreement.

The Borrower hereby assigns and pledges to the Collateral Agent, and hereby grants to the Collateral Agent, a lien and security interest in and to all of the Borrower Collateral, whether now or hereafter existing or acquired, including the Borrower Collateral more particularly described in **Schedule A** hereto.

TO HAVE AND TO HOLD the aforesaid property unto the Collateral Agent, its successors and assigns forever, upon the terms and conditions set forth in the Security Agreement to secure the payment of the Liabilities.

This Supplement shall be construed in connection with and as part of the Security Agreement and all terms, conditions and covenants contained in the Security Agreement, except as herein modified, shall be and remain in full force and effect.

Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Security Agreement Supplement No. may refer to the "Security Agreement" without making specific reference to this Security Agreement Supplement No. , but nevertheless all such references shall be deemed to include this Security Agreement Supplement No. unless the context shall otherwise require.

*Section 1.1. Counterparts.* This Supplement No. may be executed and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Supplement.

*Section 1.2. Governing Law.* THIS SECURITY SUPPLEMENT NO. AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED BY, THE LAW OF THE STATE OF NEW YORK EXCLUDING CHOICE-OF-LAW PRINCIPLES OF THE LAW OF SUCH STATE THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE, SUBJECT TO THE MANDATORY PROVISIONS OF NEVADA LAW GOVERNING PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION, AND THE PRIORITY OF A SECURITY INTEREST IN THE BORROWER COLLATERAL

*Section 1.3. Headings.* Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Supplement No. nor shall they affect its meaning, construction or effect.

*Section 1.4. The Collateral Agent.* The Collateral Agent shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Security Agreement Supplement or for or in respect of the recitals contained herein, all of which are made solely by the Borrower.

IN WITNESS WHEREOF, the Borrower has caused this Security Agreement Supplement No. to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

WYNN LAS VEGAS, LLC,  
a Nevada limited liability company, as the Borrower

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

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

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

By: \_\_\_\_\_  
Name:  
Title:

Accepted by  
WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION, as  
Collateral Agent for Lenders

By \_\_\_\_\_  
Its

Notice Address:

Attention:

Telephone:

Telefacsimile:

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**SCHEDULE A**

**DESCRIPTION OF THE BORROWER COLLATERAL**

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**Exhibit K**

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**AIRCRAFT SECURITY AGREEMENT**

Dated as of October , 2002

Among

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION,  
not in its individual capacity, but solely as TRUSTEE,

WORLD TRAVEL, LLC

and

WYNN LAS VEGAS, LLC

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**TABLE OF CONTENTS**

Section	Heading	Page
Parties		1



Preamble		1
SECTION 1.	DEFINITIONS	2
Section 1.1.	Loan Agreement Definitions	2
Section 1.2.	UCC Definitions	2
SECTION 2.	SECURITY INTEREST	2
Section 2.1.	Grant of Security	2
Section 2.2.	Continuing Security Interest	2
Section 2.3.	The Owner and World Travel Remain Liable	3
Section 2.4.	Consent and Acknowledgement	3
SECTION 3.	WARRANTIES	3
SECTION 4.	COVENANTS WITH RESPECT TO THE AIRCRAFT COLLATERAL	5
Section 4.1.	Possession and Use of Aircraft; Compliance with Laws	5
Section 4.2.	Leases and Assignments	6
Section 4.3.	Maintenance	7
Section 4.4.	Alterations, Modifications, Etc	8
Section 4.5.	Identifying Numbers and Registration; Legend; Changes; Inspection	9
Section 4.6.	Liens	9
Section 4.7.	Replacements and Substitutions	9
Section 4.8.	Amendments	10
SECTION 5.	CERTIFICATE, SCHEDULES AND REPORTS	10
SECTION 6.	ADDITIONAL AGREEMENTS OF THE OWNER AND WORLD TRAVEL	11
SECTION 7.	RISK OF LOSS; INSURANCE	11
Section 7.1.	Casualty	11
Section 7.2.	Insurance Coverages	13
Section 7.3.	Insurance Certificates and Policies	14
SECTION 8.	DEFAULTS AND REMEDIES	14
Section 8.1.	Defaults	14
Section 8.2.	Sale of Aircraft Collateral	15
Section 8.3.	Application of Sale Proceeds	15
Section 8.4.	Power of Attorney	15
Section 8.5.	Remedies Cumulative; Consents	16
Section 8.6.	Allocation of Aircraft Collateral	16
SECTION 9.	GENERAL PROVISIONS	16
Section 9.1.	Document	16
Section 9.2.	Amendments; Etc.	16
Section 9.3.	Notices	16
Section 9.4.	Section Captions	16
Section 9.5.	Severability; No Waiver	16
Section 9.6.	Governing Law	17
Section 9.7.	Counterparts	17
Section 9.8.	Risk of Loss	17
Section 9.9.	Principal Waivers	17
Signature		18
SCHEDULE A	— Description of Aircraft Collateral	
EXHIBIT A	— Form of Aircraft Security Agreement Supplement	

THIS AIRCRAFT SECURITY AGREEMENT (this "*Security Agreement*") made as of October , 2002, by WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Trustee of that certain trust created under the Trust Agreement (the "*Aircraft Trust*") dated as of May 10, 2002 with and World Travel, LLC, a Nevada limited liability company ("*World Travel*") as Trustor (in such capacity, the "*Owner*"), and World Travel in favor of Wynn Las Vegas, LLC, a Nevada limited liability company (being referred to herein, together with any successor(s) thereto in such capacity, as the "*Company*").

#### WITNESSETH:

WHEREAS, pursuant to that certain Business Loan Agreement dated as of February 28, 2002, World Travel borrowed (the "*Original Loan*") from Bank of America, N.A. funds to pay the purchase price of the Aircraft (as hereinafter defined);

WHEREAS, pursuant to that certain Mortgage, Security Agreement and Assignment dated as of February 28, 2002, (the "*Mortgage*") recorded by the FAA on March 14, 2002 as conveyance no. H105055 World Travel granted Bank of America, N.A. a lien on the Aircraft to secure its obligations under the Original Loan;

WHEREAS, pursuant to that certain Assignment and Assumption Agreement dated May 10, 2002 between World Travel and the Owner, recorded by the FAA on June 3, 2002 as conveyance no. GG027466 the Owner assumed the obligations of World Travel under the Mortgage;

WHEREAS, pursuant to that certain Amended and Restated Operating Agreement dated as of October , 2002, (the "*Aircraft Operating Agreement*") World Travel has been granted an exclusive license to possess, use and operate the Aircraft and has assumed certain obligations in connection therewith;

WHEREAS, pursuant to the terms of the Loan Agreement dated as of October , 2002 (as amended from time to time, the "*Loan Agreement*"), among the Company and the several lenders listed in Schedule IA1 attached thereto (together with each successive lender thereunder, the "*Lenders*"), the Company has agreed to borrow, and the Lenders have agreed to lend, subject to certain conditions, up to \$188,500,000;

WHEREAS, pursuant to the terms of the Intercompany Note dated as of October , 2002 (as amended from time to time, the "*Intercompany Note*"), from World Travel to the Company, World Travel will borrow from the Company the funds necessary to repay the Original Loan and for Bank of America, N.A. to release the Mortgage;

WHEREAS, as a condition precedent to making its loan to World Travel, the Company has required that the Owner and World Travel enter into this Security Agreement;

WHEREAS, as a condition precedent to making their loans, the Lenders have required that World Travel guaranty the obligations of the Company under the Loan Agreement;

WHEREAS, as a further condition precedent to making their loans, the Lenders have required that the Company assign to a collateral agent on their behalf its interests in this Security Agreement and in the Intercompany Note; and

WHEREAS, therefore, the Owner and World Travel wish to execute, deliver and perform, and have each duly authorized the execution, delivery and performance of, this Security Agreement.

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NOW, THEREFORE, the Owner and the Company hereby agree as follows:

#### SECTION 1. DEFINITIONS.

*Section 1.1. Loan Agreement Definitions.* Unless otherwise defined herein or the context otherwise requires, terms used in this Security Agreement, including its preamble and recitals, have the meanings provided in Appendix I to the Loan Agreement.

*Section 1.2. UCC Definitions.* Unless otherwise defined herein (including those terms defined in Appendix I to the Loan Agreement) or the context otherwise requires, terms for which meanings are provided in the UCC are used in this Security Agreement, including its preamble and recitals, with such meanings.

#### SECTION 2. SECURITY INTEREST.

*Section 2.1. Grant of Security.* As security for the payment and performance of all obligations of World Travel under the Intercompany Note and any other Loan Document to which it is party or agreement or document related to any Loan Document (hereinafter, collectively, the "*World Liabilities*"), the Owner and World Travel hereby transfer, assign and pledge to the Company, and grant to the Company, a continuing first and prior security interest in and to, all of the Owner's and World Travel's respective right, title and interest in (i) the Aircraft, including, without limitation, the Airframe and Engines, listed on **Schedule A** hereto and each Schedule A to each Aircraft Security Agreement Supplement executed pursuant to **Section 7.1**, whether now or hereafter existing or acquired by the Owner or World Travel or in which the Owner or World Travel now has or at any time in the future may acquire any right, title or interest, (ii) the Aircraft Contracts, to the extent that such contracts are assignable, (iii) contracts and warranties including, without limitation, the Las Vegas Jet Lease and the Aircraft Operating Agreement, necessary to operate and maintain the Aircraft or otherwise specifically related to the Aircraft (including all rents and other amounts payable thereunder), to the extent that such contracts are assignable, (iv) any rights to Liquidated Damages, rebates, offset or other warranty payments, or assignment under a purchase order, invoice or purchase agreement with any manufacturer of or contractor for any portion of the foregoing, to the extent that such rights are assignable, (v) all insurance policies relating to the Aircraft required to be maintained pursuant to any Loan Document, (vi) all logs, manuals, books, records, writings, databases, information and other property relating to, used or useful in connection with, evidencing, embodying, incorporating or referring to, any of the foregoing and (vii) all proceeds from the sale of any or all of the foregoing, and to the extent not otherwise included, all payments under insurance (whether or not the Owner or World Travel is the loss payee thereof) or any indemnity, warranty or guarantee payable by reason of loss or damage to or otherwise with respect to any of the foregoing (collectively, the "*Aircraft Collateral*").

*Section 2.2. Continuing Security Interest.* This Security Agreement shall create a continuing security interest in the Aircraft Collateral and shall (a) remain in full force and effect until payment in full of all World Liabilities, (b) be binding upon the Owner and World Travel, their respective successors,

transferees and assigns, and (c) inure, together with the rights and remedies of the Company hereunder, to the benefit of the Company. Without limiting the generality of the foregoing **clause (c)**, the Company may assign or otherwise transfer (in whole or in part) the Intercompany Note held by it to the Collateral Agent on behalf of the Lenders, and the Collateral Agent shall thereupon become vested with all the rights and benefits in respect thereof granted to the Company under any Loan Document (including this Security Agreement) or otherwise.

Upon the payment in full of all World Liabilities, the security interest granted herein shall terminate and all rights to the Aircraft Collateral granted thereby shall revert to the Owner and World Travel, respectively. Upon any such termination, the Company will, at the request and at the sole

2

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expense of World Travel, execute and deliver to the Owner and World Travel such documents as the Owner and World Travel shall reasonably request to evidence such termination.

*Section 2.3. The Owner and World Travel Remain Liable.* Anything herein to the contrary notwithstanding:

(a) the Owner and World Travel shall remain liable under the contracts and agreements included in the Aircraft Collateral to the extent set forth therein, and shall perform all of its duties and obligations under such contracts and agreements to the same extent as if this Security Agreement had not been executed,

(b) the exercise by the Company, or its assigns, of any of its rights hereunder shall not release the Owner or World Travel from any of its duties or obligations under any such contracts or agreements included in the Aircraft Collateral, and

(c) the Company shall not have any obligation or liability under any such contracts or agreements included in the Aircraft Collateral by reason of this Security Agreement, nor shall the Company be obligated to perform any of the obligations or duties of the Owner or World Travel thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

*Section 2.4. Consent and Acknowledgement.* Anything herein to the contrary notwithstanding, the Owner and World Travel hereby acknowledge and agree that:

(i) the rights and powers of the Company under this Security Agreement and the Intercompany Note are being assigned concurrently with the execution hereof to the Collateral Agent for the benefit of the Lenders pursuant to the Borrower Aircraft Assignment;

(ii) notwithstanding any action or inaction by World Travel or the Owner, the occurrence and continuance of an Event of Default under the Loan Agreement shall constitute an Aircraft Event of Default under each of this Security Agreement and the Intercompany Note; and

(iii) upon the occurrence and continuance of a default under the Intercompany Note or an Aircraft Event of Default under this Security Agreement, the Collateral Agent, as assignee of the Company, may exercise all of the rights, remedies and powers of the Company set forth in the Intercompany Note and this Security Agreement, including without limitation, the right to demand payment on the Intercompany Note and the exercise of remedies set forth in **Section 8**.

### SECTION 3. WARRANTIES.

(a) The Owner hereby represents and warrants to the Company, the Collateral Agent and each Lender that:

(i) the Owner (A) is, and will remain, duly organized, existing and in good standing and will remain the Trustee of the Aircraft Trust Agreement pursuant to the terms of the Aircraft Trust Agreement and (B) is and will be the lawful owner of all of the Aircraft Collateral, free of all liens and claims whatsoever, other than Permitted Liens, with full power and authority to execute this Security Agreement and perform the obligations of the Owner hereunder and to subject the Aircraft Collateral to the security interest hereunder;

(ii) all information with respect to the Aircraft Collateral and the Owner set forth in any schedule, certificate or other writing at any time heretofore or hereafter furnished by the Owner to the Company, the Collateral Agent or any Lender and all other written information heretofore or hereafter furnished by the Owner to the Company, the Collateral Agent or any Lender, is and will be true and correct in all material respects as of the date furnished, unless it refers by its terms to a specific date, then as of that date;

3

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(iii) on the Initial Advance Date (i) the Aircraft has been duly certificated by the Federal Aviation Administration as to type and airworthiness and (ii) the Owner has granted exclusive use and possession of the Aircraft to World Travel under the Aircraft Operating Agreement;

(iv) the Owner is a "citizen of the United States" pursuant to 49 U.S.C. Subtitle VII of the United States Code, as amended (the "FAA Act"), and the regulations thereunder and is properly qualified under the FAA Act and all applicable regulations to hold title to the Aircraft;

(v) the Owner has its chief executive office at the location set forth below its signature on the signature page;

(vi) the Aircraft Trust Agreement and this Security Agreement have been duly authorized, executed and delivered and constitute legal, valid and binding agreements against the Owner and constitute legal, valid and binding agreements enforceable under all applicable laws in accordance with their terms, except to the extent that the enforcement of remedies may be limited under applicable bankruptcy and insolvency laws;

(vii) no approval or consent or withholding of objections is required from any governmental authority or instrumentality or any other entity with respect to the entry into, or performance by, the Owner of the this Security Agreement or the Aircraft Trust Agreement, except such as have already been

obtained; and

(viii) the entry into and performance of the Aircraft Trust Agreement and this Security Agreement by the Owner will not violate the Owner's organizational documents, or any judgment, order, law or regulation applicable to the Owner, or result in any breach or constitute a default under, or result in the creation of, any lien, claim or encumbrance on any of the Owner's property (except for liens in favor of the Company and the Collateral Agent) pursuant to, any indenture mortgage, deed of trust, bank loan, credit agreement, or other agreement or instrument to which the Owner is a party.

(b) World Travel hereby represents and warrants to the Company, the Collateral Agent and each Lender that:

(i) this Security Agreement creates a valid first priority security interest in the Aircraft Collateral securing payment and performance of the World Liabilities and that all filings and other action necessary to perfect such security interest have been taken;

(ii) all information with respect to the Aircraft Collateral and World Travel set forth in any schedule, certificate or other writing at any time heretofore or hereafter furnished by World Travel to the Company, the Collateral Agent or any Lender and all other written information heretofore or hereafter furnished by World Travel to the Company, the Collateral Agent or any Lender, is and will be true and correct in all material respects as of the date furnished, unless it refers by its terms to a specific date, then as of that date;

(iii) on the Initial Advance Date (i) the Aircraft has been duly certificated by the Federal Aviation Administration as to type and airworthiness and (ii) World Travel has granted authority to operate the Aircraft to Las Vegas Jet pursuant to the Las Vegas Jet Lease;

(iv) the Aircraft is hangared in the location set forth in **Schedule A** hereto;

(v) all action for registration of the Aircraft which is necessary in light of World Travel's intended use thereof has been taken;

(vi) all licenses, approvals, authorizations, consents and permits required for the use and operation of such Aircraft have been obtained from the appropriate Governmental Agency having jurisdiction (including, without limitation, the FAA or the United States Department of Transportation) or from private parties, as the case may be;

4

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(vii) there are no patents, patent rights, trademarks, service marks, trade names, copyrights, licenses or other intellectual property rights with respect to the Aircraft that are necessary for the operation of the Aircraft and that have not been obtained;

(viii) the Aircraft Trust Agreement and this Security Agreement have been duly authorized, executed and delivered and constitute legal, valid and binding agreements against World Travel and constitute legal, valid and binding agreements enforceable under all applicable laws in accordance with their terms, except to the extent that the enforcement of remedies may be limited under applicable bankruptcy and insolvency laws;

(ix) no approval or consent or withholding of objections is required from any governmental authority or instrumentality or any other entity with respect to the entry into, or performance by, World Travel of the this Security Agreement or the Aircraft Trust Agreement, except such as have already been obtained; and

(x) the entry into and performance of the Aircraft Trust Agreement and this Security Agreement by World Travel will not violate the World Travel's organizational documents, or any judgment, order, law or regulation applicable to World Travel, or result in any breach or constitute a default under, or result in the creation of, any lien, claim or encumbrance on any of World Travel's property (except for liens in favor of the Company and the Collateral Agent) pursuant to, any indenture mortgage, deed of trust, bank loan, credit agreement, or other agreement or instrument to which World Travel is a party.

#### SECTION 4. COVENANTS WITH RESPECT TO THE AIRCRAFT COLLATERAL.

The Owner and World Travel covenant and agree as follows:

*Section 4.1. Possession and Use of Aircraft; Compliance with Laws.* The Owner and World Travel agree that the Aircraft will be used and operated in compliance with all applicable Requirements of Law. Neither the Owner nor World Travel shall use the Aircraft or any part thereof for any purpose or in any manner that would materially adversely affect the Fair Market Value, the utility of the Aircraft as a passenger aircraft or the remaining useful life of such Aircraft, ordinary wear and tear and depreciation excepted. The Owner and World Travel shall procure and maintain in effect airworthiness certificates related to Aircraft and all licenses, registrations, certificates, permits, approvals and consents required by any Requirement of Law or by any Governmental Authority necessary for the ownership, delivery, installation, maintenance, repair, use and operation of the Aircraft. Neither the Owner nor World Travel shall (a) use, operate, or maintain the Aircraft or any portion thereof in violation of **Section 4.3** or any Insurance Requirement; (b) lease, assign or otherwise permit the use of any of the Aircraft except as may be permitted by **Section 4.2**; or (c) except as set forth in **Section 4.2** or in the Loan Agreement, sell, assign or transfer any of its rights or in any of the Aircraft, or directly or indirectly create, incur or suffer to exist any Lien on any of its rights hereunder or in any of the Aircraft, except for Permitted Liens. The Owner and World Travel agree that the Aircraft will be operated at all times by a pilot whose certification is in compliance with all applicable Requirements of Law and any Insurance Requirement, including the necessary minimum "total pilot hours" and the minimum "pilot-in command hours".

Notwithstanding anything contained in the paragraph set forth immediately above, the Owner and World Travel hereby further agree not to (i) operate the Aircraft or permit the Aircraft to be operated except in operations for which the Owner and World Travel (or any lessee or other Person permitted by the provisions of **Section 4.2** hereof to operate the Aircraft) is duly authorized by the Federal Aviation Administration or other governmental authority having jurisdiction over the Aircraft; (ii) use or permit the Aircraft to be used for a purpose for which the Aircraft is not designed or reasonably suitable; and (iii) operate, use or locate the Aircraft, or suffer the Aircraft to be operated, used or located (A) and

5

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in any area excluded from coverage by any insurance required by the Insurance Requirements, (B) any country with which the United States shall not have full diplomatic relations, or (C) in any recognized or threatened area of hostilities. The Owner and World Travel hereby further agree to operate the Aircraft, or permit the Aircraft to be operated, predominately for business purposes.

**Section 4.2. Leases and Assignments.** Except for leases permitted by this **Section 4.2**, neither the Owner nor World Travel may assign, lease, mortgage, pledge or otherwise transfer to any Person, at any time, in whole or in part, any of its rights, title or interest in, or obligations to or under this Security Agreement, any other Loan Document or to any portion of the Aircraft. Each lease entered into in accordance with this **Section 4.2** shall be referred to as an "Aircraft Lease." The Owner and World Travel may, so long as no Aircraft Event of Default exists, lease all or any portion of the Aircraft to one or more of World Travel's Affiliates. With respect to any Aircraft Lease permitted under this **Section 4.2**, neither the Owner nor World Travel shall lease any portion of the Aircraft to any Person who shall then be engaged in any proceedings for relief under any bankruptcy or insolvency law or laws relating to the relief of debtors.

No Aircraft Lease hereunder will (a) discharge or diminish any of the Owner's or World Travel's obligations to Company hereunder or the Owner's or World Travel's obligations to any other Person under any other Loan Document, and the Owner and World Travel shall remain directly and primarily liable under this Security Agreement and any other Loan Document to which it is a party with respect to all of the Aircraft Collateral or (b) extend beyond the last day of the Loan Term. Each Aircraft Lease permitted hereby shall be made and shall expressly provide that it is subject and subordinate to this Security Agreement and the rights of Company hereunder including, without limitation, the right of the Company to inspect and take possession of the Aircraft from time to time, and shall expressly provide for the surrender of the Aircraft Collateral leased by the applicable lessee at the election of Company after an Aircraft Event of Default; *provided* that the Las Vegas Jet Lease shall be deemed to comply with the terms of this **Section 4.2** so long as Las Vegas Jet shall deliver a consent in form and substance satisfactory to the Collateral Agent. Accordingly each lessee shall (i) waive any right that it might have to any notice of the Company's (or its assignee's) intention to inspect, take possession of, or exercise any other right or remedy in respect of the Aircraft under this Security Agreement, (ii) waive, as against the Company, all rights to any set-off, defense, counterclaim, or cross-claim that it may hold against the Company, and (iii) acknowledge that, upon an Aircraft Event of Default it shall have no further rights in and to the Aircraft.

6

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The Owner and World Travel shall give the Company and the Collateral Agent prompt, and in any event within 5 Business Days thereof, written notice of any Aircraft Lease permitted under this **Section 4.2**, and shall promptly provide the Company and the Collateral Agent with a fully executed copy of each document evidencing such Aircraft Lease, together with a Certificate of a Responsible Officer of the Owner that such Aircraft Lease complies with this **Section 4.2**.

**Section 4.3. Maintenance.** At all times, the Owner and World Travel shall, at its own cost and expense:

(a) keep, repair, maintain and preserve the Aircraft in good order and operating condition and repair as existing on the Initial Advance Date, ordinary wear and tear excepted, and in conformance with (i) prudent industry maintenance and repair standards, (ii) such maintenance and repair standards used by the Owner, World Travel or any of World Travel's Affiliates for similar property owned or leased by it, and (iii) all Requirements of Law and Insurance Requirements, and in the event that any Requirement of Law requires any alteration, replacement or addition of or to any Aircraft Part, the Owner and World Travel will conform therewith at its own expense;

(b) (i) conduct all scheduled maintenance of the Aircraft in conformity with the Owner's, World Travel's and World Travel's Affiliates' past practices, and prudent industry maintenance and repair standards, (including, without limitation, the Owner's, World Travel's and World Travel's Affiliates' maintenance program for such equipment) and (ii) maintain such Aircraft so as to preserve its remaining economic useful life, utility and residual value; and

(c) cause the Aircraft to continue to have at all times the capacity and functional ability to perform, on a continuing basis (subject to normal interruption in the ordinary course of business for maintenance, inspection, service, repair and testing) and in commercial operation, the functions for which it was specifically designed, other than any Casualty pursuant to which the Company has paid the Casualty Amount or is causing the rebuilding the affected portion of the Aircraft pursuant to **Section 7.1**.

The Owner and World Travel shall prepare and deliver to Company, with copies to the Collateral Agent, within 30 Business Days prior to the required date of filing (or, to the extent permissible, file on behalf of Company) any and all material reports to be filed by Company with any Governmental Authority by reason of the security and World Travel interest of the Company in the Aircraft Collateral. The Company agrees to inform the Owner and World Travel of any request for such reports received by it. The Owner and World Travel shall maintain or cause to be maintained, all records, logs and other materials required by any Governmental Authority (including, without limitation, each applicable Aeronautics Authority with respect to the Aircraft) having jurisdiction over the Aircraft. The Owner and World Travel shall permit Company, the Collateral Agent and each Lender to inspect, during normal business hours and upon notice within 24 hours (so long as the Aircraft is not in service at such time, in which event 5 Business Days notice shall be required), the Aircraft Collateral and any and all records, logs and other materials maintained by the Owner, World Travel or any of World Travel's Affiliates in respect of the Aircraft Collateral; *provided* that from and after the occurrence of an Aircraft Event of Default, all costs and expenses of Company, the Collateral Agent or any Lender in connection with such inspection shall be borne by the Owner and World Travel. The Owner and World Travel hereby waive any right now or hereafter conferred by law to make repairs on the Aircraft Collateral at the expense of Company.

In addition to the foregoing provisions of this **Section 4.3** World Travel shall, at its own cost and expense, service, repair, maintain and overhaul, test or cause the same to be done to the Airframe and each Engine (i) so as to keep the Airframe and Engines in such operating condition as may be necessary to enable the airworthiness certification of the Aircraft to be maintained in good standing at all times under the applicable rules and regulations of the FAA, and (ii) in accordance with the FAA-

7

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approved maintenance program for corporate aircraft and BMW Rolls Royce engines. The Owner and World Travel shall maintain, or cause to be maintained, with respect to each Aircraft all records, logs and other materials required by the Department of Transportation or the FAA or any other Aeronautics Authority having jurisdiction over the Aircraft to be maintained in respect of the Aircraft, all such records, logs or materials to be in the English language, and shall promptly furnish to Company upon Company's request such information as may be required to enable Company to file any reports required to be filed with any Authority because of Company's interest in the Aircraft.

**Section 4.4. Alterations, Modifications, Etc.** In case the Aircraft, or any item of equipment, part or appliance therein (each, an "Aircraft Part") is required to be altered, added to, replaced or modified in order to comply with any Requirements of Law (a "Required Aircraft Alteration") pursuant to **Sections 4.1** or **4.3** hereof, the Owner and World Travel agree to make such Required Aircraft Alteration at its own expense. The Owner and World Travel shall have the right to make any modification, alteration or improvement to the Aircraft (herein referred to as a "Permitted Aircraft Modification"), or to remove any Aircraft Part which has become worn out, broken or obsolete, *provided* in each case that the Owner and World Travel continue to be in compliance with **Sections 4.1** and **4.3** hereof and that such action will not, in the Owner's reasonable judgment, materially decrease the economic value of the Aircraft or impair its originally intended use or function or decrease its economic useful life and in any event, will not decrease the Fair Market Value of the Aircraft throughout the Loan Term. In the event any Permitted Aircraft Modification (i) is readily removable without impairing the value or use which the Aircraft would have had at such time had such Aircraft Part not been affixed or placed to or on the Aircraft (a "Removable Aircraft Part"), (ii) is not a Required Aircraft Alteration and (iii) is not an Aircraft Part which replaces any Aircraft Part originally incorporated or installed in or attached to such Aircraft Collateral on the date on which such Aircraft Collateral became subject to this Security Agreement, or any Aircraft Part in replacement of or substitution for any such original Part (each an "Original Aircraft Part"), any such Permitted Aircraft Modification, if no Aircraft Event of Default is continuing, shall be and remain the property of the Owner that is not subject to the Lien of this Security Agreement and may be removed by the Owner (a "World Aircraft Part"). To the extent such Permitted Aircraft Modification is not a Removable Aircraft Part, or is a Required Aircraft Alteration or an Original Aircraft Part, and, to the extent a Removable Aircraft Part is not the property of the Owner that is not subject to the Lien of this Security Agreement because of the continuance of an Aircraft Event of Default, the same shall immediately and automatically be and become subject to the Lien of this Security Agreement. Any Required Aircraft Alterations, and any Aircraft Parts installed or replacements made by the Owner upon any Aircraft Collateral pursuant to its obligation to maintain and keep the Aircraft Collateral in good order, operating condition and repair under **Section 4.3** (collectively, "Replacement Aircraft Parts") and all other Parts which become the property of the Owner shall be considered, in each case, accessions to such Aircraft Collateral and a security interest therein shall be immediately and automatically vested in Company. All Replacement Aircraft Parts shall be free and clear of all Liens (other than Permitted Liens) and shall be in as good an operating condition as, and shall have a value and utility at least equal to, the Aircraft Parts replaced, assuming such replaced Aircraft Parts and the Aircraft Collateral were immediately prior to such replacement or the event or events necessitating such replacement in the condition and repair required to be maintained by the terms hereof. Any Aircraft Part at any time removed from any of the Aircraft Collateral shall remain subject to the interests of Company under the Loan Documents, no matter where located, until such time as such Aircraft Part shall be replaced by an Aircraft Part which has been incorporated or installed in or attached to the Aircraft and which meets the requirements for a Replacement Aircraft Part specified above. No later than 45 days after the end of each fiscal quarter of World Travel, the Owner and World Travel shall deliver to Company, an Aircraft Security Agreement Supplement evidencing the grant by the Owner and World Travel of a security interest in such Replacement Aircraft Part to Company, for each Replacement Aircraft Part not previously evidenced by an Aircraft Security Agreement Supplement and such other documents in

8

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respect of such Aircraft Part or Aircraft Parts and to the extent, as Company may reasonably request in order to confirm that a security interest to such Aircraft Part or Aircraft Parts has passed to Company as hereinabove provided. Any such Replacement Aircraft Part, regardless of whether evidenced by an Aircraft Security Agreement Supplement, shall become subject to this Security Agreement and shall be deemed part of the Aircraft Collateral, for all purposes hereof to the same extent as the Aircraft Parts originally incorporated or installed in the Aircraft, and a security interest to such Replacement Aircraft Part shall thereupon vest in the Company. All replacements pursuant to this **Section 4.4** shall be purchased by the Owner or World Travel with its own funds. There shall be no obligation on the part of the Company to pay for or otherwise finance any such replacement.

**Section 4.5. Identifying Numbers and Registration; Legend; Changes; Inspection.** The Owner and World Travel, each at its own expense, will (i) cause the Airframe and each Engine to be kept numbered with the identification numbers as shall be set forth on Schedule A to the applicable Aircraft Security Agreement Supplement, and (ii) upon the Initial Advance Date, cause the Aircraft to be duly registered in the name of the Owner under the Federal Aviation Act and at all times thereafter to remain so registered. Within 10 days after the Initial Advance Date, the Owner shall place in the cockpit of the Airframe in a location reasonably adjacent to the airworthiness certificate of the Aircraft, and on each Engine, a metal nameplate identifying the security interest of the Company, as follows:

"WYNN LAS VEGAS, LLC, as Secured Party,  
as further assigned to  
WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION, as Collateral Agent"

Neither the Owner nor World Travel will allow the name or logo of any Person other than the Company or its successors or assigns, to be placed on the Aircraft or any Engine as a designation that might be interpreted as a claim of ownership or of any interest therein, *provided, however*, that the name and/or logo of the Owner, World Travel or any of World Travel's Affiliates may be placed on the Aircraft.

**Section 4.6. Liens.** The Owner will not directly or indirectly create, incur, assume or suffer to exist any Lien (other than Permitted Liens) on or with respect to the Aircraft Collateral or any Aircraft Part. The Owner and World Travel, each at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep the Aircraft Collateral free and clear of, and to duly discharge or eliminate or bond in a manner satisfactory to Company, any such Lien not excepted above if the same shall arise at any time. The Owner and World Travel will notify Company, the Collateral Agent and each Lender in writing within 5 Business Days upon becoming aware of any Tax or other Lien (other than any Lien excepted above) that shall attach to the Aircraft Collateral, and of the full particulars thereof. Without limiting the foregoing, neither the Owner nor World Travel shall assign or pledge any of its rights under any Lease to any Person other than Company.

**Section 4.7. Replacements and Substitutions.** (a) In addition to the rights of the Owner and World Travel under **Section 4.4**, the Owner and World Travel shall have the option at any time to replace any Aircraft Part (a "Replaced Aircraft Part" or "Replaced Aircraft Parts") with a substitute Aircraft Part (a "Substitute Aircraft Part" or "Substitute Aircraft Parts"), subject to the following conditions:

(i) no Aircraft Event of Default shall have occurred and be continuing;

(ii) the Substitute Aircraft Part or Substitute Aircraft Parts shall be the same general type, year of construction (or a later year of construction), useful life, function, utility, state of repair and operating condition as the portion of the Replaced Aircraft Part or Replaced Aircraft Parts, must have a Fair Market Value of not less than the Fair Market Value of the Replaced Aircraft Part or Replaced Aircraft Parts and be free and clear of any Liens other than Permitted Liens, as described in the Appraisal delivered on the Initial Advance Date; and

9

(iii) prior to the date of any such substitution, the Owner and World Travel shall replace such Replaced Aircraft Part or Replaced Aircraft Parts by complying with the terms of **Section 7.1** to the same extent as if a Casualty or a series of Casualties had occurred with respect to such Replaced Aircraft Part or Replaced Aircraft Parts, and the Company shall release its Lien on the Replaced Aircraft Part or Replaced Aircraft Parts in the same manner as provided in said **Section 7.1**.

(b) All replacements pursuant to **Section 4.7(a)** shall be purchased by the Owner or World Travel with its own funds. There shall be no obligation on the part of the Company to pay for or otherwise finance any such replacement. No termination of this Security Agreement with respect to any Aircraft Part as contemplated by this **Section 4.7** shall result in any reduction of World Travel's obligation to pay the World Liabilities.

(c) (i) In addition to the rights of the Owner under **Section 4.4**, the Owner shall have the option at any time to replace the Aircraft with a substitute Aircraft (the "Replacement Aircraft"), subject to the following conditions:

(A) no Aircraft Event of Default shall have occurred and be continuing;

(B) the Replacement Aircraft shall be the same general type, year of construction (or a later year of construction), useful life, function, utility, state of repair and operating condition as the Aircraft, must have a Fair Market Value of not less than the Allocated Aircraft Value and be free and clear of any Liens other than Permitted Liens, as described in the Appraisal delivered on the Subsequent Aircraft Advance Date; and

(C) prior to the date of any such substitution, the Owner shall replace the Aircraft by complying with the terms of **Section 7.1** to the same extent as if a Casualty or a series of Casualties had occurred with respect to the Aircraft, and the Company shall release its Lien on the Aircraft s in the same manner as provided in said **Section 7.1**.

(ii) All replacements pursuant to **Section 4.7(c)** shall be purchased by the Owner with (i) its or World Travel's own funds, (ii) proceeds from the sale of the Aircraft and (iii) other sources of funds approved by the Lenders. No termination of this Security Agreement with respect to the Aircraft as contemplated by this **Section 4.7** shall result in any reduction of World Travel's obligation to pay the World Liabilities.

*Section 4.8. Amendments.* Neither the Owner nor World Travel will, without the prior written consent of the Collateral Agent, directly or indirectly, agree to any amendment, waiver or termination of the Aircraft Operating Agreement or the Aircraft Trust.

## SECTION 5. CERTIFICATE, SCHEDULES AND REPORTS.

The Owner and World Travel will from time to time, as the Company or any Lender may reasonably request, deliver to the Company, the Collateral Agent and the Lenders such schedules, certificates and reports respecting all or any of the Aircraft Collateral at the time subject to the security interest hereunder, and the items or amounts received by the Owner in full or partial payment or otherwise as proceeds of any of the Aircraft Collateral, all to such extent as the Company may request. Any such schedule, certificate or report shall be executed by a duly authorized officer of the Owner and shall be in such form and detail as the Company, at the direction of the Required Lenders, may reasonably specify.

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## SECTION 6. ADDITIONAL AGREEMENTS OF THE OWNER AND WORLD TRAVEL.

The Owner and World Travel agree, that, until all of the World Liabilities are paid in full, the Owner and World Travel will perform and fulfill each of the following agreements:

(a) The Owner (1) will execute such financing statements, continuation statements or amendments thereof or supplements thereto and other documents (and pay the cost of filing or recording the same in all public offices deemed necessary by the Company) and do such other acts and things, all as the Company may from time to time request, to establish and maintain a valid first security interest in the Aircraft Collateral to secure the payment of the World Liabilities, including, without limitation, deposit with the Company of any certificate of title issuable with respect to any of the Aircraft Collateral and notation thereon of the security interest hereunder (and any carbon, photographic or other reproduction of this Security Agreement or of any such financing statement shall be sufficient for filing as a financing statement) and (2) will, at the Initial Advance Date, provide, or will cause to be provided, to the Company, the Lenders and the Collateral Agent an opinion of counsel (which may be the opinion of the general counsel/chief legal officer of World Travel) stating that, in the opinion of such counsel, this Security Agreement and the FAA and UCC filings and other agreements or documents executed in connection with this Security Agreement have been, and remain, properly recorded or filed for record so as to make effective of record the lien intended to be created hereby and thereby.

(b) The Owner will not change its name, change its organizational structure, resign as trustee under the Aircraft Trust Agreement or do business under any other names without at least 30 days' prior written notice thereof from World Travel shall have been delivered to the Company, Lenders and the Collateral Agent and will not change the location of their principal executive offices or places of business, except for a change to another location within the continental limits of the United States of America and within a jurisdiction in which the UCC is in effect, of which the Company, Lenders and the Collateral Agent shall have been given at least 30 days' prior written notice by World Travel.

(c) World Travel will reimburse the Company, the Collateral Agent and Lenders upon demand for all reasonable costs and expenses, including reasonable attorney's fees and legal expenses (including allocated costs of internal counsel), incurred by the Company or the Collateral Agent in seeking to collect or enforce any right under this Security Agreement or the Aircraft Collateral and, in case of an Aircraft Event of Default, in seeking to collect payments of principal, premium, if any, and interest on the Intercompany Note and all other World Liabilities and to enforce rights hereunder, including expenses of any repairs to any realty or other property to which any of the Aircraft Collateral may be affixed or be a part.

(d) The Owner will remain a "citizen of the United States" pursuant to 49 U.S.C. Section 40102(a)(15).

## SECTION 7. RISK OF LOSS; INSURANCE.

*Section 7.1. Casualty.* Upon the occurrence of a Casualty with respect to the Airframe or an Engine, the Owner shall give the Company, the Lenders and Collateral Agent prompt notice thereof (an "Aircraft Casualty Notice").

The Company, upon receipt of the Aircraft Casualty Notice, may specify whether it shall:

(a) demand that the Owner pay to Company the Casualty Amount of the Airframe or Engines suffering such Casualty, together with all other Interest then due and owing and, if such amount is paid on a date which is not a Payment Date, an amount equal to the Applicable Administrative Charge with respect to such Casualty Amount on the Casualty Settlement Date; or

11

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(b) permit the Owner to elect to replace the Airframe or an Engine with respect to which the Casualty has occurred pursuant to the following provisions of this **Section 7.1**, *provided* that upon the occurrence and during the continuance of a Default or an Aircraft Event of Default or in the event such Casualty is pursuant to the last sentence of the definition thereof, Company shall be obligated, at the option of the Required Lenders, to require the payments referred to in **clause (a)** above and shall not be entitled to offer any right of election of replacement pursuant to this **clause (b)**.

If Company has elected, or is obligated, to demand payment of the Casualty Amount pursuant to **clause (a)** above, World Travel shall continue to make all payments of interest due under the Intercompany Note until and including the Casualty Settlement Date. Upon payment of the Casualty Amount in respect of the Airframe or an Engine suffering Casualty on such Casualty Settlement Date together with all Interest then due and owing and the application thereof pursuant to Section 3.8 of the Loan Agreement, the remaining interest and principal under the Intercompany Note shall be reduced by an amount equal to the product of the scheduled amount of each such payment (determined in each case prior to the receipt of such Casualty Amount), multiplied by the Item Value Fraction of the Airframe or Engine with respect to which the Casualty suffering such Casualty or series of Casualties.

**Airframe Replacements**—If the Owner elects (by written notice delivered to the Company within 10 Business Days of the Casualty) to replace the Airframe suffering a Casualty, and such replacement is permitted under the foregoing **clause (b)**, the Owner may make subject to this Security Agreement, not later than the Casualty Settlement Date with respect to such Airframe, a Replacement Airframe meeting the suitability standards set forth in Section 8.1 of the Loan Agreement. The Owner shall cause such documents, opinions and deliveries as set forth in Section 8.1 of the Loan Agreement to be executed and delivered to Company in order to subject such Replacement Airframe to this Security Agreement, and upon such execution and delivery and the receipt by Company, such Replacement Airframe shall be deemed an "Airframe" for all purposes hereof.

12

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**Engine Replacements**—If the Owner elects (by written notice delivered to the Company within 10 Business Days of the Casualty) to replace an Engine suffering a Casualty, and such replacement is permitted under the foregoing **clause (b)**, the Owner may make subject to this Security Agreement, not later than the Casualty Settlement Date with respect to such Engine, a Replacement Engine meeting the suitability standards hereinafter set forth in Section 8.1 of the Loan Agreement. The Owner shall cause such documents, opinions and deliveries as set forth in Section 8.1 of the Loan Agreement to be executed and delivered to Company in order to subject such Replacement Engine to this Security Agreement, and upon such execution and delivery and the receipt by the Company, such Replacement Engine shall be deemed an "Engine" for all purposes hereof.

Subject to the terms of the Loan Agreement, if (i) the Company has received the amount payable with respect to the Casualty and all other amounts due, or (ii) the Airframe or Engines have been substituted in accordance herewith, and, in each case, no Default or Aircraft Event of Default exists, the Owner shall be entitled to receive from the Company the proceeds of any recovery in respect of the Airframe or Engines from insurance or otherwise, to the extent recovered by Company, subject to the rights of any insurer insuring the Airframe or Engines as provided herein. In such event, the Company shall execute and deliver to the Owner, or to its assignee or nominee, a release for the Airframe or Engines, and such other documents as may be required to release the Airframe or Engines from the terms of this Security Agreement, in such form as may reasonably be requested by the Owner. All fees, costs and expenses relating to a substitution as described herein shall be borne by the Owner. Except as otherwise provided in this **Section 7.1**, the Owner shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty to any Airframe or Engine prior to or during the term of the Intercompany Note and thereafter until all of the Owner's obligations hereunder are fully performed.

Subject to the terms of the Loan Agreement, any payments (including, without limitation, insurance proceeds) received at any time by Company from any Authority or other party with respect to any loss or damage to any Airframe or Engines not constituting a Casualty (i) up to \$500,000, shall be paid to the Owner, so long as no Default or Aircraft Event of Default shall have occurred and be continuing, for application to repair or replacement of property in accordance with **Sections 7.1** and **4.3** or (ii) in excess of \$500,000, shall be held by Collateral Agent and applied directly in payment of repairs or for replacement of property in accordance with the provisions of **Sections 7.1** and **4.3**, if not already paid by the Owner, or if already paid by Company and no Default or Aircraft Event of Default shall have occurred and be continuing, shall be applied to reimburse the Owner for such payment, and any balance remaining after compliance with said Sections with respect to such loss or damage shall be retained by or disbursed to (as applicable) the Owner.

THE OWNER HEREBY ASSUMES ALL RISK OF LOSS, DAMAGE, THEFT, TAKING, DESTRUCTION, CONFISCATION, REQUISITION, COMMANDEERING, TAKING BY EMINENT DOMAIN OR CONDEMNATION, PARTIAL OR COMPLETE, OF OR TO THE AIRFRAME AND ENGINES, HOWEVER CAUSED OR OCCASIONED, SUCH RISK TO BE BORNE BY THE OWNER WITH RESPECT TO THE AIRFRAME AND ENGINES. THE OWNER AND WORLD TRAVEL AGREE THAT NO OCCURRENCE SPECIFIED IN THE PRECEDING SENTENCE SHALL IMPAIR, IN WHOLE OR IN PART, ANY OBLIGATION OF WORLD TRAVEL UNDER THE WORLD LIABILITIES.

*Section 7.2. Insurance Coverages.* To the extent not otherwise maintained by the Company pursuant to Section 8.2 of the Loan Agreement, the Owner and World Travel shall at all times, at its expense, cause to be carried and maintained with financially sound and reputable insurers, insurance against loss or damage to the Aircraft, of the kinds and in the amounts to be maintained with respect to the Aircraft pursuant to Section 8.2 of the Loan Agreement.

13

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Nothing in this **Section 7.2** shall prohibit Lenders or Collateral Agent from obtaining insurance for its own account and at its own expense and any proceeds payable thereunder shall be payable as provided in the insurance policy relating thereto, *provided* that no such insurance may be obtained which would limit or



otherwise adversely affect the coverage or payment of any insurance required to be obtained or maintained by Company pursuant to this **Section 7.2**.

*Section 7.3. Insurance Certificates and Policies.* To the extent not performed by the Company pursuant to the Loan Agreement, prior to the Initial Advance Date, and thereafter not less than 20 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to **Section 7.2**, the Owner and World Travel shall deliver to Collateral Agent and the Lenders certificates issued by the insurer(s) or insurance broker(s) for the insurance maintained pursuant to **Section 7.2** together with a copy of the insurance policies; *provided, however*, that if the delivery of any certificate is delayed, Company shall not be deemed to be in violation of the obligation to deliver such certificate if, within such 20 day period, Company delivers an executed binder with respect thereto and thereafter delivers the certificate upon receipt thereof.

## SECTION 8. DEFAULTS AND REMEDIES.

*Section 8.1. Defaults.* (a) The occurrence, or the existence of any Event of Default under the Loan Agreement, shall constitute an "Aircraft Event of Default" hereunder.

