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

FORM 10-K

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

For the fiscal year ended December 31, 2009

OR

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

For the transition period to

Commission File No. 000-50028

WYNN RESORTS, LIMITED

(Exact name of registrant as specified in its charter)

Nevada
(State or other jurisdiction
of incorporation or organization)

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

3131 Las Vegas Boulevard South—Las Vegas, Nevada 89109

(Address of principal executive offices) (Zip Code)

(702) 770-7555

(Registrant's telephone number, including area code)

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

Title of Each Class
Common Stock, \$.01 par value

Name of Each Exchange on Which Registered
Nasdaq Global Select Market

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

None

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

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

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

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

Large accelerated filer Accelerated filer

Non-accelerated filer Smaller reporting company

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

The aggregate market value of the registrant's voting and non-voting common stock held by non-affiliates based on the closing price as reported on the NASDAQ Global Select Market on June 30, 2009 was approximately \$2.6 billion.

As of February 17, 2010, 123,296,373 shares of the registrant's Common Stock, \$.01 par value, were outstanding.

Portions of the registrant's Proxy Statement for its 2010 Annual Meeting of Stockholders to be filed not later than 120 days after the end of the fiscal year covered by this report are incorporated by reference into Part III of this Form 10-K.

Table of Contents

TABLE OF CONTENTS

<u>PART I</u>		
Item 1.	Business	3
Item 1A.	Risk Factors	18
Item 1B	Unresolved Staff Comments	32
Item 2.	Properties	32
Item 3.	Legal Proceedings	33
Item 4.	Submission of Matters to a Vote of Security Holders	33
<u>PART II</u>		
Item 5.	Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	34
Item 6.	Selected Financial Data	36
Item 7.	Management’s Discussion and Analysis of Financial Condition and Results of Operations	37
Item 7A.	Quantitative and Qualitative Disclosures About Market Risk	60
Item 8.	Financial Statements and Supplementary Data	63
Item 9.	Changes in and Disagreements With Accountants on Accounting and Financial Disclosure	102
Item 9A.	Controls and Procedures	102
Item 9B.	Other Information	102
<u>PART III</u>		
Item 10.	Directors, Executive Officers and Corporate Governance	103
Item 11.	Executive Compensation	103
Item 12.	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	103
Item 13.	Certain Relationships and Related Transactions, and Director Independence	103
Item 14.	Principal Accountant Fees and Services	103
<u>PART IV</u>		
Item 15.	Exhibits and Financial Statement Schedules	104
	Signatures	121

PART I

ITEM 1. BUSINESS

Overview

Wynn Resorts, Limited, a Nevada corporation, was formed in June 2002, is led by Chairman and Chief Executive Officer, Stephen A. Wynn, and is a leading developer, owner and operator of destination casino resorts