(b) With respect to the Aircraft Collateral, upon the occurrence and during the continuation of any Aircraft Event of Default hereunder, the Company shall have, in addition to all other rights provided herein or by law, the rights and remedies of a secured party under the FAA or the UCC (regardless of whether the UCC is the law of the jurisdiction where the rights or remedies are asserted and regardless of whether the UCC applies to the affected Aircraft Collateral), and further the Company may, without demand and without advertisement, notice, hearing or process of law, all of which the Owner and World Travel hereby waive, at any time or times, sell and deliver any or all Aircraft Collateral held by or for it at public or private sale, for cash, upon credit or otherwise, at such prices and upon such terms as the Company deems advisable, in its sole discretion, provided that said disposition complies with any and all Requirements of Law. In addition to all other sums due the Company, the Collateral Agent or any Lender, World Travel shall pay the Company, the Collateral Agent and any Lender all costs and expenses incurred by the Company, the Collateral Agent or such Lender, including a reasonable allowance for attorneys' fees and court costs, in obtaining, liquidating or enforcing payment of Aircraft Collateral or World Liabilities or in the prosecution or defense of any action or proceeding by or against the Company, the Collateral Agent, such Lender or the Owner concerning any matter arising out of or connected with this Security Agreement or the Aircraft Collateral or World Liabilities, including without limitation any of the foregoing arising in, arising under or related to a case under the United States Bankruptcy Code (or any successor statute). Any requirement of reasonable notice shall be met if such notice is personally served on or mailed, postage prepaid, to the Owner in accordance with **Section 4** hereof at least 10 days before the time of sale or other event giving rise to the requirement of such notice; however, no notification need be given to the Owner if the Owner has signed, after an Aircraft Event of Default hereunder has occurred, a statement renouncing any right to notification of sale or other intended disposition. The Company shall not be obligated to make any sale or other disposition of the Aircraft Collateral regardless of notice having been given. The Company, the Collateral Agent or any Lender may be the purchaser at any such sale. To the extent permitted by applicable law, the Owner hereby waives all of its rights of redemption from any such sale. Subject to the provisions of applicable law, the Company may postpone or cause the postponement of the sale of all or any portion of the Aircraft Collateral by announcement at the time and place of such sale, and such sale may, without further notice, be made at the time and place to which the sale was postponed or the Company may further postpone such sale by announcement made at such time and place.

14

(c) With respect to all of the Aircraft Collateral, without in any way limiting the foregoing, the Company shall, upon the occurrence and during the continuation of any Aircraft Event of Default hereunder, have the right, in addition to all other rights provided herein or by law, to take physical possession of any and all of the Aircraft Collateral and anything found therein, the right for that purpose to enter without legal process any premises where such Aircraft Collateral may be found (*provided* such entry be done lawfully), and the right to maintain such possession on the Owner's or World Travel's premises (the Owner and World Travel hereby agreeing to lease such premises without cost or expense to the Company or its designee if the Company so requests) or to remove the Aircraft Collateral or any part thereof to such other places as the Company may desire. Upon the occurrence and during the continuation of any Aircraft Event of Default hereunder, the Owner and World Travel shall, upon the Company's demand, assemble the Aircraft Collateral and make it available to the Company at a place designated by the Company. If the Company exercises its right to take possession of the Aircraft Collateral, the Owner and World Travel shall also at its expense perform any and all other steps reasonably requested by the Company to preserve and protect the security interest hereby granted in such Aircraft Collateral, such as placing and maintaining signs indicating the security interest of the Company, appointing overseers for such Aircraft Collateral and maintaining inventory records.

(d) Failure by the Company to exercise any right, remedy or option under this Security Agreement or any other agreement between the Owner and the Company or provided by law, or delay by the Company in exercising the same, shall not operate as a waiver; no waiver hereunder shall be effective unless it is in writing, signed by the party against whom such waiver is sought to be enforced and then only to the extent specifically stated. Neither the Company nor any party acting as attorney for the Company shall be liable hereunder for any acts or omissions or for any error of judgment or mistake of fact or law other than their gross negligence or willful misconduct. The rights and remedies of the Company and the Lenders under this Agreement shall be cumulative and not exclusive of any other right or remedy which the Company or the Lenders may have.

*Section 8.2. Sale of Aircraft Collateral.* In addition to the remedies set forth in **Section 8.1**, if any Aircraft Event of Default shall occur, Company may, but is not required to, sell the Aircraft Collateral in one or more sales. Any Lender, the Collateral Agent or the Company may purchase all or any part of the Aircraft Collateral at such sale. The Owner acknowledges that sales for cash or on credit to a wholesaler, retailer or user of such Aircraft Collateral, or at public or private auction, are all commercially reasonable. Any notice required by law of intended disposition by Company shall be deemed reasonably and properly given if given at least 10 days before such disposition.

*Section 8.3. Application of Sale Proceeds.* All payments received and amounts held or realized by Company at any time when an Aircraft Event of Default shall be continuing as well as all payments or amounts then held or thereafter received by Company and the proceeds of sale pursuant to **Section 8.2** shall be distributed to the Company for distribution in accordance with Section 3.8 of the Loan Agreement.

*Section 8.4. Power of Attorney.* The Owner unconditionally and irrevocably appoints Company as its true and lawful attorney-in-fact, with full power of substitution, to the extent permitted by Requirements of Law, in its name and stead and on its behalf, solely for the purpose of effectuating any sale, assignment, transfer or delivery under this **Section 8**, if an Aircraft Event of Default occurs and is continuing, whether pursuant to foreclosure or power of sale or otherwise, and in connection therewith and during an Aircraft Event of Default to execute and deliver all such deeds, bills of sale, assignments, releases (including releases of this Security Agreement on the records of any Authority) and other proper instruments as Company may reasonably consider necessary or appropriate. The Owner ratifies and confirms all that such attorney or any substitute shall lawfully do by virtue hereof. If requested by Company or any purchaser, the Owner shall ratify and confirm any such lawful sale, assignment, transfer or delivery by executing and delivering to Company or such purchaser, all deeds,

bills of sale, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

*Section 8.5. Remedies Cumulative; Consents.* To the extent permitted by, and subject to the mandatory requirements of any Requirements of Law, each and every right, power and remedy herein specifically given to Company or otherwise in this Agreement shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by Company, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any right, power or remedy. Company's or the Lender's consent to any request made by the Owner shall not be deemed to constitute or preclude the necessity for obtaining Company's or the Lenders' consent in the future to all similar requests. To the extent permitted by any Requirements of Law, the Owner hereby waives any rights now or hereafter conferred by statute or otherwise that may require Company or the Lenders to sell, lease or otherwise use the Aircraft or any part thereof in mitigation of Company's, or the Lenders' damages upon the occurrence of an Aircraft Event of Default or that may otherwise limit or modify any of Company's or the Lenders' rights hereunder.

*Section 8.6. Allocation of Aircraft Collateral.* All cash proceeds received by the Company in respect of any sale of, collection from, or other realization upon all or any part of the Aircraft Collateral shall be held by the Company, and shall be promptly paid over by the Company to the Collateral Agent to be distributed in accordance with the terms of Section 3.8 of the Loan Agreement.

## SECTION 9. GENERAL PROVISIONS.

*Section 9.1. Document.* This Security Agreement and the Intercompany Note are executed pursuant to the Loan Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions the Loan Agreement.

*Section 9.2. Amendments; Etc.* No amendment to or waiver of any provision of this Security Agreement nor consent to any departure by the Owner or World Travel herefrom, shall in any event be effective unless the same shall be in writing and signed by the Company, with the consent of the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

*Section 9.3. Notices.* All notices and other communications provided for hereunder shall be in writing (including telegraphic and facsimile communication) and, if to the Collateral Agent or the Lenders, delivered in accordance with Section 13.6 of the Loan Agreement, or in the case of the Company the Owner or World Travel, delivered to the respective addresses as set forth beneath each party's name on the signature pages hereto.

*Section 9.4. Section Captions.* Section captions used in this Security Agreement are for convenience of reference only, and shall not affect the construction of this Security Agreement.

*Section 9.5. Severability; No Waiver.* Wherever possible each provision of this Security Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Security Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Security Agreement. No delay on the part of the Company in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Company of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy.

*Section 9.6. Governing Law.* THIS SECURITY AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED BY, THE LAW OF THE STATE OF NEW YORK EXCLUDING CHOICE-OF-LAW PRINCIPLES OF THE LAW OF SUCH STATE THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE.

*Section 9.7. Counterparts.* This Security Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall together constitute but one and the same agreement.

*Section 9.8. Risk of Loss.* AS BETWEEN THE OWNER AND THE COLLATERAL AGENT, AS ASSIGNEE OF THE COMPANY, THE OWNER HEREBY ASSUMES ALL RISK OF LOSS, DAMAGE, THEFT, TAKING, DESTRUCTION, CONFISCATION, REQUISITION, COMMANDEERING, TAKING BY EMINENT DOMAIN OR CONDEMNATION, PARTIAL OR COMPLETE, OF OR TO THE AIRFRAME AND EACH ENGINE, HOWEVER CAUSED OR OCCASIONED, SUCH RISK TO BE BORNE BY THE OWNER WITH RESPECT TO THE AIRFRAME AND EACH ENGINE. THE OWNER AGREES THAT NO OCCURRENCE SPECIFIED IN THE PRECEDING SENTENCE SHALL IMPAIR, IN WHOLE OR IN PART, ANY OBLIGATION OF THE OWNER UNDER THIS SECURITY AGREEMENT.

*Section 9.9. Principal Waivers.* All signers and endorsers hereof are to be regarded as principals hereunder, jointly and severally, if more than one. Nothing contained herein shall require the Company or the Collateral Agent, as assignee of the Company, as a condition to exercising and of its rights or remedies hereunder, to first seek or exhaust any remedy against World Travel, its successors or assigns, or any other person obligated with respect to the World Liabilities, or to first foreclose, or exhaust or proceed against any other collateral or security which may be given to secure any of the World Liabilities. The Owner agrees that its liabilities and obligations under this and any other Loan Documents are unconditional, irrespective of and unaffected by any of the following actions or circumstances (regardless of any notice to or consent of the Owner or the Collateral Agent): (i) any extension, renewal, amendment, change, waiver, or other modification of any of the Loan Documents or the Intercompany Note, (ii) the absence of, or delay in, any action to enforce the terms of any Loan Document, the Intercompany Note or this Security Agreement, (iii) the Company's or the Collateral Agent's failure or delay in obtaining any guaranty or other collateral securing the World Liabilities, (iv) the release of, or extension of time for payment or performance by, or any other indulgence granted to World Travel or any other person with respect to the World Liabilities, by operation of law or otherwise, (v) the existence, value, condition, loss, subordination, or release (with or without substitution) of, or failure to have title to or perfect and maintain a security interest in, any other collateral, or the time, place and manner of any sale or other disposition of any other collateral given in connection with the World Liabilities, (vi) World Travel's voluntary or involuntary bankruptcy, assignment for the benefit of creditors, reorganization, or similar proceedings affecting World Travel or its assets, or (vii) any other action or circumstances which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor. The Owner warrants that it has adequate means to obtain from World Travel on a

continuing basis financial data and other information regarding World Travel and is not relying upon the Company or the Collateral Agent to provide any such data or other information. Except as expressly provided herein, the Owner waives presentment, demand for payment, notice of nonpayment, protest, notice of protest, and notice of dishonor of the Intercompany Note or of any of the World Liabilities secured hereby.

[Signature Pages Begin on Next Page]

IN WITNESS WHEREOF, this Security Agreement has been duly executed as of the day and year first above written.

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity, except as expressly set forth herein, but solely as trustee

By:

Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Notice Address:

Attention:

Telephone:

Telefacsimile:

WORLD TRAVEL, LLC,  
a Nevada limited liability company

By: WYNN LAS VEGAS, LLC,  
a Nevada limited liability company,  
its sole member

By: WYNN RESORTS HOLDINGS, LLC,  
a Nevada limited liability company,  
its sole member

By: VALVINO LAMORE, LLC,  
a Nevada limited liability company,  
its sole member

By: WYNN RESORTS, LIMITED,  
a Nevada corporation,  
its sole member

By:

\_\_\_\_\_

Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Notice Address:

Attention:

Telephone:

Telefacsimile:

ACCEPTED AS OF THE DATE FIRST WRITTEN ABOVE

WYNN LAS VEGAS, LLC,  
a Nevada limited liability company,  
as the Borrower

By: Wynn Resorts Holdings, LLC,

a Nevada limited liability company,  
its sole member

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

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

By:

\_\_\_\_\_  
Name:

Title:

Notice Address:

Attention:

Telephone:

Telefacsimile:

20

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**SCHEDULE A TO  
SECURITY AGREEMENT**

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**DESCRIPTION OF AIRCRAFT COLLATERAL**

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**EXHIBIT A TO  
SECURITY AGREEMENT**

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**FORM OF AIRCRAFT SECURITY AGREEMENT SUPPLEMENT**

Security Agreement Supplement No. (this "*Security Agreement Supplement No.* ") dated , 20 , by Wells Fargo Bank Northwest, National Association, not in its individual capacity, but solely as Trustee of that certain trust created under the Trust Agreement dated as of May 10, 2002 with World Travel, LLC, a Nevada limited liability company, ("*World Travel*"), as Trustor (in such capacity, the "*Owner*") and World Travel, in favor of Wynn Las Vegas, LLC, a Nevada limited liability company (being referred to herein, together with any successor(s) thereto in such capacity, as the "*Company*"). Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Security Agreement dated as of October , 2002, among the Owner, World Travel and the Company, a copy of which is attached hereto.

**WITNESSETH:**

The Loan Agreement and Security Agreement provides for the execution and delivery from time to time of supplements to the Security Agreement substantially in the form hereof which shall particularly describe the Aircraft Collateral and shall specifically grant a security interest in the Aircraft Collateral to the Company.

The Security Agreement relates to the Aircraft Collateral described in Schedule A thereto, Schedule A to the Security Agreement and each Schedule A attached to each other Security Agreement Supplement attached to the attached Security Agreement.

The Owner hereby assigns and pledges to the Company, and hereby grants to the Company, a lien and security interest in and to all of the Aircraft Collateral, whether now or hereafter existing or acquired, including the Aircraft Collateral more particularly described in **Schedule A** hereto.

TO HAVE AND TO HOLD the aforesaid property unto the Company, its successors and assigns forever, upon the terms and conditions set forth in the Security Agreement to secure the payment of the World Liabilities.

This Supplement shall be construed in connection with and as part of the Security Agreement and all terms, conditions and covenants contained in the Security Agreement, except as herein modified, shall be and remain in full force and effect.

Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Security Agreement Supplement No. may refer to the "Security Agreement" without making specific reference to this Security Agreement Supplement No. , but nevertheless all such references shall be deemed to include this Security Agreement Supplement No. unless the context shall otherwise require.

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*Section 1.1. Counterparts.* This Supplement No. may be executed and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Supplement.

*Section 1.2. Governing Law.* THIS SECURITY SUPPLEMENT NO. AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED BY, THE LAW OF THE STATE OF NEW YORK EXCLUDING CHOICE-OF-LAW PRINCIPLES OF THE LAW OF SUCH STATE THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE.

Section 1.3. *Headings.* Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Supplement No. nor shall they affect its meaning, construction or effect.

Section 1.4. *The Company.* The Company shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Security Agreement Supplement or for or in respect of the recitals contained herein, all of which are made solely by the Owner.

[Signature Pages Begin on Next Page]

2

IN WITNESS WHEREOF, Grantor has caused this Security Agreement Supplement No. \_\_\_\_\_ to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

WELLS FARGO BANK NORTHWEST, NATIONAL  
ASSOCIATION, not in its individual capacity,  
except as expressly set forth herein, but  
solely as trustee

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WORLD TRAVEL, LLC,  
a Nevada limited liability company

By: WYNN LAS VEGAS, LLC,  
a Nevada limited liability company,  
its sole member

By: WYNN RESORTS HOLDINGS, LLC,  
a Nevada limited liability company,  
its sole member

By: VALVINO LAMORE, LLC,  
a Nevada limited liability company,  
its sole member

By: WYNN RESORTS, LIMITED,  
a Nevada corporation,  
its sole member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Notice Address:

Attention:

Telephone:

Telefacsimile:

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Accepted by

WYNN LAS VEGAS, LLC,  
a Nevada limited liability company,  
as the Borrower

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

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

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

By:

\_\_\_\_\_  
Name:  
Title:

Notice Address:

Attention:

Telephone:

Telefacsimile:

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**EXHIBIT A TO  
SECURITY AGREEMENT SUPPLEMENT**

**DESCRIPTION OF AIRCRAFT COLLATERAL**

One Bombardier Inc. model BD-700-1A10 Global Express aircraft bearing manufacturer's serial number 9065 and Federal Aviation Administration Registration Number N711SW (pending change to N711SQ, and formerly N789TP), including two BMW Rolls Royce BR 710A2-20/01 engines bearing manufacturer's serial numbers 12243 and 12244.

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**Exhibit L**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "*Assignment*") entered into by and between WYNN LAS VEGAS, LLC, a Nevada limited liability company, as assignor (the "*Assignor*"), and WELLS FARGO BANK NEVEDA, NATIONAL ASSOCIATION, not in its individual capacity but solely as Collateral Agent, as assignee (together with its permitted successors and assigns, the "*Assignee*"), dated as of October , 2002.

WHEREAS, the Assignor and the Assignee are parties to that certain Loan Agreement, dated as of even date herewith (as the same may be amended, supplemented or otherwise modified from time to time, the "*Loan Agreement*"), among the Assignor, as Borrower; the Assignee, as Collateral Agent for the benefit of the Lenders; and the Persons listed on Schedule 1A1 thereto, as Lenders. Capitalized terms not otherwise defined herein shall have the meanings assigned thereto in the Loan Agreement;

WHEREAS, pursuant to the Loan Agreement, the Assignor is obtaining Loans from the Lenders, the proceeds of which are being used, in part, by the Assignor to make an intercompany loan to World Travel, LLC, a Nevada limited liability company ("*World Travel*") evidenced by that certain intercompany note (the "*Intercompany Note*");

WHEREAS, pursuant to the Trust Agreement dated as of May 10, 2002, World Travel contributed, and WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Trustee of that certain trust created under the Trust Agreement dated as of May 10, 2002 with World Travel as Trustor (in such capacity, the "*Owner*") became the owner of, the Aircraft more particularly described in **Annex I** hereto;

WHEREAS, pursuant to the Loan Agreement and the Intercompany Note, World Travel will use the proceeds of the Intercompany Note to refinance obligations secured by such Aircraft;

WHEREAS, the Owner and World Travel has executed and delivered that certain Aircraft Security Agreement, dated as of October , 2002 (as more particularly described in **Annex I** attached hereto, the "*Security Agreement*"; the Security Agreement and the Intercompany Note shall be hereinafter referred to collectively, as the "*Assigned Agreements*") in favor of the Assignor, which Security Agreement relates to the Aircraft as more particularly described in **Annex I** hereto;

WHEREAS, as a condition precedent to the Lenders making their loans to the Assignor, the Lenders have required that the Assignor fully assign to the Assignee all of the Assignor's rights and obligations under the Assigned Agreements;

WHEREAS, the Assignor desires to assign to the Assignee all of its rights, interests, duties, obligations and liabilities in, to and under the Assigned Agreements and the Assignee desires to accept the assignment of all of the Assignor's rights, interests, duties, obligations and liabilities in, to and under the Assigned Agreements, to the same extent as if the Assignee had executed the Assigned Agreements; and

WHEREAS, it is in the best interests of the Assignor that the Document Closing Date and the Overall Transaction occur and the Assignor has duly authorized the execution, delivery and performance of this Assignment.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Lenders to enter into the Overall Transaction as set forth in the Loan Agreement, the parties hereto hereby agree as follows:

**SECTION 1. ASSIGNMENT OF ASSIGNED AGREEMENTS.**

The Assignor does hereby irrevocably and unconditionally quitclaim, assign, transfer, convey and set over unto the Assignee all of the Assignor's rights, title, interests, duties, obligations and liabilities in, to and under the Assigned Agreements. Notwithstanding the foregoing, the Assignee agrees that

unless an Event of Default shall exist under the Loan Agreement, the Assignee shall not exercise the right of the Assignor to demand payment under the Intercompany Note.

**SECTION 2. ACCEPTANCE AND REPRESENTATIONS.**

*Section 2.1.* The Assignee hereby accepts the assignment contained in **Section 1**, and shall have all the rights and privileges, of the Assignor in, to and under the Assigned Agreements to the same extent as if the Assignee had executed the Assigned Agreements. The Assignee accepts all of the Assignor's rights, interests, duties, obligations and liabilities thereunder.

*Section 2.2.* The Assignor shall have no rights or privileges, under the Assigned Agreements.

*Section 2.3.* This Assignment is a present, unconditional, irrevocable and absolute assignment. The Assignor hereby represents and warrants to Assignee as follows:

- (A) attached hereto as **Exhibit A** is a true, correct and complete copy of the Security Agreement and all supplements thereto;
- (B) attached hereto as **Exhibit B** is a true, correct and complete copy of the Intercompany Note;
- (C) (i) the Security Agreement is in full force and effect and constitutes the entire agreement executed by the Owner and World Travel in favor of the Assignor regarding the subject matter therein and (ii) the Intercompany Note is in full force and effect and constitutes the entire agreement executed by World Travel in favor of the Assignor regarding the subject matter therein;
- (D) no Default or Event of Default has occurred under the Assigned Agreements;
- (E) the Assignor has not previously assigned, hypothecated or otherwise created or allowed to exist any lien or other claim on the Assigned Agreements and has the full legal right to enter into this Assignment; and
- (F) upon execution hereof by the Assignor, the Assignee shall succeed to all of the Assignor's right title and interest in and to each Assigned Agreement, free and clear of any liens or other competing claims of any kind.

**SECTION 3. GOVERNING LAW.**

This Assignment shall be governed by, and construed under, the laws of New York without regard to conflicts of law principles (other than Title 14 of Article V of the New York General Obligations Law).

**SECTION 4. COUNTERPARTS.**

This Assignment may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument.

**SECTION 5. BINDING NATURE.**

This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective permitted successors and assigns.

**SECTION 6. TERMINATION.**

Upon the final indefeasible payment in full and immediately available funds of all Obligations of the Assignor, the Assignee shall, at the written request of the Assignor, re-convey the Intercompany Note and release all of its right, title and interest therein, and take such other actions at the Assignor's expense as the Assignor may request to evidence such release, including without limitation the return of any other assets pledged as Collateral and the execution and delivery of related instruments of transfer, lien releases, termination statements and similar documents and instruments.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment as of the date first set forth above.

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

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

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

By: WYNN RESORTS, LIMITED, a Nevada corporation, its sole member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ASSIGNEE:

WELLS FARGO BANK NEVEDA, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity, but solely as Collateral Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

3

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**ANNEX I  
DESCRIPTION OF ASSIGNED AGREEMENTS**

Aircraft Security Agreement, dated as of October , 2002 between Wells Fargo Bank Northwest, National Association, not in its individual capacity, but solely as Trustee and Wynn Las Vegas, LLC, a Nevada limited liability company.

Intercompany Note dated October , 2002 from World Travel LLC, a Nevada limited liability company, to the order of Wynn Las Vegas, LLC, a Nevada limited liability company.

**DESCRIPTION OF AIRCRAFT**

One Bombardier Inc. model BD-700-1A10 Global Express aircraft bearing manufacturer's serial number 9065 and Federal Aviation Administration Registration Number N711SW (pending change to N711SQ, and formerly N789TP), including two BMW Rolls Royce BR 710A2-20/01 engines bearing manufacturer's serial numbers 12243 and 12244.

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**EXHIBIT A  
SECURITY AGREEMENT**

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**EXHIBIT B  
INTERCOMPANY NOTE**

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**QuickLinks**

[FORM OF LOAN AGREEMENT by and among WYNN LAS VEGAS, LLC, AS BORROWER, WELLS FARGO BANK NEVEDA, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS COLLATERAL AGENT, and THE PERSONS LISTED ON SCHEDULE IA HERETO, AS LENDERS dated as of October , 2002](#)

[Table of Contents](#)

[FORM OF WYNN LAS VEGAS, LLC LOAN AGREEMENT](#)

[SCHEDULE IA1 TO LOAN AGREEMENT DATED AS OF OCTOBER , 2002 LENDERS' COMMITMENT PERCENTAGE](#)

[SCHEDULE IA2 TO LOAN AGREEMENT DATED AS OF OCTOBER , 2002 LENDERS' ALLOCATED COMMITMENT AMOUNT](#)

[SCHEDULE IB TO LOAN AGREEMENT DATED AS OF OCTOBER , 2002 ADDRESS FOR NOTICE AND PAYMENT](#)

[SCHEDULE II TO LOAN AGREEMENT DATED AS OF OCTOBER , 2002 REQUIRED PREPAYMENTS](#)

[EXHIBIT A TO LOAN AGREEMENT FORM OF PROMISSORY NOTE](#)

[WYNN LAS VEGAS, LLC](#)

[GRID ATTACHED TO NOTE DATED , OF WYNN LAS VEGAS, LLC PAYABLE TO THE ORDER OF \[.\]](#)

[APPENDIX I TO LOAN AGREEMENT \(WYNN LAS VEGAS, LLC, AS BORROWER\)](#)

[FORM OF INTERCOMPANY NOTE](#)

[EXHIBIT I TO LOAN AGREEMENT FORM OF FF&E GUARANTY](#)

[GUARANTY AGREEMENT made by VALVINO LAMORE, LLC, WYNN LAS VEGAS CAPITAL CORP., PALO, LLC, WYNN RESORTS HOLDINGS, LLC, DESERT INN WATER COMPANY, LLC, WYNN DESIGN & DEVELOPMENT, LLC, WORLD TRAVEL LLC, LAS VEGAS JET, LLC and THE OTHER GUARANTORS FROM TIME TO TIME PARTY HERETO in favor of SECURED PARTIES \(as defined herein\) Dated as of October , 2002](#)

[TABLE OF CONTENTS](#)

[RECITALS](#)

[NOTICE ADDRESSES OF GUARANTORS](#)

[RECITALS](#)



[BORROWER SECURITY AGREEMENT Dated as of October , 2002 Between WYNN LAS VEGAS, LLC, as Borrower and WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION, as Collateral Agent for the Lenders](#)

[TABLE OF CONTENTS](#)

[BORROWER SECURITY AGREEMENT](#)

[WITNESSETH](#)

[DESCRIPTION OF THE BORROWER COLLATERAL](#)

[FORM OF THE BORROWER SECURITY AGREEMENT SUPPLEMENT](#)

[WITNESSETH](#)

[SCHEDULE A DESCRIPTION OF THE BORROWER COLLATERAL](#)

[TABLE OF CONTENTS](#)

[AIRCRAFT SECURITY AGREEMENT](#)

[W I T N E S S E T H](#)

[" WYNN LAS VEGAS, LLC, as Secured Party, as further assigned to WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION, as Collateral Agent"](#)

[DESCRIPTION OF AIRCRAFT COLLATERAL](#)

[FORM OF AIRCRAFT SECURITY AGREEMENT SUPPLEMENT](#)

[DESCRIPTION OF AIRCRAFT COLLATERAL](#)

[ASSIGNMENT AND ASSUMPTION AGREEMENT](#)

[ANNEX I DESCRIPTION OF ASSIGNED AGREEMENTS](#)

[DESCRIPTION OF AIRCRAFT](#)

[EXHIBIT A SECURITY AGREEMENT](#)

[EXHIBIT B INTERCOMPANY NOTE](#)

## FORM OF COMPLETION GUARANTY

THIS COMPLETION GUARANTY (this "*Guaranty*") dated as of October [ ], 2002, is made by Wynn Completion Guarantor, LLC ("*Completion Guarantor*"), in favor of Deutsche Bank Trust Company Americas, as the Bank Agent acting on behalf of the Bank Lenders and Wells Fargo Bank, National Association, as the Indenture Trustee acting on behalf of the Second Mortgage Note Holder(s). This Guaranty is made and delivered pursuant to the Master Disbursement Agreement (the "*Disbursement Agreement*") dated as of even date herewith among Wynn Las Vegas, LLC, a Nevada limited liability company, ("*Wynn Las Vegas*"), Wynn Las Vegas Capital Corp., a Nevada corporation ("*Capital Corp.*"), Wynn Design & Development, LLC, a Nevada limited liability company ("*WDD*" and, jointly and severally with Capital Corp., the "*Company*"), the Bank Agent, the Indenture Trustee, Deutsche Bank Trust Company Americas, as the Disbursement Agent and Wells Fargo Bank Nevada, National Association, as the FF&E Agent. The Bank Agent, the Indenture Trustee and the Lenders under their respective Facility Agreements are hereinafter referred to as the "Lender Beneficiaries" ("*Lender Beneficiaries*") (it being understood that the term "Lender Beneficiaries" shall not include the FF&E Agent or the FF&E Lenders).

### RECITALS

A. *The Project.* The Company proposes to develop, construct and operate the Le Rêve Casino Resort, a hotel and casino resort, with related parking structure and golf course facilities, as part of the redevelopment of the site of the former Desert Inn in Las Vegas, Nevada.

B. *Bank Credit Agreement.* Concurrently herewith, Wynn Las Vegas, the Bank Agent, Deutsche Bank Securities, Inc., as advisor, lead arranger and joint book running manager, Banc of America Securities LLC, as advisor, lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as advisor, arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York Branch, as arranger and joint documentation agent 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 Wynn Las Vegas in an aggregate amount not to exceed \$750,000,000 and certain delay draw term loans to Wynn Las Vegas in an aggregate amount not to exceed \$250,000,000, as more particularly described therein. Of the Bank Revolving Facility amount, \$747,000,000 is intended to finance Project Costs, as more particularly described therein. Valvino, Wynn Resorts Holdings and certain other guarantors have, pursuant to the Bank Guarantee and Collateral Agreement, guaranteed the Wynn Las Vegas' obligations under the Bank Credit Agreement.

C. *Second Mortgage Notes Indenture.* Concurrently herewith, the Company, certain guarantors signatory thereto (including Valvino and Wynn Resorts Holdings) and the Indenture Trustee have entered into the Second Mortgage Notes Indenture pursuant to which the Company will issue the Second Mortgage Notes in an aggregate principal amount equal to \$340,000,000 to finance Project Costs, as more particularly described therein.

D. *Disbursement Agreement.* Concurrently herewith, the Company, the Disbursement Agent, the Bank Agent, the Indenture Trustee and the FF&E Agent, have entered into the Disbursement 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, (b) the conditions precedent to the Closing Date, to the initial Advance and to subsequent Advances, (c) certain common representations, warranties and covenants of the Company in favor of the Funding Agents and the Lenders and (d) the common events of default and remedies.

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E. *Requirement of Guaranty.* The Lender Beneficiaries and the Disbursement Agent have agreed to enter into and consummate the transactions contemplated under the respective Facility Agreements and the Disbursement Agreement on the condition that Completion Guarantor guarantee certain of the Company's obligations under the Disbursement Agreement as provided herein.

F. *Benefit to Completion Guarantor.* Completion Guarantor is a wholly owned subsidiary of Wynn Las Vegas and acknowledges that it will benefit, directly and indirectly, if the Lender Beneficiaries and the Disbursement Agent enter into the respective Facility Agreements and the Disbursement Agreement.

G. *Concurrent Obligations.* The obligations of Completion Guarantor hereunder are being incurred concurrently with the respective obligations of the Company under the Facility Agreements, the guaranties executed by Valvino, Wynn Resorts Holdings and the other guarantors, and the Disbursement Agreement.

H. *Capitalized Terms.* Capitalized terms used but not defined herein shall have the respective meanings given them in Exhibit A to the Disbursement Agreement, and the Rules of Interpretation contained in said Exhibit A shall apply hereto.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and as an inducement to the Lender Beneficiaries and the Disbursement Agent to enter into the Facility Agreements and the Disbursement Agreement, Completion Guarantor hereby consents and agrees as follows:

1. *Guaranty.*

(a) The undersigned Completion Guarantor, as primary obligor and not merely as surety, unconditionally and irrevocably guarantees to (i) the Bank Agent acting on behalf of the Bank Lenders, and (ii) the Indenture Trustee acting on behalf of the Second Mortgage Note Holder(s), (A) the performance by the Company of its obligation under the Disbursement Agreement to achieve Completion on or before the Scheduled Completion Date and thereafter to achieve Final Completion, (B) payment and performance when due, whether by acceleration or otherwise, of the full amount of any and all obligations and liabilities of the Company under Sections 5.8.1, 5.8.3 and the last sentence of Section 5.21 of the Disbursement Agreement (the "*Relevant Provisions*"), and (C) the payment or performance when due of all other "Obligations" (as defined in the Disbursement Agreement) of the Loan Parties

under the Credit Agreement and the Second Mortgage Notes Indenture, whether by acceleration or otherwise, together with all expenses incurred by the Disbursement Agent or the Lender Beneficiaries in enforcing any of such obligations and liabilities or the terms hereof, including, without limitation, reasonable fees and expenses of legal counsel (collectively, the "Obligations"), and agrees that if for any reason the Company shall fail to pay or perform when due any of such Obligations, Completion Guarantor will pay or perform the same forthwith. Notwithstanding any other provision hereof, Completion Guarantor's aggregate liability under this *Section 1(a)* shall in no event exceed Fifty Million Dollars (\$50,000,000) (the "*Liability Cap*"). Completion Guarantor waives notice of acceptance of this Guaranty and of any obligation to which it applies or may apply under the terms hereof, and waives diligence, presentment, demand of payment, notice of dishonor or non-payment, protest, notice of protest, of any such obligations, suit or taking other action by the Disbursement Agent, the Lender Beneficiaries or Lenders against, and giving any notice of default or other notice to, or making any demand on, any party liable thereon (including Completion Guarantor).

(b) This Guaranty is a primary obligation of Completion Guarantor and is an absolute, unconditional, continuing and irrevocable guaranty of payment and not of collectibility and is in no way conditioned on or contingent upon any attempt to enforce in whole or in part the Company's

2

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liabilities and obligations to the Funding Agents, the Lenders and the Disbursement Agent. Subject to the Liability Cap set forth in *Section 1(a)* above, if the Company shall fail to pay any of the Obligations as and when they are due, Completion Guarantor shall forthwith pay such Obligations in immediately available funds. Each failure by the Company to pay any Obligations shall give rise to a separate cause of action herewith, and separate suits may be brought hereunder as each cause of action arises.

(c) The Funding Agents or the Lenders may, in accordance with the Financing Agreements, at any time and from time to time (whether or not after revocation or termination of this Guaranty) without the consent of or notice to Completion Guarantor, except such notice as may be required by the Financing Agreements or applicable law which cannot be waived, without incurring responsibility to Completion Guarantor, without impairing or releasing the obligations of Completion Guarantor hereunder, upon or without any terms or conditions and in whole or in part, (i) change the manner, place and terms of payment or change or extend the time of payment of, renew, or alter any Obligation, or any obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof or in any manner modify, amend or supplement the terms of any Facility Agreement, the Disbursement Agreement (including the Relevant Provisions) or any documents, instruments or agreements executed in connection therewith (in each case, with the consent of the Company if required by such documents) and the guaranty herein made shall apply to the Obligations, changed, extended, renewed, modified, amended, supplemented or altered in any manner; (ii) exercise or refrain from exercising any rights against the Company or others (including Completion Guarantor) or otherwise act or refrain from acting; (iii) add or release any other guarantor from its obligations without affecting or impairing the obligations of Completion Guarantor hereunder; (iv) settle or compromise any Obligations and/or any obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any obligations and liabilities which may be due to the Lenders or others; (v) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner or in any order any property by whomsoever pledged or mortgaged to secure or howsoever securing the Obligations or any liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and/or any offset thereagainst; (vi) apply any sums by whomsoever paid or howsoever realized to any obligations and liabilities of the Company to the Funding Agents and the Lenders under any of the Financing Agreements in the manner provided therein regardless of what obligations and liabilities remain unpaid; (vii) consent to or waive any breach of, or any act, omission or default under, any Facility Agreement or the Disbursement Agreement (including the obligation to achieve Completion on or before the Scheduled Completion Date, the obligation to achieve Final Completion or the obligation set forth in the Relevant Provisions) or otherwise amend, modify or supplement (with the consent of the Company, if required by such documents) any Facility Agreement or the Disbursement Agreement (including the obligation to achieve Completion on or before the Scheduled Completion Date, the obligation to achieve Final Completion, or the obligation set forth in the Relevant Provisions) or any of such other instruments or agreements; and/or (viii) act or fail to act in any manner referred to in this Guaranty which may deprive Completion Guarantor of any right to subrogation which Completion Guarantor may, notwithstanding the provisions of *Section 7*, have against the Company to recover full indemnity for any payments made pursuant to this Guaranty or of any right of contribution which Completion Guarantor may have against any other party.

(d) No invalidity, irregularity or unenforceability of the Obligations shall affect, impair, or be a defense to this Guaranty, which is a primary obligation of Completion Guarantor.

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(e) This is a continuing Guaranty and all obligations to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. In the event that, notwithstanding the provisions of *Section 1(a)* hereof, this Guaranty shall be deemed revocable in accordance with applicable law, then any such revocation shall become effective only upon receipt by the Bank Agent, the Indenture Trustee and the Disbursement Agent of written notice of revocation signed by Completion Guarantor. No revocation or termination hereof shall affect in any manner rights arising under this Guaranty with respect to Obligations (i) arising prior to receipt by the Bank Agent, the Indenture Trustee and the Disbursement Agent of written notice of such revocation or termination and the sole effect of revocation and termination hereof shall be to exclude from this Guaranty Obligations thereafter arising which are unconnected with Obligations theretofore arising or transactions theretofore entered into or (ii) arising as a result of an Event of Default under the Disbursement Agreement occurring by reason of the revocation or termination of this Guaranty.

(f) (i) Except as otherwise required by law, each payment required to be made by Completion Guarantor hereunder shall be made without deduction or withholding for or on account of Taxes. If such deduction or withholding is so required, Completion Guarantor shall, upon notice thereof from the Bank Agent, the Indenture Trustee or the Disbursement Agent, (A) pay the amount required to be deducted or withheld to the appropriate authorities before penalties attach thereto or interest accrues thereon, (B) on or before the sixtieth (60th) day after payment of such amount, forward to the Bank Agent, the Indenture Trustee and the Disbursement Agent an official receipt evidencing such payment (or a certified copy thereof), and (C) in the case of any such deduction or withholding, forthwith pay to the Disbursement Agent for application in accordance with the Disbursement Agreement such additional amount as may be necessary to ensure that the net amount actually received by the Disbursement Agent free and clear of such Taxes, including any Taxes on such additional amount, is equal to the amount that the Disbursement Agent would have received had there been no such deduction or withholding.

(ii) As used herein, the term "Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Guaranty other than (A) any income, franchise, transfer, inheritance, capital stock or similar tax imposed upon the gross or net income of any Lender by the United States, any state of the United States, any jurisdiction where any Lender is organized and/or the jurisdiction in which is located any office from or at which any Lender is making or maintaining any Loans under the Bank Credit Facility or acquiring the Mortgage Note(s), as the case may be, or receiving any payments under any of the Financing Agreements and (B) any stamp, registration, documentation or similar tax.

## 2. Completion Guaranty Deposit Account.

(a) As security for Completion Guarantor's obligations hereunder, Completion Guarantor shall, on or prior to the Closing Date, establish or cause to be established the Completion Guaranty Deposit Account and deposit in the Completion Guaranty Deposit Account, in cash or Permitted Investments, Fifty Million Dollars (\$50,000,000).

(b) The Lender Beneficiaries shall have the right to withdraw funds from the Completion Guaranty Deposit Account at the following times and in the following amounts:

(i) On any date on which the Company is required to (but does not prior to 11:00 a.m. New York, New York time) deposit amounts in the Company's Funds Account or the Disbursement Account, pursuant to *Section 5.8.3* of the Disbursement Agreement, in an amount equal to the lesser of (A) the amount so required to be deposited and (B) the greater of (x) the amount which is permitted to be withdrawn from the Completion Guaranty Deposit

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Account on such date pursuant to *Section 5.8.3* of the Disbursement Agreement and (y) from and after the initial Advance Under the Bank Credit Facility, such greater amount as may be authorized by the Bank Agent; and

(ii) Pursuant to *Sections 5.8.1, 5.21 and 10.2* of the Disbursement Agreement, upon (A) the occurrence of an Event of Default, (B) the dissolution or liquidation of the Completion Guarantor, or the Completion Guarantor's "Bankruptcy" (as defined in the Second Mortgage Notes Deed of Trust), (C) the breach by Completion Guarantor of any of its obligations hereunder (including its obligations under *Section 5*) or (d) the occurrence of an Event of Loss following which the Company is not allowed to repair or restore the Project, in the full amount of funds then on deposit in the Completion Guaranty Deposit Account.

(c) On the Completion Guaranty Release Date, the Lender Beneficiaries shall release or cause to be released the amounts contemplated in *Section 2.10(d)* of the Disbursement Agreement to, or as directed by, Completion Guarantor. On the Final Completion Date, (i) the Lender Beneficiaries shall release or cause to be released all amounts remaining in the Completion Guaranty Deposit Account to, or as directed by, Completion Guarantor and (ii) this Guaranty shall, except for the provisions set forth in *Sections 7 and 8* below and subject to *Section 19*, be deemed terminated and of no force or effect. The provisions of *Sections 7 and 8* below shall, subject to *Section 19*, survive until all the Financing Agreements Obligations (as defined in *Section 7*) have been paid in full.

(d) Proceeds of any withdrawal from the Completion Guaranty Deposit Account shall (except as provided in *Section 2(c)* above) be applied by the Lender Beneficiaries (i) in the case of a withdrawal under *Section 2(b)(i)* above, to the satisfaction of the Company's obligation to cause funds to be deposited into the Company's Funds Account or the Disbursement Account, as the case may be, pursuant to *Section 5.8.3* of the Disbursement Agreement and (ii) in the case of a withdrawal under *Section 2(b)(ii)* above, as permitted under *Section 7.2* of the Disbursement Agreement, *Section 8* of the Bank Credit Agreement or *Article 6* of the Second Mortgage Notes Indenture and, in any event, as otherwise permitted by *Section 3* hereof.

(e) The Lender Beneficiaries shall withdraw or cause to be withdrawn any interest or other earnings which accrue on amounts on deposit in the Completion Guaranty Deposit Account and shall deposit or cause to be deposited such amounts in the Company Funds Account until applied to pay Project Costs as provided in the Disbursement Agreement.

## 3. Safekeeping of Completion Guaranty Deposit Account.

(a) Amounts deposited in the Completion Guaranty Deposit Account shall be applied exclusively as provided in this Guaranty and the Lender Beneficiaries shall at all times act and direct the Securities Intermediary under the Completion Guaranty Collateral Account Agreements so as to implement the application of funds provisions and procedures herein set forth. The Lender Beneficiaries are 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 the Completion Guaranty Deposit Account shall be disbursed or applied except in accordance with the provisions hereof or as required by law.

(b) The Indenture Trustee, the Bank Agent and the Disbursement Agent shall take such actions within their control that they customarily take in the conduct of their business to protect the Completion Guaranty Deposit Account and all cash, funds and Permitted Investments from time to time deposited therein, as well as any proceeds therefrom (collectively, the "Guaranty Collateral") and maintain the same free and clear of all liens, security interests, safekeeping or other charges, demands and claims of any nature whatsoever now or hereafter arising in favor of any parties other than the Project Secured Parties (collectively, "Third Party Claims"); it being

5

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understood, however, that the foregoing shall in no way be deemed to be a guaranty or other assurance by the Indenture Trustee, the Bank Agent or the Disbursement Agent that Third Party Claims will not arise.

(c) The Disbursement Agent shall take any other steps from time to time requested by the Bank Agent or Indenture Trustee to confirm or cause the securities intermediary under the Completion Guaranty Collateral Account Agreements to confirm and maintain the priority of the security interests in the

4. *Representations and Warranties.* Completion Guarantor makes the representations and warranties set forth below to the Lender Beneficiaries and the other Lenders as of the date hereof:

(a) Completion Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and to (i) own or hold under lease and operate the properties it purports to own or hold under lease, (ii) carry on its business as now being conducted, (iii) incur indebtedness and create a lien on its property and (iv) to execute, deliver and perform under this Guaranty.

(b) Completion Guarantor has duly authorized, executed and delivered this Guaranty and neither the execution and delivery hereof nor the consummation of the transactions contemplated hereby nor the compliance with the terms hereof (a) does or will contravene the formation documents or any other Legal Requirement then applicable to or binding on Completion Guarantor, (b) does or will contravene or result in any breach or constitute any default under, or result in or require the creation of any Lien upon any of Completion Guarantor's properties or under any agreement or instrument to which Completion Guarantor is a party or by which it or any of its properties may be bound, or (c) does or will require the consent or approval of any Person which has not previously been obtained.

(c) All governmental authorizations and actions necessary in connection with the execution and delivery by Completion Guarantor of this Guaranty and the performance of its Obligations hereunder have been obtained or performed and remain valid and in full force and effect.

(d) This Guaranty constitutes the legal, valid and binding obligation of Completion Guarantor, enforceable against Completion Guarantor (and Completion Guarantor's successors and assigns) in accordance with the terms of this Guaranty, subject to applicable bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and general principles of equity.

(e) The execution, delivery and performance of this Guaranty (i) do not and will not contravene any provisions of Completion Guarantor's certificate of incorporation or bylaws; (ii) do not and will not contravene any law, rule, regulation, order, judgment or decree applicable to or binding on Completion Guarantor or any of its assets or properties; (iii) do not and will not contravene, or result in any breach of or constitute any default under, any agreement or instrument to which Completion Guarantor is a party or by which Completion Guarantor or any of its assets or properties may be bound or affected; and (iv) do not and will not require the consent of any Person under any existing law or agreement which has not already been obtained.

(f) There is no pending or, to the best of Completion Guarantor's knowledge, threatened action or proceeding affecting Completion Guarantor before any court, governmental agency or arbitrator, which might reasonably be expected to materially and adversely affect the financial condition, results of operations, business or prospects of Completion Guarantor or the ability of Completion Guarantor to perform its obligations under this Guaranty.

6

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(g) Completion Guarantor possesses all franchises, certificates, licenses, permits and other governmental authorizations and approvals necessary for him to own his properties, conduct its businesses and perform its obligations under this Guaranty.

(h) Completion Guarantor has established adequate means of obtaining financial and other information pertaining to the businesses, operations and condition (financial and otherwise) of the Company and its properties on a continuing basis, and Completion Guarantor now is and hereafter will be completely familiar with the businesses, operations and condition (financial and otherwise) of the Company and its properties.

(i) All quarterly and annual financial statements heretofore delivered by Completion Guarantor to Agent are true, correct and complete, do not fail to disclose any material liabilities, whether direct or contingent, fairly present the financial condition of Completion Guarantor as of the date delivered and are prepared in accordance with generally accepted accounting principles consistently applied.

(j) Completion Guarantor is not an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940.

(k) (i) Completion Guarantor is not, and will not as a result of the execution and delivery of this Guaranty, be rendered insolvent, (ii) Completion Guarantor does not intend to incur, or believe it is incurring, obligations beyond its ability to pay and (iii) Completion Guarantor's property remaining after delivery and performance of this Guaranty will not constitute unreasonably small capital for its business.

5. *Covenants.* So long as any Obligations are outstanding, Completion Guarantor agrees that:

(a) it will preserve, renew and keep in full force and effect its limited liability company existence and it will not amend, revise or modify its organizational documents;

(b) it will comply with Articles IV, VI and VII of its Articles of Organization;

(c) it will maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Guaranty and will obtain any such consent that may become necessary in the future;

(d) it will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Guaranty;

(e) promptly, and in any event within thirty (30) Banking Days after the obtaining knowledge thereof, Completion Guarantor will give to the Bank Agent, the Indenture Trustee and the Disbursement Agent notice of the occurrence of any litigation or governmental proceeding pending against Completion Guarantor or which relates to this Guaranty; and

(f) it will deliver such other documents and other information reasonably requested by the Bank Agent, the Indenture Trustee or the Disbursement Agent.

6. *Waiver.* To the fullest extent permitted by law, Completion Guarantor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including without limitation (a) any right to require the Funding Agents, the Lenders or the Disbursement Agent to proceed against the Company or any other person or to proceed against or exhaust any security held by the Funding Agents, the Lenders or the Disbursement Agent at any time or to pursue any other remedy in the Funding Agents', the Lenders' or the Disbursement Agent's power before proceeding against Completion Guarantor, (b) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of the Company or any other Person or the failure of the

7

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Funding Agents, the Lenders or the Disbursement Agent to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of the Company or any other Person, (c) demand, presentment, protest and notice of any kind, including without limitation notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of the Company, the Funding Agents, the Lenders, the Disbursement Agent, any endorser or creditor of the Company or Completion Guarantor or on the part of any other person under this or any other instrument in connection with any obligation or evidence of indebtedness held by the Funding Agents, the Lenders or the Disbursement Agent as collateral or in connection with any Obligations, (d) any defense based upon an election of remedies by the Funding Agents, the Lenders or the Disbursement Agent, including without limitation an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs any subrogation rights which Completion Guarantor may, notwithstanding the provisions of Sections 7 and 8, have against the Company, any right which Completion Guarantor may, notwithstanding the provisions of Sections 7 and 8, have to proceed against the Company for reimbursement, or both, (e) any defense based on any offset against any amounts which may be owed by any Person to Completion Guarantor for any reason whatsoever, (f) any defense based on any act, failure to act, delay or omission whatsoever on the part of the Company or the failure by the Company to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Financing Agreements, (g) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal provided, that, upon payment in full of the Obligations, this Guaranty shall no longer be of any force or effect, (h) any defense, setoff or counterclaim which may at any time be available to or asserted by the Company against the Funding Agents, the Lenders, the Disbursement Agent, the Construction Consultant or any other Person under any of the Financing Agreements, including in connection with the exercise of any judgment by the Disbursement Agent, the Construction Consultant or any other Person under the Disbursement Agreement or by reason of the delay or failure by the Disbursement Agent or the Construction Consultant or any other Person to perform their duties thereunder, (i) any duty on the part of the Funding Agents, the Lenders or the Disbursement Agent to disclose to Completion Guarantor any facts the Funding Agents, the Lenders or the Disbursement Agent may now or hereafter know about the Company, regardless of whether the Funding Agents, the Lenders or the Disbursement Agent have reason to believe that any such facts materially increase the risk beyond that which Completion Guarantor intends to assume, or have reason to believe that such facts are unknown to Completion Guarantor, or have a reasonable opportunity to communicate such facts to Completion Guarantor, since Completion Guarantor acknowledges that Completion Guarantor is fully responsible for being and keeping informed of the financial condition of the Company and of all circumstances bearing on the risk of non-payment of any obligations and liabilities hereby guaranteed, (j) fact that Completion Guarantor may at any time in the future no longer be a subsidiary of Wynn Las Vegas, (k) any defense based on any change in the time, manner or place of any payment under, or in any other term of, any Facility Agreement, the Disbursement Agreement (including the Relevant Provisions) or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of any Facility Agreement, the Disbursement Agreement (including the Relevant Provisions) or any other Financing Agreement, (l) any defense arising because of the any Funding Agents', any Lender's or the Disbursement Agent's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code, and (m) any defense based upon any borrowing or grant of a security interest under Section 364 of the Federal Bankruptcy Code.

7. *Subordination.* All existing and future indebtedness of the Company to Completion Guarantor is hereby subordinated to all obligations and liabilities of all kinds and nature (including the "Obligations" (as defined in the Disbursement Agreement)) of the Company to the Lender Beneficiaries, including the obligations and liabilities hereby guaranteed (collectively, the "*Financing*

8

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*Agreements Obligations*"). Without the prior written consent of Bank Agent, such subordinated indebtedness shall not be paid or withdrawn in whole or in part, nor shall Completion Guarantor accept any payment of or on account of any such indebtedness until all the Financing Agreements Obligations have been repaid in full. At Bank Agent's request, if an Event of Default under the Disbursement Agreement has occurred and is continuing, Completion Guarantor shall cause Company to pay to Bank Agent for the benefit of the Bank Lenders all or any part of such subordinated indebtedness. Any payment by Company in violation of this Guaranty shall be received by Completion Guarantor in trust for Lender Beneficiaries, and Completion Guarantor shall cause the same to be paid to Lender Beneficiaries immediately upon demand by Bank Agent on account of Company's obligations and liabilities hereby guaranteed. Completion Guarantor shall not assign all or any portion of such indebtedness while this Guaranty remains in effect. Any attempted assignment of such indebtedness in violation of the provisions hereof shall be void.

8. *Subrogation.* Until all Financing Agreements Obligations have been paid in full, (a) Completion Guarantor shall not have any right of subrogation and waives all rights to enforce any remedy which the Lender Beneficiaries, the Lenders or the Disbursement Agent now have or may hereafter have against the Company, and waives the benefit of, and all rights to participate in, any security now or hereafter held by the Lender Beneficiaries, the Lenders or the Disbursement Agent from the Company and (b) Completion Guarantor waives any claim, right or remedy which Completion Guarantor may now have or hereafter acquire against the Company that arises hereunder and/or from the performance by the Completion Guarantor hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of the Lender Beneficiaries, the Lenders or the Disbursement Agent against the Company, or any security which the Lender Beneficiaries, the Lenders or the Disbursement Agent now have or hereafter acquire, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

9. *Bankruptcy.*

(a) So long as any of the Financing Agreements Obligations are owed to the Lender Beneficiaries, Completion Guarantor shall not commence, or join with any other Person in commencing, any bankruptcy, reorganization, or insolvency proceeding against the Company. The obligations of Completion Guarantor under this Guaranty shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, reorganization, insolvency, receivership, liquidation or arrangement of the Company, or by any defense which the Company may have by reason of any order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) So long as any Financing Agreements Obligations are owed to the Lender Beneficiaries, to the extent of such Financing Agreements Obligations, Completion Guarantor shall file, in any bankruptcy or other proceeding of or against the Company in which the filing of proofs of claims is required or permitted by law, all claims which Completion Guarantor may have against the Company (but only to the extent) relating to any indebtedness of the Company to Completion Guarantor, and hereby assigns to the Bank Agent and the Indenture Trustee, on behalf of the Bank Lenders and the Mortgage Note Holders, respectively, all rights of Completion Guarantor thereunder. If Completion Guarantor does not file any such claim, each of the Bank Agent and the Indenture Trustee as attorney-in-fact for Completion Guarantor, is hereby authorized to do so in the name of Completion Guarantor or, in such Funding Agent's discretion, to assign the claim to a nominee and to cause proofs of claim to be filed in the name of such nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. The Bank Agent and the Indenture Trustee nominees shall have the sole right to accept or reject any plan proposed in any such proceeding and to take any other action which a party filing a claim is entitled to take. In all such cases, whether in administration, bankruptcy or otherwise, the person authorized to pay such

a claim shall pay the same to the Bank Agent and the Indenture Trustee to the extent of any Financing Agreements Obligations which then remain unpaid, and, to the full extent necessary for that purpose, Completion Guarantor hereby assigns to the Bank Agent and the Indenture Trustee all of Completion Guarantor's rights to all such payments or distributions to which Completion Guarantor would otherwise be entitled; provided, however, that Completion Guarantor's obligations hereunder shall not be satisfied except to the extent that the Bank Agent or the Indenture Trustee receives cash by reason of any such payment or distribution. If the Bank Agent or the Indenture Trustee receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

10. *Successions or Assignments.*

(a) This Guaranty shall inure to the benefit of the successors or assigns of the Lender Beneficiaries who shall have, to the extent of their interest, the rights of the Lender Beneficiaries hereunder.

(b) This Guaranty is binding upon Completion Guarantor and its successors and assigns. Completion Guarantor is not entitled to assign its obligations hereunder to any other person, and any purported assignment in violation of this provision shall be void.

11. *Waivers.*

(a) No delay on the part of the Lender Beneficiaries, the Lenders or the Disbursement Agent in exercising any of their rights (including those hereunder) and no partial or single exercise thereof and no action or non-action by the Lender Beneficiaries, the Lenders or the Disbursement Agent, with or without notice to Completion Guarantor or anyone else, shall constitute a waiver of any rights or shall affect or impair this Guaranty.

(b) COMPLETION GUARANTOR HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS GUARANTY OR RELATING TO THE SUBJECT MATTER OF THIS GUARANTY AND THE RELATIONSHIP BETWEEN COMPLETION GUARANTOR AND THE LENDER BENEFICIARIES AND THE DISBURSEMENT AGENT THAT IS BEING ESTABLISHED. COMPLETION GUARANTOR ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT THE LENDER BENEFICIARIES AND THE DISBURSEMENT AGENT HAVE ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS GUARANTY, AND THAT THE LENDER BENEFICIARIES AND THE DISBURSEMENT AGENT WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. COMPLETION GUARANTOR FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

12. *Interpretation.* The section headings in this Guaranty are for the convenience of reference only and shall not affect the meaning or construction of any provision hereof.

13. *Notices.* All notices in connection with this Guaranty shall be given by notice in writing hand-delivered or sent by facsimile transmission or by certified mail return-receipt requested (airmail, if overseas), postage prepaid. All such notices shall be sent to the appropriate telecopier number or address, as the case may be, set forth in *Section 17* below or to such other number or address as shall have been subsequently specified by written notice to the other party, and shall be sent with copies, if any, as indicated below. All such notices shall be effective upon receipt, and confirmation by answerback of any such notice so sent by telecopier shall be sufficient evidence of receipt thereof.

14. *Amendments.* This Guaranty may be amended only with the written consent of the parties hereto.

15. *Jurisdiction; Governing Law.*

(a) Any action or proceeding relating in any way to this Guaranty shall be brought and enforced in the courts of the State of New York in Manhattan or of the United States for the Southern District of New York. Any such process or summons in connection with any such action or proceeding may be served by mailing a copy thereof by certified or registered mail, or any substantially similar form of mail, addressed to Completion Guarantor as provided for notices hereunder.

(b) This Guaranty and the rights and obligations of Agent and of the Completion Guarantor shall be governed by and construed in accordance with the law of the State of New York without reference to principles of conflicts of laws (other than Section 5-1401 of the New York General Obligations Law).

16. *Integration of Terms.* This Guaranty contains the entire agreement between the Completion Guarantor, the Lender Beneficiaries, the Lenders and the Disbursement Agent relating to the subject matter hereof and supersedes all oral statements and prior writing with respect hereto.

17. *Addresses.*

(a) The address of Completion Guarantor for notices is:

Wynn Completion Guarantor, LLC  
3145 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
Attn: Ron Kramer  
Telephone Number: (702) 733-4123  
Telecopier Number: (702) 791-0167

(b) The address of the Bank Agent for notices is:

Deutsche Bank Trust Company Americas  
31 West 52nd Street  
New York, New York 10019  
Attn: George Reynolds  
Telephone No.: (646) 324-2112  
Telecopier No.: (646) 324-7450

(c) The address of the Indenture Trustee for notices is:

Wells Fargo Bank, National Association  
MAC: N9303-110  
Sixth & Marquette  
Minneapolis, MN 55479  
Attention: Michael Slade  
Telephone Number:  
Telecopier Number:

(d) The address of the Disbursement Agent for notices is:

Deutsche Bank Trust Company Americas  
31 West 52nd Street  
New York, New York 10019  
Attention: Amy Sinensky  
Telephone No.: (212) 469-4063  
Telecopier No.: (212) 469-6091

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18. *Interest; Collection Expenses.* Any amount required to be paid by Completion Guarantor pursuant to the terms hereof shall bear interest at the highest default rate provided in the Financing Agreement or the maximum rate permitted by law, whichever is less, from the date due until paid in full. If the Lender Beneficiaries or the Disbursement Agent are required to pursue any remedy against Completion Guarantor hereunder, Completion Guarantor shall pay to the Lender Beneficiaries or the Disbursement Agent, as the case may be, upon demand, all reasonable attorneys' fees and expenses all other costs and expenses incurred by the Lender Beneficiaries or the Disbursement Agent in enforcing this Guaranty and such amounts shall increase the Liability Cap as provided in Section 1(a).

19. *Reinstatement of Guaranty.* This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment to or on behalf of the Company or by the Company under the Financing Agreements or by Completion Guarantor hereunder is rescinded or must otherwise be returned by the Lender Beneficiaries, the Lenders or the Disbursement Agent upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of the Company or otherwise, all as though such payment had not been made.

20. *Counterparts.* The Guaranty may be executed in one or more duplicate counterparts, and when executed and delivered by all of the parties listed below shall constitute a single binding agreement.

21. *Disbursement Agent.*

(a) The Lender Beneficiaries may appoint or designate the Disbursement Agent to exercise or enforce their rights and remedies under this Guaranty and to otherwise act on their behalf in all matters related hereto. Completion Guarantor shall respect and treat any and all actions so taken by the Disbursement Agent as if taken by the Lender Beneficiaries.

(b) All references in this Guaranty to the Disbursement Agent shall mean and be construed as the Disbursement Agent acting pursuant to the Disbursement Agreement.

22. *No Benefit to the Company.* This Guaranty is for the benefit of only the Lender Beneficiaries and is not for the benefit of the Company. The Guaranty shall not be deemed to be a contract to make a loan, or extend other debt financing or financial accommodation, for the benefit of the Company, in each case within the meaning of Section 365(e) of the Bankruptcy Code.

23. *Project Lenders Intercreditor Agreement.* All rights and remedies of the Indenture Trustee hereunder are, as between the Indenture Trustee and the Bank Agent, subject to the terms of the Project Lenders Intercreditor Agreement. This provision is for the benefit of, and may be enforced exclusively by, the Bank Agent and the Bank Lenders only. For the avoidance of doubt, this provision is not for the benefit of the Completion Guarantor and may not, under any circumstances, be enforced by the Completion Guarantor.



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IN WITNESS WHEREOF, the Completion Guarantor has caused this Guaranty to be duly executed and delivered as of the day and year first written above.

WYNN COMPLETION GUARANTOR, LLC,

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Agreed and accepted:

DEUTSCHE BANK TRUST COMPANY AMERICAS,  
as the Bank Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as the Indenture Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DEUTSCHE BANK TRUST COMPANY AMERICAS,  
as the Disbursement Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

QuickLinks

- [FORM OF COMPLETION GUARANTY](#)
- [RECITALS](#)
- [AGREEMENT](#)

**FORM OF  
INTERCREDITOR AGREEMENT**

(Project Lenders)

**DEUTSCHE BANK TRUST COMPANY AMERICAS,  
as Bank Agent**

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Indenture Trustee**

, 2002

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**TABLE OF CONTENTS**

1.	Definitions and General Provisions	S-2
1.1	Definitions	S-2
1.1.1	Other Terms	S-2
1.2	Interpretation	S-5
2.	Collateral, Priority of Liens, Subordination and Release	S-6
2.1	Liens and Security Interests	S-6
2.1.1	Collateral for Bank Secured Obligations	S-6
2.1.2	Collateral for Second Mortgage Notes Secured Obligations	S-6
2.2	FF&E Component Collateral	S-6
2.3	Separate Proceeds Accounts Collateral	S-6
2.4	Confirmation of Liens	S-6
3.	Rights and Limitation of Actions With Respect to Collateral	S-7
3.1	Rights and Limitations Applicable to Note Holders	S-7
3.2	Rights and Limitations Applicable to the Banks	S-8
3.3	Notification of Events of Default	S-10
3.4	Certain Waivers by Note Holders	S-11
4.	Rights and Limitations with Respect to Amendments, Waivers and Other Actions Under Facility Agreements	S-11
4.1	Rights and Limitations Applicable to Note Holders	S-11
4.2	Rights and Limitations Applicable to the Banks	S-11
4.3	Waivers and Deferrals of Payments	S-12
4.4	Waivers and Amendments Binding on Note Holders	S-13
4.5	Limitation of Liability	S-13
5.	Insolvency or Liquidation Proceedings	S-14
5.1	Right to file Involuntary Bankruptcy	S-14
5.2	Certain Agreements and Consents by Note Holders	S-14
5.3	Avoidance of Bank Secured Obligations in Bankruptcy	S-17
5.4	No Other Restrictions on Note Holders	S-17
6.	Default Purchase Option	S-17
7.	Representations and Warranties	S-18
7.1	Organization	S-18
7.2	Authorization	S-18
7.3	Binding Agreement	S-18
7.4	No Consent Required	S-19
7.5	No Conflict	S-19

8.	Miscellaneous Provisions	S-19
8.1	Notices; Addresses	S-19
8.2	Further Assurances	S-20
8.3	Waiver	S-20
8.4	Entire Agreement	S-20
8.5	Governing Law	S-20
8.6	Severability	S-20
8.7	Headings	S-20
8.8	Limitations on Liability	S-20
8.9	Consent of Jurisdiction	S-20
8.10	Successors and Assigns	S-21
8.11	Counterparts	S-21
8.12	No Third Party Beneficiaries	S-21
8.13	Amendment for New Project Credit Parties	S-21
8.14	Trust Indenture Act	S-21
8.15	Reinstatement	S-21
8.16	Attorneys' Fees	S-22

**FORM OF INTERCREDITOR AGREEMENT**

(Project Lenders)

**THIS INTERCREDITOR AGREEMENT** is made as of \_\_\_\_\_, 2002, by and among **DEUTSCHE BANK TRUST COMPANY AMERICAS**, as the Administrative Agent acting on behalf of itself and the Bank Lenders pursuant to the Bank Credit Agreement (in such capacity, the "**Bank Agent**"), and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association in its capacity as Trustee under the Second Mortgage Note Indenture (in such capacity, the "**Indenture Trustee**").

**RECITALS:**

**A. The Project.** Wynn Las Vegas, LLC, a Nevada limited liability company (the "**Company**"), proposes to develop, construct and operate the Le Reve Hotel Casino, a large-scale, hotel, casino, golf course and entertainment complex with related ancillary facilities, all as part of the redevelopment on the site of the former Desert Inn Resort & Casino.

**B. The Bank Credit Facility.** Concurrently herewith, the Company, the Bank Agent, the Bank Lenders and the other parties named therein have entered into the Bank Credit Agreement pursuant to which the Bank Lenders have agreed, subject to the terms thereof, to provide the Bank Credit Facility to the Company.

**C. The Second Mortgage Note Indenture.** Concurrently herewith, the Company, Wynn Las Vegas Capital Corp., certain guarantors named therein and the Indenture Trustee have entered into the Second Mortgage Note Indenture pursuant to which the Company and Wynn Las Vegas Capital Corp. will issue the Second Mortgage Note.

**D. FF&E Facility.** Concurrently herewith, the Company, the FF&E Agent and the FF&E Lenders have entered into the FF&E Facility Agreement pursuant to which the FF&E Lenders have agreed, subject to the terms thereof, to provide the FF&E Facility to the Company. The proceeds of the FF&E Facility will be used to acquire the FF&E Component and the Aircraft (as defined in the FF&E Facility Agreement).

**E. Financing for the Project.** The Company is financing the development of the Project, in part, with the proceeds of the Bank Credit Facility, the FF&E Facility and the Second Mortgage Note. In addition to certain other collateral and security interests:

(1) the Bank Credit Facility is secured (i) by a first priority lien on the Bank Proceeds Account Collateral and the Hotel/Casino Collateral, and (ii) by a second priority lien on the FF&E Component Collateral as more particularly described in *Section 2.1* and *Section 2.2* hereof;

(2) the Second Mortgage Note are secured (i) by a first priority lien on the Second Mortgage Note Proceeds Account Collateral, (ii) by a second priority lien on Hotel/Casino Collateral and (iii) by a third priority lien on the FF&E Component Collateral, as more particularly described in *Section 2.1* and *Section 2.2* hereof; and

(3) the FF&E Facility is secured by a first priority lien on the FF&E Collateral as defined and more particularly described in the FF&E Intercreditor Agreement.

**F. Disbursement Agreement.** The Company, the Bank Agent, the Indenture Trustee, the FF&E Agent and the Disbursement Agent, have entered into that Master Disbursement Agreement as of even date herewith (the "**Disbursement Agreement**"), in order to set forth, among other things, (a) the mechanics for and allocation of the Company's request for advances under the various Facilities and from the Company's Funds Account, (b) the conditions precedent to the initial advance and

conditions precedent to subsequent advances, (c) certain common representations, warranties and covenants of the Company in favor of the Funding Agents and (d) common Events of Default and remedies during construction of the Project.

**G. Intercreditor Agreement.** The Project Credit Parties desire to enter into this Agreement in order to set forth certain provisions relating to their respective rights in the Collateral, the exercise of remedies upon the occurrence of an event of default, the application of proceeds of enforcement and certain

other matters.

**NOW, THEREFORE**, with reference to the foregoing recitals and in reliance thereon, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Project Credit Parties agree as follows:

## 1. Definitions and General Provisions.

**1.1 Definitions.** Except as otherwise expressed and provided herein, all capitalized terms used in this Agreement and its Exhibits and not otherwise defined herein shall have the meanings given to such terms in the Disbursement Agreement. Except as set forth herein, the rules of interpretations set forth in Exhibit A to the Disbursement Agreement shall apply.

**1.1.1 Other Terms.** The following terms shall have the meanings set forth below:

**"Account Collateral"** or **"Accounts Collateral"** means, collectively, all of the Company Accounts (other than the FF&E Proceeds Account) and all amounts on deposit therein, any interest earned thereon, and any investments of such amounts made pursuant to the Collateral Account Agreements and any proceeds of the foregoing. When the term "Collateral" is used in conjunction with any of the foregoing accounts (e.g., the "Second Mortgage Notes Proceeds Account Collateral"), said Account Collateral means the specified account and all amounts on deposit therein, any interest earned thereon, and any investments of such amounts made pursuant to the applicable Collateral Account Agreement, and any proceeds of the foregoing *except* to the extent such proceeds are deposited into another account pursuant to the terms of the Disbursement Agreement or the Collateral Account Agreements.

**"Agreement"** has the meaning given in the preamble hereto.

**"Bank Agent"** means Deutsche Bank Trust Company Americas or its successor or assignee in its capacity as Administrative Agent under the Bank Credit Agreement.

**"Bank Credit Facility"** means, collectively, the delay draw term loan credit facility and the revolving credit facility (including the letter of credit facility thereunder) described and made available to Wynn Las Vegas by the Bank Lenders pursuant to the Bank Credit Agreement.

**"Bank Financing Agreements"** means the Bank Credit Agreement, the Bank Fee Letter, the FF&E Intercreditor Agreement, this Agreement, the Bank Security Documents and any other agreement, document or instrument entered into or delivered by a member of the Company Group on, prior to or after the Closing Date with or to the Bank Agent or the Bank Lenders in connection with the financing of the Project.

**"Bank Financing Period"** means the period commencing on the date of the initial Advance under the Bank Credit Facility and ending upon Discharge of the Bank Secured Obligations.

**"Bank Lenders"** means, collectively, (a) the Bank lenders pursuant to the Bank Credit Agreement and (b) the counterparties to Interest Rate Agreements (as defined in the Bank Credit Agreement) that are permitted to be secured by the Bank Security Documents, in each case, or their successors or assignees in such capacity as lenders or counterparties, as the case may be, under the Bank Credit Agreement.

S-2

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**"Bank Secured Obligations"** means all Obligations of the Company Group to the Bank Agent and the Bank Lenders under the Bank Credit Facility, the Bank Security Documents and the other Bank Financing Agreements, including, without limitation, amounts paid by the Bank Lenders pursuant to the Default Pay Off Option under the FF&E Intercreditor Agreement and Obligations in respect of Interest Rate Agreements (as defined in the Bank Credit Agreement), but only to the extent that the Bank Credit Agreement permits such Interest Rate Agreement Obligations to be secured by the Bank Security Documents.

**"Bankruptcy Law"** means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute and any other state or federal insolvency, reorganization, moratorium or similar law for the relief of debtors now or hereafter in effect.

**"Blocking Event"** means (a) the occurrence of an Event of Default under Section 8(a) of the Bank Facility Agreement (Payment Default) or (b) that the Bank Secured Obligations have become due and payable in full (whether at maturity, upon acceleration or otherwise).

**"Collateral"** means the following unique and separate categories of property encumbered to secure the Obligations to any of the Secured Lenders: (a) the Hotel/Casino Collateral, (b) the FF&E Collateral and (c) the Separate Proceeds Accounts Collateral.

**"Company Group"** means, collectively, the Company and any Affiliate of the Company that has incurred any Obligations or pledged any Collateral under any Financing Agreement.

**"Credit Bid Rights"** means, in respect of any order relating to a sale of assets in any Insolvency or Liquidation Proceeding, that:

(a) such order grants the Second Mortgage Note Holders (individually and in any combination) the right to bid at the sale of such assets and the right to offset such Second Mortgage Note Holders' claims secured by liens upon such assets against the purchase price of such assets if:

(i) the bid of such Second Mortgage Note Holders is the highest bid or otherwise determined by the court to be the best offer at the sale; and

(ii) the bid of such Second Mortgage Note Holders includes a cash purchase price component payable at the closing of the sale in an amount that would be sufficient on the date of the closing of the sale to achieve the Discharge of the Bank Secured Obligations and to satisfy all liens entitled to priority over the liens securing the Bank Secured Obligations that attach to the proceeds of the sale, if such amount were applied on the date of the sale to the payment in cash of:

(A) all unpaid Bank Secured Obligations;

(B) all unpaid claims secured by any such liens entitled to priority over the liens securing the Bank Secured Obligations; and

(C) all claims and costs, including those incurred in connection with the sale by the Bank Agent or the Bank Lenders, required by such order to be paid from the proceeds of the sale in priority over the Bank Secured Obligations, whether or not the order requires or permits such amount to be so applied; and

(b) such order allows the claims of the Second Mortgage Note Holders in such Insolvency or Liquidation Proceeding to the extent required for the grant of such rights.

**"Default Purchase Option"** means the option granted to the Indenture Trustee on behalf of the Second Mortgage Note Holders pursuant to *Section 6* hereof to purchase the Bank Secured Obligations.

**"Disbursement Agent"** means Deutsche Bank Trust Company Americas or its successor or assignee in its capacity as Disbursement Agent under the Disbursement Agreement.

S-3

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**"Disbursement Agreement Default"** means the occurrence and continuance of an Event of Default under, and as defined in, the Disbursement Agreement.

**"Disbursement Agreement Default Date"** the date upon which a Disbursement Agreement Default occurs.

**"Discharge"** means (a) in respect of the Bank Facility, the termination of all commitments to extend credit under the Bank Credit Facility, indefeasible payment in full in cash of the principal of and interest and premium (if any) on all Bank Secured Obligations, termination, cancellation or expiration of all letters of credit issued under the Bank Credit Facility and indefeasible payment in full in cash of all other Bank Secured Obligations that are unpaid at the time the principal and interest are indefeasibly paid in full in cash and (b) in respect of the Second Mortgage Note, indefeasible payment in full in cash of the principal of and interest and premium (if any) on all Second Mortgage Note Secured Obligations and indefeasible payment in full in cash of all other Second Mortgage Note Secured Obligations that are unpaid at the time the principal and interest are indefeasibly paid in full in cash.

**"Eligible Purchaser"** means any Person or Persons at any time or from time to time designated by the holders of at least 25% in outstanding principal amount of the Second Mortgage Note, voting as a single class, as entitled to exercise the Default Purchase Option.

**"Event of Default"** means, as the context requires, (i) a Disbursement Agreement Default, or (ii) the occurrence and continuance of an "Event of Default" by or with respect to the Company under the applicable Financing Agreement that has not been waived by the applicable Project Credit Party (it being understood that the provisions of *Section 1.2* of this Agreement shall not apply to any such waiver).

**"Facility or Facilities"** means, as the context requires, any or all of the Bank Credit Facility and the Second Mortgage Note Proceeds.

**"Facility Agreements"** means, collectively, the Bank Credit Agreement and the Second Mortgage Note Indenture.

**"FF&E Component Collateral"** has the meaning given in the FF&E Intercreditor Agreement.

**"FF&E Financing Agreements"** means the FF&E Facility Agreement, the FF&E Security Documents and any other agreement, document or instrument entered into or delivered by a member of the Company Group on, prior to or after the Closing Date with or to the FF&E Agent or the FF&E Lenders in connection with the financing of the Project.

**"FF&E Secured Obligations"** means all Obligations of the Company Group to the FF&E Agent and the FF&E Lenders under the FF&E Facility Agreement, the FF&E Security Documents and the other FF&E Financing Agreements.

**"Guarantor"** shall have the meaning given in the Bank Credit Agreement.

**"Hotel/Casino Collateral"** means all real and personal property encumbered to secure the Bank Secured Obligations under the Bank Security Documents and the Second Mortgage Notes Secured Obligations under the Second Mortgage Notes Security Documents *other than* (i) the Separate Proceeds Accounts Collateral and (ii) the FF&E Collateral, *provided, however*, that after the release of any portion of the Hotel/Casino Collateral in accordance with the Bank Credit Agreement and the Second Mortgage Notes Indenture, the Hotel/Casino Collateral shall exclude such released Collateral.

**"Indenture Trustee"** means Wells Fargo Bank, National Association or its successor or assignee in its capacity as Trustee under the Second Mortgage Notes Indenture.

S-4

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**"Insolvency or Liquidation Proceeding"** means (1) any case commenced by or against the Company Group or any Person within the Company Group under any Bankruptcy Law, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of the Company Group or any Person within the Company Group, any receivership or assignment for the benefit of creditors relating to the Company Group or any Person within the Company Group or any similar case or proceeding relative to the Company Group or any Person within the Company Group or their creditors, as such, in each case whether or not voluntary; (2) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to the Company Group or any Person within the Company Group, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or (3) any other proceeding of any type or nature in which substantially all claims of creditors of the Company Group or any Person within the Company Group are determined and any payment or distribution is or may be made on account of such claims.

"**Notice of Default**" means a notice of default which must be recorded in the official real property records of Clark County, Nevada, in order to commence non-judicial foreclosure of a Deed of Trust in accordance with applicable Nevada law.

"**Project Credit Parties**" means the Bank Agent and the Indenture Trustee.

"**Second Mortgage Notes Financing Agreements**" means the Second Mortgage Notes Indenture, the Second Mortgage Notes, the Disbursement Agreement, the FF&E Intercreditor Agreement, this Agreement, the Second Mortgage Notes Security Documents and any other agreement, document or instrument entered into or delivered by a member of the Company Group on, prior to or after the Closing Date with or to the Indenture Trustee or the Second Mortgage Note Holders in connection with the financing of the Project.

"**Second Mortgage Notes Secured Obligations**" means all Obligations of the Company Group under the Second Mortgage Notes Indenture, the Second Mortgage Notes, the Second Mortgage Notes Security Documents and the other Second Mortgage Notes Financing Agreements, including, without limitation, amounts paid by any Second Mortgage Note Holder pursuant to the Default Payoff Option under the FF&E Intercreditor Agreement.

"**Secured Lenders**" means the Bank Agent, the Bank Lenders, the Indenture Trustee and the Second Mortgage Note Holders.

"**Secured Obligations**" means the Bank Secured Obligations or the Second Mortgage Notes Secured Obligations, as the context requires.

"**Securities Intermediary**" means any entity acting in its capacity as Securities Intermediary under any Collateral Account Agreement.

"**Separate Proceeds Accounts Collateral**" means, collectively, the Second Mortgage Notes Proceeds Account Collateral and the Bank Proceeds Account Collateral.

**1.2 Interpretation.** To the extent that reference is made in this Agreement to any term defined in, or to any other provision of, any other agreement, such term or provision shall continue to have the original meaning thereof notwithstanding any termination, expiration or amendment of such other agreement; *provided, however*, that to the extent that the Disbursement Agreement or any other agreement to which all of the Project Credit Parties are parties is amended in accordance with the terms thereof and hereof, then any references herein to such terms and provisions of such document shall be to such terms or provisions as so amended.

S-5

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## 2. Collateral, Priority of Liens, Subordination and Release.

**2.1 Liens and Security Interests.** The Project Credit Parties agree that each Secured Lender shall have the benefit of the following liens on and security interests in the Collateral:

**2.1.1 Collateral for Bank Secured Obligations.** The Bank Secured Obligations shall be secured by (a) a first priority lien on and security interest in the Bank Proceeds Account Collateral and the Hotel/Casino Collateral and (b) subject to the lien and security interest of the FF&E Agent and FF&E Lenders in the FF&E Component Collateral, by a first priority lien on and security interest in the FF&E Component Collateral.

**2.1.2 Collateral for Second Mortgage Notes Secured Obligations.** The Second Mortgage Notes Secured Obligations shall be secured by (a) a first priority lien on and security interest in the Second Mortgage Notes Proceeds Account Collateral, (b) by a second priority lien on and security interest in the Hotel/Casino Collateral and (c) subject to the lien and security interest of the FF&E Agent and the FF&E Lenders in the FF&E Component Collateral, by a second priority lien on and security interest in the FF&E Component Collateral, which second priority liens and security interests described in clauses (b) and (c) above shall be subject and subordinate to the lien and security interest in the Hotel/Casino Collateral and the FF&E Component Collateral securing the Bank Secured Obligations.

**2.2 FF&E Component Collateral.** The Project Credit Parties acknowledge that pursuant to the FF&E Intercreditor Agreement, and subject to the terms and conditions thereof, the FF&E Agent and the FF&E Lenders shall, from and after the initial Advance under the FF&E Facility, have a first priority lien on and security interest in a portion or all of the FF&E Component Collateral. None of the rights or obligations of the FF&E Agent, the Bank Agent or the Indenture Trustee under the FF&E Intercreditor Agreement shall affect or otherwise modify the rights and obligations of the Bank Agent or the Indenture Trustee hereunder.

**2.3 Separate Proceeds Accounts Collateral.** The Second Mortgage Notes Proceeds Account Collateral secures only the Second Mortgage Notes Secured Obligations, and no other Project Credit Party shall have any liens thereon or any security interest therein. The Bank Proceeds Account Collateral secures only the Bank Secured Obligations, and no other Project Credit Party shall have any liens thereon or any security interest therein.

**2.4 Confirmation of Liens.** Each Project Credit Party hereto hereby confirms and agrees that the liens and security interests held by or for the benefit of each Secured Lender in the Collateral, as provided for in the preceding provisions of this Section 2 shall secure all Obligations of the Company Group and any Person within the Company Group now or hereafter owing to each Secured Lender in connection with the applicable Facility throughout the term of this Agreement, in each case with the priority specified in Section 2.1, notwithstanding (a) the availability of any other collateral to any Secured Lender, (b) the actual date and time of execution, delivery, recording, filing and perfection of any of the Security Documents, or (c) the fact that any lien or security interest created by any of the Security Documents, or any claim with respect thereto, is or may be subordinated, avoided or disallowed in whole or in part under any Bankruptcy Law. All provisions of this Agreement, including but not limited to, all matters relating to the creation, validity, perfection, priority, subordination and release of the liens and security interests intended to be created by the Security Documents and all provisions regarding the allocation and priority of payments with respect to any Facility shall survive Insolvency or Liquidation Proceeding and be fully enforceable by and against each Project Credit Party hereto during any such proceeding. In the event of an Insolvency or Liquidation Proceeding, each Project Credit Party further confirms and agrees that the Obligations due and outstanding under and with respect to each Facility shall include all principal, additional advances permitted hereunder,

S-6

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Protective Advances made by such Project Credit Party, interest, default interest, LIBOR breakage and swap breakage, post petition interest and all other amounts due thereunder, for periods before and for periods after the commencement of any such proceedings, even if the claim for such amounts is disallowed pursuant to applicable law, and all proceeds from the sale or other disposition of the Collateral shall be paid to the Secured Lenders in the order and priority provided for in this *Section 2* notwithstanding the disallowance of any such claim or the invalidity or subordination of any lien on or security interest in the Collateral under applicable law.

### **3. Rights and Limitation of Actions With Respect to Collateral.**

#### **3.1 Rights and Limitations Applicable to Note Holders.**

**3.1.1** Subject to *Section 3.1.2* below, during the Bank Financing Period, the Indenture Trustee shall not, and shall not authorize or direct any Person acting for it, or any Second Mortgage Note Holder to exercise any right or remedy with respect to any Collateral (including any right of set-off) or take any action to enforce, collect or realize upon any Collateral, including, without limitation, any right, remedy or action to:

- (a) take possession of or control over any Collateral;
- (b) exercise any collection rights in respect of any Collateral;
- (c) exercise any right of set-off against any property subject to any lien securing the Bank Secured Obligations;
- (d) foreclose upon any Collateral or take or accept any transfer of title in lieu of foreclosure upon any Collateral;
- (e) enforce any claim to the proceeds of insurance upon any Collateral;
- (f) deliver any notice, claim or demand relating to the Collateral to any Person (including any securities intermediary, depository bank or landlord) in the possession or control of any Collateral or acting as bailee, custodian or agent for the Bank Agent or any Bank Lender in respect of any Collateral;
- (g) otherwise enforce any remedy available upon default for the enforcement of any lien upon the Collateral, including any Exercise of Remedies during the Standstill Period (each, as defined in the FF&E Intercreditor Agreement);
- (h) deliver any notice or commence any proceeding for any of the foregoing purposes;
- (i) seek relief in any Insolvency or Liquidation Proceeding permitting it to do any of the foregoing; or
- (j) subject to *Section 3.2.3* below, retain any proceeds of accounts and other obligations receivable paid to it directly by any account debtor.

S-7

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**3.1.2** Notwithstanding *Section 3.1.1* above, any right or remedy set forth in clauses (a) through (j) thereof may be exercised and any such action may be taken, authorized or instructed:

- (a) if all the Bank Secured Obligations are purchased by a Person entitled to purchase the outstanding Bank Secured Obligations upon exercise of the Default Purchase Option;
- (b) as necessary to redeem any Collateral in a creditor's redemption permitted by law or to deliver (subject to the prior Discharge of the Bank Secured Obligations) any notice or demand necessary to enforce any right to claim, take or receive proceeds of Collateral remaining after the Discharge of the Bank Secured Obligations in the event of foreclosure or other enforcement of any lien securing the Bank Secured Obligations, so long as the enforcement of any such lien securing the Bank Secured Obligations is not adversely affected or delayed;
- (c) as necessary to perfect a lien upon any Collateral by any method of perfection except through possession or control;
- (d) subject to all the other provisions of this Agreement, as necessary to prove (but not enforce) the liens securing the Second Mortgage Notes Secured Obligations or as necessary to preserve or protect (but not enforce) the liens securing the Second Mortgage Notes Secured Obligations in any manner that is not adverse to the grant, perfection, priority or enforcement of liens securing the Bank Secured Obligations and does not adversely affect or delay any exercise or enforcement of the rights and remedies of the Bank Agent and the Bank Lenders; or
- (e) after obtaining the prior written consent of the Bank Agent, which consent shall be subject to the Bank Agent's sole discretion.

**3.1.3** Nothing in this Agreement or any other Financing Agreement shall:

- (a) impair as between the Company Group and the Second Mortgage Note Holders, the obligation of the Company and all guarantors within the Company Group, which is absolute and unconditional, to pay principal of, premium and interest and Liquidated Damages (as defined in the Second Mortgage Notes Indenture), if any, on the Second Mortgage Notes in accordance with their terms or any other obligation of the Company or any other Person within the Company Group under the Mortgage Note Financing Agreements;
- (b) affect the relative rights of the Second Mortgage Note Holders and creditors of the Company (other than the Bank Agent and the Bank Lenders); or
- (c) restrict the right of the Second Mortgage Note Holders to sue for payments that are then due and owing or accelerate the Second Mortgage Notes Secured Obligations; or
- (d)

prevent the Indenture Trustee or any Second Mortgage Note Holder from exercising any rights or remedies they may have against the Company or any Person within the Company Group, subject to the rights of the Bank Agent and the Bank Lenders hereunder and the Obligations of the Indenture Trustee and the Second Mortgage Note Holders hereunder.

### 3.2 Rights and Limitations Applicable to the Banks.

**3.2.1** Subject to *Sections 3.2.2 and 3.2.3* below, at all times during the Bank Financing Period the Bank Agent and the Bank Lenders shall have the exclusive right to manage, perform and enforce the terms of the Bank Security Documents with respect to all Collateral and to exercise and enforce all privileges and rights thereunder according to their discretion

S-8

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and exercise of their business judgment, including, without limitation, the exclusive right to take the actions enumerated in clauses (a) through (j) of *Section 3.1.1* above. Without limiting the generality of the foregoing, at all times during the Bank Financing Period:

- (a) the Bank Agent will have the sole right to adjust settlement of all insurance claims and condemnation awards in the event of any covered loss, theft or destruction or condemnation of any Collateral and all claims under insurance constituting Collateral;
- (b) subject to *Section 5.21* of the Disbursement Agreement, all proceeds of insurance on or constituting Collateral and all condemnation awards resulting from a taking of any Collateral will inure to the benefit of, and will be paid to, the Bank Agent and the Bank Lenders;
- (c) the Bank Agent shall have the sole right to enforce the provisions of the FF&E Intercreditor Agreement against the FF&E Agent (provided that the Second Mortgage Note Holders or any of them may exercise the Default Payoff Option as defined and subject to the terms of the FF&E Intercreditor Agreement); and
- (d) the Indenture Trustee will cooperate, if necessary and as reasonably requested by the Bank Agent, in effecting the payment of insurance proceeds to the Bank Agent as described above.

In connection therewith, each of the Indenture Trustee and the Second Mortgage Note Holders waives any and all rights to affect the method or challenge the appropriateness of any action by the Bank Agent and the Bank Lenders and subject to *Sections 3.2.2. and 3.2.3* below, hereby consents to each of the Bank Agent and the Bank Lenders exercising or not exercising such rights and remedies as if no lien securing the Second Mortgage Notes Secured Obligations existed, except only that the Indenture Trustee and the Second Mortgage Note Holders reserve all rights granted by law (i) to request or receive notice of any sale of Collateral in foreclosure of any Lien securing the Bank Secured Obligations and (ii) to redeem any Collateral or enforce any right to claim, take or receive proceeds of Collateral remaining after the Discharge of the Bank Secured Obligations as provided in *Section 3.1.2(b)*.

**3.2.2** Notwithstanding *Section 3.2.1* above, if (a) the Bank Agent shall at any time record a Notice of Default in respect of an Event of Default under the Bank Credit Agreement and (b) on the date of such recordation the aggregate outstanding amount of Bank Secured Obligations is no greater than \$100,000,000, then neither the Bank Agent nor the Bank Lenders shall be entitled to complete a foreclosure against or other realization upon any portion of the Collateral that is material or essential to the construction or operation of the Project earlier than 180 days after the Bank Agent provides to the Indenture Trustee the notice contemplated in *Section 3.3* in respect of such Event of Default. For purposes of the foregoing, the Project Credit Parties agree that neither the Phase II Land nor the equity interests in any Person within the Company Group that have been pledged to secure the Bank Secured Obligations shall at any time be deemed to be material or essential to the construction or operation of the Project.

**3.2.3** (a) Notwithstanding *Sections 3.1.1(c) and 3.2.1* above, the Indenture Trustee and the Second Mortgage Notes Holders shall be permitted to receive and retain, free from any liens or security interests in favor of the Bank Agent or the Bank Lenders, any and all payments made thereto by or on behalf of the Company Group or any Person within the Company Group, other than:

- (i) payments which are made during the Bank Financing Period in breach of any provision of the Bank Credit Agreement or Bank Security Documents;

S-9

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- (ii) Payment of amounts during the Bank Financing Period which constitute proceeds from the sale, transfer or other disposition of any Collateral or proceeds from any insurance policy or condemnation settlement or award, in each case, in respect of any Collateral;
  - (iii) payments obtained or received during the Bank Financing Period in connection with or as a result of any breach of *Section 3.1(a) through (i)* above; and
  - (iv) payments obtained or received during the Bank Financing Period (A) at any time after the Indenture Trustee has received written notice (and prior to the rescission of such notice) that a Blocking Event has occurred or (B) at any time after the commencement of an Insolvency or Liquidation Proceeding in respect of the Company Group or any Person within the Company Group.

Any payment received by the Indenture Trustee or any Second Mortgage Note Holder (including, without limitation, payments and prepayments made for application against the Second Mortgage Notes Secured Obligations and all other payments and deposits made pursuant to any provision of the Second Mortgage Notes Indenture or any Second Mortgage Notes Security Documents) during the Bank Financing Period in violation of any of clauses (i) through (iv) above shall be held in trust for the benefit of the Bank Agent and the Bank Lenders and shall be turned over to the Bank Agent promptly upon the Bank Agent's request.

- (b) Notwithstanding *Section 3.2.1*, from and after the occurrence of an Event of Default under the Bank Facility Agreement but so long as a Blocking Event has not occurred, the Bank Agent may seize control of the Accounts and the Accounts Collateral and issue instructions to the Disbursement Agent or any Securities Intermediary under any Collateral Account Agreement with respect to the Accounts and the Accounts Collateral (other than the Second Mortgage Notes Proceeds Collateral), *provided* that in such circumstances the Bank Agent (i) may not apply the Accounts Collateral against Bank Secured Obligations which have not become due and payable and (ii) may not



restrict or prohibit the Company (or the Disbursement Agent or Securities Intermediary acting at the request of the Company) from (A) using Project revenues from and after the Opening Date to pay costs and expenses necessary or appropriate, in the reasonable judgment of the Bank Agent, to continue to operate the Project in the ordinary course or (B) using Project revenues to pay scheduled debt service in respect of the Bank Secured Obligations, the Second Mortgage Notes Secured Obligations or the FF&E Secured Obligations. None of the foregoing limitations on the Bank Agent's rights and remedies shall apply from and after the occurrence and during the continuance of a Blocking Event. In addition, in the event that pursuant to Section 7.27 of the Bank Credit Agreement, amounts on deposit in the Project Liquidity Reserve Account are permitted to be used to pay Debt Service on the Second Mortgage Notes, the Bank Agent shall upon receipt of a Note Debt Service Shortfall Notice from the Indenture Trustee, so long as no Blocking Event has occurred and is continuing, cause funds to be released from the Project Liquidity Reserve Account and paid to the Indenture Trustee in the amount set forth in the Note Debt Service Shortfall Notice or, if less, the amount permitted to be used for such purpose pursuant to Section 7.27 of the Bank Credit Agreement.

**3.3 Notification of Events of Default.** Each Credit Party hereby agrees, for the benefit of the other Credit Party, to use best efforts to provide written notice to such other Credit Party within 10 Business Days after obtaining actual knowledge of the occurrence or assertion of an Event of Default under their respective Facilities. Neither Credit Party shall have any liability to the other for failing to provide any such notice, but such release from liability shall not affect the Bank Agent's and the Bank Lenders' obligation under Section 3.2.2 above.

S-10

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**3.4 Certain Waivers by Note Holders.** To the fullest extent permitted by law, the Indenture Trustee and the Second Mortgage Note Holders waive and agree not to assert or enforce at any time during the Bank Financing Period:

- (a) any right of subrogation to the rights or interests of the Bank Agent or the Bank Lenders or any claim or defense based upon impairment of any such right of subrogation;
- (b) any right of marshalling accorded to a junior lienholder, as against a priority lienholder, under equitable principles; and
- (c) any statutory right of appraisal or valuation accorded to a junior lienholder in a proceeding to foreclose a senior lien,

in each case, that otherwise may be enforceable in respect of any lien securing the Second Mortgage Notes Secured Obligations as against the Bank Agent or the Bank Lenders.

#### **4. Rights and Limitations with Respect to Amendments, Waivers and Other Actions Under Facility Agreements.**

**4.1 Rights and Limitations Applicable to Note Holders.** Prior to the Discharge of the Bank Secured Obligations, the Indenture Trustee will not enter into, and the Second Mortgage Note Holders will not authorize or direct, any amendment of or supplement to any Second Mortgage Notes Security Document relating to any Collateral that would make such Second Mortgage Notes Security Document inconsistent in any material respect with the comparable provisions of the Bank Security Document upon such Collateral. No such amendment or supplement will be enforceable. For purposes of the foregoing, (a) no inconsistency reflected in the Second Mortgage Notes Security Documents delivered at the time of the issuance of the Second Mortgage Notes, as compared with the corresponding provisions of the comparable Bank Security Document then in effect, will be subject to the provisions of this Section and (b) subject to clause (a) above, any provision granting rights or powers to the Indenture Trustee or any Second Mortgage Note Holder that are not granted to the Bank Agent and the Banks will constitute a material inconsistency.

#### **4.2 Rights and Limitations Applicable to the Banks.**

The Bank Agent and the Bank Lenders may at any time and from time to time, without the consent of or notice to the Indenture Trustee or any Second Mortgage Note Holder, without incurring any responsibility or liability to the Indenture Trustee or any Second Mortgage Note Holder and without in any manner prejudicing, affecting or impairing the ranking or priority of the liens and the security interests in the Collateral created by the Bank Security Documents or the rights and obligations of the Project Credit Parties hereunder:

- (a) make loans and advances to the Company Group or any Person within the Company Group or issue, guaranty or obtain letters of credit for account of the Company Group or any Person within the Company Group or otherwise extend credit to the Company Group or any Person within the Company Group in any amount (subject to the provisions of the Second Mortgage Notes Indenture relating to the maximum amount of first priority lien indebtedness) and on any terms, whether pursuant to a commitment or as a discretionary advance and whether or not any Default or Event of Default or failure of condition is then continuing;
- (b) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, compromise, accelerate, extend or, subject to Section 8.13 hereof, refinance, any Bank Secured Obligations or any agreement, guaranty, lien or obligation of the Company Group or any Person within the Company Group or any other Person in any manner related thereto, or otherwise amend, supplement or change in any manner

S-11

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any Bank Secured Obligations or liens securing Bank Secured Obligations or any such agreement, guaranty, lien or obligation; provided that notwithstanding any other provision herein to the contrary, the Bank Agent and the Bank Lenders may not amend Section 7.27 of the Bank Credit Agreement;

- (c) increase or reduce the amount of any Bank Secured Obligation (subject to the provisions of the Second Mortgage Notes Indenture relating to the maximum amount of the first priority lien indebtedness) or the interest, premium, fees or other amounts payable in respect thereof;
- (d) release or discharge any Bank Secured Obligation or any guaranty thereof or any agreement or obligation of the Company Group or any Person within the Company Group or any other Person with respect thereto;

- (e) take or fail to take any first priority lien or any other collateral security for any Bank Secured Obligation or take or fail to take any action which may be necessary or appropriate to ensure that any lien securing a Bank Secured Obligation or any other lien upon any property is duly enforceable or perfected or entitled to priority as against any other lien or to ensure that any proceeds of any property subject to any lien are applied to the payment of any Bank Secured Obligation or any other obligation secured thereby;
- (f) release, discharge or permit the lapse of any or all liens securing a Bank Secured Obligation or any other liens upon any property at any time;
- (g) exercise or enforce, in any manner, order or sequence, or fail to exercise or enforce, any right or remedy against the Company or any Guarantor or any collateral security or any other Person or property in respect of any Bank Secured Obligation or any lien securing any Bank Secured Obligation or any right or power under the Bank Security Documents and hereunder and apply any payment or proceeds of collateral in any order of application; or
- (h) sell, exchange, release, foreclose upon or otherwise deal with any property that may at any time be subject to any lien securing any Bank Secured Obligation.

No (a) exercise, delay in exercising or failure to exercise any right arising under the Bank Security Documents or this Agreement, (b) act or omission of the Bank Agent or any Bank Lender in respect of the Company Group or any Person within the Company Group or any other Person or any collateral security for any Bank Secured Obligation or any right arising under the Bank Security Documents and hereunder, (c) change, impairment, or suspension of any right or remedy of the Bank Agent or any Bank Lender, or (d) other act, failure to act, circumstance, occurrence or event, including, without limitation, the acts listed in *Section 4.2.1* above, which, but for this provision, would or could act as a release or exoneration of the agreements or obligations of the Indenture Trustee or any Second Mortgage Note Holder hereunder shall in any way affect, decrease, diminish or impair any of such agreements or obligations, including, without limitation, the lien subordination provisions and the standstill obligations set forth in *Sections 2.1* and *3.1* hereof.

No amendment, supplement, waiver or change otherwise permitted by the Second Mortgage Notes Indenture in respect of the Bank Security Documents will be prohibited or in any manner restricted or affected by, or by reason of, the provisions of this Agreement.

**4.3 Waivers and Deferrals of Payments.** Any Project Credit Party may, without the consent of the other Project Credit Parties, defer any payments due under its Facility or waive any provisions thereof.

S-12

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#### **4.4 Waivers and Amendments Binding on Note Holders.**

The Project Credit Parties agree that from and after the Initial Advance under the Bank Facility the Bank Agent shall have the exclusive right, without the consent of the Indenture Trustee (but subject to any right of the FF&E Agent to consent to such amendment or waiver to the extent such consent is required under the Disbursement Agreement and/or the FF&E Intercreditor Agreement), to amend the Disbursement Agreement or to waive any Default or Event of Default by or with respect to the Company or any Person within the Company Group under the Disbursement Agreement (*i.e.*, any Potential Event of Default or Disbursement Agreement Default), *provided, however*, that without the consent of the holders of a majority (in aggregate principal amount) of the Second Mortgage Notes, (a) such waiver of a Disbursement Agreement Default must be made not later than one hundred eighty (180) days following the applicable Disbursement Agreement Default Date, (b) the Bank Agent shall not waive any default or event of default which otherwise independently (not by cross-default or cross-reference to another agreement) constitutes a default or event of default under the Second Mortgage Notes Indenture, (c) the Bank Agent shall not amend the definition of or the conditions or circumstances requiring a Required Scope Change Approval and shall not waive any default or event of default resulting from, or any condition relating to, implementation of a Scope Change for which a Required Scope Change Approval is required pursuant to *Section 6.2.1* of the Disbursement Agreement or (d) amend or waive any default or event of default under *Sections 7.12* or *7.1.11* of the Disbursement Agreement ("in balance" and "Project Completion Date") or amend or waive any provision so as to effect an amendment or waiver of such Sections.

The Project Credit Parties agree that from and after the initial Advance under the Bank Facility, without the consent of any Indenture Trustee, any amendment, waiver or consent agreed to, upon any terms and conditions, by, on the one hand, the Company Group or any Person within the Company Group that is party to a Bank Security Document and, on the other hand, the Bank Agent, in respect of any provision of any Bank Security Document, will automatically apply, on the same terms and subject to the same conditions to the corresponding provision of the comparable Mortgage Note Security Document. Such application to the Second Mortgage Notes Security Documents shall become effective upon the delivery by the Bank Agent of written notice of such amendment, waiver or consent, and the terms and conditions thereof, to the Indenture Trustee, if the notice states that such amendment, waiver or consent has become effective as to such agreement and is, pursuant to this *Section 4.4.2* likewise effective as to the corresponding provision of the comparable Mortgage Note Security Document; *provided, however*, that no amendment, waiver or consent of a Bank Security Document which effects or relates to a release of lien shall apply to or otherwise amend or affect any Second Mortgage Notes Security Document. Any such amendment, waiver or consent need not otherwise be confirmed by the Indenture Trustee or any Second Mortgage Note Holder in order to be effective.

#### **4.5 Limitation of Liability**

Except as expressly set forth herein, none of the Bank Agent or any Bank Lender will have any duty, express or implied, fiduciary or otherwise, to the Indenture Trustee or any Second Mortgage Note Holder.

To the maximum extent permitted by law, each of the Indenture Trustee and each Second Mortgage Note Holder waives any claim it may have against the Bank Agent or any Bank Lender with respect to or arising out of any action or failure to act or any error of judgment or negligence on the part of the Bank Agent or any Bank Lender or their respective directors, officers, employees or agents with respect to any exercise of rights or remedies in respect of the Bank Secured Obligations or under the Bank Security Documents or any transaction relating to the Collateral. Neither the Bank Agent nor any Bank Lender nor any of their respective directors, officers, employees or agents will be liable for failure to demand, collect or realize upon any of the

S-13

Collateral or for any delay in doing so, except to the extent arising out of the gross negligence or willful misconduct of the Bank Agent or any such Bank Lender or any of their respective directors, officers, employees or agents, or will be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Person within the Company Group or upon the request of any Second Mortgage Note Holder or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof.

The Bank Agent and the Bank Lenders, on the one hand, and the Indenture Trustee and the Second Mortgage Note Holders, on the other hand, shall each be responsible for keeping themselves informed of the financial condition of the Company Group and all other circumstances bearing upon the risk of nonpayment of the Bank Secured Obligation or Second Mortgage Notes Secured Obligations, as the case may be. Except as set forth in *Section 3.3*, the Bank Agent and the Bank Lenders shall have no duty to advise the Indenture Trustee or any Second Mortgage Note Holder of information regarding such condition or circumstances or as to any other matter. If the Bank Agent or any Bank Lender, in its sole discretion, undertakes at any time or from time to time to provide any such information to the Indenture Trustee or any Second Mortgage Note Holder it shall be under no obligation to provide any similar information on any subsequent occasion, to provide any additional information, or undertake any investigation, or to disclose any information which, pursuant to accepted or reasonable commercial finance practice, it wishes to maintain confidential.

## 5. Insolvency or Liquidation Proceedings

**5.1 Right to file Involuntary Bankruptcy.** Notwithstanding any other provision of this Agreement to the contrary, any Secured Lender shall be entitled, at any time and upon its sole discretion, to initiate or join as a petitioning creditor in an involuntary Insolvency or Liquidation Proceeding against any Person within the Company Group.

### 5.2 Certain Agreements and Consents by Note Holders.

At no time during the Bank Financing Period shall the Indenture Trustee or any Second Mortgage Note Holder:

- (a) request judicial relief in an Insolvency or Liquidation Proceeding or in any other court, that would hinder, delay, limit or prohibit the exercise or enforcement of any right or remedy otherwise available to the holders of Bank Secured Obligations that would limit, invalidate, avoid or set aside any lien securing the Bank Secured Obligations or Bank Security Document or subordinate the lien securing the Bank Secured Obligations to the liens securing the Second Mortgage Notes Secured Obligations or grant the lien securing the Second Mortgage Notes Secured Obligations equal ranking to the liens securing the Bank Secured Obligations;
- (b) oppose or otherwise contest any motion for relief from the automatic stay or from any injunction against foreclosure or enforcement of lien securing the Bank Secured Obligations made by any holder of Bank Secured Obligations in any Insolvency or Liquidation Proceeding;
- (c) oppose or otherwise contest any exercise by any holder of Bank Secured Obligations of the right to credit bid Bank Secured Obligations at any sale in foreclosure of lien securing the Bank Secured Obligations; or
- (d) oppose or otherwise contest any other request for judicial relief made in any court by any holder of Bank Secured Obligations relating to the enforcement of any lien securing the Bank Secured Obligations.

S-14

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If, in any Insolvency or Liquidation Proceeding during the Bank Financing Period, the Bank Agent and the Bank Lenders:

- (a) consent to any order for use of cash collateral for payment (i) of expenses reasonably necessary or appropriate for the conduct of the Project or for the preservation of the Collateral, (ii) debt secured by liens upon the Collateral that are senior to the liens securing the Second Mortgage Notes Secured Obligations or (iii) administrative expenses arising in connection with the Insolvency or Liquidation Proceeding;
- (b) consent to any order granting any priming lien, replacement lien, cash payment or other relief on account of Bank Secured Obligations as adequate protection (or its equivalent) for the interests of the Bank Agent and the Bank Lenders in property subject to the liens securing the Bank Secured Obligations in connection with any order for use of cash collateral; or
- (c) consent to any order relating to any sale of assets of any Person within the Company Group and providing, to the extent the sale is to be free and clear of liens, that all such liens shall attach to the proceeds of the sale, and, in connection therewith, consent to and support before the court any request for Credit Bid Rights made by the Indenture Trustee or any Second Mortgage Note Holder (except that the Bank Agent and Bank Lenders need not admit, consent to or support any valuation of the Collateral alleged in support of the allowance of any secured claim based upon the liens securing the Second Mortgage Notes Secured Obligations),

then, so long as the Bank Agent and the Bank Lenders do not oppose or otherwise contest any request made by the Indenture Trustee or any Second Mortgage Note Holder (which may be made only if, pursuant to any such order, the Bank Agent and the Bank Lenders are, or are to be, granted a lien upon any property) for the grant to the Indenture Trustee, for the benefit of the Second Mortgage Note Holders and as adequate protection (or its equivalent) for the Indenture Trustee's interest in the Collateral pursuant to the liens securing the Second Mortgage Notes Secured Obligations of a junior lien upon such property that is co-extensive in all respects with, but subordinated (as set forth herein) in all respects to, all liens securing the Bank Secured Obligations upon such property and any such lien granted to the Bank Agent and the Bank Lenders pursuant to such order,

the Indenture Trustee and the Second Mortgage Note Holders will not oppose or otherwise contest the entry of such order, except that any such order relating to a sale of assets may be opposed or otherwise contested by them (x) as necessary to secure the grant of Credit Bid Rights or (y) based on any ground that may be asserted by a holder of unsecured claims (but not except for Credit Bid Rights, on any grounds arising from or relating to any lien securing the Second Mortgage Notes Secured Obligations or any secured claim or secured creditor rights based on any lien securing the Second Mortgage Notes Secured Obligations).

If, in any Liquidation or Insolvency Proceeding, debt obligations of the reorganized debtor secured by liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization or similar dispositive restructuring plan, both on account of the Bank Secured Obligations and on account of the Second Mortgage Notes Secured Obligations, then, to the extent the debt obligations distributed on account of the Bank Secured Obligations and on account of the Second Mortgage Notes Secured Obligations are secured by liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the liens securing such debt obligations.

The Indenture Trustee and the Second Mortgage Note Holders will not assert or enforce, at any time during the Bank Financing Period, any claim under §506(c) of the United States

S-15

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Bankruptcy Code with respect to the liens securing the Bank Secured Obligations for costs or expenses of preserving or disposing of any Collateral.

If, for purposes of valuation of the secured claims of the Bank Agent and Bank Lenders in any Insolvency or Liquidation Proceeding, the Bank Agent and Bank Lenders determine, and the Bank Agent notifies the Indenture Trustee, that the Collateral should be valued as of any particular time in the period from the date of commencement of such Insolvency or Liquidation Proceeding to the date of confirmation of any plan of reorganization or other dispositive restructuring plan therein, then the Indenture Trustee and the Second Mortgage Note Holders shall not oppose or otherwise contest that the date as of which such secured claims should be valued is the date chosen by the Bank Agent and Bank Lenders, but the Indenture Trustee and the Second Mortgage Note Holders shall remain free (a) to contest without any restriction any valuation claimed or asserted by the Bank Agent or the Bank Lenders as of such date and (b) to assert and seek relief determining that the Collateral should be valued at another date if a valuation at the other date would have the effect of placing a higher value upon the Collateral, taken as a whole. Notwithstanding the foregoing; the Indenture Trustee and the Second Mortgage Note Holders shall not have the right to assert the lack of adequate protection of their liens or the collateral securing the Second Mortgage Notes as a basis for opposing a motion or other relief sought in any Insolvency or Liquidation Proceeding and approved by the Bank Lenders.

If, in connection with the approval by creditors of any plan of reorganization or other dispositive restructuring plan in any Insolvency or Liquidation Proceeding, either:

- (a) secured claims based upon the Second Mortgage Notes Secured Obligations and secured claims based upon the Bank Secured Obligations are classified in the same class of secured claims; or
- (b) secured claims based upon the Second Mortgage Notes Secured Obligations are classified in a separate class from secured claims based upon the Bank Secured Obligations and are treated under such plan as an impaired secured class, and such plan could not lawfully be confirmed or approved by the court in such Insolvency or Liquidation Proceeding unless the class of secured claims based upon the Second Mortgage Notes Secured Obligations votes, as a class, to accept such plan,

then the holders of secured claims based upon the Second Mortgage Notes Secured Obligations shall not vote such secured claims to accept such plan if: (i) the Bank Agent notifies the holders of such secured claims (in such manner and to such Person at such addresses as the Indenture Trustee may direct), at least 10 Business Days before ballots are due in the voting on such plan, that fewer than the holders of two-thirds in amount of secured claims based upon the Bank Secured Obligations will vote, as a separate class (or as if they were a separate class), to accept such plan, (ii) such notice is not withdrawn by the Bank Agent by written notice to the Indenture Trustee or the Second Mortgage Note Holders and (iii) such plan is not accepted by the holders of secured claims based upon the Bank Secured Obligations voting as a separate class (or as if they were a separate class).

The Indenture Trustee shall provide the Bank Agent with such information as may be available to the Indenture Trustee as to the names and notice addresses of the holders of secured claims based upon the Second Mortgage Notes. The notice described in clause (i) of the preceding paragraph shall be conclusively deemed sufficiently given if mailed by ordinary mail, postage prepaid, to such names and addresses. No ballot voting a secured claim based upon the Second Mortgage Notes Secured Obligations shall be delivered in respect of any such plan by any holder of secured claims based upon the Second Mortgage Notes Secured Obligations prior to the last date on which the notice described in clause (i) may be given by the Bank Agent. Any ballot cast in violation of this section will be invalid.

S-16

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**5.3 Avoidance of Bank Secured Obligations in Bankruptcy.** If (a) any lien securing a Bank Secured Obligation is avoided in any Insolvency or Liquidation Proceeding, (b) by reason of such avoidance, there is a resultant reduction (a "**Bank Secured Claim Reduction**") in the amount of the secured claims (without regard to unsecured claims) that, but for such avoidance, would have been allowed in such Insolvency or Liquidation Proceeding on account of claims based upon Bank Secured Obligations, and (c) a distribution is made in such Insolvency or Liquidation Proceeding on account of secured claims (without regard to any unsecured claims) based upon Second Mortgage Notes Secured Obligations, whether such distribution is made in cash, securities or otherwise, or the Indenture Trustee receives any proceeds from the foreclosure or other enforcement of the liens securing the Second Mortgage Notes Secured Obligations (such distribution or receipt, a "**Mortgage Note Recovery**"), then a portion of such Mortgage Note Recovery (the "**Shareable Recovery**") determined by multiplying:

- (i) a percentage by dividing (A) the aggregate amount allowed in such Insolvency or Liquidation Proceeding on account of all unsecured claims based upon Bank Secured Obligations (after giving effect to such avoidance) by (B) the aggregate amount allowed in such Insolvency or Liquidation Proceeding on account of all unsecured claims based upon Bank Secured Obligations (after giving effect to such avoidance) and all secured and unsecured claims based upon Second Mortgage Notes Secured Obligations; *by*
- (ii) the lesser of (A) the amount of such Bank Secured Claim Reduction and (B) the amount of such Mortgage Note Recovery,

shall be received and held by the Indenture Trustee subject to an option, exercisable solely by the Bank Agent by written notice delivered to the Indenture Trustee no later than the 20<sup>th</sup> Business Day after the latest of:

- (1) the date on which such Mortgage Note Recovery is received;
- (2) the date on which the amount (if any) of secured claims and unsecured claims based on the Bank Secured Obligations and the Second Mortgage Notes Secured Obligations are allowed in such Insolvency or Liquidation Proceeding; and
- (3) the date on which the amount of such Bank Secured Claim Reduction is determined,

to exchange the Shareable Recovery (in the form received, with any interest accrued thereon) for an equivalent amount (net of any such accrued interest) of unsecured claims allowed in such Insolvency or Liquidation Proceeding based upon Bank Secured Obligations or for any substantially contemporaneous distribution (exchanged in the form received, with any interest accrued thereon) made in such Insolvency or Liquidation Proceeding on account of such equivalent amount of unsecured claims based upon Bank Secured Obligations. Such exchange shall be made by each party thereto without any recourse, representation, warranty or liability whatsoever.

**5.4 No Other Restrictions on Note Holders.** Notwithstanding any other provision of this Agreement to the contrary, except as expressly provided herein the Second Mortgage Note Holders shall not, in any Insolvency or Liquidation Proceeding, be restricted in voting any secured claims based upon the Second Mortgage Notes Secured Obligations and will not be in any respect restricted in voting any unsecured claims based upon the Obligations outstanding under the Second Mortgage Notes.

**6. Default Purchase Option.** The Bank Agent hereby grants the Indenture Trustee the right (without any obligation) to purchase, at any time during the period that begins when all commitments to extend credit constituting all Bank Secured Obligations have terminated and all Bank Secured Obligations have matured (whether at the stated maturity, upon acceleration or otherwise, including by virtue of

S-17

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the commencement of an Insolvency or Liquidation Proceeding) and ends on the 45<sup>th</sup> day after receipt by the Indenture Trustee of written notice of such maturity from the Bank Agent, all, but not less than all, of the principal of and interest on and all prepayment or acceleration penalties and premiums in respect of all Bank Secured Obligations outstanding at the time of purchase and all other Bank Secured Obligations then outstanding, together with all liens securing such Bank Secured Obligations and all guarantees and other supporting obligations relating to such Bank Secured Obligations:

- (a) for a purchase price equal to 100% of the principal amount and accrued interest outstanding on the Bank Secured Obligations on the date of purchase (including fees and interest accruing after the commencement of a Liquidation or Insolvency Proceeding at the rate provided for in the Bank Credit Agreement (regardless of whether such item is an allowed claim under applicable law) and any costs of collection) plus all other Bank Secured Obligations (including any LIBOR breakage costs but excluding any prepayment or acceleration penalty or premium) then unpaid;
- (b) with such purchase price payable in cash on the date of purchase against transfer to an Eligible Purchaser or its nominee or transferee (without recourse and without any representation or warranty whatsoever, whether as to the enforceability of any Bank Secured Obligations or the validity, enforceability, perfection, priority or sufficiency of any lien securing or guarantee or other supporting obligation for any Bank Secured Obligations or as to any other matter whatsoever, except only the representation and warranty that the transferor is transferring free and clear of all liens and encumbrances (other than that will be satisfied and discharged concurrently with the closing of the purchase from the proceeds of the purchase price), and has good right to convey, whatever claims and interests it purports to have in respect of Bank Secured Obligations and any such liens, guarantees and supporting obligations pursuant to the Bank Financing Agreements);
- (c) with such purchase accompanied by a deposit of cash collateral under the dominion and control of the Bank Agent in an amount equal to 105% of the undrawn amount of each letter of credit then outstanding as Bank Secured Obligations, as security for the additional obligation of the purchaser to purchase, at par plus accrued interest, the reimbursement obligation in respect of such letter of credit as and when such letter of credit is funded and to pay all Bank Secured Obligations then outstanding relating to such letter of credit; and
- (d) pursuant to an Assignment and Assumption Agreement in the form of Exhibit E to the Bank Credit Agreement and otherwise consistent with this Section.

**7. Representations and Warranties.** Each Project Credit Party represents and warrants to each other Project Credit Party as follows:

**7.1 Organization.** It is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

**7.2 Authorization.** All actions necessary to authorize the execution, delivery and performance of this Agreement on behalf of such party have been duly taken, and all such actions continue in full force and effect as of the date hereof.

**7.3 Binding Agreement.** It has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of such party enforceable in accordance with its terms and subject to (a) applicable bankruptcy, reorganization, insolvency and moratorium laws, and (b) principles of equity, which may apply regardless of whether a proceeding is brought in law or in equity.

S-18

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**7.4 No Consent Required.** To the best of its knowledge, no consent of any other party and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution,

delivery, or performance by such party of this Agreement or consummation by such party of the transactions contemplated by this Agreement.

**7.5 No Conflict.** None of the execution, delivery, and performance of this Agreement nor the consummation of the transactions contemplated by this Agreement will (a) violate or conflict with any provision of the organizational or governing documents, if any, of such party; (b) to the best of its knowledge, violate, conflict with, or result in the breach or termination of, or otherwise give any other contracting party the right to terminate, or constitute (or with notice or lapse of time, or both, would constitute) a default under the terms of any contract, mortgage, lease, bond, indenture, agreement, or other instrument to which such party is a party or to which any of its properties are subject; (c) to the best of its knowledge, result in the creation of any lien, charge, encumbrance, mortgage, lease, claim, security interest, or other right or interest upon the properties or assets of such party pursuant to the terms of any such contract, mortgage, lease, bond, indenture, agreement, franchise, or other instrument; (d) violate any judgment, order, injunction, decree, or award of any court, arbitrator, administrative agency, or governmental or regulatory body of which it has knowledge against, or binding upon such party or upon any of the securities, properties, assets, or business of such party; or (e) to the best of its knowledge, constitute a violation by such party of any statute, law, or regulation that is applicable to such party.

## 8. Miscellaneous Provisions.

**8.1 Notices; Addresses.** Any communications between the Project Credit Parties hereto or notices herein to be given may be given to the following addressees:

If to the Bank Agent:

Deutsche Bank Trust Company Americas  
31 West 52<sup>nd</sup> Street  
New York, New York 10019

Attn: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

If to the Indenture Trustee:

Wells Fargo Bank, National Association,  
as Indenture Trustee,  
MAC: N303-121  
Corporate Trust Operations  
6<sup>th</sup> & Marquette Avenue  
Minneapolis, MN 55479

Attn: Michael Slade

Phone: (612) 667-0266

Fax: (612) 667-2160

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 any 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

S-19

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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 of no less than twenty (20) days' notice to the other parties in the manner set forth hereinabove.

S-20

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**8.2 Further Assurances.** Each Project Credit Party (a) shall deliver to each other Project Credit Party, to the Disbursement Agent and to the Securities Intermediary such instruments, agreements, certificates and documents as any such Person may reasonably request to confirm the validity and priority of the liens on and security interests in the Collateral granted pursuant to the Security Documents as affected hereby, (b) shall fully cooperate with each other, with the Disbursement Agent and with the Securities Intermediary, and (c) shall perform all additional acts reasonably requested by any such Person to effect the purposes of this Agreement.

**8.3 Waiver.** Any waiver, permit, consent or approval of any kind or character on the part of any of the Project Credit Parties, the Disbursement Agent or the Securities Intermediary of any Potential Event of Default, Event of Default or other breach or default under this Agreement, any Security Document or any other Financing Agreement, or any waiver on the part of any of the Project Credit Parties, the Disbursement Agent or the Securities Intermediary, of any provision or condition of this Agreement or any other operative document, must be in writing and shall be effective only to the extent in such writing specifically set forth.

**8.4 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. As among the Project Credit Parties, in the event of any conflict between the terms of this Agreement and the terms of the Disbursement Agreement, the terms of this Agreement shall control.

**8.5 Governing Law.** This Agreement shall be governed by the laws of 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.

**8.6 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.

**8.7 Headings.** Section headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

**8.8 Limitations on Liability.** No claim shall be made by any Project Credit Party or any of its Affiliates against any other Project Credit Party, the Disbursement Agent, the Securities Intermediary 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 any act or omission or event occurring in connection therewith; and each Project Credit Party hereby waives, releases and agrees not to sue upon any such claim for any such special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

**8.9 Consent of Jurisdiction.** Any legal action or proceeding 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, each Project Credit Party, accepts, for its and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts for legal

S-20

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proceedings arising out of or in connection with this Agreement and irrevocably consents to the appointment of the Prentice-Hall Corporation System Inc. 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 including judicial or non-judicial foreclosure of real property interests which are part of the Collateral. Each Project Credit Party hereby waives any right to stay or dismiss any action or proceeding under or in connection with any or all of the Project, this Agreement or any other operative document brought before the foregoing courts on the basis of forum non-conveniens.

**8.10 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; *provided, however*, this Agreement shall terminate upon the earlier to occur of (i) Discharge of the Bank Secured Obligation and (ii) Discharge of the Second Mortgage Notes Secured Obligations. Upon Discharge of the Bank Secured Obligation, the Bank Agent agrees to deliver any and all Collateral of which it has possession, either directly or through an agent, custodian or other representative to the Indenture Trustee and to notify each Securities Intermediary, each counterparty to a Consent and such other Persons as the Indenture Trustee may reasonably request that the Bank Credit Facility has been terminated and discharged in full.

**8.11 Counterparts.** This Agreement may be executed in one or more duplicate counterparts and when signed by all of the Project Credit Parties listed below shall constitute a single binding agreement.

**8.12 No Third Party Beneficiaries.** Except for the Bank Lenders, the Second Mortgage Note Holders, the Disbursement Agent and the Securities Intermediary, the Project Credit Parties do not intend the benefits of this Agreement to inure to the benefit of nor shall it be enforceable by any third party (including, without limitation, any other Funding Agent, the Company or any of its Affiliates) nor shall this Agreement be construed to make or render any Project Credit Party liable to any third party (including, without limitation, any other Funding Agent, the Company or any of its Affiliates) for the performance or failure to perform any obligations hereunder.

**8.13 Amendment for New Project Credit Parties.** Upon any refinancing of any Facility, or the incurring of other Indebtedness of the Company (subject to the rights of the existing Project Credit Parties under their respective Financing Agreements with respect to any such refinancing or other Indebtedness), the applicable lender shall be bound by the terms of this Agreement and such lender, or an agent or trustee on its behalf, and the Project Credit Parties shall execute and deliver an amendment to this Agreement to make such Person a Credit Party hereunder.

**8.14 Trust Indenture Act.** The parties do not intend that the provisions of this Agreement violate the requirements of the Trust Indenture Act of 1939, as amended.

**8.15 Reinstatement.** If the payment of any amount applied to any Bank Secured Obligations is later avoided, or rescinded (including by settlement of any claim for avoidance or rescission) or otherwise set aside, then:

- (a) to the fullest extent lawful, all claims for the payment of such amount as Bank Secured Obligations and, to the extent securing such claims, all such liens under the Bank Security Documents will be reinstated and entitled to the benefits hereof, and
- (b) if a Discharge of Bank Secured Obligations became effective prior to such reinstatement, all obligations of the Indenture Trustee and the Second Mortgage Note Holders that were terminated as a result of such Discharge of Bank Secured Obligations shall be concurrently reinstated to the extent such claims and liens under the Bank Security Documents are reinstated, beginning on such date but prospectively only (and not retroactively), as though no Bank Secured Obligations or liens under the Bank Security

S-21

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Documents had been outstanding at any time prior to such date and will remain effective until the claims for such amount are paid in full in cash.

**8.16 Attorneys' Fees.** Unless paid by the Company Group, the prevailing party in any dispute or controversy hereunder shall be entitled to an award of its reasonable attorneys' fees.

**IN WITNESS WHEREOF**, the Project Credit Parties hereto have caused this Agreement to be executed by their respective officers or agents thereunto duly authorized as of the day and year first above written.

Bank Agent:

**DEUTSCHE BANK TRUST COMPANY AMERICAS,**

By: \_\_\_\_\_

Name:

Title:

Indenture Trustee:

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

S-22

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QuickLinks

[FORM OF INTERCREDITOR AGREEMENT \(Project Lenders\)](#)

[TABLE OF CONTENTS](#)

[FORM OF INTERCREDITOR AGREEMENT \(Project Lenders\)](#)



FORM OF INTERCREDITOR AGREEMENT

(FF&E)

DEUTSCHE BANK TRUST COMPANY AMERICAS,  
as Bank Agent,

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Indenture Trustee

and

WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION,  
as FF&E Agent,

[                      ], 2002

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TABLE OF CONTENTS

	<u>Page</u>
1. Definitions and General Provisions.	2
1.1 Definitions	2
1.2 Interpretation	6
2. FF&E Collateral, Priority of Liens, Subordination and Release.	6
2.1 Liens and Security Interests on the FF&E Collateral	6
2.2 FF&E Proceeds Accounts Collateral and Aircraft Collateral Does Not Secure Bank Facility or Second Mortgage Note Holders	7
2.3 Hotel/Casino Collateral Does Not Secure FF&E Facility	7
2.4 Confirmation of Liens.	7
2.5 Release of Liens.	8
3. Rights and Limitation of Actions With Respect to the FF&E Collateral.	8
3.1 Rights and Limitations Applicable to the Project Credit Parties.	8
3.2 Rights and Limitations Applicable to the FF&E Agent and the FF&E Lenders.	10
3.3 Certain Waivers by the Project Secured Parties	12
3.4 Notification of Events of Default	12
3.5 FF&E Standstill Period.	12
3.6 Limitation of Liability.	13
3.7 Cooperation with Foreclosure Purchaser	14
3.8 Obligations of Project Credit Parties Limited to their Capacities as Junior Lien Holders	14
4. Other Intercreditor Provisions.	14
4.1 Waiver of Provisions Under Financing Agreements	14
4.2 Amendments of Financing Agreements	14
4.3 Provisions Relating to Events of Loss and Loss Proceeds.	15
4.4 Responsibility for Staying Informed.	16
5. Insolvency or Liquidation Proceedings.	16
5.1 Right to File Involuntary Bankruptcy	16
5.2 Certain Agreements and Consents by the Project Credit Parties	16
6. Default Payoff Option	17
7. Representations and Warranties	17
7.1 Organization	17
7.2 Authorization	17
7.3 Binding Agreement	17
7.4 No Consent Required	17
7.5 No Conflict	17
8. Miscellaneous Provisions.	18
8.1 Notices; Addresses	18
8.2 Further Assurances	19
8.3 Waiver	19
8.4 Entire Agreement	19
8.5 Governing Law	19
8.6 Severability	19
8.7 Headings	19
8.8 Limitations on Liability	19
8.9 Consent to Jurisdiction	19

8.10	Successors and Assigns	20
8.11	Counterparts	20
8.12	No Third Party Beneficiaries	20

i

---

8.13	Refinancing; Amendment for New Credit Parties	20
8.14	Trust Indenture Act	20
8.15	Reinstatement	20
8.16	Interaction with Project Lenders Intercreditor Agreement	20
8.17	Attorneys' Fees	21

ii

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**FORM OF INTERCREDITOR AGREEMENT**  
(FF&E)

**THIS INTERCREDITOR AGREEMENT** (this "**Agreement**") is made as of [ ], 2002 (the "**Effective Date**"), by and among **DEUTSCHE BANK TRUST COMPANY AMERICAS**, as the Administrative Agent acting on behalf of itself and the Bank Lenders pursuant to the Bank Credit Agreement (in such capacity, the "**Bank Agent**"), **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association in its capacity as Trustee under the Second Mortgage Notes Indenture (in such capacity, the "**Indenture Trustee**") and **WELLS FARGO BANK NEVADA, NATIONAL ASSOCIATION**, as the Collateral Agent acting on behalf of itself and the FF&E Lenders pursuant to the FF&E Facility Agreement (in such capacity, the "**FF&E Agent**").

**RECITALS:**

**A. The Project.** Wynn Las Vegas, LLC, a Nevada limited liability company (the "**Company**"), proposes to develop, construct and operate the Le Reve Hotel Casino, a large-scale, hotel, casino, golf course and entertainment complex with related ancillary facilities, all as part of the redevelopment on the site of the former Desert Inn Resort & Casino.

**B. The Bank Credit Facility.** Concurrently herewith, the Company, the Bank Agent, the Bank Lenders and the other parties named therein have entered into the Bank Credit Agreement pursuant to which the Bank Lenders have agreed, subject to the terms thereof, to provide the Bank Credit Facility to the Company.

**C. The Second Mortgage Notes Indenture.** Concurrently herewith, the Company, Wynn Las Vegas Capital Corp., certain guarantors named therein and the Indenture Trustee have entered into the Second Mortgage Notes Indenture pursuant to which the Company and Wynn Las Vegas Capital Corp. will issue the Second Mortgage Notes.

**D. FF&E Facility.** Concurrently herewith, the Company, the FF&E Agent and the FF&E Lenders have entered into the FF&E Facility Agreement pursuant to which the FF&E Lenders have agreed, subject to the terms thereof, to provide the FF&E Facility to the Company. The proceeds of the FF&E Facility will be used to acquire the FF&E Component Collateral and the Aircraft Collateral.

**E. Financing for the Project.** The Company is financing the development of the Project, in part, with the proceeds of the Bank Credit Facility, the FF&E Facility and the Second Mortgage Notes. In addition to certain other collateral and security interests:

(1) the Bank Credit Facility is secured (i) by a first priority lien on the Bank Proceeds Account Collateral and the Hotel/Casino Collateral, and (ii) by a second priority lien on the FF&E Component Collateral, in each case, as more particularly described in *Section 2* hereof;

(2) the Second Mortgage Notes are secured (i) by a first priority lien on the Second Mortgage Notes Proceeds Account Collateral, (ii) by a second priority lien on Hotel/Casino Collateral and (iii) by a third priority lien on the FF&E Component Collateral, in each case, as more particularly described in *Section 2* hereof; and

(3) the FF&E Facility is secured by a first priority lien on (i) the FF&E Proceeds Account Collateral, (ii) the Aircraft Collateral and (iii) the FF&E Component Collateral, in each case, as more particularly described in *Section 2* hereof.

**F. Disbursement Agreement.** The Company, the Bank Agent, the Indenture Trustee, the FF&E Agent and the Disbursement Agent, have entered into that certain Master Disbursement Agreement as of an even date herewith (the "**Disbursement Agreement**"), in order to set forth, among other things, (a) the mechanics for and allocation of the Company's request for advances under the various Facilities and from the Company's Funds Account, (b) the conditions precedent to the initial advance and

1

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conditions precedent to subsequent advances, (c) certain common representations, warranties and covenants of the Company in favor of the Funding Agents and (d) common Events of Default and remedies during construction of the Project.

**G. Intercreditor Agreement (Project Lenders).** The Project Credit Parties have entered into the Project Lenders Intercreditor Agreement in order to set forth certain provisions relating to their respective rights in the Collateral (including the FF&E Component Collateral) securing the obligations of the Company Group to the Project Credit Parties, the exercise of remedies upon the occurrence of an event of default, the application of proceeds of enforcement and certain other matters.

**H. Intercreditor Agreement (FF&E).** The Bank Agent, the Indenture Trustee and the FF&E Agent desire to enter into this Agreement in order to set forth certain provisions relating to their respective rights in the FF&E Collateral, the exercise of remedies with respect thereto upon the occurrence of an event of default, the application of proceeds of enforcement and certain other matters.

## AGREEMENT:

NOW, THEREFORE, with reference to the foregoing recitals and in reliance thereon, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Credit Parties agree as follows:

### 1. Definitions and General Provisions.

**1.1 Definitions.** Except as otherwise expressed and provided herein, all capitalized terms used in this Agreement and its Exhibits and not otherwise defined herein shall have the meanings given to such terms in the Disbursement Agreement. Except as set forth herein, the rules of interpretation set forth in Exhibit A to the Disbursement Agreement shall apply.

**1.1.1 Other Terms.** The following terms shall have the meanings set forth below:

"**Agreement**" has the meaning given in the preamble to this Agreement.

"**Aircraft Collateral**" has the meaning given in the FF&E Facility Agreement.

"**Aircraft Secured Obligations**" means, from time to time, all of the FF&E Secured Obligations other than the FF&E Component Secured Obligations.

"**Bank Agent**" means Deutsche Bank Trust Company Americas or its successor or assignee in its capacity as Administrative Agent under the Bank Credit Agreement.

"**Bank Credit Facility**" means, collectively, the delay draw term loan credit facility and the revolving credit facility (including the letter of credit facility thereunder) described and made available to Wynn Las Vegas by the Bank Lenders pursuant to the Bank Credit Agreement.

"**Bank Financing Agreements**" means the Bank Credit Agreement, the Bank Fee Letter, the Project Lenders Intercreditor Agreement, this Agreement, the Bank Security Documents and any other agreement, document or instrument entered into or delivered by a member of the Company Group on, prior to or after the Closing Date with or to the Bank Agent or the Bank Lenders in connection with the financing of the Project.

"**Bank Proceeds Account Collateral**" means the Bank Proceeds Account and all amounts on deposit therein, any interest earned thereon, and any investments of such amounts made pursuant to the Bank Company Collateral Account Agreement, and any proceeds of the foregoing *except* to the extent such proceeds are deposited into another account pursuant to the terms of the Disbursement Agreement or the Bank Company Collateral Account Agreement.

2

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"**Bank Secured Obligations**" means all Obligations of the Company Group to the Bank Agent and the Bank Lenders under the Bank Credit Facility, the Bank Security Documents and the other Bank Financing Agreements, including, without limitation, Obligations in respect of Interest Rate Agreements (as defined in the Bank Credit Agreement), but only to the extent that the Bank Credit Agreement permits such Interest Rate Agreement Obligations to be secured by the Bank Security Documents.

"**Bankruptcy Law**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute and any other state or federal insolvency, reorganization, moratorium or similar law for the relief of debtors now or hereafter in effect.

"**Collateral**" means the following unique and separate categories of property encumbered to secure the Obligations of the Company Group to any of the applicable Secured Parties: (a) the Hotel/Casino Collateral, (b) the FF&E Collateral and (c) the Separate Proceeds Accounts Collateral.

"**Company Group**" means, collectively, the Company and any Affiliate of the Company that from time to time has incurred any Obligations or pledged any Collateral under any Financing Agreement.

"**Credit Party**" or "**Credit Parties**" means, as the context requires, any or all of the Bank Agent, the Indenture Trustee and the FF&E Agent.

"**Default Payoff Option**" means the option granted to the Eligible Payor on behalf of the Project Secured Parties pursuant to *Section 6* hereof to pay off the FF&E Component Secured Obligations.

"**Disbursement Agent**" means Deutsche Bank Trust Company Americas or its successor or assignee in its capacity as Disbursement Agent under the Disbursement Agreement.

"**Disbursement Agreement Default**" means the occurrence and continuance of an Event of Default under, and as defined in, the Disbursement Agreement.

"**Discharge**" means (a) in respect of the Bank Credit Facility, the termination of all commitments to extend credit under the Bank Credit Facility, indefeasible payment in full in cash of the principal of and interest and premium (if any) on all Bank Secured Obligations, termination, cancellation or expiration of all letters of credit issued under the Bank Credit Facility and indefeasible payment in full in cash of all other Bank Secured Obligations that are unpaid at the time the principal and interest are indefeasibly paid in full in cash, (b) in respect of the Second Mortgage Notes, indefeasible payment in full in cash of the principal of and interest and premium (if any) on all Second Mortgage Notes Secured Obligations and indefeasible payment in full in cash of all other Second Mortgage Notes Secured Obligations that are unpaid at the time the principal and interest are indefeasibly paid in full in cash and (c) in respect of the FF&E Facility, the termination of all commitments to extend credit under the FF&E Facility Agreement, and either (i) the indefeasible payment in full in cash of the principal of and interest and premium (if any) on all FF&E Component Secured Obligations and indefeasible payment in full in cash of all other FF&E Component Secured Obligations that are unpaid at the time the principal and interest are indefeasibly paid in full in cash, in each case in accordance with the terms of this Agreement, or (ii) the indefeasible payment in full in cash of the principal of and interest and premium (if any) on all FF&E Secured Obligations and indefeasible payment in full in cash of all other FF&E Secured Obligations that are unpaid at the time the principal and interest are indefeasibly paid in full in cash, in each case in accordance with the terms of the FF&E Facility Agreement.

"**Effective Date**" has the meaning given in the *preamble* to this Agreement.

**"Eligible Payor"** means (a) from the date of the initial Advance under the Bank Credit Facility until the Discharge of the Bank Secured Obligations, (i) the Bank Agent (acting on behalf of and, to the extent applicable, at the instruction of, the Bank Lenders in accordance with the Bank Financing Agreements) and (ii) from and after the expiration of 180 days following the occurrence of the Event

of Default giving rise to the Default Payoff Option, any Person or Persons at any time or from time to time designated by holders of at least 25% in outstanding principal amount of the Second Mortgage Notes, voting as a single class, as entitled to exercise the Default Payoff Option and (b) at any other time, any Person or Persons at any time or from time to time designated by the holders of at least 25% in outstanding principal amount of the Second Mortgage Notes, voting as a single class, as entitled to exercise the Default Payoff Option and, in each case, any nominee or designee of the foregoing.

**"Event of Default"** means, as the context requires, (i) a Disbursement Agreement Default, or (ii) the occurrence and continuance of an "Event of Default" by or with respect to the Company under the applicable Financing Agreement that has not been waived by the applicable Credit Party (it being understood that the provisions of *Section 1.2* of this Agreement shall not apply to any such waiver).

**"Exercise Remedies"** or **"Exercise of Remedies"** shall mean, with respect to each Lender, the taking of any action to enforce its rights or remedies against the Company Group following the occurrence of a Potential Default or Event of Default under its respective Financing Agreements, including, without limitation, the termination of a commitment to lend, the acceleration of all or a portion of the Obligations under such Financing Agreements, the filing or initiation of an Insolvency or Liquidation Proceeding against the Company or any other Person within the Company Group, the commencement of any foreclosure proceedings against any Collateral, the repossession of any Collateral, or the appointment or institution of a receiver, custodian or similar official to take custody of any assets of the Company or other members of the Company Group; provided, however, that the term "Exercise Remedies" shall specifically exclude (i) the issuance of any notice of default, (ii) any actions by a Credit Party to suspend (a) any disbursements from any accounts of the Company Group in which such Credit Party has a security interest or (b) Advances under the particular Facility and (iii) the recording of a Notice of Default in the County Recorder's Office of Clark County, Nevada.

**"Facility"** or **"Facilities"** means, as the context requires, any or all of the Bank Credit Facility, the Second Mortgage Notes Proceeds and the FF&E Facility.

**"Facility Agreement"** or **"Facility Agreements"** means, as the context requires, any or all of the Bank Credit Agreement, the Second Mortgage Notes Indenture and the FF&E Facility Agreement.

**"FF&E Agent"** means Wells Fargo Bank Nevada, National Association or its successor or assignee in its capacity as Collateral Agent under the FF&E Facility Agreement.

**"FF&E Collateral"** means the following unique and separate categories of property encumbered to secure all or a portion of the Obligations of the Company Group to the applicable Secured Parties (in each case as set forth in *Section 2*): (a) the Aircraft Collateral, (b) the FF&E Component Collateral and (c) the FF&E Proceeds Account Collateral; *provided, however*, that upon the release by the FF&E Agent of its security interest in any portion of the FF&E Collateral, the FF&E Collateral shall exclude such released FF&E Collateral.

**"FF&E Component Collateral"** means from time to time, items consisting of the FF&E Component under the Disbursement Agreement (as more specifically set forth from time to time in Exhibit T-3 to the Disbursement Agreement) *other than* (a) the FF&E Proceeds Accounts Collateral and (b) the Aircraft Collateral.

**"FF&E Component Secured Obligations"** means, at any time and from time to time, the Allocated Equipment Value (as defined in the FF&E Facility Agreement), plus all accrued but unpaid interest thereon in accordance with the FF&E Facility Agreement, plus the Applicable Administrative Charge (as defined in the FF&E Facility Agreement), if any, allocable to such Allocated Equipment Value, plus any other accrued but unpaid fees or other amounts owed under the FF&E Financing Agreements and allocable to the Allocable Equipment Value.

**"FF&E Financing Agreements"** means the FF&E Facility Agreement, this Agreement, the FF&E Security Documents and any other agreement, document or instrument entered into or delivered by a member of the Company Group on, prior to or after the Closing Date with or to the FF&E Agent or the FF&E Lenders in connection with the financing of the Project.

**"FF&E Proceeds Account Collateral"** means the FF&E Proceeds Account and all amounts on deposit therein, any interest earned thereon, and any investments of such amounts made pursuant to the applicable FF&E Collateral Account Agreement, and any proceeds of the foregoing *except* to the extent such proceeds are deposited into another account pursuant to the terms of the Disbursement Agreement or the FF&E Collateral Account Agreement.

**"FF&E Secured Obligations"** means all Obligations of the Company Group to the FF&E Agent and the FF&E Lenders under the FF&E Facility Agreement, the FF&E Security Documents and the other FF&E Financing Agreements.

**"Hotel/Casino Collateral"** means all real and personal property encumbered to secure the Bank Secured Obligations under the Bank Security Documents or the Second Mortgage Notes Secured Obligations under the Second Mortgage Notes Security Documents *other than* (a) the Separate Proceeds Accounts Collateral and (b) the FF&E Collateral, *provided, however*, that upon the release by the Bank Agent and the Indenture Trustee of their respective security interests in any portion of the Hotel/Casino Collateral, the Hotel/Casino Collateral shall exclude such released Hotel/Casino Collateral.

**"Indenture Trustee"** means Wells Fargo Bank, National Association or its successor or assignee in its capacity as Trustee under the Second Mortgage Notes Indenture.

**"Insolvency or Liquidation Proceeding"** means (a) any case commenced by or against the Company Group or any Person within the Company Group under any Bankruptcy Law, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of the Company Group or any Person within the Company Group, any receivership or assignment for the benefit of creditors relating to the Company Group or any Person within

the Company Group or any similar case or proceeding relative to the Company Group or any Person within the Company Group or their creditors, as such, in each case whether or not voluntary; (b) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to the Company Group or any Person within the Company Group, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or (c) any other proceeding of any type or nature in which substantially all claims of creditors of the Company Group or any Person within the Company Group are determined and any payment or distribution is or may be made on account of such claims.

"**Notice of Default**" means a notice of default which must be recorded in the official real property records of Clark County, Nevada, in order to commence non-judicial foreclosure of a deed of trust in accordance with applicable Nevada law.

"**Project Credit Party**" or "**Project Credit Parties**" means, as the context requires, any or both of the Bank Agent and the Indenture Trustee.

"**Project Credit Party Agent**" means (a) from the date of the initial Advance under the Bank Credit Agreement until the Discharge of the Bank Secured Obligations, the Bank Agent (acting on behalf of, and to the extent applicable, at the instruction of, the Bank Lenders in accordance with the Bank Financing Agreements), and (b) at any other time, the Indenture Trustee (acting on behalf of, and to the extent applicable, at the instruction of, the Second Mortgage Note Holders in accordance with the Second Mortgage Notes Indenture).

"**Second Mortgage Notes Financing Agreements**" means the Second Mortgage Notes Indenture, the Second Mortgage Notes, the Disbursement Agreement, the Project Lenders Intercreditor

5

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Agreement, this Agreement, the Second Mortgage Notes Security Documents and any other agreement, document or instrument entered into or delivered by a member of the Company Group on, prior to or after the Closing Date with or to the Indenture Trustee or the Second Mortgage Note Holders in connection with the financing of the Project.

"**Second Mortgage Notes Proceeds Account Collateral**" means the Second Mortgage Notes Proceeds Account and all amounts on deposit therein, any interest earned thereon, and any investments of such amounts made pursuant to the applicable Second Mortgage Notes Company Collateral Account Agreement, and any proceeds of the foregoing *except* to the extent such proceeds are deposited into another account pursuant to the terms of the Disbursement Agreement or the Second Mortgage Notes Company Collateral Account Agreement.

"**Second Mortgage Notes Secured Obligations**" means all Obligations of the Company Group under the Second Mortgage Notes Indenture, the Second Mortgage Notes, the Second Mortgage Notes Security Documents and the other Second Mortgage Notes Financing Agreements.

"**Secured Obligations**" means, as the context requires, any or all of the Bank Secured Obligations, the Second Mortgage Notes Secured Obligations and the FF&E Secured Obligations.

"**Secured Party**" or "**Secured Parties**" means, as the context requires, any or all of the Project Secured Parties, the FF&E Agent and the FF&E Lenders.

"**Securities Intermediary**" means any entity acting in its capacity as Securities Intermediary under any Collateral Account Agreement.

"**Separate Proceeds Accounts Collateral**" means, as the context requires, any or all of the Second Mortgage Notes Proceeds Account Collateral, the Bank Proceeds Account Collateral and the FF&E Proceeds Account Collateral.

"**Standstill Period**" has the meaning given in *Section 3.5.1* of this Agreement.

**1.2 Interpretation.** To the extent that reference is made in this Agreement to any term defined in, or to any other provision of, any other agreement, such term or provision shall continue to have the original meaning thereof notwithstanding any termination, expiration or amendment of such other agreement; *provided, however*, that to the extent that the Disbursement Agreement or any other agreement to which all of the Credit Parties are parties is amended in accordance with the terms thereof and hereof, then any references herein to such terms and provisions of such document shall be to such terms or provisions as so amended.

## **2. FF&E Collateral, Priority of Liens, Subordination and Release.**

**2.1 Liens and Security Interests on the FF&E Collateral.** Each Credit Party agrees that the Secured Parties shall have the benefit of the following liens on and security interests and relative priorities in the FF&E Collateral:

**2.1.1 FF&E Collateral for the FF&E Secured Obligations.** Subject to the terms of this Agreement, the FF&E Secured Obligations shall be secured by a first priority lien on and security interest in the (a) FF&E Proceeds Account Collateral, (b) the Aircraft Collateral and (c) the FF&E Component Collateral.

**2.1.2 FF&E Collateral for the Bank Secured Obligations.** Subject to the terms of this Agreement (and, as between the Bank Agent and the Trustee, the Project Lenders Intercreditor Agreement), the Bank Secured Obligations shall be secured by a second priority lien on and security interest in the FF&E Component Collateral.

**2.1.3 FF&E Collateral for Second Mortgage Notes Secured Obligations.** Subject to the terms of this Agreement (and, as between the Bank Agent and the Trustee, the Project

6

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Lenders Intercreditor Agreement), the Second Mortgage Notes Secured Obligations shall be secured by a third priority lien on and security interest in the FF&E Component Collateral.

**2.2 FF&E Proceeds Accounts Collateral and Aircraft Collateral Does Not Secure Bank Facility or Second Mortgage Note Holders.** The Bank Agent on behalf of the Bank Lenders and the Trustee on behalf of the Second Mortgage Note Holders acknowledge and agree that FF&E Proceeds Account Collateral and the Aircraft Collateral secure only the FF&E Secured Obligations, and no Project Secured Party in its capacity as such (it being understood that any such party may also be an FF&E Lender and shall, in its capacity as an FF&E Lender, enjoy all of the rights and protections provided to the FF&E Lenders hereunder and under the other Financing Agreements) shall have, or claim to have, now or at any time hereafter any liens thereon or any security interest therein (other than a judgment lien obtained as an unsecured creditor). Except as provided in *Section 3.5*, nothing in this Agreement shall affect, limit or otherwise restrict the right and ability of the FF&E Agent and the FF&E Lenders to exercise any remedy or enforce other rights (including foreclosure) upon the FF&E Proceeds Account Collateral and the Aircraft Collateral.

**2.3 Hotel/Casino Collateral Does Not Secure FF&E Facility.** The FF&E Agent, on behalf of the FF&E Lenders, acknowledges and agrees that the Project Credit Parties have liens on, and security interests in the Hotel/Casino Collateral and that neither the FF&E Agent nor any FF&E Lender in its capacity as such (it being understood that any such party may also be a Project Secured Party, and shall, in its capacity as a Project Secured Party, enjoy all of the rights and protections provided to the Project Secured Parties hereunder and under the other Financing Agreements) shall have or claim to have, now or at any time hereafter, a lien on, or other security interest in or with respect to, any Collateral (other than the FF&E Collateral) referred to in this Agreement or described in the Bank Security Documents or the Second Mortgage Notes Security Documents (other than a judgment lien obtained as an unsecured creditor). Notwithstanding any other provision in any Financing Agreement to the contrary, other than insurance proceeds and proceeds from the sale or other disposition of the FF&E Collateral received in accordance with the terms of this Agreement and the FF&E Security Documents, in no event whatsoever shall the liens and other security interests to be created and perfected by the FF&E Security Documents evidencing and securing the FF&E Secured Obligations attach to any revenues, income, rents or other profits generated by the Project (including, without limitation, any revenues, income, rents or other profits associated with the FF&E Collateral) (other than a judgment lien obtained as an unsecured creditor). Nothing in this Agreement shall affect, limit or otherwise restrict the right and ability of the Bank Agent and the Bank Lenders and (subject to the Project Lenders Intercreditor Agreement) the Indenture Trustee and the Second Mortgage Note Holders to exercise any remedy or enforce other rights (including foreclosure) upon any collateral other than the FF&E Collateral.

#### **2.4 Confirmation of Liens.**

**2.4.1** Each Credit Party hereto hereby confirms and agrees that the liens and security interests held by or for the benefit of each Secured Party in the Collateral, as provided for in the preceding provisions of this *Section 2* shall secure all Obligations of the Company Group and any Person within the Company Group now or hereafter owing to such Secured Party under the applicable Facility throughout the term of this Agreement, in each case with the priority specified in this *Section 2*, notwithstanding (a) the availability of any other collateral to any Secured Party, (b) the actual date and time of execution, delivery, recording, filing and perfection of any of the Security Documents, or (c) the fact that any lien or security interest created by any of the Security Documents, or any claim with respect thereto, is or may be subordinated, avoided or disallowed in whole or in part under any Bankruptcy Law. All provisions of this Agreement, including but not limited to, all matters relating to the creation, validity, perfection, priority, subordination and release of the liens and security interests

7

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intended to be created by the Security Documents and all provisions regarding the allocation and priority of payments with respect to any Facility shall survive any Insolvency or Liquidation Proceeding and be fully enforceable by and against each Credit Party hereto during any such proceeding.

**2.4.2** In the event of an Insolvency or Liquidation Proceeding, each Credit Party further confirms and agrees that (i) the Obligations due and outstanding under and with respect to each Facility shall include all principal, additional advances permitted hereunder, Protective Advances made by such Credit Party, interest, default interest, LIBOR breakage and swap breakage, post petition interest and all other amounts due thereunder, for periods before and for periods after the commencement of any such proceedings, even if the claim for such amounts is disallowed pursuant to applicable law, and all proceeds from the sale or other disposition of any Collateral shall be paid to the applicable Secured Party in the order and priority provided for in this *Section 2* with respect to such Collateral notwithstanding the disallowance of any such claim or the invalidity or subordination of any lien on or security interest in such Collateral under applicable law and (ii) it will not request judicial relief or take any other action that would limit, invalidate, avoid or set aside the lien of any other Credit Party on the Collateral or any portion thereof or that would change the lien priorities described in *Section 2.1*.

#### **2.5 Release of Liens.**

**2.5.1** The FF&E Agent agrees to release its respective liens on and security interests in the FF&E Component Collateral on the date on which the Discharge in respect of the FF&E Facility occurs in accordance with the terms of the FF&E Facility Agreement and this Agreement (including any Discharge of the FF&E Facility in connection with the exercise by the Eligible Payor of the Default Payoff Option in accordance with *Section 6* hereof).

**2.5.2** The Bank Agent and the Indenture Trustee agree to release their respective liens on and security interests in the FF&E Component Collateral in connection with (a) any foreclosure or similar sale of such FF&E Component Collateral in connection with the Exercise of Remedies by the FF&E Agent and the FF&E Lenders or (b) any other sale of the FF&E Component Collateral that is permitted by the Bank Financing Agreements and the Second Mortgage Notes Financing Agreements.

**2.5.3** The FF&E Agent, the Bank Agent and the Indenture Trustee agree to release their respective liens on and security interests in the FF&E Component Collateral in connection with any replacement of such FF&E Component Collateral permitted under the FF&E Facility Agreement, the Bank Credit Agreement and the Second Mortgage Notes Indenture. Any replacement items that are permitted under the FF&E Facility Agreement and the Bank Credit Agreement to constitute FF&E Component Collateral shall constitute FF&E Collateral hereunder and shall be subject to the lien priorities set forth in *Section 2.1* above.

**2.5.4** In connection with any release described in this *Section 2.5*, the FF&E Agent, the Bank Agent and/or the Indenture Trustee, as the case may be, agree to execute and deliver any documentation reasonably requested by the other Credit Parties to evidence such lien release.

### 3. Rights and Limitation of Actions With Respect to the FF&E Collateral.

#### 3.1 Rights and Limitations Applicable to the Project Credit Parties.

**3.1.1** Subject to *Section 3.1.2* below, neither the Bank Agent nor the Indenture Trustee shall, nor shall either such Credit Party authorize or direct any Person acting for it, or any

8

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Bank Lender or Second Mortgage Note Holder to, exercise any right or remedy with respect to any FF&E Component Collateral (including any right of set-off) or take any action to enforce, collect or realize upon any FF&E Component Collateral including, without limitation, any right, remedy or action to:

- (a) remove the FF&E Component Collateral (except as permitted under *Section 3.7* below);
- (b) exercise any collection rights in respect of the proceeds from the sale or other disposition of any FF&E Component Collateral;
- (c) exercise any right of set-off against any property constituting FF&E Component Collateral;
- (d) initiate any foreclosure or similar proceeding against any FF&E Component Collateral or take or accept any transfer of title in lieu of foreclosure upon any FF&E Component Collateral;
- (e) enforce any claim to the proceeds of insurance upon any FF&E Component Collateral, other than in accordance with the provisions of *Section 4.3* hereof;
- (f) deliver any notice, claim or demand relating to the FF&E Component Collateral to any Person in the possession or control of any FF&E Component Collateral or acting as bailee, custodian or agent for a Project Secured Party in respect of any FF&E Component Collateral;
- (g) otherwise enforce any remedy available upon default for the enforcement of any lien upon the FF&E Component Collateral;
- (h) deliver any notice or commence any proceeding for any of the foregoing purposes; or
- (i) seek relief in any Insolvency or Liquidation Proceeding permitting it to do any of the foregoing.

**3.1.2** Notwithstanding *Section 3.1.1* above, any right or remedy set forth in clauses (a) through (i) thereof may be exercised and any such action may be taken, authorized or instructed by the Bank Agent or the Indenture Trustee:

- (a) after Discharge of the FF&E Facility;
- (b) as necessary, to deliver any notice or demand necessary to enforce any right to claim, take or receive proceeds of any FF&E Component Collateral remaining after the Discharge of the FF&E Secured Obligations in the event of foreclosure or other enforcement of any lien securing the FF&E Secured Obligations, so long as, in any of the foregoing cases, any such actions are not adverse to the grant, perfection, priority or enforcement of the liens upon the FF&E Component Collateral securing the FF&E Secured Obligations, the value of the FF&E Component Collateral or the rights of the FF&E Agent and the FF&E Lenders in and to the FF&E Component Collateral;
- (c) as necessary to perfect a subordinate lien upon any FF&E Component Collateral by any method of perfection except through possession or control;
- (d) subject to all the other provisions of this Agreement, as necessary to prove (but not enforce) the liens securing the Bank Secured Obligations or the Second Mortgage Notes Obligations upon the FF&E Component Collateral or as necessary to preserve or protect (but not enforce) such liens upon the FF&E Component Collateral (excluding any claim for adequate protection) in any manner that is not adverse to the grant, perfection, priority or enforcement of liens upon the FF&E Component Collateral securing the FF&E Secured Obligations, the value of the FF&E Component Collateral or the rights of the FF&E Agent and the FF&E Lenders in and to the FF&E Component Collateral;

9

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- (e) after obtaining the prior written consent of the FF&E Agent, which consent shall be subject to the FF&E Agent's sole discretion.

**3.1.3** Nothing in this Agreement or any other Financing Agreement shall:

- (a) impair as between the Company Group, on the one hand, and the Project Secured Parties, on the other hand, the obligation of the Company and all guarantors within the Company Group, which is absolute and unconditional, to pay principal of, premium and interest and Liquidated Damages (as defined in the Second Mortgage Notes Indenture), if any, in respect of the Bank Secured Obligations and the Second Mortgage Notes Secured Obligations in accordance with the terms of the Bank Financing Agreements and the Second Mortgage Notes Financing Agreements or any other obligation of the Company or any other Person within the Company Group under the Bank Financing Agreements and the Second Mortgage Notes Financing Agreements;
- (b) affect the relative rights of the Project Secured Parties and creditors of the Company (other than the FF&E Agent and the FF&E Lenders);
- (c) restrict the right of the Project Secured Parties to sue for payments that are then due and owing or accelerate the Bank Secured Obligations or the Second Mortgage Notes Secured Obligations; or
- (d)

prevent the Project Secured Parties from exercising any rights or remedies any of them may have against the Company or any Person within the Company Group, subject however, in all cases, to the rights of the FF&E Agent and the FF&E Lenders in respect of the FF&E Collateral hereunder and the obligations of the Project Secured Parties hereunder.

### 3.2 Rights and Limitations Applicable to the FF&E Agent and the FF&E Lenders.

**3.2.1** Subject to *Section 3.5* below, the FF&E Agent and the FF&E Lenders shall have the exclusive right to manage, perform and enforce the terms of the FF&E Security Documents with respect to all FF&E Component Collateral and to exercise and enforce all privileges and rights thereunder according to their discretion and exercise of their business judgment, including, without limitation, the exclusive right to take the actions enumerated in clauses (a) through (i) of *Section 3.1.1* above. Without limiting the generality of the foregoing, if an Event of Default has occurred and is continuing under the FF&E Facility, the FF&E Agent shall have the right to (i) enter the Project's real property for the purpose of inspecting, maintaining or protecting the FF&E Component Collateral and (ii) without causing material damage the Hotel/Casino Collateral (other than any such material damage which has been repaired), remove the FF&E Component Collateral (including all records and other documentation relating thereto) and take such additional steps as are reasonably necessary or appropriate to prepare such FF&E Component Collateral for a foreclosure sale or other exercise of remedies with respect to such FF&E Component Collateral under the FF&E Facility Agreement. The FF&E Agent agrees to repair any damage caused to the Hotel/Casino Collateral in connection with its removal of any FF&E Collateral.

In connection with any of the actions taken by the FF&E Agent or the FF&E Lenders in accordance with this *Section 3.2.1*, subject to *Section 3.8*, the Project Credit Parties waive any and all rights to affect the method or challenge the appropriateness of any action by the FF&E Agent or the FF&E Lenders with respect to the FF&E Component Collateral and hereby consent to each of the FF&E Agent and the FF&E Lenders exercising or not exercising such rights and remedies as if no lien upon the FF&E Component Collateral securing the Bank Secured Obligations or the Second Mortgage Notes Secured Obligations, as the case may be, existed, except only that the Project Credit Parties reserve all rights granted by law (i) to request or receive notice of any sale of FF&E Component Collateral in foreclosure of any lien upon the FF&E Component Collateral securing the FF&E Secured

10

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Obligations and (ii) after the Discharge of the FF&E Facility, to redeem any FF&E Component Collateral or enforce any right to claim, take or receive proceeds of FF&E Component Collateral then remaining.

**3.2.2** The FF&E Agent and the FF&E Lenders may at any time and from time to time, without the consent of or notice to the Project Credit Parties but subject to any applicable Standstill Period and to the provisions of *Section 4.2*, without incurring any responsibility or liability to such Project Credit Parties and without in any manner prejudicing, affecting or impairing the ranking or priority of the liens and the security interests in the FF&E Component Collateral created by the FF&E Security Documents or the rights and obligations of the Credit Parties hereunder:

- (a) make loans and advances to the Company Group or any Person within the Company Group or issue, guaranty or obtain letters of credit for the account of the Company Group or any Person within the Company Group or otherwise extend credit to the Company Group or any Person within the Company Group in any amount (subject to the provisions of the Bank Credit Agreement and the Second Mortgage Notes Indenture relating to the maximum amount of indebtedness) and on any terms, whether pursuant to a commitment or as a discretionary advance and whether or not any Potential Event of Default or Event of Default or failure of condition is then continuing;
- (b) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, compromise, accelerate, extend or, subject to *Section 8.13* hereof, refinance (as permitted in *Section 8.13* below), any FF&E Secured Obligations or any agreement, guaranty or obligation of the Company Group or any Person within the Company Group or any other Person in any manner related thereto, or otherwise amend, supplement or change in any manner any FF&E Secured Obligations or any such agreement, guaranty or obligation;
- (c) increase or reduce the amount of any FF&E Secured Obligation (subject to the provisions of the Bank Credit Agreement and the Second Mortgage Notes Indenture relating to the maximum amount of indebtedness) or reduce the interest, premium, fees or other amounts payable in respect thereof;
- (d) release or discharge any FF&E Secured Obligation or any guaranty thereof or any agreement or obligation of the Company Group or any Person within the Company Group or any other Person with respect thereto;
- (e) take or fail to take any first priority lien in any FF&E Component Collateral or take or fail to take any action which may be necessary or appropriate to ensure that any lien upon the FF&E Component Collateral securing an FF&E Secured Obligation is duly enforceable or perfected or entitled to priority as against any other lien or to ensure that any proceeds of any FF&E Component Collateral are applied to the payment of any FF&E Component Secured Obligation or any other obligation secured thereby;
- (f) release, discharge or permit the lapse of any or all liens securing a FF&E Secured Obligation or any other liens upon any property at any time;
- (g) exercise or enforce, in any manner, order or sequence, or fail to exercise or enforce, any right or remedy against the Company or any guarantor or any FF&E Component Collateral or any right or power under the FF&E Security Documents and hereunder and apply any payment or proceeds of collateral in any order of application; or
- (h) sell, exchange, release, foreclose upon or otherwise deal with the FF&E Component Collateral.

11

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**3.2.3** Except for its gross negligence or willful misconduct, no (a) exercise, delay in exercising or failure to exercise any right arising under the FF&E Security Documents or this Agreement, (b) act or omission of the FF&E Agent or any FF&E Lender in respect of the Company Group or any Person within the Company Group or any other Person or FF&E Component Collateral or any right arising under the FF&E Security Documents and hereunder, (c) change, impairment, or suspension of any right or remedy of the FF&E Agent or any FF&E Lender with respect to the FF&E Component Collateral, or (d) other act, failure to act, circumstance, occurrence or event, including, without limitation, the acts listed in *Section 3.2.2* above, which, but for this provision, would or could act as a release or exoneration of the agreements or obligations of the Project



Credit Parties hereunder shall in any way affect, decrease, diminish or impair any of such agreements or obligations, including, without limitation, the lien subordination provisions set forth in *Sections 2.1* and *3.1*.

**3.3 Certain Waivers by the Project Secured Parties.** To the fullest extent permitted by law, until Discharge of the FF&E Secured Obligations, each Project Secured Party waives and agrees not to assert or enforce:

- (a) any right of subrogation to the rights or interests of the FF&E Agent or the FF&E Lenders in the FF&E Component Collateral or any claim or defense based upon impairment of any such right of subrogation;
- (b) any right of marshalling accorded to a junior lienholder in the FF&E Component Collateral, as against a priority lienholder in such Collateral, under equitable principles; and
- (c) any statutory right of appraisal or valuation of the FF&E Component Collateral accorded to a junior lienholder in a proceeding to foreclose a senior lien,

in each case, that otherwise may be enforceable in respect of any lien upon the FF&E Component Collateral securing the Bank Secured Obligations or the Second Mortgage Notes Secured Obligations as against the FF&E Agent or the FF&E Lenders; provided, however, that the foregoing shall not be construed as reducing or otherwise negating the obligation of the Company Group to pay, as part of the Bank Secured Obligations and the Second Mortgage Notes Secured Obligations any amounts advanced by the Bank Lenders or the Secured Mortgage Note Holders to pay any portion of the FF&E Secured Obligations.

**3.4 Notification of Events of Default.** Each Credit Party hereby agrees, for the benefit of each other Credit Party, to use its best efforts to provide or cause the Company to provide written notice to each other Credit Party as promptly as practicable after obtaining actual knowledge of the occurrence of an Event of Default under its respective Facility. No Credit Party shall have any liability to another for failing to provide or cause to be provided any such notice, but such release from liability shall not relieve the FF&E Agent's and the FF&E Lenders' obligation to restrain from the Exercise of Remedies until the expiration of the Standstill Period in accordance with and subject to the provisions of *Section 3.5*.

### **3.5 FF&E Standstill Period.**

**3.5.1** The delivery by the FF&E Agent or the Company to the Bank Agent and the Indenture Trustee of the notice referred to in *Section 3.4* with respect to the occurrence of an Event of Default under the FF&E Facility Agreement, which notice references the commencement of the Standstill Period, shall, subject to the provisions of *Section 3.5.3*, commence a standstill period of 30 days (as may be extended pursuant to the terms of *Section 3.5.2* below, the "**Standstill Period**"). Until the expiration of such Standstill Period:

- (a) unless otherwise agreed in writing by the Project Credit Party Agent, the FF&E Agent agrees not to Exercise Remedies (except and to the extent that such Exercise of Remedies is

12

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necessary to prevent the expiration of any applicable statute of limitations) unless (x) the Bank Agent or the Indenture Trustee Exercises Remedies (except and to the extent that such Exercise of Remedies is necessary to prevent the expiration of any applicable statute of limitations) or (y) an Insolvency or Liquidation Proceeding has commenced or been initiated with respect to the Company or any other Loan Party; and

- (b) if (i) all Events of Default under the FF&E Facility Agreement are cured (or waived to the satisfaction of the FF&E Lenders), (ii) all Events of Default under the Bank Credit Agreement are cured (or waived to the satisfaction of the Bank Lenders) and (iii) the Bank Agent notifies the FF&E Agent that the Bank Credit Agreement will be reinstated and that funding under the Bank Credit Agreement will recommence, the FF&E Agent agrees to reinstate the FF&E Facility Agreement and recommence funding thereunder in accordance with the terms of such FF&E Facility Agreement and the Disbursement Agreement.

**3.5.2** So long as all interest, fees, indemnities and expenses of the FF&E Agent and the FF&E Lenders under the FF&E Financing Agreements are brought current on or before the 15<sup>th</sup> day following the commencement of the Standstill Period and thereafter kept current through the expiration of the Standstill Period (as may be extended pursuant to this paragraph), then (a) with respect to a Standstill Period commencing prior to the Completion of the Project, such Standstill Period shall be extended for a period of 30 days from the date on which such Standstill Period was to expire and (b) with respect to a Standstill Period commencing after the Completion of the Project, such Standstill Period shall be extended for a period of 15 days from the date on which such Standstill Period was to expire.

**3.5.3** The provisions of this *Section 3.5* shall apply only to (a) the first Event of Default occurring under the FF&E Facility Agreement prior to the Completion of the Project in respect of which the Bank Agent and the Indenture Trustee receive a notice commencing the Standstill Period and (b) the first Event of Default occurring under the FF&E Facility Agreement after the Completion of the Project in respect of which the Bank Agent and the Indenture Trustee receive a notice commencing the Standstill Period; provided, however, that any Event of Default as to which, pursuant to the FF&E Facility Agreement and the vote of the applicable FF&E Lenders thereunder, the FF&E Lenders will exercise remedies only against the Aircraft Collateral and accelerate only the Aircraft Secured Obligations, shall not be taken into account for purposes of the foregoing.

### **3.6 Limitation of Liability.**

**3.6.1** Except as expressly set forth herein, no Credit Party will have any duty, express or implied, fiduciary or otherwise, to any other Credit Party.

**3.6.2** To the maximum extent permitted by law, each Project Credit Party waives any claim it may have against the FF&E Agent or any FF&E Lender with respect to or arising out of any action or failure to act or any error of judgment or negligence on the part of the FF&E Agent or such FF&E Lender or their respective directors, officers, employees or agents with respect to any exercise of rights or remedies in respect of the FF&E Component Collateral or any transaction relating to the FF&E Component Collateral and each Project Credit Party agrees that except as specifically provided herein the FF&E Agent and FF&E Lenders shall be entitled to manage and exercise their rights and remedies with respect to the FF&E Collateral in the manner they deem appropriate; provided that the foregoing shall not exculpate the FF&E Agent or any FF&E Lender from any liability arising out of the gross negligence or willful misconduct of the FF&E Agent or such FF&E Lender, as the case may be, or any

Component Collateral or for any delay in doing so; provided that the foregoing shall not exculpate the FF&E Agent or any FF&E Lender from any liability arising out of the gross negligence or willful misconduct of the FF&E Agent or any such FF&E Lender, as the case may be, or any of their respective directors, officers, employees or agents, nor will the FF&E Agent or any FF&E Lender be under any obligation to sell or otherwise dispose of any FF&E Component Collateral upon the request of any Person within the Company Group or upon the request of any Project Credit Party or any other Person or to take any other action whatsoever with regard to the FF&E Component Collateral or any part thereof.

**3.7 Cooperation with Foreclosure Purchaser.** Each of the Bank Agent and the Indenture Trustee agree to cooperate with any Person that acquires the FF&E Component Collateral in a foreclosure proceeding or other sale proceeding to remove the FF&E Component Collateral from the Project. After any such foreclosure or other sale proceeding and if the FF&E Agent or such other purchaser has not removed the FF&E Component Collateral within forty-five (45) days following such foreclosure or other sale, then pending such removal by the FF&E Agent or such purchaser the Project Credit Party Agent may, at the cost and expense of the Secured Parties under its Facility, and in a manner reasonable satisfactory to the FF&E Agent or such other purchaser, remove such FF&E Component Collateral from the Project and store and insure the same for the FF&E Agent or such other purchaser in a manner reasonably satisfactory to such party. The FF&E Agent or such other purchase shall be required to pay the costs of such storage and insurance from and after the 91<sup>st</sup> day following such foreclosure or other sale.

**3.8 Obligations of Project Credit Parties Limited to their Capacities as Junior Lien Holders.** Each Credit Party acknowledges and agrees that notwithstanding anything to the contrary in this Agreement or the other Financing Agreements, the provisions of *Section 3* and *Section 5* of this Agreement apply to the Bank Agent, the Bank Lenders, the Indenture Trustee and the Second Mortgage Note Holders solely in their respective capacities as holders of liens secured by the FF&E Component Collateral. Nothing in *Section 3* or *Section 5* of this Agreement or the other Financing Agreements shall prevent or preclude the Bank Agent, the Bank Lenders, the Indenture Trustee or the Second Mortgage Note Holders from taking any action or asserting rights or claims which such parties may be entitled to take or assert in any other capacity (including, without limitation, any action or assertion of rights as holders of liens on and security interests in any Collateral pledged by any Person within the Company Group to such Credit Parties (other than the FF&E Component Collateral) and as holders of unsecured claims against the Company or any Person within the Company Group). Except as provided in *Section 2* and *Section 3.5* above, nothing in this Agreement or the other Financing Agreement shall prevent or preclude the FF&E Agent from taking any action or asserting any rights or claims which it may be entitled to take or assert as the holder of unsecured claims against the Company or any Person within the Company Group.

#### 4. Other Intercreditor Provisions.

**4.1 Waiver of Provisions Under Financing Agreements.** Any Credit Party may, without the consent of any other Credit Party, defer any payments due under its Facility or waive any provisions thereof.

**4.2 Amendments of Financing Agreements.** Each of the FF&E Agent and the FF&E Lenders, the Bank Agent and the Bank Lenders and the Indenture Trustee and the Second Mortgage Note Holders (subject, in the case of the Indenture Trustee and the Second Mortgage Note Holders, to the Project Lenders Intercreditor Agreement) shall be permitted to enter into amendments, modifications and supplements with the Company Group of their respective Financing Agreements without the consent of any other party, including during any Standstill Period, *except* for amendments, modifications or supplements (i) increasing the applicable interest

rate or fees, (ii) changing (to earlier or more frequent dates) the dates upon which payments of principal or interest are due thereon (iii) in the case of the FF&E Facility, (a) readjusting the amortization schedules of the indebtedness as between FF&E Component Secured Obligations and the other FF&E Secured Obligation so as to reduce the amortization of the FF&E Component Secured Obligations relative to the amortization of the other FF&E Secured Obligations or (b) permit to be prepaid or allocate to the FF&E Component Secured Obligations less than a pro rata portion of any prepayment made under the FF&E Facility (except for (A) prepayments made with the proceeds from the sale, disposition or casualty event with respect to a portion of the Collateral, which shall be used to prepay the obligations related to such Collateral and (B) refinancings permitted under the Financing Agreements and Section 8.13 hereof), (iv) reducing the amount of the lending commitments thereunder at any time prior to Completion, (v) changing the redemption, prepayment, or defeasance provisions thereof, (vi) amend Section 7.5(e) of the Bank Credit Agreement or Section 7.5(e) of the FF&E Facility Agreement so as to reduce the aggregate fair market value of Property which the Company is permitted to dispose of in any Fiscal Year (as defined in each such Facility Agreement) or (vii) which (a) in the case of the Bank Credit Facility, have the effect of prohibiting, limiting or restricting the prepayments of the FF&E Facility allowed pursuant to Section 7.9(a) of the Bank Credit Agreement and (b) in the case of the FF&E Facility, have the effect of prohibiting, limiting or restricting the prepayments of the Bank Credit Facility allowed pursuant to Section 7.9(a) of the FF&E Facility Agreement, each of which amendments, modifications or supplements described in clauses (i) through (vi) above shall require the consent of the FF&E Agent and the Bank Agent.

#### 4.3 Provisions Relating to Events of Loss and Loss Proceeds.

**4.3.1** Upon the occurrence of an Event of Loss, the FF&E Agent will have the sole right to adjust settlement of all insurance claims and condemnation awards relating to FF&E Collateral and the Project Credit Party Agent will have the sole right to adjust settlement of all insurance claims and condemnation awards relating to any Collateral other than FF&E Collateral.

**4.3.2** Any Loss Proceeds received prior to Final Completion shall, to the extent permitted by the Disbursement Agreement, be applied towards repair or restoration of the Project in accordance with the Disbursement Agreement.

**4.3.3** The Credit Parties acknowledge that, from and after Final Completion, the Project Credit Party Agent is the loss payee under the Company's and the other Loan Parties' insurance policies and will receive and hold all Loss Proceeds payable to the Company or the other Loan

Parties. Each of the Bank Agent and the Indenture Trustee hereby covenants and agrees, for so long as each such party is the Project Credit Party Agent, to hold any Loss Proceeds so received in accordance with the terms hereof and to apply the same only as provided hereunder.

**4.3.4** Any Loss Proceeds received prior to Final Completion which are not permitted to be applied towards repair or restoration of the Project and any Loss Proceeds received after Final Completion shall be applied as follows:

- (i) if (A) all or any portion of such Loss Proceeds have been allocated by the payor thereof among the assets or property to which such Event of Loss relates or (B) such Loss Proceeds result from an Event of Loss involving exclusively a specific category of Collateral (for example, the Aircraft Collateral, the FF&E Component Collateral or the Hotel/Casino Collateral), such Loss Proceeds shall be paid over to the Credit Party with a prior lien priority in such assets or property as more specifically set forth in *Section 2* of this Agreement; and

15

- (ii) any Loss Proceeds remaining after application of the preceding clause shall be allocated among the assets or property to which such Event of Loss relates in proportion to the magnitude of the losses (after giving effect to any allocation under clause (i) above) experienced by such assets or property based upon the diminution in value to such assets or property as a consequence of such Event of Loss. Upon completion of such allocation, the applicable Loss Proceeds shall be paid over to the applicable Credit Party with a prior lien priority in such assets or property as more specifically set forth in *Section 2* of this Agreement.

**4.3.5** To the extent the Company is allowed and elects to restore or replace any FF&E Component Collateral using Loss Proceeds, only such restored or replacement items the cost of which is funded entirely with Loss Proceeds allocated to the FF&E Collateral in accordance with the principles of Section 4.3.4 above shall constitute FF&E Component Collateral hereunder and shall be subject to the lien priorities set forth in *Section 2.1* above.

**4.4 Responsibility for Staying Informed.** Each Credit Party and the Lenders on whose behalf it is acting shall be responsible for keeping themselves informed of the financial condition of the Company Group and all other circumstances bearing upon the risk of nonpayment of the FF&E Secured Obligations, the Bank Secured Obligations or the Second Mortgage Note Secured Obligations, as the case may be. Except as set forth in *Section 3.4* and *3.5*, no Credit Party shall have any duty to advise any other Credit Party of information regarding such condition or circumstances or as to any other matter. If any Credit Party or any Lender, in its sole discretion, undertakes at any time or from time to time to provide any such information to any other Credit Party or Lender it shall be under no obligation to provide any similar information on any subsequent occasion, to provide any additional information, or undertake any investigation, or to disclose any information which, pursuant to accepted or reasonable commercial finance practice, it wishes to maintain confidential.

## 5. Insolvency or Liquidation Proceedings.

**5.1 Right to File Involuntary Bankruptcy.** Except as set forth in *Section 3.5* with respect to the FF&E Agent and the FF&E Lenders during any Standstill Period, any Secured Party shall be entitled, at any time and upon its sole discretion, to initiate or join as a petitioning creditor in an involuntary Insolvency or Liquidation Proceeding against any Person within the Company Group.

### 5.2 Certain Agreements and Consents by the Project Credit Parties

**5.2.1** At no time shall the Project Credit Parties solely in their respective capacities as junior lienholders with respect to the FF&E Component Collateral:

- (a) oppose or otherwise contest any motion for relief from the automatic stay or from any injunction against foreclosure or enforcement of a lien upon the FF&E Component Collateral securing the FF&E Secured Obligations made by any holder of FF&E Secured Obligations in any Insolvency or Liquidation Proceeding;
- (b) oppose or otherwise contest any exercise by any holder of FF&E Secured Obligations of the right to credit bid any portion of the FF&E Component Secured Obligations at any sale in foreclosure of a lien upon the FF&E Component Collateral securing the FF&E Secured Obligations; or
- (c) oppose or otherwise contest any other request for judicial relief made in any court by any holder of FF&E Component Secured Obligations relating to the enforcement of any lien upon the FF&E Component Collateral securing such Obligations.

16

**5.2.2** The Project Credit Parties will not assert or enforce any claim under §506(c) of the United States Bankruptcy Code with respect to their liens upon the FF&E Component Collateral securing the FF&E Secured Obligations for costs or expenses of preserving or disposing of any FF&E Component Collateral.

## 6. Default Payoff Option.

The FF&E Agent hereby grants the Eligible Payor the right (without any obligation) to pay off in cash, at any time when an Event of Default has occurred and is continuing under the FF&E Facility Agreement, all, but not less than all, of the principal of and interest on all FF&E Component Secured Obligations outstanding at the time of payment. The pay off amount shall be equal to 100% of the principal amount and accrued interest outstanding on the FF&E Component Secured Obligations on the date of payment (including fees and interest accruing after the commencement of an Insolvency or Liquidation Proceeding at the rate provided for in the FF&E Facility Agreement (regardless of whether such item is an allowed claim under applicable law) and any costs of collection) plus all other FF&E Component Secured Obligations (including any LIBOR breakage costs but excluding any prepayment or acceleration penalty or premium) then unpaid. Upon receipt of such payment in cash, all commitments under the FF&E Facility shall terminate and the FF&E Agent and the FF&E Lenders shall release their liens on and security interests in the FF&E Component Collateral in accordance with *Section 2.5* above.

## 7. Representations and Warranties.

Each Credit Party represents and warrants to each other Credit Party as follows:

**7.1 Organization.** It is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

**7.2 Authorization.** All actions necessary to authorize the execution, delivery and performance of this Agreement on behalf of such party have been duly taken, and all such actions continue in full force and effect as of the date hereof.

**7.3 Binding Agreement.** It has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of such party enforceable in accordance with its terms and subject to (a) applicable bankruptcy, reorganization, insolvency and moratorium laws, and (b) principles of equity, which may apply regardless of whether a proceeding is brought in law or in equity.

**7.4 No Consent Required.** To the best of its knowledge, no consent of any other party and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery, or performance by such party of this Agreement or consummation by such party of the transactions contemplated by this Agreement.

**7.5 No Conflict.** None of the execution, delivery, and performance of this Agreement nor the consummation of the transactions contemplated by this Agreement will (a) violate or conflict with any provision of the organizational or governing documents, if any, of such party; (b) to the best of its knowledge, violate, conflict with, or result in the breach or termination of, or otherwise give any other contracting party the right to terminate, or constitute (or with notice or lapse of time, or both, would constitute) a default under the terms of any contract, mortgage, lease, bond, indenture, agreement, or other instrument to which such party is a party or to which any of its properties are subject; (c) to the best of its knowledge, result in the creation of any lien, charge, encumbrance, mortgage, lease, claim, security interest, or other right or interest upon the

17

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properties or assets of such party pursuant to the terms of any such contract, mortgage, lease, bond, indenture, agreement, franchise, or other instrument; (d) violate any judgment, order, injunction, decree, or award of any court, arbitrator, administrative agency, or governmental or regulatory body of which it has knowledge against, or binding upon such party or upon any of the securities, properties, assets, or business of such party; or (e) to the best of its knowledge, constitute a violation by such party of any statute, law, or regulation that is applicable to such party.

## 8. Miscellaneous Provisions.

**8.1 Notices; Addresses.** Any communications among the Credit Parties hereto or notices herein to be given may be given to the following addressees:

If to the Bank Agent: Deutsche Bank Trust Company Americas  
31 West 52<sup>nd</sup> Street  
New York, New York 10019  
Attn: \_\_\_\_\_  
Phone: (646) 324-2112  
Fax: (646) 324-7450

If to the Indenture Trustee: Wells Fargo Bank, National Association,  
as Indenture Trustee  
MAC: N303-121  
Corporate Trust Operations  
6<sup>th</sup> & Marquette Avenue  
Minneapolis, MN 55479  
Attn: Michael Slade  
Phone: (612) 667-0266  
Fax: (612) 667-2160

If to the FF&E Agent Wells Fargo Bank Nevada, National Association  
c/o Wells Fargo Bank Northwest, National Association  
299 South Main Street, 12<sup>th</sup> Floor  
Salt Lake City, Utah 94111  
Attn: Corporate Trust Services  
MAC: U1228-120  
Phone: (801) 246-5630  
Fax: (801) 246-5053

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 any 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 of no less than twenty (20) days' notice to the other parties in the manner set forth hereinabove.

**8.2 Further Assurances.** Each Credit Party (a) shall deliver to each other Credit Party, to the Disbursement Agent and to the Securities Intermediary such instruments, agreements, certificates and documents as any such Person may reasonably request to confirm the validity and priority of the liens on and security interests in the Collateral granted pursuant to the Security Documents as affected hereby, (b) shall fully cooperate with each other, with the Disbursement Agent and with the Securities Intermediary, and (c) shall perform all additional acts reasonably requested by any such Person to effect the purposes of this Agreement.

**8.3 Waiver.** Any waiver, permit, consent or approval or any kind or character on the part of any of the Credit Parties under this Agreement or any waiver on the part of any of the Credit Parties 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.

**8.4 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. As among the Credit Parties, in the event of any conflict between the terms of this Agreement and the terms of the Disbursement Agreement, the terms of this Agreement shall control.

**8.5 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.

**8.6 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.

**8.7 Headings.** Section headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

**8.8 Limitations on Liability.** No claim shall be made by any Credit Party or any of its Affiliates against any other Credit Party, the Disbursement Agent, the Securities Intermediary 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 any act or omission or event occurring in connection therewith; and each Credit Party hereby waives, releases and agrees not to sue upon any such claim for any such special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

**8.9 Consent to Jurisdiction.** Any legal action or proceeding 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, each Credit Party, 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 Prentice-Hall Corporation System Inc. 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 including judicial or non-judicial foreclosure of real property interests which are part of the

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Collateral. Each Credit Party hereby waives any right to stay or dismiss any action or proceeding under or in connection with any or all of the Project, this Agreement or any other operative document brought before the foregoing courts on the basis of forum non-conveniens.

**8.10 Successors and Assigns.** The provision of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided, however*, this Agreement shall terminate upon the earlier to occur of (a) Discharge of both the Bank Facility and the Second Mortgage Notes and (b) the Discharge of the FF&E Facility.

**8.11 Counterparts.** This Agreement may be executed in one or more duplicate counterparts and when signed by all of the Credit Parties listed below shall constitute a single binding agreement.

**8.12 No Third Party Beneficiaries.** Except for the Bank Lenders, the Second Mortgage Note Holders, the FF&E Agent, the FF&E Lenders, the Disbursement Agent and the Securities Intermediary, the Credit Parties do not intend the benefits of this Agreement to inure to the benefit of nor shall it be enforceable by any third party (including, without limitation, the Company or any of its Affiliates) nor shall this Agreement be construed to make or render any Credit Party liable to any third party (including, without limitation, the Company or any of its Affiliates) for the performance or failure to perform any obligations hereunder.

**8.13 Refinancing; Amendment for New Credit Parties.** Upon (a) any refinancing in whole or in part of any Facility or (b) if any Credit Party deems necessary, the incurring of other Indebtedness of the Company (subject in each case to the terms of this Agreement and the rights of the existing Credit Parties under their respective Financing Agreements with respect to any such refinancing or other Indebtedness), any such new lender shall be bound by the terms of this Agreement and each Credit Party hereby agrees to execute and deliver an amendment to this Agreement with such new lender, or an agent or trustee on its behalf, to make such Person a Credit Party hereunder. No more than one partial refinancing shall be permitted with respect to each Facility, it being understood however that once a Facility is partially refinanced, the foregoing limitation shall not apply to refinancings in whole of the parts so refinanced.

**8.14 Trust Indenture Act.** The parties do not intend that the provisions of this Agreement violate the requirements of the Trust Indenture Act of 1939, as amended.

**8.15 Reinstatement.** If the payment of any amount applied to any FF&E Component Secured Obligation is later avoided, rescinded (including by settlement of any claim for avoidance or rescission) or otherwise set aside, then:

- (a) to the fullest extent lawful, all claims for the payment of such amount as FF&E Component Secured Obligations and, to the extent securing such claims, all such liens upon such FF&E Component Collateral granted under the FF&E Security Documents will be reinstated and entitled to the benefits hereof, and
- (b) if a Discharge of the FF&E Facility became effective prior to such reinstatement, all obligations of the Project Credit Parties that were terminated as a result of such Discharge of the FF&E Facility shall be concurrently reinstated to the extent such claims and liens upon the FF&E Component Collateral granted under the FF&E Security Documents are reinstated, beginning on such date but prospectively only (and not retroactively), as though no FF&E Component Secured Obligations or liens upon such FF&E Component Collateral granted under the FF&E Security Documents had been outstanding at any time prior to such date and will remain effective until the claims for such amount are paid in full in cash.

**8.16 Interaction with Project Lenders Intercreditor Agreement.** As between the Bank Agent and the Indenture Trustee, nothing in this Agreement shall reduce, relieve or otherwise

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discharge the obligations of the Indenture Trustee, the Second Mortgage Note Holders, the Bank Agent and the Bank Lenders under the Project Lenders Intercreditor Agreement.

**8.17 Attorneys' Fees.** Unless paid by the Company Group, the prevailing party in any dispute or controversy hereunder shall be entitled to an award of its reasonable attorneys' fees.

[Signature Page Follows]

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**IN WITNESS WHEREOF**, the Credit Parties hereto have caused this Agreement to be executed by their respective officers or agents thereunto duly authorized as of the day and year first above written.

Bank Agent:

**DEUTSCHE BANK TRUST COMPANY AMERICAS,**  
a \_\_\_\_\_

By:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

Indenture Trustee:

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
a national banking association

By:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

FF&E Agent:

**WELLS FARGO BANK NEVADA,**  
**NATIONAL ASSOCIATION,**  
a national banking association

By:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

## QuickLinks

[FORM OF INTERCREDITOR AGREEMENT](#)

[FORM OF INTERCREDITOR AGREEMENT \(FF&E\)](#)

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FORM OF GUARANTEE AND COLLATERAL AGREEMENT

made by

VALVINO LAMORE, LLC,

WYNN LAS VEGAS CAPITAL CORP.,

PALO, LLC,

WYNN RESORTS HOLDINGS, LLC,

DESERT INN WATER COMPANY, LLC,

WYNN DESIGN & DEVELOPMENT, LLC,

WORLD TRAVEL LLC,

LAS VEGAS JET, LLC,

WYNN LAS VEGAS, LLC

and

THE OTHER GRANTORS FROM TIME TO TIME PARTY HERETO

in favor of

DEUTSCHE BANK TRUST COMPANY AMERICAS,  
as Administrative Agent

Dated as of \_\_\_\_\_, 2002

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TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. DEFINED TERMS	1
1.1. <i>Definitions.</i>	1
1.2. <i>Other Definitional Provisions.</i>	6
SECTION 2. GUARANTEE	6
2.1. <i>Guarantee.</i>	6
2.2. <i>Rights of Reimbursement, Contribution and Subrogation.</i>	7
2.3. <i>Amendments, etc. with respect to the Borrower Obligations.</i>	9
2.4. <i>Guarantee Absolute and Unconditional.</i>	9
2.5. <i>Reinstatement.</i>	10
2.6. <i>Payments.</i>	10
SECTION 3. GRANT OF SECURITY INTEREST	10
SECTION 4. REPRESENTATIONS AND WARRANTIES	11
4.1. <i>Representations in Credit Agreement; Guarantor Representations.</i>	11
4.2. <i>Title; No Other Liens.</i>	11
4.3. <i>Perfected First Priority Liens.</i>	11
4.4. <i>Name; Jurisdiction of Organization, etc.</i>	12
4.5. <i>Inventory, Equipment and Books and Records.</i>	12
4.6. <i>Farm Products.</i>	12
4.7. <i>Investment Property.</i>	12
4.8. <i>Receivables.</i>	13
4.9. <i>Contracts.</i>	13
4.10. <i>Intellectual Property.</i>	14
4.11. <i>Vehicles.</i>	16



SECTION 5. COVENANTS	16
5.1. <i>Covenants in Credit Agreement.</i>	16
5.2. <i>Delivery and Control of Instruments, Chattel Paper, Investment Property and Deposit Accounts.</i>	16
5.3. <i>[INTENTIONALLY OMITTED].</i>	17
5.4. <i>Payment of Obligations.</i>	17
5.5. <i>Maintenance of Perfected Security Interest; Further Documentation.</i>	17
5.6. <i>Changes in Locations, Name, Jurisdiction of Incorporation, etc.</i>	17
5.7. <i>Notices.</i>	18
5.8. <i>Investment Property.</i>	18
5.9. <i>Receivables.</i>	19
5.10. <i>Contracts.</i>	19
5.11. <i>Intellectual Property.</i>	19
5.12. <i>Vehicles.</i>	21
5.13. <i>Non-Deliverable Collateral</i>	22

SECTION 6. REMEDIAL PROVISIONS	22
6.1. <i>Nevada Gaming Laws and Intercreditor Agreements.</i>	22
6.2. <i>Certain Matters Relating to Receivables.</i>	22
6.3. <i>Communications with Obligor; Grantors Remain Liable.</i>	22
6.4. <i>Pledged Securities.</i>	23
6.5. <i>Proceeds to be Turned Over To Administrative Agent.</i>	23

i

6.6. <i>Application of Proceeds.</i>	24
6.7. <i>Code and Other Remedies.</i>	24
6.8. <i>Registration Rights.</i>	25
6.9. <i>Waiver; Deficiency.</i>	26

SECTION 7. THE ADMINISTRATIVE AGENT	26
7.1. <i>Administrative Agent's Appointment as Attorney-in-Fact, etc.</i>	26
7.2. <i>Duty of Administrative Agent.</i>	28
7.3. <i>Execution of Financing Statements.</i>	28
7.4. <i>Authority of Administrative Agent.</i>	28
7.5. <i>Appointment of Co-Collateral Agents.</i>	29

SECTION 8. MISCELLANEOUS	29
8.1. <i>Amendments in Writing.</i>	29
8.2. <i>Notices.</i>	29
8.3. <i>No Waiver by Course of Conduct; Cumulative Remedies.</i>	29
8.4. <i>Enforcement Expenses; Indemnification.</i>	29
8.5. <i>Successors and Assigns.</i>	30
8.6. <i>Set-Off.</i>	30
8.7. <i>Counterparts.</i>	30
8.8. <i>Severability.</i>	30
8.9. <i>Section Headings.</i>	30
8.10. <i>Integration.</i>	30
8.11. <b>GOVERNING LAW</b>	30
8.12. <i>Submission to Jurisdiction; Waivers.</i>	31
8.13. <i>Acknowledgments.</i>	31
8.14. <i>Additional Grantors.</i>	31
8.15. <i>Releases.</i>	31
8.16. <b>WAIVER OF JURY TRIAL</b>	32
8.17. <i>Regulatory Matters.</i>	32

ii

## GUARANTEE AND COLLATERAL AGREEMENT

This GUARANTEE AND COLLATERAL AGREEMENT, dated as of \_\_\_\_\_, 2002, is made by each of the signatories hereto (together with any other entity that may become a party hereto as provided herein, the "Grantors"), in favor of DEUTSCHE BANK TRUST COMPANY AMERICAS, as administrative agent (in such capacity, the "Administrative Agent") for (i) the banks and other financial institutions or entities (the "Lenders") from time to time parties to the Credit Agreement, dated as of \_\_\_\_\_, 2002 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Wynn Las Vegas, LLC, a Nevada limited liability company (the "Borrower"), the Lenders, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York Branch, as arranger and joint documentation agent, and the Administrative Agent and (ii) the other Secured Parties (as hereinafter defined).

## RECITALS:

WHEREAS, pursuant to the Credit Agreement, the Lenders have severally agreed to make extensions of credit to the Borrower upon the terms and subject to the conditions set forth therein;

WHEREAS, the Borrower is a member of an affiliated group of companies that includes each other Grantor;

WHEREAS, the proceeds of the extensions of credit under the Credit Agreement will be used in part to enable the Borrower to make valuable transfers to one or more of the other Grantors in connection with the operation of their respective businesses;

WHEREAS, the Borrower and the other Grantors are engaged in related businesses, and each Grantor will derive substantial direct and indirect benefit from the making of the extensions of credit under the Credit Agreement; and

WHEREAS, it is a condition precedent to the obligation of the Lenders to make their respective extensions of credit to the Borrower under the Credit Agreement that the Grantors shall have executed and delivered this Agreement to the Administrative Agent for the ratable benefit of the Secured Parties;

NOW, THEREFORE, in consideration of the premises and to induce the Arrangers, the Managers, the Agents, including, without limitation, the Administrative Agent, and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Borrower thereunder, each Grantor hereby agrees with the Administrative Agent, for the ratable benefit of the Secured Parties, as follows:

## SECTION 1. DEFINED TERMS

1.1. *Definitions.* (a) Any capitalized terms used in this Agreement which are not otherwise defined herein shall have the respective meanings ascribed to such terms in the Disbursement Agreement (as defined below) and, if not defined therein, the respective meanings ascribed to such terms in the Credit Agreement; *provided*, that (1) any such capitalized terms used in this Agreement which are defined in both the Disbursement Agreement and the Credit Agreement shall have the respective meanings ascribed to such terms in the Disbursement Agreement, and (2) upon termination of the Disbursement Agreement, any defined terms used herein having meanings given to such terms in the Disbursement Agreement shall continue to have the meanings given to such terms in the Disbursement Agreement as amended and in effect immediately prior to such termination (provided that, following any such termination of the Disbursement Agreement, such terms and the meanings therefor may be amended or modified in accordance with Section 10.1 of the Credit Agreement). The following terms which are defined in the Uniform Commercial Code in effect in the State of New York on the date hereof are used herein as so defined: Accounts, Certificated Security, Chattel Paper,

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Commodity Account, Commodity Contract, Commodity Intermediary, Documents, Entitlement Order, Equipment, Farm Products, Financial Asset, Goods, Instruments, Inventory, Letters of Credit, Letter of Credit Rights, Payment Intangible, Securities Account, Securities Intermediary, Security, Security Entitlement, Supporting Obligation and Uncertificated Security.

(b) The following terms shall have the following meanings:

"*Agreement*": this Guarantee and Collateral Agreement, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

"*Borrower Obligations*": the collective reference to the Obligations (as defined in the Credit Agreement).

"*Collateral*": as defined in Section 3.

"*Collateral Account*": (i) any collateral account established by the Administrative Agent as provided in Section 6.2 or 6.5 or (ii) any cash collateral account established as provided in Sections 2.12(g) or 8 of the Credit Agreement.

"*Contracts*": the contracts and agreements listed in Schedule 7 as the same may be amended, supplemented, replaced or otherwise modified from time to time, including, without limitation, (i) all rights of any Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (ii) all rights of any Grantor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect thereto, (iii) all rights of any Grantor to damages arising thereunder, (iv) all rights of any Grantor to cancel, terminate or suspend such Contracts or the performance of work thereunder, and to perform and compel performance of, such Contracts and to exercise all remedies thereunder and (v) all rights of any Grantor to amend or modify such Contracts and to consent to any sale, assignment or disposition (by operation of law or otherwise) by the counterparty thereto of any part of such counterparty's interest in any such Contract.

"*Copyright Licenses*": any written agreement naming any Grantor as licensor or licensee (including, without limitation, those listed in Schedule 6), granting any right under any Copyright, including, without limitation, the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright.

"*Copyrights*": (i) all copyrights, whether or not the underlying works of authorship have been published, including, but not limited to, copyrights in software and databases, all Mask Works (as defined in 17 U.S.C. 901 of the U.S. Copyright Act) and all such underlying works of authorship and other intellectual property rights therein, all copyrights of works based on, incorporated in, derived from or relating to works covered by such copyrights, all right, title and interest to make and exploit all derivative works based on or adopted from works covered by such copyrights, and all copyright registrations and copyright applications, and any renewals or extensions thereof, including, without limitation, each registration and application identified in Schedule 6, (ii) the rights to print, publish and distribute any of the foregoing, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all Copyright Licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all other rights of any kind whatsoever accruing thereunder or pertaining thereto.

"*Deposit Account*": as defined in the Uniform Commercial Code of any applicable jurisdiction and, in any event, including, without limitation, any demand, time, savings, passbook or like account maintained with a depository institution.

same may hereafter be amended or modified in accordance with its terms and the terms of the Credit Agreement.

"*Excluded Assets*": (i) the Aircraft and the Aircraft Note, (ii) the Company Accounts (it being understood that certain of the Company Accounts have been pledged to the Administrative Agent pursuant to the Company Collateral Account Agreements), (iii) subject to Section 7.13(b) of the Credit Agreement, any assets the acquisition of which was financed by Indebtedness permitted by Section 7.2(g) of the Credit Agreement, to the extent that the terms of such Indebtedness prohibit additional Liens on such assets (but only to the extent and so long as so prohibited) and (iv) any Contract that prohibits the creation of a security interest therein or requires consent to such security interest (other than to the extent that any such prohibition or consent requirement would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the New York UCC); provided, however, that the security interest shall attach immediately at such time as the restriction prohibiting assignment shall be removed or any condition thereto shall be satisfied.

"*General Intangibles*": all "general intangibles" as such term is defined in Section 9-102(a)(42) of the Uniform Commercial Code in effect in the State of New York on the date hereof and, in any event, including, without limitation, with respect to any Grantor, all rights and interests in, to and under contracts, agreements, instruments and indentures, including, without limitation, the Contracts, and all licenses, permits, concessions, franchises and authorizations issued by Governmental Authorities in any form, and portions thereof, to which such Grantor is a party or under which such Grantor has any right, title or interest or to which such Grantor or any property of such Grantor is subject, as the same may from time to time be amended, supplemented, replaced or otherwise modified, including, without limitation, (i) all rights of such Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (ii) all rights of such Grantor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect thereto, (iii) all rights of such Grantor to damages arising thereunder, (iv) all rights of such Grantor to receive any tax refunds, and (v) all rights of such Grantor to terminate and to perform, compel performance and to exercise all remedies thereunder.

"*Guarantor Obligations*": with respect to any Guarantor, all obligations and liabilities of such Guarantor which may arise under or in connection with this Agreement (including, without limitation, Section 2) or any other Loan Document to which such Guarantor is a party, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to any Secured Party that are required to be paid by such Guarantor pursuant to the terms of this Agreement or any other Loan Document).

"*Guarantors*": the collective reference to the Grantors other than the Borrower.

"*Hedge Agreements*": as to any Person, all interest rate swaps, caps or collar agreements or similar arrangements entered into by such Person providing for protection against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies.

"*Intellectual Property*": the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets and the Trade Secret Licenses, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"*Intercompany Note*": any promissory note evidencing loans made by any Grantor to Borrower or any of the other Grantors, including, without limitation, the Subordinated Intercompany Note (but excluding the Aircraft Note).

"*Investment Property*": the collective reference to (i) all "investment property" as such term is defined in Section 9-102(a)(49) of the Uniform Commercial Code in effect in the State of New York on the date hereof including, without limitation, all Certificated Securities and Uncertificated Securities, all Security Entitlements, all Securities Accounts, all Commodity Contracts and all Commodity Accounts, (ii) security entitlements, in the case of any United States Treasury book-entry securities, as defined in 31 C.F.R. section 357.2, or, in the case of any United States federal agency book-entry securities, as defined in the corresponding United States federal regulations governing such book-entry securities, and (iii) whether or not constituting "investment property" as defined in the Uniform Commercial Code in effect in the State of New York on the date hereof, all Pledged Notes, all Pledged Stock, all Pledged Security Entitlements, all Pledged Debt Securities and all Pledged Commodity Contracts.

"*Issuers*": the collective reference to each issuer of a Pledged Security.

"*Nevada Gaming Authorities*": as defined in the Credit Agreement.

"*New York UCC*": the Uniform Commercial Code as from time to time in effect in the State of New York.

"*Non-Deliverable Collateral*": as defined in Section 4.8(b).

"*Obligations*": (i) in the case of the Borrower, the Borrower Obligations, and (ii) in the case of each Guarantor, its Guarantor Obligations.

"*Patent License*": all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to manufacture, use or sell any invention covered in whole or in part by a Patent, including, without limitation, any of the foregoing referred to in *Schedule 6*.

"*Patents*": (i) all patents, patent applications and patentable inventions, including, without limitation, each issued patent and patent application identified in *Schedule 6*, all certificates of invention or similar industrial property rights, (ii) all inventions and improvements described and claimed

therein, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all Patent Licenses entered into in connection therewith, and damages and payments for past, present or future infringement thereof), and (v) all reissues, divisions, continuations, continuations-in-part, substitutes, renewals, and extensions thereof, all improvements thereon and all other rights of any kind whatsoever accruing thereunder or pertaining thereto.

"Permits": as defined in the Credit Agreement.

"Pledged Commodity Contracts": all commodity contracts listed on *Schedule 2* and all other commodity contracts to which any Grantor is party from time to time.

"Pledged Debt Securities": the debt securities listed on *Schedule 2*, together with any other certificates, options, rights or security entitlements of any nature whatsoever in respect of the debt securities of any Person that may be issued or granted to, or held by, any Grantor while this Agreement is in effect.

"Pledged Notes": all promissory notes listed on *Schedule 2*, all Intercompany Notes at any time issued to any Grantor and all other promissory notes issued to or held by any Grantor.

4

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"Pledged Securities": the collective reference to the Pledged Debt Securities, the Pledged Notes and the Pledged Stock.

"Pledged Security Entitlements": all security entitlements with respect to the financial assets listed on *Schedule 2* and all other security entitlements of any Grantor.

"Pledged Stock": the shares of Capital Stock listed on *Schedule 2*, together with any other shares, stock certificates, options, rights or security entitlements of any nature whatsoever in respect of the Capital Stock of any Person that may be issued or granted to, or held by, any Grantor while this Agreement is in effect.

"Proceeds": all "proceeds" as such term is defined in Section 9-102(a)(64) of the Uniform Commercial Code in effect in the State of New York on the date hereof and, in any event, shall include, without limitation, all dividends or other income from the Pledged Securities, collections thereon or distributions or payments with respect thereto.

"Receivable": any right to payment for goods or other property sold, leased, licensed or otherwise disposed of or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including, without limitation, any Account or Payment Intangible). References herein to a Receivable shall include any Supporting Obligation or collateral securing such Receivable.

"Secured Parties": collectively, the Arrangers, the Agents, the Managers, the Lenders and, with respect to any Specified Hedge Agreement, any affiliate of any Lender party thereto or any Person that was a Lender or an affiliate thereof when such Specified Hedge Agreement was entered into that has agreed to be bound by the provisions of Section 7.2 hereof as if it were a party hereto and by the provisions of Section 9 of the Credit Agreement as if it were a Lender party thereto.

"Securities Act": the Securities Act of 1933, as amended.

"Trademark License": any agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trademark, including, without limitation, any of the foregoing referred to in *Schedule 6*.

"Trademarks": (i) all trademarks, service marks, trade names, corporate names, company names, business names, trade dress, trade styles, logos, or other indicia of origin or source identification, internet domain names, trademark and service mark registrations, and applications for trademark or service mark registrations and any renewals thereof, including, without limitation, each registration and application identified in *Schedule 6*, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all Trademark Licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, each of the above.

"Trade Secret License": any agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trade Secret, including, without limitation, any of the foregoing referred to in *Schedule 6*.

"Trade Secrets": (i) all trade secrets and all confidential and proprietary information, including know-how, manufacturing and production processes and techniques, inventions, research and development information, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, and customer and supplier lists and information, including, without limitation, any of the foregoing referred to in *Schedule 6*, (ii) the right to sue or

5

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otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of any Grantor accruing thereunder or pertaining thereto.

"Vehicles": all cars, trucks, trailers, construction and earth moving equipment and other vehicles covered by a certificate of title law of any jurisdiction and, in any event including, without limitation, the vehicles listed on *Schedule 8* and all tires and other appurtenances to any of the foregoing; provided, that the term "Vehicles" shall not include the Aircraft.

1.2. *Other Definitional Provisions.* (a) The words "hereof", "herein", "hereto" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor's Collateral or the relevant part thereof.

(d) The expressions "payment in full," "paid in full" and any other similar terms or phrases when used herein with respect to the Borrower Obligations or the Guarantor Obligations shall mean the unconditional, final and irrevocable payment in full, in immediately available funds, of all of the Borrower Obligations or the Guarantor Obligations, as the case may be.

## SECTION 2. GUARANTEE

### 2.1. *Guarantee.*

(a) Each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Administrative Agent, for the ratable benefit of the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Borrower when due (whether at the stated maturity, by acceleration or otherwise) of the Borrower Obligations.

(b) If and to the extent required in order for the Obligations of any Guarantor to be enforceable under applicable federal, state and other laws relating to the insolvency of debtors, the maximum liability of such Guarantor hereunder shall be limited to the greatest amount which can lawfully be guaranteed by such Guarantor under such laws, after giving effect to any rights of contribution, reimbursement and subrogation arising under Section 2.2. Each Guarantor acknowledges and agrees that, to the extent not prohibited by applicable law, (i) such Guarantor (as opposed to its creditors, representatives of creditors or bankruptcy trustee, including such Guarantor in its capacity as debtor in possession exercising any powers of a bankruptcy trustee) has no personal right under such laws to reduce, or request any judicial relief that has the effect of reducing, the amount of its liability under this Agreement, (ii) such Guarantor (as opposed to its creditors, representatives of creditors or bankruptcy trustee, including such Guarantor in its capacity as debtor in possession exercising any powers of a bankruptcy trustee) has no personal right to enforce the limitation set forth in this Section 2.1(b) or to reduce, or request judicial relief reducing, the amount of its liability under this Agreement, and (iii) the limitation set forth in this Section 2.1(b) may be enforced only to the extent required under such laws in order for the obligations of such Guarantor under this Agreement to be enforceable under such laws and only by or for the benefit of a creditor, representative of creditors or

6

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bankruptcy trustee of such Guarantor or other Person entitled, under such laws, to enforce the provisions thereof.

(c) Each Guarantor agrees that the Borrower Obligations may at any time and from time to time be incurred or permitted in an amount exceeding the maximum liability of such Guarantor under Section 2.1(b) without impairing the guarantee contained in this Section 2 or affecting the rights and remedies of any Secured Party hereunder.

(d) The guarantee contained in this Section 2 shall remain in full force and effect until payment in full of all Obligations that do not arise under a Specified Hedge Agreement, notwithstanding that from time to time during the term of the Credit Agreement the Borrower may be free from any Borrower Obligations.

(e) No payment made by the Borrower, any of the Guarantors, any other guarantor or any other Person or received or collected by any Secured Party from the Borrower, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Borrower Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Borrower Obligations or any payment received or collected from such Guarantor in respect of the Borrower Obligations), remain liable for the Borrower Obligations up to the maximum liability of such Guarantor hereunder until the Borrower Obligations (other than Obligations in respect of any Specified Hedge Agreement) are paid in full, no Letter of Credit shall be outstanding and the Commitments are terminated or have expired.

2.2. *Rights of Reimbursement, Contribution and Subrogation.* In case any payment is made on account of the Obligations by any Grantor or is received or collected on account of the Obligations from any Grantor or its property:

(a) If such payment is made by the Borrower or from its property, then, if and to the extent such payment is made on account of Obligations arising from or relating to a Loan made to the Borrower or a Letter of Credit issued for account of the Borrower, the Borrower shall not be entitled (A) to demand or enforce reimbursement or contribution in respect of such payment from any other Grantor or (B) to be subrogated to any claim, interest, right or remedy of any Secured Party against any other Person, including any other Grantor or its property; and

(b) If such payment is made by a Guarantor or from its property, such Guarantor shall be entitled, subject to and upon payment in full of the Obligations, (A) to demand and enforce reimbursement for the full amount of such payment from the Borrower and (B) to demand and enforce contribution in respect of such payment from each other Guarantor which has not paid its fair share of such payment, as necessary to ensure that (after giving effect to any enforcement of reimbursement rights provided hereby) each Guarantor pays its fair share of the unreimbursed portion of such payment. For this purpose, the fair share of each Guarantor as to any unreimbursed payment shall be determined based on an equitable apportionment of such unreimbursed payment among all Guarantors based on the relative value of their assets and any other equitable considerations deemed appropriate by the court.

7

(c) If and whenever (after payment in full of the Obligations) any right of reimbursement or contribution becomes enforceable by any Grantor against any other Grantor under Sections 2.2(a) and 2.2(b), such Grantor shall be entitled, subject to and upon payment in full of the Obligations, to be subrogated (equally and ratably with all other Grantors entitled to reimbursement or contribution from any other Grantor as set forth in this Section 2.2) to any security interest that may then be held by the Administrative Agent upon any Collateral granted to it in this Agreement. Such right of subrogation shall be enforceable solely against the Grantors, and not against the Secured Parties, and neither the Administrative Agent nor any other Secured Party shall have any duty whatsoever to warrant, ensure or protect any such right of subrogation or to obtain, perfect, maintain, hold, enforce or retain any Collateral for any purpose related to any such right of subrogation. If subrogation is demanded by any Grantor, then (after payment in full of the Obligations) the Administrative Agent shall deliver to the Grantors making such demand, or to a representative of such Grantors or of the Grantors generally, an instrument satisfactory to the Administrative Agent transferring, on a quitclaim basis without any recourse, representation, warranty or obligation whatsoever, whatever security interest the Administrative Agent then may hold in whatever Collateral may then exist that was not previously released or disposed of by the Administrative Agent.

(d) All rights and claims arising under this Section 2.2 or based upon or relating to any other right of reimbursement, indemnification, contribution or subrogation that may at any time arise or exist in favor of any Grantor as to any payment on account of the Obligations made by it or received or collected from its property shall be fully subordinated in all respects to the prior payment in full of all of the Obligations. Until payment in full of the Obligations, no Grantor shall demand or receive any collateral security, payment or distribution whatsoever (whether in cash, property or securities or otherwise) on account of any such right or claim. If any such payment or distribution is made or becomes available to any Grantor in any bankruptcy case or receivership, insolvency or liquidation proceeding, such payment or distribution shall be delivered by the person making such payment or distribution directly to the Administrative Agent, for application to the payment of the Obligations. If any such payment or distribution is received by any Grantor, it shall be held by such Grantor in trust, as trustee of an express trust for the benefit of the Secured Parties, and shall forthwith be transferred and delivered by such Grantor to the Administrative Agent, in the exact form received and, if necessary, duly endorsed.

(e) The obligations of the Grantors under the Loan Documents, including their liability for the Obligations and the enforceability of the security interests granted thereby, are not contingent upon the validity, legality, enforceability, collectibility or sufficiency of any right of reimbursement, contribution or subrogation arising under this Section 2.2. The invalidity, insufficiency, unenforceability or uncollectibility of any such right shall not in any respect diminish, affect or impair any such obligation or any other claim, interest, right or remedy at any time held by any Secured Party against any Guarantor or its property. The Secured Parties make no representations or warranties in respect of any such right and shall have no duty to assure, protect, enforce or ensure any such right or otherwise relating to any such right.

(f) Each Grantor reserves any and all other rights of reimbursement, contribution or subrogation at any time available to it as against any other Grantor, but (i) the exercise and enforcement of such rights shall be subject to Section 2.2(d) and (ii) neither the Administrative Agent nor any other Secured Party shall ever have any duty or liability whatsoever in respect of any such right, except as provided in Section 2.2(c).

(g) Each Guarantor waives any right or claims of right to cause a marshalling of the Borrower's or any Guarantor's assets or to proceed against any Guarantor, the Borrower or any other guarantor of any of the Borrower's obligations in any particular order, including, but not limited to, any right arising out of Nevada Revised Statutes 40.430.

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2.3. *Amendments, etc. with respect to the Borrower Obligations.* Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Borrower Obligations made by any Secured Party may be rescinded by such Secured Party and any of the Borrower Obligations continued, and the Borrower Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, increased, extended, amended, modified, accelerated, compromised, waived, surrendered or released by any Secured Party, and the Credit Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Administrative Agent (or the requisite Lenders under the Credit Agreement or all Lenders, as the case may be) may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by any Secured Party for the payment of the Borrower Obligations may be sold, exchanged, waived, surrendered or released. No Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Borrower Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

2.4. *Guarantee Absolute and Unconditional.* Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Borrower Obligations and notice of or proof of reliance by any Secured Party upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; the Borrower Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 2; and all dealings between the Borrower and any of the Guarantors, on the one hand, and the Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Each Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower or any of the Guarantors with respect to the Borrower Obligations. Each Guarantor understands and agrees that the guarantee contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment and performance without regard to (a) the validity or enforceability of the Credit Agreement or any other Loan Document, any of the Borrower Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by any Secured Party, (b) any defense, set-off or counterclaim (other than a defense of payment or performance hereunder) which may at any time be available to or be asserted by the Borrower or any other Person against any Secured Party, or (c) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower for the Borrower Obligations, or of such Guarantor under the guarantee contained in this Section 2, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, any Secured Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for the Borrower Obligations or any right of offset with respect thereto, and any failure by any Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability

hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of any Secured Party against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

2.5. *Reinstatement.* The guarantee contained in this Section 2 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Borrower Obligations is rescinded or must otherwise be restored or returned by any Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

2.6. *Payments.* Each Guarantor hereby guarantees that payments hereunder will be paid to the Administrative Agent without set-off or counterclaim in Dollars in immediately available funds at the office of the Administrative Agent located at the Payment Office specified in the Credit Agreement.

### SECTION 3. GRANT OF SECURITY INTEREST

Each Grantor, subject to compliance with applicable Nevada Gaming Laws, hereby assigns and transfers to the Administrative Agent, and hereby grants to the Administrative Agent, for the ratable benefit of the Secured Parties, a security interest in, all of the personal property of such Grantor, including, without limitation, the following property, in each case, wherever located and now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "*Collateral*"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor's Obligations:

- (a) all Accounts;
- (b) all Chattel Paper;
- (c) all Contracts;
- (d) all Deposit Accounts;
- (e) all Documents;
- (f) all Equipment;
- (g) all General Intangibles (including, without limitation, Payment Intangibles);
- (h) all Instruments;
- (i) all Intellectual Property;
- (j) all Inventory;
- (k) all Investment Property;
- (l) all Letters of Credit and Letter of Credit Rights;
- (m) all money;
- (n) all Vehicles;
- (o) all Goods and other property not otherwise described above:
- (p) all bank accounts, all funds held therein and all certificates and instruments, if any, from time to time representing or evidencing such bank accounts;
- (q) all books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and other electronic storage media and related data processing software and similar items that at any time evidence or

contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.;

- (r) all Permits;
- (s) all insurance policies and all loss proceeds and other amounts payable thereunder (including, without limitation, Insurance Proceeds) and all Eminent Domain Proceeds; and
- (t) to the extent not otherwise included, all Proceeds, accessions and products of any kind and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing (including, without limitation, Supporting Obligations).

Notwithstanding anything to the contrary in this Agreement, the term "Collateral" shall not include (i) any of the Excluded Assets, (ii) any license, permit, or authorization issued by any of the Nevada Gaming Authorities or any other Governmental Authority, or any other Collateral, which may not be pledged or in which a security interest may not be granted under Nevada Gaming Laws, or other applicable law, or under the terms of any such license, permit, or authorization, or which would require a finding of suitability or other similar approval or procedure by any of the Nevada Gaming Authorities or any other Governmental Authority prior to being pledged, hypothecated, or given as collateral security (to the extent such finding or approval has not been obtained), and (iii) any water rights, to the extent that the requisite approvals from the Nevada Public Utility Commission for the granting of security interests therein have not been obtained.

#### SECTION 4. REPRESENTATIONS AND WARRANTIES

To induce the Arrangers, the Agents, the Managers and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Borrower thereunder, each Grantor hereby represents and warrants to the Secured Parties that:

4.1. *Representations in Credit Agreement; Guarantor Representations.* In the case of each Guarantor, the representations and warranties set forth in Section 4 of the Credit Agreement as they relate to such Guarantor or to the Loan Documents to which such Guarantor is a party, each of which is hereby incorporated herein by reference and shall apply to each Guarantor *mutatis mutandis*, are true and correct, and the Secured Parties shall be entitled to rely on each of them as if they were fully set forth herein, *provided* that each reference in each such representation and warranty to the Borrower's knowledge shall, for the purposes of this Section 4.1(a), be deemed to be a reference to such Guarantor's knowledge.

4.2. *Title; No Other Liens.* Such Grantor owns each item of the Collateral free and clear of any and all Liens or claims, including, without limitation, Liens arising as a result of such Grantor becoming bound (as a result of merger or otherwise) as Grantor under a security agreement entered into by another Person, except for Permitted Liens. No effective financing statement, mortgage or other instrument similar in effect with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, pursuant to this Agreement or as are otherwise permitted by the Credit Agreement.

4.3. *Perfected First Priority Liens.* (a) The security interests granted pursuant to this Agreement (i) constitute valid and, subject only to the filing of the financing statements listed on *Schedule 3* hereto, fully perfected security interests in all of the Collateral in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, as collateral security for such Grantor's Obligations, enforceable in accordance with the terms hereof against all creditors of such Grantor, (ii) are subject to no other Liens on the Collateral except for Permitted Liens and (iii) are prior to all other Liens on the Collateral except for Senior Permitted Liens. Without limiting the foregoing, each Grantor has taken all actions necessary, including, without limitation, those specified in Section 5.2 to: (i) establish the

11

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Administrative Agent's "control" (within the meanings of Sections 8-106 and 9-106 of the New York UCC) over any portion of the Investment Property constituting Certificated Securities, Uncertificated Securities, Securities Accounts, Securities Entitlements or Commodity Accounts (each as defined in the New York UCC), (ii) establish the Administrative Agent's "control" (within the meaning of Section 9-104 of the New York UCC) over all Deposit Accounts, and (iii) establish the Administrative Agent's "control" (within the meaning of Section 9-107 of the New York UCC) over all Letter of Credit Rights.

(b) No authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body (except those which have been made or obtained) is required for either (i) the pledge or grant by any Grantor of the security interests purported to be created in favor of the Administrative Agent hereunder or (ii) the exercise by the Administrative Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except (A) for filings and actions specified on *Schedule 3* and (B) as may be required, in connection with the disposition of any Investment Property, by laws generally affecting the offering and sale of securities;

4.4. *Name; Jurisdiction of Organization, etc.* On the date hereof, such Grantor's exact legal name (as indicated on the public record of such Grantor's jurisdiction of formation or organization), jurisdiction of organization and the location of such Grantor's chief executive office or sole place of business are specified on *Schedule 4*. Each Grantor is organized solely under the law of the jurisdiction so specified and has not filed any certificates of domestication, transfer or continuance in any other jurisdiction. Except as otherwise indicated on *Schedule 4*, the jurisdiction of each such Grantor's organization of formation is required to maintain a public record showing the Grantor to have been organized or formed. Except as specified on *Schedule 4*, such Grantor has not changed its name, jurisdiction of organization, chief executive office or sole place of business or its corporate structure in any way (e.g. by merger, consolidation, change in corporate form or otherwise) within the previous five year period ending on the date hereof and has not within such period become bound (whether as a result of merger or otherwise) as grantor under a security agreement entered into by another Person, which has not heretofore been terminated.

4.5. *Inventory, Equipment and Books and Records.* On the date hereof, the Inventory and the Equipment (other than mobile goods) and the books and records pertaining to the Collateral are kept at the locations listed on *Schedule 5*. No material Inventory or Equipment (in the aggregate) of such Grantor is in the possession of an issuer of a negotiable document (as defined in Section 7-104 of the UCC) therefor that has not been delivered to the Administrative Agent or is otherwise in the possession of any bailee or warehouseman.

4.6. *Farm Products.* None of the Collateral constitutes, or is the Proceeds of, Farm Products.

4.7. *Investment Property.* (a) The shares of Pledged Stock pledged by such Grantor hereunder constitute all of the issued and outstanding shares of all classes of the Capital Stock of each Issuer owned by such Grantor.

(b) All the shares of the Pledged Stock of such Grantor have been duly and validly issued and are fully paid and nonassessable.

(c) Each limited liability company interest or partnership interest owned by such Grantor and included in the Pledged Stock is certificated (and each Grantor covenants that it will not issue or cause or permit its Subsidiaries to issue any Capital Stock in uncertificated form or seek to convert all or any part of its existing Capital Stock into uncertificated form) and the terms of such certificated limited liability company interests and partnership interests expressly provide that they are securities governed by Article 8 of the Uniform Commercial Code in effect from time to time in the applicable jurisdiction.

12



(d) Each of the Pledged Notes issued to such Grantor constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(e) Such Grantor is the record and beneficial owner of, and has good and marketable title to, the Investment Property pledged by it hereunder, free of any and all Liens or options in favor of, or claims of, any other Person, except Permitted Liens.

(f) Each Issuer that is not a Grantor hereunder but is an Affiliate of any Grantor has executed and delivered to the Administrative Agent an Acknowledgment and Agreement, in substantially the form of *Exhibit A*, to the pledge of the Pledged Securities pursuant to this Agreement.

4.8. *Receivables.* (a) No amount payable to such Grantor under or in connection with any Receivable is evidenced by any Instrument or Chattel Paper which has not been delivered to the Administrative Agent (other than Receivables evidenced by Instruments representing (i) extensions of credit by the Borrower to individual customers of its gaming operations in the ordinary course of business and (ii) loans to employees expressly permitted under Section 7.8(d) of the Credit Agreement (collectively, the "*Non-Deliverable Collateral*").

(b) None of the obligors on any material Receivables is a Governmental Authority.

(c) The amounts represented by such Grantor to the Secured Parties from time to time as owing to such Grantor in respect of the Receivables will at such times be materially accurate.

4.9. *Contracts.* (a) Except as specified on *Schedule 7*, no Contract prohibits assignment or requires or purports to require the consent of any party (other than such Grantor) to such Contract in connection with the execution, delivery and performance of this Agreement.

(b) Except, after the Closing Date, as expressly permitted by the Credit Agreement or the Disbursement Agreement, each Contract is in full force and effect and constitutes a valid and legally enforceable obligation of the parties thereto, subject to the effects of bankruptcy, insolvency, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law).

(c) No consent or authorization of, filing with or other act by or in respect of any Governmental Authority is required in connection with the execution, delivery, performance, validity or enforceability of any of the Contracts by any party thereto other than (i) those which have been duly obtained, made or performed, are in full force and effect and do not subject the scope of any such Contract to any material adverse limitation, either specific or general in nature and (ii) with respect to the performance of such Contracts only, filings, Permits or authorizations to be subsequently obtained as contemplated by the Credit Agreement or the Disbursement Agreement.

(d) Neither such Grantor nor (to the best of such Grantor's knowledge) any of the other parties to the Contracts is in default in the performance or observance of any of the terms thereof in any manner that, in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(e) The right, title and interest of such Grantor in, to and under the Contracts are not subject to any defenses, offsets, counterclaims or claims that, in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(f) Such Grantor has delivered to the Administrative Agent a complete and correct copy of each Contract, including all amendments, supplements and other modifications thereto.

(g) No amount payable to such Grantor under or in connection with any Contract is evidenced by any Instrument or Chattel Paper which has not been delivered to the Administrative Agent.

13

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(h) None of the parties to any Contract is a Governmental Authority.

4.10. *Intellectual Property.* (a) *Schedules 6* includes, without limitation, all Intellectual Property material to the conduct of such Grantor's Permitted Businesses (which includes, in any case, all Intellectual Property relating to) which Intellectual Property is owned by such Grantor in its own name on the date hereof. Except as set forth in *Schedule 6*, such Grantor is the exclusive owner of the entire and unencumbered right, title and interest in and to such Intellectual Property and is otherwise entitled to use all such Intellectual Property, without limitation, subject only to the license terms of the licensing or franchise agreements referred to in paragraph (c) below.

(b) On the date hereof, all material Intellectual Property is valid, subsisting, unexpired and enforceable and has not been abandoned.

(c) Except as set forth in *Schedule 6* and for licenses between Grantors in the ordinary course of business, on the date hereof (i) none of the Intellectual Property is the subject of any licensing or franchise agreement pursuant to which such Grantor is the licensor or franchisor, and (ii) there are no other agreements, obligations, orders or judgments which affect the use of any Intellectual Property.

(d) With respect to \_\_\_\_\_, (i) the rights of \_\_\_\_\_ in or to \_\_\_\_\_ do not infringe upon the rights of any third party, which infringement could reasonably be expected to have a material adverse effect on such Grantor's ability to use the "Le Reve" name in its Permitted Businesses as currently used or contemplated to be used, (ii) no claim has been asserted that the use of such Intellectual Property does or may infringe upon the rights of any third party which claim, if determined adversely to \_\_\_\_\_, could reasonably be expected to have a material adverse effect on such Grantor's ability to use such Intellectual Property in \_\_\_\_\_'s Permitted Businesses, (iii) there is currently no infringement or unauthorized use of any item of such Intellectual Property which infringement or unauthorized use could reasonably be expected to have a material adverse effect on \_\_\_\_\_'s ability to use such Intellectual Property in \_\_\_\_\_'s Permitted Businesses and (iv) no holding, decision or judgment has been rendered by any Governmental Authority which could reasonably be expected to have a material adverse effect on \_\_\_\_\_'s ability to use such Intellectual Property in \_\_\_\_\_'s Permitted Businesses.

(e) The rights of such Grantor in or to the Intellectual Property do not infringe upon the rights of any third party, and no claim has been asserted that the use of such Intellectual Property does or may infringe upon the rights of any third party, in either case, which conflict or infringement could reasonably be expected to have a Material Adverse Effect. To such Grantor's knowledge, there is currently no infringement or unauthorized use of any item of Intellectual Property that could reasonably be expected to have a Material Adverse Effect.

(f) No holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity or enforceability of, or such Grantor's rights in, any of such Grantor's Intellectual Property in any respect that could reasonably be expected to have a Material Adverse Effect. Such Grantor is not aware of any uses of any item of its material Intellectual Property that could reasonably be expected to lead to such item becoming invalid or unenforceable.

(g) Except as could not reasonably be expected to have a Material Adverse Effect, no action or proceeding is pending, or, to the knowledge of such Grantor, threatened, on the date hereof (i) seeking to limit, cancel or question the validity of any Intellectual Property or such Grantor's ownership interest therein, (ii) alleging that any services provided by, processes used by, or products manufactured or sold by such Grantor infringe any patent, trademark, copyright, or any other right of any third party, (iii) alleging that any material Intellectual Property is being licensed, sublicensed or used in violation of any patent, trademark, copyright or any other right of any third party, or (iv) which, if adversely determined, would have a material adverse effect on the value of any Intellectual Property. To the knowledge of such Grantor, no Person is engaging in any activity that infringes upon Grantor's material

14

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Intellectual Property or upon the rights of such Grantor therein, except (i) with respect to the Intellectual Property related to or otherwise associated with the Grantor's use of the "Le Reve" name, such claims that, if determined adversely to a Grantor, could not reasonably be expected to have a material adverse effect on such Grantor's ability to use the "Le Reve" name in its Permitted Businesses as currently used or contemplated to be used and (ii) with respect to all other Intellectual Property, as could not reasonably be expected to have a Material Adverse Effect. Except as set forth in *Schedule 6* hereto, such Grantor has not granted any material license, or any release, covenant not to sue, non-assertion assurance, or other right to any person with respect to any part of the material Intellectual Property. The consummation of the transactions contemplated by this Agreement will not result in the termination or impairment of any of the Intellectual Property.

(h) With respect to each Copyright License, Trademark License and Patent License, as of the date hereof and with respect to each material Copyright License, material Trademark License and material Patent License after the date hereof: (i) except as could not reasonably be expected to have a Material Adverse Effect, such license is valid and binding and in full force and effect and such license represents the entire agreement between the respective licensor and licensee with respect to the subject matter of such license; (ii) such license will not cease to be valid and binding and in full force and effect on terms identical to those currently in effect as a result of the rights and interests granted herein, nor will the grant of such rights and interests constitute a breach or default under such license or otherwise give the licensor or licensee a right to terminate such license; (iii) such Grantor has not received any notice of termination or cancellation under such license, which notice could reasonably be expected to have a Material Adverse Effect; (iv) such Grantor has not received any notice of a breach or default under such license, which notice could reasonably be expected to have a Material Adverse Effect, which breach or default has not been cured; (v) such Grantor has not granted to any other third party any rights, adverse or otherwise, under such license which could reasonably be expected to have a Material Adverse Effect; and (vi) such Grantor is not in breach or default in any material respect, and no event has occurred that, with notice and/or lapse of time, would constitute such a breach or default or permit termination, modification or acceleration under such license.

(i) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor has performed all acts and has paid all required fees and taxes to maintain each and every item of material Intellectual Property in full force and effect and to protect and maintain its interest therein. Such Grantor has either used proper statutory notice in connection with its use of each material Patent, Trademark and Copyright included in the Intellectual Property, or such Grantor's failure to use proper statutory notice could not reasonably be expected to have a Material Adverse Effect.

(j) To its knowledge, except as could not reasonably be expected to have a Material Adverse Effect, (i) none of the Trade Secrets of such Grantor has been used, divulged, disclosed or appropriated to the detriment of such Grantor for the benefit of any other Person; (ii) no employee, independent contractor or agent of such Grantor has misappropriated any trade secrets of any other Person in the course of the performance of his or her duties as an employee, independent contractor or agent of such Grantor; and (iii) no employee, independent contractor or agent of such Grantor is in default or breach of any term of any employment agreement, non-disclosure agreement, assignment of inventions agreement or similar agreement or contract relating in any way to the protection, ownership, development, use or transfer of such Grantor's material Intellectual Property.

(k) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor has made all filings and recordings necessary to adequately protect its interest in its Intellectual Property including, without limitation, recordation of its interests in the Patents and Trademarks with the United States Patent and Trademark Office and in corresponding national and international patent offices, and recordation of any of its interests in the Copyrights with the United States Copyright Office and in corresponding national and international copyright offices.

15

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(l) Such Grantor has taken all commercially reasonable steps to ensure that all licensed users of any material Intellectual Property use consistent standards of quality which are controlled by such Grantor.

4.11. *Vehicles.* *Schedule 8* is a complete and correct list of all Vehicles owned by such Grantor on the date hereof.

## SECTION 5. COVENANTS

Each Grantor covenants and agrees with the Secured Parties that, from and after the date of this Agreement until the Obligations (other than unmatured contingent reimbursement and indemnification Obligations, and Obligations in respect of any Specified Hedge Agreement) shall have been paid in full, no Letter of Credit shall be outstanding and the Commitments shall have terminated or expired:

5.1. *Covenants in Credit Agreement.* Each Guarantor shall take, or shall refrain from taking, as the case may be, each action that is necessary to be taken or not taken, as the case may be, so that no Default or Event of Default is caused by the failure to take such action or to refrain from taking such action by such Guarantor or any of its Subsidiaries and each provision of the Credit Agreement that relates to such Guarantor (whether directly, indirectly, through the Borrower's obligation to cause such Guarantor to take or not take actions or otherwise) is hereby incorporated herein by reference and shall apply to such Guarantor *mutatis mutandis* to the same extent as if the Credit Agreement had been executed by such Guarantor and such provisions had been made the direct obligations of such Guarantor.

5.2. *Delivery and Control of Instruments, Chattel Paper, Investment Property and Deposit Accounts.* (a) If any of the Collateral shall be or become evidenced or represented by any Instrument, Certificated Security, Chattel Paper or Negotiable Document, such Instrument, Certificated Security, Chattel Paper or Negotiable Document shall be promptly delivered to the Administrative Agent, duly endorsed in a manner satisfactory to the Administrative Agent, to be held as Collateral pursuant to this Agreement (other than the Non-Deliverable Collateral).

(b) If any of the Collateral shall be or become evidenced or represented by an Uncertificated Security, such Grantor shall cause, or with respect to any Issuer that is not an Affiliate of any Grantor, use commercially reasonable efforts to cause, the Issuer thereof either (i) to register the Administrative Agent as the registered owner of such Uncertificated Security, upon original issue or registration of transfer or (ii) to agree in writing with such Grantor and the Administrative Agent that such Issuer will comply with instructions with respect to such Uncertificated Security originated by the Administrative Agent without further consent of such Grantor, such agreement to be in substantially the form of *Exhibit C*. Notwithstanding the foregoing, each Grantor covenants that (x) the representations and warranties contained in Section 4.7(c) shall at all times be true and correct and (y) it will not issue or cause or permit its Subsidiaries to issue any Capital Stock in uncertificated form or seek to convert all or any part of its existing Capital Stock into uncertificated form.

(c) If any of the Collateral now or hereafter constitutes a Deposit Account or a Securities Account, such Grantor shall cause the financial institution maintaining such account to agree in writing with such Grantor and the Administrative Agent that such financial institution shall comply with all Entitlement Orders and instructions originated or issued by the Administrative Agent with respect to such Deposit Account or Securities Account without further consent of such Grantor, such agreement to be substantially in the form of *Exhibit D* or in such other form as shall be satisfactory to the Administrative Agent.

(d) If any of the Collateral shall be or become evidenced or represented by a Commodity Contract, such Grantor shall cause the Commodity Intermediary with respect to such Commodity Contract to agree in writing with such Grantor and the Administrative Agent that such Commodity

16

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Intermediary will apply any value distributed on account of such Commodity Contract as directed by the Administrative Agent without further consent of such Grantor, such agreement to be in substantially the form of *Exhibit E* or in such other form as may be satisfactory to the Administrative Agent.

(e) If any of the Collateral shall be or become evidenced or represented by or held in a Securities Account or a Commodity Account, such Grantor shall, in the case of a Securities Account, comply with Section 5.2(c) with respect to all Security Entitlements carried in such Securities Account and, in the case of a Commodity Account, comply with Section 5.2(d) with respect to all Commodity Contracts carried in such Commodity Account.

5.3. [INTENTIONALLY OMITTED].

5.4. *Payment of Obligations.* Such Grantor will pay and discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all taxes, assessments and governmental charges or levies imposed upon the Collateral or in respect of income or profits therefrom, as well as all claims of any kind (including, without limitation, claims for labor, materials and supplies) against or with respect to the Collateral, except that no such charge need be paid if the amount or validity thereof is currently being contested in good faith by appropriate proceedings, reserves in conformity with GAAP with respect thereto have been provided on the books of such Grantor and such proceedings could not reasonably be expected to result in the sale, forfeiture or loss of any material portion of the Collateral or any interest therein.

5.5. *Maintenance of Perfected Security Interest; Further Documentation.* (a) Such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.3 and shall defend such security interest against the claims and demands of all Persons whomsoever.

(b) Such Grantor will furnish to the Secured Parties from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the assets and property of such Grantor as the Administrative Agent may reasonably request, all in reasonable detail.

(c) At any time and from time to time, upon the written request of the Administrative Agent, and at the sole expense of such Grantor, such Grantor will promptly and duly authorize, execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Administrative Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, (i) the filing of any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby and (ii) in the case of Investment Property, Deposit Accounts and any other relevant Collateral, taking any actions necessary to enable the Administrative Agent to obtain "control" (within the meaning of the applicable Uniform Commercial Code) with respect thereto, including without limitation, executing and delivering and causing the relevant depository bank or securities intermediary to execute and deliver a Control Agreement in the form attached hereto as *Exhibit D*, or in such other form as may be satisfactory to the Administrative Agent.

5.6. *Changes in Locations, Name, Jurisdiction of Incorporation, etc.* Such Grantor will not, except upon 15 days' prior written notice to the Administrative Agent and delivery to the Administrative Agent of (a) all additional executed financing statements and other documents reasonably requested by the Administrative Agent to maintain the validity, perfection and priority of the security interests provided for herein and (b) if applicable, a written supplement to *Schedule 5* showing any additional

17

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location at which Inventory or Equipment (other than mobile goods) or books and records pertaining to the Collateral shall be kept:

(i) permit any of the Inventory or Equipment (other than mobile goods) or books and records pertaining to the Collateral to be kept at a location other than those listed on *Schedule 5*;

(ii) without limiting the prohibitions on mergers involving the Grantors contained in the Credit Agreement, change its legal name, jurisdiction of organization or the location of its chief executive office or sole place of business from that referred to in Section 4.4; or

(iii) change its legal name, identity or structure to such an extent that any financing statement filed by the Administrative Agent in connection with this Agreement would become misleading.

5.7. *Notices.* Such Grantor will advise the Secured Parties promptly, in reasonable detail, of:

(a) any Lien (other than any Permitted Lien) on any of the Collateral which would adversely affect the ability of the Administrative Agent to exercise any of its remedies hereunder; and

(b) of the occurrence of any other event which could reasonably be expected to have a material adverse effect on the aggregate value of the Collateral or on the security interests created hereby.

5.8. *Investment Property.* (a) Subject to compliance with applicable Nevada Gaming Laws, if such Grantor shall become entitled to receive or shall receive any stock or other ownership certificate (including, without limitation, any certificate representing a stock dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights in respect of the Capital Stock of any Issuer, whether in addition to, in substitution of, as a conversion of, or in exchange for, any shares of or other ownership interests in the Pledged Stock, or otherwise in respect thereof, such Grantor shall accept the same as the agent of the Secured Parties, hold the same in trust for the Secured Parties and deliver the same forthwith to the Administrative Agent in the exact form received, duly endorsed by such Grantor to the Administrative Agent, if required, together with an undated stock power covering such certificate duly executed in blank by such Grantor and with, if the Administrative Agent so requests, signature guaranteed, to be held by the Administrative Agent, subject to the terms hereof, as additional collateral security for the Obligations. So long as no Event of Default shall have occurred and be continuing, the Administrative Agent authorizes each Grantor to retain all ordinary cash dividends and distributions paid in the normal course of the business of the Issuer and all scheduled payments of interest. All other dividends and distributions of any type or nature, including, without limitation, any dividends or distributions paid in respect of Pledged Securities upon liquidation or dissolution of any Issuer shall immediately be delivered to the Administrative Agent to be held as additional Collateral hereunder. If any sums of money or property so paid or distributed in respect of the Pledged Securities shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to the Administrative Agent, hold such money or property in trust for the Secured Parties, segregated from other funds of such Grantor, as additional collateral security for the Obligations.

(b) Without the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld), such Grantor will not (i) vote to enable, or take any other action to permit, any Issuer to issue any stock or other equity securities of any nature or to issue any other securities convertible into or granting the right to purchase or exchange for any stock or other equity securities of any nature of any Issuer (except pursuant to a transaction permitted by the Credit Agreement), (ii) sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, any of the Investment Property or Proceeds thereof or any interest therein (except pursuant to a transaction expressly permitted by the Credit Agreement), (iii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Investment Property or Proceeds thereof, or any interest therein, except for the security interests created by this Agreement and other

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Permitted Liens or (iv) enter into any agreement or undertaking restricting the right or ability of such Grantor or the Administrative Agent to sell, assign or transfer any of the Investment Property or Proceeds thereof or any interest therein (except pursuant to a transaction expressly permitted by the Credit Agreement).

(c) In the case of each Grantor which is an Issuer, such Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Pledged Securities issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify the Administrative Agent promptly in writing of the occurrence of any of the events described in Section 5.8(a) with respect to the Pledged Securities issued by it and (iii) the terms of Sections 6.3(c) and 6.7 shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to Section 6.4(c) or 6.8 with respect to the Pledged Securities issued by it. In addition, each Grantor which is either an Issuer or an owner of any Pledged Security hereby consents to the grant by each other Grantor of the security interest hereunder in favor of the Administrative Agent and to the transfer of any Pledged Security to the Administrative Agent or its nominee following an Event of Default and to the substitution of the Administrative Agent or its nominee as a partner, member or shareholder of the Issuer of the related Pledged Security.

5.9. *Receivables.* (a) Other than in the ordinary course of business consistent with customary practices in its Permitted Businesses, and so long as no Event of Default shall have occurred and be continuing, such Grantor will not (i) grant any extension of the time of payment of any Receivable, (ii) compromise or settle any Receivable for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Receivable, (iv) allow any credit or discount whatsoever on any Receivable or (v) amend, supplement or modify any Receivable in any manner that could materially adversely affect the value thereof.

(b) Such Grantor will deliver to the Administrative Agent a copy of each material written demand, notice or document received by it that questions or calls into doubt the validity or enforceability of more than 5% of the aggregate amount of the then outstanding Receivables.

5.10. *Contracts.* (a) Except to the extent permitted under the Credit Agreement or Disbursement Agreement, such Grantor will perform and comply in all material respects with all its obligations under the Contracts.

(b) Such Grantor will not amend, modify, cancel, terminate, waive or fail to enforce any provision of any Contract or suspend such Contract or the performance of work thereunder, or agree to the sale, assignment or disposition by any counterparty to such Contract of any part of its interest therein (all of which powers are rested in the Administrative Agent), except to the extent expressly permitted by the terms of the other Financing Agreements.

(c) Such Grantor will exercise promptly and diligently each and every material right which it may have under each Contract, except to the extent provided in any of the other Financing Agreements.

(d) Such Grantor will deliver to the Administrative Agent a copy of each material demand, notice or document received by it relating in any way to any Contract that questions the validity or enforceability of such Contract that is material to its business.

(e) In the event that such Grantor enters into any new contract that would qualify as either [(i) a Material Project Document (as defined in the Disbursement Agreement)] [or] [(ii) a Material Contract (as defined in the Credit Agreement)], such Grantor shall provide the Administrative Agent promptly with an amended *Schedule 7* hereto and any such new contract shall be deemed for all purposes to be a Contract hereunder.

5.11. *Intellectual Property.* (a) Such Grantor (either itself or through licensees) will (i) continue to use each material Trademark on each and every trademark class of goods in order to maintain such

19

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Trademark (in the trademark classes of goods in which it is used) in full force free from any claim of abandonment for non-use, (ii) use such Trademark with the appropriate notice of registration and all other notices and legends required by applicable Requirements of Law, (iii) not adopt or use any mark which is confusingly similar or a colorable imitation of such Trademark unless the Administrative Agent, for the ratable benefit of the Secured Parties, shall obtain a perfected security interest in such mark pursuant to this Agreement and the Intellectual Property Security Agreement, and (iv) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby such Trademark may become invalidated or impaired in any way.

(b) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor (either itself or through licensees) will not do any act, or omit to do any act, whereby any material Patent may become forfeited, abandoned or dedicated to the public.

(c) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor (either itself or through licensees) (i) will employ each material Copyright and (ii) will not (and will not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any material portion of the Copyrights may become invalidated or otherwise impaired. Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor will not (either itself or through licensees) do any act whereby any material Copyright may fall into the public domain.

(d) Such Grantor (either itself or through licensees) will not do any act that knowingly uses any material Intellectual Property to infringe the intellectual property rights of any other Person.

(e) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor (either itself or through licensees) will use proper statutory notice in connection with the use of each material Patent, Trademark and Copyright included in the Intellectual Property.

(f) Such Grantor will notify the Secured Parties promptly if it knows that any application or registration relating to any of its material Intellectual Property may become forfeited, abandoned or dedicated to the public, or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country) regarding such Grantor's ownership of, or the validity of, any material Intellectual Property or such Grantor's right to register the same or to own and maintain the same, unless such forfeiture, abandonment, dedication to the public, or adverse determination or development could not reasonably be expected to have a Material Adverse Effect.

(g) Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, such Grantor shall report such filing to the Administrative Agent within five Business Days after the last day of the fiscal quarter in which such filing occurs. Upon request of the Administrative Agent, such Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as the Administrative Agent may request to evidence the Secured Parties' security interest in any Copyright, Patent, Trademark or other Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

(h) Except as could not reasonably be expected to have a Material Adverse Effect, such Grantor will take all reasonable and necessary steps, including, without limitation, in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of material Intellectual Property, including, without limitation, the payment of required fees and taxes, the filing of

20

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responses to office actions issued by the United States Patent and Trademark Office and the United States Copyright Office, the filing of applications for renewal or extension, the filing of affidavits of use and affidavits of incontestability, the filing of divisional, continuation, continuation-in-part, reissue, and renewal applications or extensions, the payment of maintenance fees, and the participation in interference, reexamination, opposition, cancellation, infringement and misappropriation proceedings.

(i) Such Grantor (either itself or through licensees) will not, without the prior written consent of the Administrative Agent, discontinue use of or otherwise abandon any Intellectual Property, or abandon any application or any right to file an application for letters patent, trademark, or copyright, unless such Grantor shall have previously determined that such use or the pursuit or maintenance of such Intellectual Property is no longer desirable in the conduct of such Grantor's business and that the loss thereof could not reasonably be expected to have a Material Adverse Effect and, in which case, such Grantor shall give prompt notice of any such abandonment of any material Intellectual Property to the Administrative Agent in accordance herewith.

(j) In the event that any material Intellectual Property is infringed, misappropriated or diluted by a third party, such Grantor shall (i) take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is of material economic value, promptly notify the Administrative Agent after it learns thereof and sue for infringement, misappropriation or dilution (as applicable), seek injunctive relief where appropriate and recover any and all damages awarded for any such infringement, misappropriation or dilution (or take other action as such Grantor deems appropriate in the exercise of its prudent business judgment).

(k) Such Grantor agrees that, should it obtain an ownership interest in any item of Intellectual Property which is not now a part of the Intellectual Property Collateral (the "*After-Acquired Intellectual Property*"), (i) the provisions of Section 3 shall automatically apply thereto, (ii) any such After-Acquired Intellectual

Property, and in the case of trademarks, the goodwill of the business connected therewith or symbolized thereby, shall automatically become part of the Intellectual Property Collateral, (iii) it shall give prompt (and, in any event within five Business Days after the last day of the fiscal quarter in which such Grantor acquires such ownership interest in any material Intellectual Property) written notice thereof to the Administrative Agent in accordance herewith, and (iv) it shall provide the Administrative Agent promptly (and, in any event within five Business Days after the last day of the fiscal quarter in which such Grantor acquires such ownership interest in any material Intellectual Property) with an amended *Schedule 6* hereto and take the actions specified in 5.11(m).

(l) Such Grantor agrees to execute an Intellectual Property Security Agreement with respect to its Intellectual Property in substantially the form of *Exhibit B-1* in order to record the security interest granted herein to the Administrative Agent for the ratable benefit of the Secured Parties with the United States Patent and Trademark Office, the United States Copyright Office, and any other applicable Governmental Authority.

(m) Promptly after filing an application for the registration of any After-Acquired Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office, or any similar office or agency in any other county or any political subdivision thereof, such Grantor agrees to execute an After-Acquired Intellectual Property Security Agreement with respect to such After-Acquired Intellectual Property in substantially the form of *Exhibit B-2* in order to record the security interest granted herein to the Administrative Agent for the ratable benefit of the Secured Parties with the United States Patent and Trademark Office, the United States Copyright Office, or other Governmental Authority (as applicable).

5.12. *Vehicles.* (a) No Vehicle shall be removed from the state which has issued the certificate of title or ownership therefor for a period in excess of the period after which such vehicle would be required to be retitled under applicable state law.

21

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(b) With respect to any Vehicles acquired by such Grantor subsequent to the date hereof, within 30 days after the date of acquisition thereof, all applications for certificates of title or ownership indicating the Administrative Agent's first priority security interest in the Vehicle covered by such certificate, and any other necessary documentation, shall be filed in each office in each jurisdiction which the Administrative Agent shall deem advisable to perfect its security interests in the Vehicles.

5.13. *Non-Deliverable Collateral.* At no time shall any item of Non-Deliverable Collateral be delivered to or held by any Person (other than the Administrative Agent) as collateral security for any obligation of any Grantor.

## SECTION 6. REMEDIAL PROVISIONS

6.1. *Nevada Gaming Laws and Intercreditor Agreements.* Each of the provisions of this Section 6 shall be subject to compliance with (i) applicable Nevada Gaming Laws and (ii) applicable provisions of the Intercreditor Agreements.

6.2. *Certain Matters Relating to Receivables.* (a) The Administrative Agent shall have the right to make test verifications of the Receivables in any manner and through any medium that it reasonably considers advisable, and each Grantor shall furnish all such assistance and information as the Administrative Agent may require in connection with such test verifications.

(b) The Administrative Agent hereby authorizes each Grantor to collect such Grantor's Receivables; provided that the Administrative Agent may curtail or terminate said authority at any time after the occurrence and during the continuance of an Event of Default. If required by the Administrative Agent at any time after the occurrence and during the continuance of an Event of Default, any payments of Receivables, when collected by any Grantor, (i) shall be forthwith (and, in any event, within two Business Days) deposited by such Grantor in the exact form received, duly endorsed by such Grantor to the Administrative Agent if required, in a Collateral Account maintained under the control of the Administrative Agent, subject to withdrawal by the Administrative Agent for the account of the Secured Parties only as provided in Section 6.4, and (ii) until so turned over, shall be held by such Grantor in trust for the Secured Parties, segregated from other funds of such Grantor. Each such deposit of Proceeds of Receivables shall be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(c) At the Administrative Agent's request, each Grantor shall deliver to the Administrative Agent all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to the Receivables, including, without limitation, all original orders, invoices and shipping receipts (other than Non-Deliverable Collateral).

6.3. *Communications with Obligors; Grantors Remain Liable.* (a) In addition to the rights of the Administrative Agent under the Consents, the Administrative Agent in its own name or in the name of others may at any time after the occurrence and during the continuance of an Event of Default communicate with obligors under the Receivables and parties to the Contracts to verify with them to the Administrative Agent's satisfaction the existence, amount and terms of any Receivables or Contracts.

(b) Upon the request of the Administrative Agent at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall notify obligors on the Receivables and parties to the Contracts that the Receivables and the Contracts have been assigned to the Administrative Agent for the ratable benefit of the Secured Parties and that payments in respect thereof shall be made directly to the Administrative Agent.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each of the Receivables and Contracts to observe and perform all the conditions and obligations to be

22

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observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. No Secured Party shall have any obligation or liability under any Receivable (or any agreement giving rise thereto) or Contract by reason of or arising out of this Agreement or the receipt by any Secured Party of any payment relating thereto, nor shall any Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Receivable (or any agreement giving rise thereto) or Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

6.4. *Pledged Securities.* (a) Unless an Event of Default shall have occurred and be continuing and the Administrative Agent shall have given notice to the relevant Grantor of the Administrative Agent's intent to exercise its corresponding rights pursuant to Section 6.4(b), each Grantor shall be permitted to receive all cash dividends paid in respect of the Pledged Stock and all payments made in respect of the Pledged Notes, in each case paid in the normal course of business of the relevant Issuer, to the extent permitted in the Credit Agreement, and to exercise all voting and corporate or other ownership rights with respect to the Pledged Securities; *provided, however*, that no vote shall be cast or corporate or other ownership right exercised or other action taken which, in the Administrative Agent's reasonable judgment, would impair the Collateral or which would be inconsistent with or result in any violation of any provision of the Credit Agreement, this Agreement or any other Loan Document.

(b) Subject to applicable provisions of Nevada Gaming Laws, if an Event of Default shall occur and be continuing and the Administrative Agent shall give notice of its intent to exercise such rights to the relevant Grantor or Grantors, (i) the Administrative Agent shall have the right to receive any and all cash dividends, payments or other Proceeds paid in respect of the Pledged Securities and make application thereof to the Obligations in the order set forth in Section 6.6, and (ii) any or all of the Pledged Securities shall be registered in the name of the Administrative Agent or its nominee, and the Administrative Agent or its nominee may thereafter exercise (x) all voting, corporate or other ownership and other rights pertaining to such Pledged Securities at any meeting of shareholders or other equity holders of the relevant Issuer or Issuers or otherwise and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Pledged Securities as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of the Pledged Securities upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other structure of any Issuer, or upon the exercise by any Grantor or the Administrative Agent of any right, privilege or option pertaining to such Pledged Securities, and in connection therewith, the right to deposit and deliver any and all of the Pledged Securities with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Administrative Agent may determine), all without liability except to account for property actually received by it, but the Administrative Agent shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Pledged Securities pledged by such Grantor hereunder (i) to comply with any instruction received by it from the Administrative Agent in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) unless otherwise expressly permitted hereby, to pay any dividends or other payments with respect to the Pledged Securities directly to the Administrative Agent.

6.5. *Proceeds to be Turned Over To Administrative Agent.* In addition to the rights of the Secured Parties specified in Section 6.2, and subject to applicable provisions of Nevada Gaming Laws, with

23

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respect to payments of Receivables, if an Event of Default shall occur and be continuing, all Proceeds received by any Grantor consisting of cash, Cash Equivalents, checks and other near-cash items shall be held by such Grantor in trust for the Secured Parties, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the Administrative Agent in the exact form received by such Grantor (duly endorsed by such Grantor to the Administrative Agent, if required). All Proceeds received by the Administrative Agent hereunder shall be held by the Administrative Agent in a Collateral Account maintained under its control. All Proceeds while held by the Administrative Agent in a Collateral Account (or by such Grantor in trust for the Secured Parties) shall continue to be held as collateral security for all the Obligations and shall not constitute payment thereof until applied as provided in Section 6.6.

6.6. *Application of Proceeds.* At such intervals as may be agreed upon by the Borrower and the Administrative Agent in writing, or, if an Event of Default shall have occurred and be continuing, at any time at the Administrative Agent's election, the Administrative Agent may, notwithstanding the provisions of Section 2.12 of the Credit Agreement, apply all or any part of Proceeds constituting Collateral realized through the exercise by the Administrative Agent of its remedies hereunder, whether or not held in any Collateral Account, and any proceeds of the guarantee set forth in Section 2, in payment of the Obligations in the following order:

*First*, to the Administrative Agent, to pay incurred and unpaid fees and expenses of the Secured Parties under the Loan Documents;

*Second*, to the Administrative Agent, for application by it towards payment of amounts then due and owing and remaining unpaid in respect of the Obligations, pro rata among the Lenders according to the amounts of the Obligations then due and owing and remaining unpaid to the Lenders;

*Third*, to the Administrative Agent, for application by it towards prepayment of the Obligations, pro rata among the Lenders according to the amounts of the Obligations then held by the Lenders; and

*Fourth*, any balance of such Proceeds remaining after the Obligations (other than unmatured contingent reimbursement and indemnification Obligations, and Obligations in respect of any Specified Hedge Agreement) shall have been paid in full, no Letters of Credit shall be outstanding and the Commitments shall have terminated or expired shall be paid over to the Borrower or to whomsoever may be lawfully entitled to receive the same.

6.7. *Code and Other Remedies.* (a) If an Event of Default shall occur and be continuing, the Administrative Agent, on behalf of the Secured Parties, may exercise (subject to obtaining any required approvals from any Governmental Authorities that may not be waived by the Grantors), in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the New York UCC (whether or not the New York UCC applies to the affected Collateral) or any other applicable law or in equity. Without limiting the generality of the foregoing, the Administrative Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, license, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of any Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Each Secured Party shall have the right upon any such public

24

sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Administrative Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Administrative Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Administrative Agent may sell the Collateral without giving any warranties as to the Collateral. The Administrative Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely effect the commercial reasonableness of any sale of the Collateral. Each Grantor agrees that it would not be commercially unreasonable for the Administrative Agent to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Grantor hereby waives any claims against the Administrative Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Administrative Agent accepts the first offer received and does not offer such Collateral to more than one offeree. Each Grantor further agrees, at the Administrative Agent's request, to assemble the Collateral and make it available to the Administrative Agent at places which the Administrative Agent shall reasonably select, whether at such Grantor's premises or elsewhere. The Administrative Agent shall apply the net proceeds of any action taken by it pursuant to this Section 6.7, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Secured Parties hereunder, including, without limitation, reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Obligations, in such order as the Administrative Agent may elect, and only after such application and after the payment by the Administrative Agent of any other amount required by any provision of law, including, without limitation, Section 9-615(a) of the New York UCC, need the Administrative Agent account for the surplus, if any, to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against any Secured Party arising out of the exercise by them of any rights hereunder.

(b) In the event of any Disposition of any of the Intellectual Property, the goodwill of the business connected with and symbolized by any Trademarks subject to such Disposition shall be included, and the applicable Grantor shall supply the Administrative Agent or its designee with such Grantor's know-how and expertise, and with documents and things embodying the same, relating to the manufacture, distribution, advertising and sale of products or the provision of services relating to any Intellectual Property subject to such Disposition, and such Grantor's customer lists and other records and documents relating to such Intellectual Property and to the manufacture, distribution, advertising and sale of such products and services.

6.8. *Registration Rights.* (a) If the Administrative Agent shall determine to exercise its right to sell any or all of the Pledged Stock pursuant to Section 6.7, and if in the opinion of the Administrative Agent it is necessary or advisable to have the Pledged Stock, or that portion thereof to be sold, registered under the provisions of the Securities Act, the relevant Grantor will cause, or with respect to any Issuer that is not an Affiliate of any Grantor, use commercially reasonable efforts to cause, the Issuer thereof to (i) execute and deliver, and cause the directors and officers of such Issuer to execute

25

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and deliver, all such instruments and documents, and do or cause to be done all such other acts as may be, in the opinion of the Administrative Agent, necessary or advisable to register the Pledged Stock, or that portion thereof to be sold, under the provisions of the Securities Act, (ii) use its best efforts to cause the registration statement relating thereto to become effective and to remain effective for a period of one year from the date of the first public offering of the Pledged Stock, or that portion thereof to be sold, and (iii) make all amendments thereto and/or to the related prospectus which, in the opinion of the Administrative Agent, are necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the SEC applicable thereto. Each Grantor agrees to cause, or with respect to any Issuer that is not an Affiliate of any Grantor, use commercially reasonable efforts to cause, such Issuer to comply with the provisions of the securities or "Blue Sky" laws of any and all jurisdictions which the Administrative Agent shall designate and to make available to its security holders, as soon as practicable, an earnings statement (which need not be audited) which will satisfy the provisions of Section 11(a) of the Securities Act.

(b) Each Grantor recognizes that the Administrative Agent may be unable to effect a public sale of any or all the Pledged Stock or the Pledged Debt Securities, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Administrative Agent shall be under no obligation to delay a sale of any of the Pledged Stock or the Pledged Debt Securities for the period of time necessary to permit the Issuer thereof to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if such Issuer would agree to do so.

(c) Each Grantor agrees to use its best efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Pledged Stock pursuant to this Section 6.8 valid and binding and in compliance with any and all other applicable Requirements of Law. Each Grantor further agrees that a breach of any of the covenants contained in this Section 6.8 will cause irreparable injury to the Secured Parties, that the Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 6.8 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing under the Credit Agreement or a defense of payment.

6.9. *Waiver; Deficiency.* Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Obligations and the fees and disbursements of any attorneys employed by any Secured Party to collect such deficiency.

## SECTION 7. THE ADMINISTRATIVE AGENT

7.1. *Administrative Agent's Appointment as Attorney-in-Fact, etc.* (a) Subject to compliance with applicable Nevada Gaming Laws, each Grantor hereby irrevocably constitutes and appoints the Administrative Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Administrative Agent

26



the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Receivable or Contract or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Administrative Agent for the purpose of collecting any and all such moneys due under any Receivable or Contract or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as the Administrative Agent may request to evidence the Secured Parties' security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 6.7 or 6.8, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (1) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct; (2) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (3) sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (4) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (5) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (6) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Administrative Agent may deem appropriate; (7) assign any Copyright, Patent or Trademark (along with the goodwill of the business to which any such Copyright, Patent or Trademark pertains), throughout the world for such term or terms, on such conditions, and in such manner, as the Administrative Agent shall in its reasonable judgment determine; and (8) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes, and do, at the Administrative Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which the Administrative Agent deems necessary to protect, preserve or realize upon the Collateral and the Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Anything in this Section 7.1(a) to the contrary notwithstanding, the Administrative Agent agrees that, except as provided in Section 7.1(b), it will not exercise any rights under the power of attorney provided for in this Section 7.1(a) unless and until an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Administrative Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

27

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(c) The expenses of the Administrative Agent incurred in connection with actions undertaken as provided in this Section 7.1, together with interest thereon at a rate per annum equal to the rate per annum at which interest would then be payable on past due Revolving Credit Loans that are Base Rate Loans under the Credit Agreement, from the date of payment by the Administrative Agent to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to the Administrative Agent on demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

**7.2. Duty of Administrative Agent.** The Administrative Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 or 9-208 of the New York UCC or otherwise, shall be to deal with it in the same manner as the Administrative Agent deals with similar property for its own account. Neither the Administrative Agent, nor any other Secured Party nor any of their respective officers, directors, partners, employees, agents, attorneys and other advisors, attorneys-in-fact or affiliates shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Secured Parties hereunder are solely to protect the Secured Parties' interests in the Collateral and shall not impose any duty upon any Secured Party to exercise any such powers. The Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, partners, employees, agents, attorneys and other advisors, attorneys-in-fact or affiliates shall be responsible to any Grantor for any act or failure to act hereunder, except to the extent that any such act or failure to act is found by a final and nonappealable decision of a court of competent jurisdiction to have resulted solely and proximately from their own gross negligence or willful misconduct in breach of a duty owed to such Grantor.

**7.3. Execution of Financing Statements.** Each Grantor acknowledges that pursuant to Section 9-509(b) of the New York UCC and any other applicable law, each Grantor authorizes the Administrative Agent is authorized to file or record financing or continuation statements, and amendments thereto, and other filing or recording documents or instruments with respect to the Collateral in such form and in such offices as the Administrative Agent reasonably determines appropriate to perfect or maintain the perfection of the security interests of the Administrative Agent under this Agreement. Each Grantor hereby agrees that such financing statements may describe the collateral in the same manner as described in the Security Documents or as "all assets" or "all personal property" of the undersigned, whether now owned or hereafter existing or acquired by the undersigned. If and to the extent permitted by applicable law, a photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction.

**7.4. Authority of Administrative Agent.** Each Grantor acknowledges that the rights and responsibilities of the Administrative Agent under this Agreement with respect to any action taken by the Administrative Agent or the exercise or non-exercise by the Administrative Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Administrative Agent and the other

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full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

7.5. *Appointment of Co-Collateral Agents.* At any time or from time to time, in order to comply with any Requirement of Law, the Administrative Agent may appoint another bank or trust company or one of more other persons, either to act as co-agent or agents on behalf of the Secured Parties with such power and authority as may be necessary for the effectual operation of the provisions hereof and which may be specified in the instrument of appointment (which may, in the discretion of the Administrative Agent, include provisions for indemnification and similar protections of such co-agent or separate agent); provided that the Administrative Agent shall give prompt notice of such appointment to all Grantors pursuant to Section 8.2 hereof.

## SECTION 8. MISCELLANEOUS

8.1. *Amendments in Writing.* None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.1 of the Credit Agreement.

8.2. *Notices.* All notices, requests and demands to or upon the Administrative Agent or any Grantor hereunder shall be effected in the manner provided for in Section 10.2 of the Credit Agreement; *provided* that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on *Schedule 1*.

8.3. *No Waiver by Course of Conduct; Cumulative Remedies.* No Secured Party shall by any act (except by a written instrument pursuant to Section 8.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

8.4. *Enforcement Expenses; Indemnification.* (a) Each Grantor agrees to pay or reimburse each Secured Party for all its costs and expenses incurred in collecting against such Grantor under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents to which such Grantor is a party, including, without limitation, the fees and disbursements of counsel to each Secured Party and of counsel to the Administrative Agent.

(b) Each Grantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) Each Grantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Borrower would be required to do so pursuant to Section 10.5 of the Credit Agreement.

(d) The agreements in this Section 8.4 shall survive repayment of the Obligations and all other amounts payable under the Credit Agreement and the other Loan Documents.

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(e) Each Grantor agrees that the provisions of Section 2.20 of the Credit Agreement are hereby incorporated herein by reference, *mutatis mutandis*, and each Secured Party shall be entitled to rely on each of them as if they were fully set forth herein.

8.5. *Successors and Assigns.* This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Secured Parties and their successors and assigns; *provided* that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Administrative Agent.

8.6. *Set-Off.* Each Grantor hereby irrevocably authorizes each Secured Party at any time and from time to time while an Event of Default shall have occurred and be continuing, without notice to such Grantor or any other Grantor, any such notice being expressly waived by each Grantor, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Secured Party to or for the credit or the account of such Grantor, or any part thereof in such amounts as such Secured Party may elect, against and on account of the obligations and liabilities of such Grantor to such Secured Party hereunder and claims of every nature and description of such Secured Party against such Grantor, in any currency, whether arising hereunder, under the Credit Agreement, any other Loan Document or otherwise, as such Secured Party may elect, whether or not any Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. Each Secured Party shall notify such Grantor promptly of any such set-off and the application made by such Secured Party of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Secured Party under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Secured Party may have.

8.7. *Counterparts.* This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

8.8. *Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction (including by reason of the application of Nevada Gaming Laws or non-approval of the Nevada Gaming Authorities as set forth in Section 8.17) shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.9. *Section Headings.* The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

8.10. *Integration.* This Agreement and the other Loan Documents represent the agreement of the Grantors, the Administrative Agent and the other Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Secured Party relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Loan Documents.

**8.11. GOVERNING LAW. SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS AND MANDATORY PROVISIONS OF NEW YORK LAW WHICH MAY REQUIRE APPLICATION OF NEVADA OR DELAWARE LAW AS TO CERTAIN ISSUES OF PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION, AND THE PRIORITY OF SECURITY INTERESTS, THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

30

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8.12. *Submission to Jurisdiction; Waivers.* Each Grantor hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Grantor at its address referred to in Section 8.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

8.13. *Acknowledgments.* Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) no Secured Party has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Grantors, on the one hand, and the Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Grantors and the Secured Parties.

8.14. *Additional Grantors.* Each Subsidiary of Valvino that is required to become a party to this Agreement pursuant to Section 6.10(b) of the Credit Agreement shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of an Assumption Agreement in the form of Annex 1 hereto.

8.15. *Releases.* (a) At such time as the Loans, the Reimbursement Obligations and the other Obligations (other than unmatured contingent reimbursement and indemnification Obligations, and Obligations in respect of any Specified Hedge Agreement) shall have been paid in full, the Commitments have been terminated or expired and no Letters of Credit shall be outstanding, the Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Grantors. At the request and sole expense of any Grantor following any such termination, the Administrative Agent shall deliver to such Grantor any of such Grantor's Collateral held by the Administrative Agent hereunder, and execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination.

31

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(b) If any of the Collateral shall be Disposed of by any Grantor in a transaction permitted by the Credit Agreement, then the Administrative Agent, at the request and sole expense of such Grantor, shall execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral. At the request and sole expense of the Borrower, a Guarantor shall be released from its obligations hereunder in the event that all the Capital Stock of such Guarantor shall be Disposed of in a transaction permitted by the Credit Agreement; provided that the Borrower shall have delivered to the Administrative Agent, at least ten Business Days prior to the date of the proposed release, a written request for release identifying the relevant Guarantor and the terms of the Disposition in reasonable detail, including the price thereof and any expenses in connection therewith,

together with a certification by the Borrower stating that such transaction is in compliance with the Credit Agreement and the other Loan Documents and that the Proceeds of such Disposition will be applied in accordance therewith.

(c) Each Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement originally filed in connection herewith without the prior written consent of the Administrative Agent subject to such Grantor's rights under Section 9-509(d)(2) of the New York UCC.

**8.16. WAIVER OF JURY TRIAL. EACH GRANTOR AND THE ADMINISTRATIVE AGENT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.**

8.17. *Regulatory Matters.* The Administrative Agent, on behalf of the Lenders, acknowledges and agrees that:

(a) At such time as any Grantor becomes subject to the jurisdiction of the Nevada Gaming Authorities as a licensee or registered company under the Nevada Gaming Laws (or prior to such time in furtherance of any Grantor's application to become a licensee or registered company under the Nevada Gaming Laws), the pledge of any Pledged Stock or other equity securities issued by such Grantor ("*Pledged Gaming Stock*") under this Agreement will require the approval of the Nevada Gaming Authorities in order to remain effective.

(b) In the event that a Secured Party exercises a remedy set forth in this Agreement with respect to any Pledged Gaming Stock, that is a foreclosure, transfer of a possessory security interest in such Collateral, the exercise of voting and consensual rights with respect thereto afforded hereunder and/or re-registration of such Collateral, such exercise of remedies would be deemed a separate transfer of such Collateral and would require the separate and prior approval of the Nevada Gaming Authorities pursuant to applicable Nevada Gaming Laws as in effect on the date hereof and the licensing of such Secured Party or other transferee, unless such licensing requirement is waived by the Nevada Gaming Authorities.

(c) In the event that after a Secured Party exercises a remedy set forth in this Agreement with respect to Collateral consisting of gaming devices, cashless wagering systems and associated equipment (as those terms are defined in the Nevada Gaming Laws) a transfer, sale, distribution, or other disposition of such Collateral occurs (separate from any foreclosure action by a Secured Party unless such Secured Party utilizes such Collateral for gaming purposes), such transfer, sale, distribution, or other disposition of such Collateral would require the separate and prior approval of the Nevada Gaming Authorities pursuant to applicable Nevada Gaming Laws as in effect on the date hereof or the licensing of such Secured Party or other transferee.

(d) The approval by the applicable Nevada Gaming Authorities of this Agreement shall not act or be construed as the approval, either express or implied, for a Secured Party to take any actions or steps provided for in this Agreement for which prior approval of the Nevada Gaming

32

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Authorities is required, without first obtaining such prior and separate approval of the applicable Nevada Gaming Authorities to the extent then required applicable Nevada Gaming Laws.

(e) The physical location of all certificates evidencing Pledged Gaming Stock shall at all times remain within the territory of the State of Nevada at a location designated to the Nevada Gaming Authorities, and each of such certificate shall be made available for inspection by agents of the Nevada Gaming Authorities immediately upon request during normal business hours. Neither the Administrative Agent nor any agent of the Administrative Agent shall surrender possession of the Pledged Gaming Stock to any Person other than the Grantor pledging such Pledged Gaming Stock without the prior approval of the Nevada Gaming Authorities or as otherwise permitted by applicable Nevada Gaming Laws.

(f) It shall cooperate with the Nevada Gaming Authorities in connection with the administration of their regulatory jurisdiction over certain of the Grantors, including, without limitation, through the provision of such documents or other information as may be requested by the Nevada Gaming Authorities relating to the Administrative Agent, the Lenders or such Grantors.

(g) The Administrative Agent, the Lenders and their respective assignees are subject to being called forward by the Nevada Gaming Authorities, in their discretion, for licensing or a finding of suitability in order to remain entitled to the benefits of this Agreement as it relates to Pledged Gaming Stock.

33

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IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee and Collateral Agreement to be duly executed and delivered as of the date first above written.

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

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

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

VALVINO LAMORE, LLC,  
a Nevada limited liability company,

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WYNN LAS VEGAS CAPITAL CORP.,  
a Nevada corporation,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PALO, LLC,  
a Delaware limited liability company,

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

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

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

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

By:

Name:

Title:

35

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

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

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

By:

Name:

Title:

WORLD TRAVEL, LLC,  
a Nevada limited liability company,

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

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

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

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

By:

Name:

Title:

36

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

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

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

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DEUTSCHE BANK TRUST COMPANY AMERICAS,  
as Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Schedule 1*

**NOTICE ADDRESSES OF GUARANTORS**

*Schedule 2*

**DESCRIPTION OF PLEDGED INVESTMENT PROPERTY**

**Pledged Stock:**

Issuer	Issuer's Jurisdiction Under New York UCC Section 9-305(a)(2)	Class of Stock or other equity interest	Stock or Membership Interest Certificate No.	Percentage of Shares	No. of Shares
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**Pledged Notes:**

Issuer	Payee	Principal Amount
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**Pledged Debt Securities:**

Issuer	Issuer's Jurisdiction Under New York UCC Section 9-305(a)(2)	Payee	Principal Amount
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**Pledged Security Entitlements:**

Issuer of Financial Asset	Description of Financial Asset	Securities Intermediary (Name and Address)	Securities Account (Number and Location)	Securities Intermediary's Jurisdiction Under
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**Pledged Commodity Contracts:**

<b>Description of Commodity Contract</b>	<b>Commodity Intermediary (Name and Address)</b>	<b>Commodity Account (Number and Location)</b>	<b>Commodity Intermediary's Jurisdiction Under New York UCC Section 9-305(a)(4)</b>
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2-1

*Schedule 3*

**FILINGS AND OTHER ACTIONS  
REQUIRED TO PERFECT SECURITY INTERESTS**

*Uniform Commercial Code Filings*

*Copyright, Patent and Trademark Filings*

*Actions with respect to Investment Property*

*Other Actions*

3-1

*Schedule 4*

**EXACT LEGAL NAME, LOCATION OF JURISDICTION OF ORGANIZATION AND  
CHIEF EXECUTIVE OFFICE**

**Grantor**

**Location**

4-1

*Schedule 5*

**LOCATION OF INVENTORY AND EQUIPMENT**

**Grantor**

**Locations**

5-1

*Schedule 6*

**COPYRIGHTS**

**PATENTS**

**TRADEMARKS**

**TRADE SECRETS**

**INTELLECTUAL PROPERTY LICENSES**

**OTHER INTELLECTUAL PROPERTY**

6-1



CONTRACTS

7-1

VEHICLES

8-1

FORM OF ACKNOWLEDGMENT AND CONSENT

The undersigned hereby acknowledges receipt of a copy of the Guarantee and Collateral Agreement dated as of \_\_\_\_\_, 2002 (the "Agreement"), made by the Grantors parties thereto for the benefit of Deutsche Bank Trust Company Americas, as administrative agent (in such capacity the "Administrative Agent"); capitalized terms used but not defined herein have the meanings given such terms therein. The undersigned agrees for the benefit of the Administrative Agent and the Lenders as follows:

1. The undersigned will be bound by the terms of the Agreement and will comply with such terms insofar as such terms are applicable to the undersigned.
2. The undersigned confirms the statements made in the Agreement with respect to the undersigned including, without limitation, in Section 4.7 and Schedule 2.
3. The undersigned will notify the Administrative Agent promptly in writing of the occurrence of any of the events described in Section 5.8(a) of the Agreement.
4. The terms of Sections 6.4(c) and 6.8 of the Agreement shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to Section 6.4(c) or 6.8 of the Agreement.

[NAME OF ISSUER]

By: \_\_\_\_\_

Name:

Title:

Address for Notices:

\_\_\_\_\_  
\_\_\_\_\_

Fax: \_\_\_\_\_

A-1

FORM OF INTELLECTUAL PROPERTY SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT, dated as of \_\_\_\_\_, 2002 (as amended, supplemented or otherwise modified from time to time, the "Intellectual Property Security Agreement"), is made by each of the signatories hereto (collectively, the "Grantors") in favor of Deutsche Bank Trust Company Americas, as administrative agent (in such capacity, the "Administrative Agent") for the Secured Parties (as defined in the Credit Agreement referred to below).

WHEREAS, Wynn Las Vegas, LLC, a Nevada limited liability company (the "Borrower"), has entered into a Credit Agreement, dated as of \_\_\_\_\_, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "Credit Agreement"), with the banks and other financial institutions and entities from time to time party thereto, Deutsche Bank Trust Company Americas, as administrative agent and swing line lender, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, and Dresdner Bank AG, New

York Branch, as arranger and joint documentation agent. Capitalized terms used and not defined herein have the meanings given such terms in the Credit Agreement.

WHEREAS, it is a condition precedent to the obligation of the Lenders to make their respective extensions of credit to the Borrower under the Credit Agreement that the Grantors shall have executed and delivered that certain Guarantee and Collateral Agreement, dated as of \_\_\_\_\_, 2002, in favor of the Administrative Agent (as amended, supplemented, replaced or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*").

WHEREAS, under the terms of the Guarantee and Collateral Agreement, the Grantors have granted a security interest in certain Property, including, without limitation, certain Intellectual Property of the Grantors, to the Administrative Agent for the ratable benefit of the Secured Parties, and have agreed as a condition thereof to execute an Intellectual Property Security Agreement for recording with the United States Patent and Trademark Office, the United States Copyright Office, and other applicable Governmental Authorities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantors agree as follows:

SECTION 1. *Grant of Security.* Subject to compliance with applicable Nevada Gaming Laws, each Grantor hereby grants to the Administrative Agent for the ratable benefit of the Secured Parties a security interest in and to all of such Grantor's right, title and interest in and to the following (the "*Intellectual Property Collateral*"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor's Obligations:

(a) (i) all trademarks, service marks, trade names, corporate names, company names, business names, trade dress, trade styles, logos, or other indicia of origin or source identification, internet domain names, trademark and service mark registrations, and applications for trademark or service mark registrations and any new renewals thereof, including, without limitation, each registration and application identified in Schedule 1, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other

B-1

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rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, each of the above (collectively, the "*Trademarks*");

(b) (i) all patents, patent applications and patentable inventions, including, without limitation, each issued patent and patent application identified in Schedule 1, all certificates of invention or similar industrial property rights, (ii) all inventions and improvements described and claimed therein, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all reissues, divisions, continuations, continuations-in-part, substitutes, renewals, and extensions thereof, all improvements thereon and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "*Patents*");

(c) (i) all copyrights, whether or not the underlying works of authorship have been published, including but not limited to copyrights in software and databases, all Mask Works (as defined in 17 U.S.C. 901 of the U.S. Copyright Act) and all such underlying works of authorship and other intellectual property rights therein, all copyrights of works based on, incorporated in, derived from or relating to works covered by such copyrights, all right, title and interest to make and exploit all derivative works based on or adopted from works covered by such copyrights, and all copyright registrations and copyright applications, and any renewals or extensions thereof, including, without limitation, each registration and application identified in Schedule 1, (ii) the rights to print, publish and distribute any of the foregoing, (iv) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto ("*Copyrights*");

(d) (i) all trade secrets and all confidential and proprietary information, including know-how, manufacturing and production processes and techniques, inventions, research and development information, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, and customer and supplier lists and information, including, without limitation, any of the foregoing identified in Schedule 1, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "*Trade Secrets*");

(e) (i) all licenses or agreements, whether written or oral, providing for the grant by or to any Grantor of: (A) any right to use any Trademark or Trade Secret, (B) any right to manufacture, use or sell any invention covered in whole or in part by a Patent, and (C) any right under any Copyright including, without limitation, the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright including, without limitation, any of the foregoing identified in Schedule 1, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations of any of the foregoing, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith,

B-2-2

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and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto; and

(f) any and all proceeds of the foregoing.

SECTION 2. *Recordation.* Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner of Patents and Trademarks and any other applicable government officer record this Intellectual Property Security Agreement.

SECTION 3. *Execution in Counterparts.* This Agreement may be executed in any number of counterparts (including by telecopy), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 4. *Governing Law.* Subject to compliance with applicable Nevada Gaming Laws, this Intellectual Property Security Agreement shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

SECTION 5. *Conflict Provision.* This Intellectual Property Security Agreement has been entered into in conjunction with the provisions of the Guarantee and Collateral Agreement and the Credit Agreement. The rights and remedies of each party hereto with respect to the security interest granted herein are without prejudice to, and are in addition to those set forth in the Guarantee and Collateral Agreement and the Credit Agreement, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this Intellectual Property Security Agreement are in conflict with the Guarantee and Collateral Agreement or the Credit Agreement, the provisions of the Guarantee and Collateral Agreement or the Credit Agreement shall govern.

B-2-3

IN WITNESS WHEREOF, each of the undersigned has caused this Intellectual Property Security Agreement to be duly executed and delivered as of the date first above written.

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

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

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

VALVINO LAMORE, LLC,  
a Nevada limited liability company,

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WYNN LAS VEGAS CAPITAL CORP.,  
a Nevada corporation,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

B-2-4

PALO, LLC,  
a Delaware limited liability company,

By: Wynn Resorts Holdings, LLC,

a Nevada limited liability company,  
its sole member

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

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

By:

Name:

Title:

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

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

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

By:

Name:

Title:

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

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

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

By:

Name:

Title:

B-2-5

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

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

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

By:

Name:

Title:

WORLD TRAVEL, LLC,  
a Nevada limited liability company,

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

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

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

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

B-2-6

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

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

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

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

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

B-2-7

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*Schedule 1*

**COPYRIGHTS**

**PATENTS**

**TRADEMARKS**

**TRADE SECRETS**

**INTELLECTUAL PROPERTY LICENSES**

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FORM OF AFTER-ACQUIRED INTELLECTUAL PROPERTY SECURITY AGREEMENT

(FIRST SUPPLEMENTAL FILING)

This INTELLECTUAL PROPERTY SECURITY AGREEMENT (FIRST SUPPLEMENTAL FILING), dated as of \_\_\_\_\_, 200 (as amended, supplemented or otherwise modified from time to time, the "*First Supplemental Intellectual Property Security Agreement*"), is made by each of the signatories hereto (collectively, the "*Grantors*") in favor of Deutsche Bank Trust Company Americas, as administrative agent (in such capacity, the "*Administrative Agent*") for the Secured Parties (as defined in the Credit Agreement referred to below).

WHEREAS, Wynn Las Vegas, LLC, a Nevada limited liability company (the "*Borrower*"), has entered into a Credit Agreement, dated as of \_\_\_\_\_, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Credit Agreement*"), with the banks and other financial institutions and entities from time to time party thereto, Deutsche Bank Trust Company Americas, as administrative agent and swing line lender, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, and Dresdner Bank AG, New York Branch, as arranger and joint documentation agent. Capitalized terms used and not defined herein have the meanings given such terms in the Credit Agreement.

WHEREAS, it is a condition precedent to the obligation of the Lenders to make their respective extensions of credit to the Borrower under the Credit Agreement that the Grantors shall have executed and delivered that certain Guarantee and Collateral Agreement, dated as of \_\_\_\_\_, 2002, in favor of the Administrative Agent (as amended, supplemented, replaced or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*").

WHEREAS, under the terms of the Guarantee and Collateral Agreement, the Grantors have granted a security interest in certain Property, including, without limitation, certain Intellectual Property, including but not limited to After-Acquired Intellectual Property of the Grantors, to the Administrative Agent for the ratable benefit of the Secured Parties, and have agreed as a condition thereof to execute an After-Acquired Intellectual Property Security Agreement for recording with the United States Patent and Trademark Office, the United States Copyright Office, and other applicable Governmental Authorities.

WHEREAS, the Intellectual Property Security Agreement was recorded against certain United States Intellectual Property at [INSERT REEL/FRAME NUMBER] [IF SECOND OR LATER SUPPLEMENTAL, ADD PRIOR REEL/FRAME NUMBERS].

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantors agree as follows:

SECTION 6. *Grant of Security.* Subject to compliance with applicable Nevada Gaming Laws, each Grantor hereby grants to the Administrative Agent for the ratable benefit of the Secured Parties a security interest in and to all of such Grantor's right, title and interest in and to the following (the "*Intellectual Property Collateral*"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of such Grantor's Obligations:

(a) (i) all trademarks, service marks, trade names, corporate names, company names, business names, trade dress, trade styles, logos, or other indicia of origin or source identification, internet

B-2-1

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domain names, trademark and service mark registrations, and applications for trademark or service mark registrations and any new renewals thereof, including, without limitation, each registration and application identified in Schedule 1, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, each of the above (collectively, the "*Trademarks*");

(b) (i) all patents, patent applications and patentable inventions, including, without limitation, each issued patent and patent application identified in Schedule 1, all certificates of invention or similar industrial property rights, (ii) all inventions and improvements described and claimed therein, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all reissues, divisions, continuations, continuations-in-part, substitutes, renewals, and extensions thereof, all improvements thereon and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "*Patents*");

(c) (i) all copyrights, whether or not the underlying works of authorship have been published, including, but not limited to, copyrights in software and databases, all Mask Works (as defined in 17 U.S.C. 901 of the U.S. Copyright Act) and all such underlying works of authorship and other intellectual property rights therein, all copyrights of works based on, incorporated in, derived from or relating to works covered by such copyrights, all right, title and interest to make and exploit all derivative works based on or adopted from works covered by such copyrights, and all copyright registrations and copyright applications, and any renewals or extensions thereof, including, without limitation, each registration and application identified in Schedule 1, (ii) the rights to print, publish and distribute any of the foregoing, (iii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iv) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (v) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto ("*Copyrights*");

(d) (i) all trade secrets and all confidential and proprietary information, including know-how, manufacturing and production processes and techniques, inventions, research and development information, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, and customer and supplier lists and information, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto (collectively, the "*Trade Secrets*");

(e) (i) all licenses or agreements, whether written or oral, providing for the grant by or to any Grantor of: (A) any right to use any Trademark or Trade Secret, (B) any right under any Patent, and (C) any right under any Copyright, (ii) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations of any of the foregoing,

B-2-2

(iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof), and (iv) all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto; and

(f) any and all proceeds of the foregoing.

SECTION 7. *Recordation.* Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner of Patents and Trademarks and any other applicable government officer record this First Supplemental Intellectual Property Security Agreement.

SECTION 8. *Execution in Counterparts.* This Agreement may be executed in any number of counterparts (including by telecopy), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 9. *Governing Law.* Subject to compliance with applicable Nevada Gaming Laws, this First Supplemental Intellectual Property Security Agreement shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

SECTION 10. *Conflict Provision.* This First Supplemental Intellectual Property Security Agreement has been entered into in conjunction with the provisions of the Guarantee and Collateral Agreement and the Credit Agreement. The rights and remedies of each party hereto with respect to the security interest granted herein are without prejudice to, and are in addition to those set forth in the Guarantee and Collateral Agreement and the Credit Agreement, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this First Supplemental Intellectual Property Security Agreement are in conflict with the Guarantee and Collateral Agreement or the Credit Agreement, the provisions of the Guarantee and Collateral Agreement or the Credit Agreement shall govern.

IN WITNESS WHEREOF, each of the undersigned has caused this Intellectual Property Security Agreement to be duly executed and delivered as of the date first above written.

[NAME OF GRANTOR]

By:

\_\_\_\_\_

Name:

Title:

B-2-3

*Schedule 1*

**COPYRIGHTS**

**PATENTS**

**TRADEMARKS**

**TRADE SECRETS**

**INTELLECTUAL PROPERTY LICENSES**

Exhibit C to  
Guarantee and Collateral Agreement

**FORM OF CONTROL AGREEMENT**

This CONTROL AGREEMENT (as amended, supplemented or otherwise modified from time to time, the "Control Agreement") dated as of \_\_\_\_\_, 200\_\_\_\_, is made by and among \_\_\_\_\_, a \_\_\_\_\_ (the "Grantor"), Deutsche Bank Trust Company Americas, as administrative agent (in such capacity, the "Administrative Agent") for the Secured Parties (as defined in the Guarantee and Collateral Agreement referred to below), and \_\_\_\_\_, a \_\_\_\_\_ (the "Issuer").

WHEREAS, the Grantor has granted to the Administrative Agent for the benefit of the Secured Parties a security interest in the uncertificated securities of the Issuer owned by the Grantor from time to time (collectively, the "Pledged Securities"), and all additions thereto and substitutions and proceeds thereof (collectively, with the Pledged Securities, the "Collateral") pursuant to a Guarantee and Collateral Agreement, dated as of \_\_\_\_\_, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "Guarantee and Collateral Agreement"), among the Grantor and the other persons party thereto as grantors in favor of the Administrative Agent.

WHEREAS, the following terms which are defined in Articles 8 and 9 of the Uniform Commercial Code in effect in the State of New York on the date hereof (the "UCC") are used herein as so defined: Adverse Claim, Control, Instruction, Proceeds and Uncertificated Security. Capitalized terms used and not defined herein have the meanings given such terms in that certain Credit Agreement dated as of \_\_\_\_\_, 2002 among Wynn Las Vegas, LLC, a Nevada limited liability company, the Administrative Agent and the banks and other financial institutions and entities from time to time party thereto.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 11. *Notice of Security Interest.* The Grantor, the Administrative Agent and the Issuer are entering into this Control Agreement to perfect, and to confirm the priority of, the Administrative Agent's security interest in the Collateral. The Issuer acknowledges that this Control Agreement constitutes written notification to the Issuer of the Administrative Agent's security interest in the Collateral. The Issuer agrees to promptly make all necessary entries or notations in its books and records to reflect the Administrative Agent's security interest in the Collateral and, upon request by the Administrative Agent, to register the Administrative Agent as the registered owner of any or all of the Pledged Securities. The Issuer acknowledges that the Administrative Agent has control over the Collateral.

SECTION 12. *Collateral.* The Issuer hereby represents and warrants to, and agrees with the Grantor and the Administrative Agent that (i) the terms of any limited liability company interests or partnership interests included in the Collateral from time to time shall expressly provide that they are securities governed by Article 8 of the Uniform Commercial Code in effect from time to time in the State of Nevada and any other applicable jurisdiction, (ii) the Pledged Securities are uncertificated securities, (iii) the issuer's jurisdiction is, and during the term of this Control Agreement shall remain, the State of \_\_\_\_\_, (iv) *Schedule 1* contains a true and complete description of the Pledged Securities as of the date hereof and (v) except for the claims and interests of the Administrative Agent and the Grantor in the Collateral, the Issuer does not know of any claim to or security interest or other interest in the Collateral.

SECTION 13. *Control.* The Issuer hereby agrees, upon written direction from the Administrative Agent and without further consent from the Grantor, (a) to comply with all instructions and directions of any kind originated by the Administrative Agent concerning the Collateral, to liquidate or otherwise dispose of the Collateral as and to the extent directed by the Administrative Agent and to pay over to

C-1

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the Administrative Agent all proceeds without any setoff or deduction, and (b) except as otherwise directed by the Administrative Agent, not to comply with the instructions or directions of any kind originated by the Grantor or any other person at any time after the Issuer has received notice from the Administrative Agent that an Event of Default exists and is continuing (and thereafter not until such time as the Administrative Agent sends written notice to the Issuer that such Event of Default has been cured or waived).

SECTION 14. *Other Agreements.* The Issuer shall notify promptly the Administrative Agent and the Grantor if any other person asserts any lien, encumbrance, claim (including any adverse claim) or security interest in or against any of the Collateral. In the event of any conflict between the provisions of this Control Agreement and any other agreement governing the Pledged Securities or the Collateral, the provisions of this Control Agreement shall control.

SECTION 15. *Protection of Issuer.* The Issuer may rely and shall be protected in acting upon any notice, instruction or other communication that it reasonably believes to be genuine and authorized.

SECTION 16. *Termination.* This Control Agreement shall terminate automatically upon receipt by the Issuer of written notice executed by the Administrative Agent that (i) all of the Obligations (excluding unmatured contingent reimbursement and indemnification obligations, and obligations that arise under any Specified Hedge Agreement) secured by the Collateral have been paid in full in immediately available funds, or (ii) all of the Collateral has been released, whichever is sooner, and the Issuer shall thereafter be relieved of all duties and obligations hereunder.

SECTION 17. *Notices.* All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three days after being deposited in the mail and sent by first-class mail, postage prepaid, or, in the case of telecopy notice, when received, to the Grantor's and the Administrative Agent's addresses as set forth in the Guarantee and Collateral Agreement, and to the Issuer's address as set forth below, or to such other address as any party may give to the others in writing for such purpose:

[Name of Issuer]  
[Address of Issuer]  
Attention: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_-\_\_\_\_  
Telecopy: (\_\_\_\_) \_\_\_\_-\_\_\_\_

SECTION 18. *Amendments in Writing.* None of the terms or provisions of this Control Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the parties hereto.

SECTION 19. *Entire Agreement.* This Control Agreement and the Guarantee and Collateral Agreement constitute the entire agreement and supersede all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

SECTION 20. *Execution in Counterparts.* This Control Agreement may be executed in any number of counterparts (including by telecopy), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 21. *Successors and Assigns.* This Control Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Grantor may not assign, transfer or delegate any of its rights or obligations under this Control Agreement without the prior written consent of the Administrative Agent.

C-2



SECTION 22. *Governing Law and Jurisdiction.* This Control Agreement has been delivered to and accepted by the Administrative Agent and will be deemed to be made in the State of New York. **SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS CONTROL AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.** Each of the parties hereto submits for itself and its property in any legal action or proceeding relating to this Control Agreement, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof.

**SECTION 23. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS CONTROL AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.**

IN WITNESS WHEREOF, each of the undersigned has caused this Control Agreement to be duly executed and delivered as of the date first above written.

[NAME OF GRANTOR]

By: \_\_\_\_\_

Name:  
Title:

DEUTSCHE BANK TRUST COMPANY  
AMERICAS, as Administrative Agent

By: \_\_\_\_\_

Name:  
Title:

[NAME OF ISSUER]

By: \_\_\_\_\_

Name:  
Title:

C-3

**Exhibit D to  
Guarantee and Collateral Agreement**

### FORM OF CONTROL AGREEMENT

This CONTROL AGREEMENT (as amended, supplemented or otherwise modified from time to time, the "*Control Agreement*") dated as of \_\_\_\_\_, 200 , among \_\_\_\_\_ (the "Grantor"), Deutsche Bank Trust Company Americas, as administrative agent (the "*Secured Party*") for the secured parties under the Guarantee and Collateral Agreement (as defined below) and \_\_\_\_\_ in its capacity as a "securities intermediary" (as defined in Section 8-102 of the UCC and a "bank" as defined in Section 9-102 of the UCC (in such capacities, the "*Financial Institution*"). Capitalized terms used but not defined herein shall have the meaning assigned in the Credit Agreement dated as of \_\_\_\_\_, 2002 among Wynn Las Vegas, LLC, a Nevada limited liability company, the Administrative Agent and the banks and other financial institutions and entities from time to time party thereto. All references herein to the "UCC" shall mean the Uniform Commercial Code as from time to time in effect in the State of New York.

WHEREAS, the Grantor has granted to the Secured Party a security interest in the Pledged Accounts (as hereinafter defined) pursuant to the Guarantee and Collateral Agreement, dated as of \_\_\_\_\_, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*"), among the Grantor and the other persons party thereto as grantors in favor of the Administrative Agent;

WHEREAS, the parties hereto are entering into this agreement to perfect and ensure the priority of such security interest;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### SECTION 1. *Establishment and Maintenance of Collateral Accounts.*

(a) The Financial Institution hereby represents and warrants that it has established and currently maintains the accounts listed on Schedule 1 hereto and that the Secured Party is its sole customer or entitlement holder with respect to each such account. Each such account and any successor account and all other accounts which the Grantor now or hereafter maintains with the Financial Institution, being referred to herein individually as a "Pledged Account" and collectively as the "Pledged Accounts." The Financial Institution covenants and agrees that it shall not change the name or account number of any Pledged Account without the prior written consent of the Secured Party.

(b) [Each of the parties hereto acknowledges and agrees that the accounts listed on Part A of Schedule 1 hereto are intended to be deposit accounts (as defined in Section 9-102(a)(29) of the UCC) and the accounts listed on Part B of Schedule 1 hereto are intended to be securities accounts (as defined in Section 8-501 of the UCC).] **or** [Each of the parties hereto acknowledges and agrees that all of the Pledged Accounts are intended to be [deposit accounts/securities accounts] (as defined in the UCC)] Notwithstanding such intention, as used herein "Deposit Account" shall mean any Pledged Account (or any part thereof) which is determined to be a "deposit account" (within the meaning of Section 9-102(a)(29) of the UCC) and "Securities Account" shall mean any Pledged Account (or any part thereof) which is determined to be a "securities account" (within the meaning of Section 8-501 of the UCC).

(c) The Financial Institution covenants and agrees that: (i) all securities or other property underlying any financial assets credited to any Securities Account shall be registered in the name of the Financial Institution, indorsed to the Financial Institution or indorsed in blank or credited to another securities account maintained in the name of the Financial Institution and in no case will any financial asset credited to any Securities Account be registered in the name of the Grantor, payable to the order of the Grantor or specially indorsed to the Grantor except to the extent the foregoing have been specially indorsed to the Financial Institution or in blank; and (ii) all property delivered to the

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Financial Institution pursuant to the Guarantee and Collateral Agreement will be promptly credited to one of the Pledged Accounts.

**SECTION 2. "Financial Assets" Election.** The Financial Institution hereby agrees that each item of property (including, without limitation, all Permitted Investments and any investment property, financial asset, security, instrument or cash) credited to any Pledged Account that is a Securities Account shall be treated as a "financial asset" within the meaning of Section 8-102(a)(9) of the UCC.

**SECTION 3. Secured Party's Control of the Pledged Accounts.** If at any time the Financial Institution shall receive from the Secured Party an entitlement order (i.e. an order directing transfer or redemption of any financial asset relating to a Pledged Account) or any instruction (within the meaning of Section 9-104 of the UCC) originated by the Secured Party (i.e., an instruction directing the disposition of funds in a Pledged Account), the Financial Institution shall comply with such entitlement order or instruction without further consent by the Grantor or any other person. If the Grantor is otherwise entitled to give any entitlement orders or instructions with respect to the Pledged Account in accordance with Section 3 hereof and such entitlement orders or instructions conflict with instructions of the Secured Party, the Financial Institution shall comply with the entitlement orders and instructions issued by the Secured Party.

**SECTION 4. Grantor's Access to the Account.** If at any time the Secured Party delivers to the Financial Institution a Notice of Sole Control in substantially the form set forth in Exhibit A hereto, the Financial Institution agrees that after receipt of such notice, it will take all directions with respect to the Pledged Accounts solely from the Secured Party and shall not comply with instructions or entitlement orders of the Grantor or any other person.

**SECTION 5. Subordination of Lien; Waiver of Set-Off.** In the event that the Financial Institution has or subsequently obtains by agreement, by operation of law or otherwise a security interest in any Pledged Account or any financial assets, cash or other property credited thereto, the Financial Institution hereby agrees that such security interest shall be subordinate to the security interest of the Secured Party. The financial assets, money and other items credited to any Pledged Account will not be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Secured Party [(except that the Financial Institution may set off (i) all amounts due to the Financial Institution in respect of customary fees and expenses for the routine maintenance and operation of the respective Pledged Account and (ii) the face amount of any checks which have been credited to such Pledged Account but are subsequently returned unpaid because of uncollected or insufficient funds).]

**SECTION 6. Choice of Law.** This Control Agreement shall be governed by the laws of the State of New York. **SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS CONTROL AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.** Regardless of any provision in any other agreement, for purposes of the UCC, with respect to each Pledged Account New York shall be deemed to be the bank's jurisdiction (within the meaning of Section 9-304 of the UCC) and the securities intermediary's jurisdiction (within the meaning of Section 8-110 of the UCC). The Pledged Accounts shall be governed by the laws of the State of New York.

**SECTION 7. Conflict with Other Agreements.** The Financial Institution hereby represents, warrants, covenants and agrees that:

(a) There are no other agreements entered into between the Financial Institution and the Grantor with respect to any Pledged Account [except for [identify other agreements]] (the "Account Agreements").

(b) It has not entered into, and until the termination of the this agreement will not enter into, any agreement with any other person relating the Pledged Accounts and/or any financial assets credited thereto pursuant to which it has agreed to comply with entitlement orders (as defined in

D-2

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Section 8-102(a)(8) of the UCC) or instructions (within the meaning of Section 9-104 of the UCC) of such other person.

(c) It has not entered into, and until the termination of this agreement will not enter into, any agreement with the Grantor purporting to limit or condition the obligation of the Financial Institution to comply with entitlement orders or instructions.

(d) In the event of any conflict between this Control Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into, the terms of this Control Agreement shall prevail.

**SECTION 8. Adverse Claims.** The Financial Institution represents and warrants that, except for the claims and interest of the Secured Party and of the Grantor in the Pledged Accounts, it does not know of any lien on or claim to, or interest in, any Pledged Account or in any "financial asset" (as defined in Section 8-102(a) of the UCC) credited thereto. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Pledged Accounts or in any financial asset carried therein, the Financial Institution will promptly notify the Secured Party and the Grantor thereof.

**SECTION 9. Additional Provisions Regarding Maintenance of Accounts.** The Financial Institution covenants and agrees:

(a) **Statements and Confirmations.** The Financial Institution will promptly send copies of all statements, confirmations and other correspondence concerning (i) any Securities Account and/or any financial assets credited thereto and (ii) any Deposit Account, simultaneously to each of the Grantor and the Secured Party at the address for each set forth in Section 13 of this Agreement.

(b) **Tax Reporting.** All items of income, gain, expense and loss recognized in any Securities Account and all interest, if any, relating to any Deposit Account, shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of the Grantor.

(c) *Voting Rights.* At any time during which the Grantor is entitled to give entitlement orders pursuant to Section 4 hereof, the Grantor shall direct the Financial Institution with respect to the voting of any financial assets credited to the Pledged Accounts.

(d) *Permitted Investments.* At any time during which the Grantor is entitled to give entitlement orders pursuant to Section 4 hereof, the Grantor shall direct the Financial Institution with respect to the selection of investments to be made for any Pledged Account that is a securities account; provided, however, that the Financial Institution shall not honor any instruction to purchase any investments other than investments of a type described on Exhibit A hereto.

SECTION 10. *Additional Representation and Warranty of the Financial Institution.* The Financial Institution represents and warrants that this Control Agreement is the legal, valid, binding and enforceable obligation of the Financial Institution.

SECTION 11. *Indemnification of Financial Institution.* The Grantor and the Secured Party hereby agree that (a) the Financial Institution is released from any and all liabilities to the Grantor and the Secured Party arising from the terms of this Control Agreement and the compliance of the Financial Institution with the terms hereof, except to the extent that such liabilities arise from the Financial Institution's gross negligence or willful misconduct and (b) the Grantor, its successors and assigns shall at all times indemnify and save harmless the Financial Institution from and against any and all claims, actions and suits of others arising out of the terms of this Control Agreement or the compliance of the Financial Institution with the terms hereof, except to the extent that such arises from the Financial Institution's negligence, and from and against any and all liabilities, losses, damages,

D-3

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costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Control Agreement.

SECTION 12. *Successors; Assignment.* The terms of this Control Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors and assigns, except that the neither the Grantor nor the Financial Institution may delegate their obligations hereunder without the prior written consent of the Secured Party. [Additionally, in the event that the Secured Party is replaced as Administrative Agent under the Guarantee and Collateral Agreement] any entity that succeeds to such role shall be entitled to the benefits of this Control Agreement. The Secured Party agrees to send written notice to the Financial Institution of any such replacement.]

SECTION 13. *Notices.* All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice, when received, to the address as set forth below, or to such other address as any party may give to the others in writing for such purpose:

[Name of Bank]  
[Address of Bank]  
Attention:  
Telephone: ( )  
Telecopy: ( )

Deutsche Bank Trust Company Americas  
31 West 52<sup>nd</sup> Street  
New York, New York 10019  
Attention:  
Telephone: ( )  
Telecopy: ( )

[Name of Grantor]  
[Address]  
Attention:  
Telephone: ( )  
Telecopy: ( )

SECTION 14. *Amendment.* No amendment or modification of this Control Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

SECTION 15. *Termination.* The obligations of the Financial Institution to the Secured Party pursuant to this Control Agreement shall continue in effect until the security interests of the Secured Party in each of the Pledged Accounts have been terminated pursuant to the terms of the Guarantee and Collateral Agreement and the Secured Party has notified the Financial Institution of such termination in writing. The Secured Party agrees to provide Notice of Termination in substantially the form of Exhibit B hereto to the Financial Institution upon the request of the Grantor on or after the termination of the Secured Party's security interest in the Pledged Accounts pursuant to the terms of the Guarantee and Collateral Agreement. The termination of this Control Agreement shall not terminate the Pledged Accounts or alter the obligations of the Financial Institution to the Grantor pursuant to any other agreement with respect to the Pledged Accounts.

D-4

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SECTION 16. *Counterparts.* This Control Agreement may be executed in any number of counterparts (including by telecopy), all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

[NAME OF GRANTOR]

DEUTSCHE BANK TRUST COMPANY AMERICAS, as Administrative Agent

By: \_\_\_\_\_

Name:

Title:

NAME OF INSTITUTION SERVING AS FINANCIAL INSTITUTION

By: \_\_\_\_\_

Name:

Title:

D-5

**SCHEDULE 1**

Part A List of Existing Deposit Accounts Subject to this Control Agreement

Exact Name of Account

Account Number

Part B List of Existing Securities Accounts Subject to this Control Agreement

Exact Name of Account

Account Number

D-6

**Exhibit A**

**Permitted Investments**

D-7

**Exhibit B**

**DEUTSCHE BANK TRUST COMPANY AMERICAS**

**31 West 52<sup>nd</sup> Street  
New York, New York 10019**

[Date]

[Name and Address of Financial Institution]

Attention:

Re: *Termination of Control Agreement*

You are hereby notified that the Control Agreement between you, the Grantor and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such Control Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to account number(s) \_\_\_\_\_ from the Grantor. This notice terminates any obligations you may have to the undersigned with respect to such account, however nothing contained in this notice shall alter any obligations which you may otherwise owe to the Grantor pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to [insert name of Grantor].

Very truly yours,

DEUTSCHE BANK TRUST COMPANY AMERICAS, as Administrative Agent

By: \_\_\_\_\_

Name:

Title:

D-8

**Exhibit E to  
Guarantee and Collateral Agreement**

**FORM OF CONTROL AGREEMENT**

This CONTROL AGREEMENT (as amended, supplemented or otherwise modified from time to time, the "*Control Agreement*") dated as of \_\_\_\_\_, 2002, is made by and among \_\_\_\_\_, a \_\_\_\_\_ (the "*Grantor*"), Deutsche Bank Trust Company Americas, as administrative agent (in such capacity, the "*Administrative Agent*") for the Secured Parties (as defined in the Guarantee and Collateral Agreement referred to below), and \_\_\_\_\_, a \_\_\_\_\_ (the "*Broker*").

WHEREAS, the Broker maintains for the Grantor a commodity account, Account No. \_\_\_\_\_ (the "*Pledged Account*"), in the name of the Grantor.

WHEREAS, the Grantor has granted to the Administrative Agent for the benefit of the Secured Parties a security interest in the Pledged Account, the commodity contracts and any free credit balance carried therein, and all additions thereto and substitutions and proceeds thereof (collectively, the "*Collateral*") pursuant to a Guarantee and Collateral Agreement, dated as of \_\_\_\_\_, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*"), among the Grantor and the other persons party thereto as grantors in favor of the Administrative Agent.

WHEREAS, the following terms which are defined in Articles 8 and 9 of the Uniform Commercial Code in effect in the State of New York on the date hereof (the "*UCC*") are used herein as so defined: Commodity Account, Commodity Contract, Commodity Intermediary's Jurisdiction, Control and Proceeds. Capitalized terms used and not defined herein have the meanings given such terms in that certain Credit Agreement dated as of \_\_\_\_\_, 2002 among Wynn Las Vegas, LLC, a Nevada limited liability company, the Administrative Agent and the banks and other financial institutions and entities from time to time party thereto.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**SECTION 1. *Notice of Security Interest.*** The Grantor, the Administrative Agent and the Broker are entering into this Control Agreement to perfect, and to confirm the priority of, the Administrative Agent's security interest in the Collateral. The Broker acknowledges that this Control Agreement constitutes written notification to the Broker of the Administrative Agent's security interest in the Collateral. The Broker agrees to promptly make all necessary entries or notations in its books and records to reflect the Administrative Agent's security interest in the Collateral. The Broker acknowledges that the Administrative Agent has control over the Pledged Account and all commodity contracts and any free credit balance carried therein from time to time.

**SECTION 2. *Collateral; Pledged Account.*** (a) The Grantor hereby represents and warrants to, and agrees with the Administrative Agent and the Broker that, all commodity contracts carried by the Broker on its books for the Grantor are and shall be credited to the Pledged Account.

(b) The Broker hereby represents and warrants to, and agrees with the Grantor and the Administrative Agent that (i) the Broker is a commodity intermediary with respect to the Grantor and the Pledged Account is a commodity account, (ii) the commodity intermediary's jurisdiction (within the meaning of Section 9305(b) of the UCC) is, and during the term of this Control Agreement shall for all purposes of this Control Agreement remain, the State of New York, (iii) *Schedule 1* contains a true and complete statement of the Pledged Account and the commodity contracts and any free credit balance carried therein as of the date hereof, and (iv) the Pledged Account is and shall remain a cash account, and the Broker will not extend, directly or indirectly, any "purpose credit" (within the

E-1

meaning of such term under Regulation T of the Board of Governors of the Federal Reserve System of the United States) to the Grantor in respect of the Pledged Account.

(c) The Administrative Agent hereby instructs the Broker, and the Broker hereby confirms and agrees that, unless the Administrative Agent shall otherwise direct the Broker in writing, all commodity contracts carried by the Broker on its books for the Grantor shall be credited only to, and carried only in, the Pledged Account.

**SECTION 3. *Control.*** The Broker hereby agrees, upon written direction from the Administrative Agent and without further consent from the Grantor, (a) to apply any value distributed on account of the commodity contracts carried in the Pledged Account as directed by the Administrative Agent, to liquidate or otherwise dispose of the Collateral as and to the extent directed by the Administrative Agent and to pay over to the Administrative Agent all proceeds and other value therefrom or otherwise distributed with respect thereto without any setoff or deduction, and (b) except as otherwise directed by the Administrative Agent, not to apply any value distributed on account of any commodity contract carried in the Pledged Account as directed by the Grantor or any other person at any time after the Broker has received notice from the Administrative Agent that an Event of Default exists and is continuing (and thereafter not until such time as the Administrative Agent sends written notice to the Broker that such Event of Default has been cured or waived).

**SECTION 4. *Other Agreements; Termination; Successor Brokers.*** The Broker shall simultaneously send to the Administrative Agent copies of all notices given and statements rendered pursuant to the Pledged Account. The Broker shall notify promptly the Administrative Agent and the Grantor if any other person asserts any lien, encumbrance, claim or security interest in or against any of the Collateral. As long as the Guarantee and Collateral Agreement remains in effect,

neither the Grantor nor the Broker shall terminate the Pledged Account without thirty (30) days' prior written notice to the other party and the Administrative Agent. In the event of any conflict between the provisions of this Control Agreement and any other agreement governing the Pledged Account or the Collateral, the provisions of this Control Agreement shall control. In the event the Broker no longer serves as Broker for the Collateral, the Pledged Account, the commodity contracts and any free credit balance carried therein shall be transferred to a successor broker, custodian or futures commission merchant satisfactory to the Administrative Agent, provided, that prior to such transfer, such successor broker, custodian or futures commission merchant shall execute an agreement that is substantially in the form of this Control Agreement or is otherwise in form and substance satisfactory to the Administrative Agent.

SECTION 5. *Protection of Broker.* The Broker may rely and shall be protected in acting upon any notice, instruction or other communication that it reasonably believes to be genuine and authorized.

SECTION 6. *Termination.* This Control Agreement shall terminate automatically upon receipt by the Broker of written notice executed by the Administrative Agent that (i) all of the Obligations (excluding unmatured contingent reimbursement and indemnification obligations, and obligations that arise under any Specified Hedge Agreement) secured by the Collateral have been paid in full in immediately available funds, or (ii) all of the Collateral has been released, whichever is sooner, and the Broker shall thereafter be relieved of all duties and obligations hereunder.

SECTION 7. *Waiver; Priority of Administrative Agent's Interests.* Other than with respect to its fees and customary commissions with respect to the Pledged Account, the Broker hereby waives its right to set off any obligations of the Grantor to the Broker against any or all of the Collateral, and hereby agrees that any and all liens, encumbrances, claims or security interests which the Broker may have against the Collateral, either now or in the future in connection with the Pledged Account are and shall be subordinate and junior to the prior payment in full in immediately available funds of all obligations of the Grantor now or hereafter existing under the Credit Agreement, the Guarantee and

E-2

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Collateral Agreement, and all other documents related thereto, whether for principal, interest (including, without limitation, interest as provided in the Credit Agreement, whether or not such interest accrues after the filing of such petition for purposes of the federal Bankruptcy Code or is an allowed claim in such proceeding), indemnities, fees, premiums, expenses or otherwise. Except for the foregoing and claims and interests of the Administrative Agent and the Grantor in the Collateral, the Broker does not know of any claim to or security interest or other interest in the Collateral.

SECTION 8. *Notices.* All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three days after being deposited in the mail and sent by first-class mail, postage prepaid, or, in the case of telecopy notice, when received, to the Grantor's and the Administrative Agent's addresses as set forth in the Guarantee and Collateral Agreement, and to the Broker's address as set forth below, or to such other address as any party may give to the others in writing for such purpose:

[Name of Broker]  
[Address of Broker]  
Attention:  
Telephone: ( ) -  
Telecopy: ( ) -

SECTION 9. *Amendments in Writing.* None of the terms or provisions of this Control Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the parties hereto.

SECTION 10. *Entire Agreement.* This Control Agreement and the Guarantee and Collateral Agreement constitute the entire agreement and supersede all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

SECTION 11. *Execution in Counterparts.* This Control Agreement may be executed in any number of counterparts (including by telecopy), each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 12. *Successors and Assigns.* This Control Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Grantor may not assign, transfer or delegate any of its rights or obligations under this Control Agreement without the prior written consent of the Administrative Agent.

SECTION 13. *Governing Law and Jurisdiction.* This Control Agreement has been delivered to and accepted by the Administrative Agent and will be deemed to be made in the State of New York. **SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS CONTROL AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.** Each of the parties hereto submits for itself and its property in any legal action or proceeding relating to this Control Agreement, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof.

SECTION 14. **WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS CONTROL AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.**

E-3

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IN WITNESS WHEREOF, each of the undersigned has caused this Control Agreement to be duly executed and delivered as of the date first above written.

[NAME OF GRANTOR]

By: \_\_\_\_\_

Name:  
Title:

DEUTSCHE BANK TRUST COMPANY AMERICAS, as Administrative Agent

By:

\_\_\_\_\_  
Name:  
Title:

[NAME OF BROKER]

By:

\_\_\_\_\_  
Name:  
Title:

E-4

**Annex 1 to  
Guarantee and Collateral Agreement**

ASSUMPTION AGREEMENT, dated as of \_\_\_\_\_, 200\_\_\_\_, made by \_\_\_\_\_, a \_\_\_\_\_ (the "Additional Grantor"), in favor of Deutsche Bank Trust Company Americas, as administrative agent (in such capacity, the "Administrative Agent") for (i) the banks and other financial institutions and entities (the "Lenders") parties to the Credit Agreement referred to below, and (ii) the other Secured Parties (as defined in the Guarantee and Collateral Agreement (as hereinafter defined)). All capitalized terms not defined herein shall have the meaning ascribed to them in such Credit Agreement.

**RECITALS:**

WHEREAS, Wynn Las Vegas, LLC (the "Borrower"), the Lenders, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Banc of America Securities LLC, as lead arranger, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York Branch, as arranger and joint documentation agent, and the Administrative Agent have entered into a Credit Agreement, dated as of \_\_\_\_\_, 2002 (as amended, supplemented, replaced or otherwise modified from time to time, the "Credit Agreement");

WHEREAS, in connection with the Credit Agreement, the Borrower and certain of its Affiliates (other than the Additional Grantor) have entered into the Guarantee and Collateral Agreement, dated as of \_\_\_\_\_, 2002 (as amended, supplemented or otherwise modified from time to time, the "Guarantee and Collateral Agreement") in favor of the Administrative Agent for the benefit of the Secured Parties;

WHEREAS, the Credit Agreement requires the Additional Grantor to become a party to the Guarantee and Collateral Agreement; and

WHEREAS, the Additional Grantor has agreed to execute and deliver this Assumption Agreement in order to become a party to the Guarantee and Collateral Agreement;

NOW, THEREFORE, IT IS AGREED:

1. *Guarantee and Collateral Agreement.* By executing and delivering this Assumption Agreement, the Additional Grantor, as provided in Section 8.14 of the Guarantee and Collateral Agreement, hereby becomes a party to the Guarantee and Collateral Agreement as a Grantor thereunder with the same force and effect as if originally named therein as a Grantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Grantor thereunder. The information set forth in Annex 1-A hereto is hereby added to the information set forth in Schedules \_\_\_\_\_ to the Guarantee and Collateral Agreement. The Additional Grantor hereby represents and warrants that each of the representations and warranties contained in Section 4 of the Guarantee and Collateral Agreement is true and correct on and as the date hereof (after giving effect to this Assumption Agreement) as if made by such Additional Grantor on and as of such date.

**2. GOVERNING LAW. SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GRANTOR]

By:

\_\_\_\_\_  
Name:  
Title:

[TABLE OF CONTENTS](#)

[GUARANTEE AND COLLATERAL AGREEMENT](#)

[RECITALS](#)

[SECTION 1. DEFINED TERMS](#)

[SECTION 2. GUARANTEE](#)

[SECTION 3. GRANT OF SECURITY INTEREST](#)

[SECTION 4. REPRESENTATIONS AND WARRANTIES](#)

[SECTION 5. COVENANTS](#)

[NOTICE ADDRESSES OF GUARANTORS](#)

[DESCRIPTION OF PLEDGED INVESTMENT PROPERTY](#)

[FILINGS AND OTHER ACTIONS REQUIRED TO PERFECT SECURITY INTERESTS](#)

[EXACT LEGAL NAME, LOCATION OF JURISDICTION OF ORGANIZATION AND CHIEF EXECUTIVE OFFICE](#)

[LOCATION OF INVENTORY AND EQUIPMENT](#)

[CONTRACTS](#)

[VEHICLES](#)

[FORM OF ACKNOWLEDGMENT AND CONSENT](#)

[FORM OF INTELLECTUAL PROPERTY SECURITY AGREEMENT](#)

[COPYRIGHTS PATENTS TRADEMARKS TRADE SECRETS INTELLECTUAL PROPERTY LICENSES](#)

[FORM OF AFTER-ACQUIRED INTELLECTUAL PROPERTY SECURITY AGREEMENT \(FIRST SUPPLEMENTAL FILING\)](#)

[COPYRIGHTS PATENTS TRADEMARKS TRADE SECRETS INTELLECTUAL PROPERTY LICENSES](#)

[FORM OF CONTROL AGREEMENT](#)

[FORM OF CONTROL AGREEMENT](#)

[Permitted Investments](#)

[FORM OF CONTROL AGREEMENT](#)

[RECITALS](#)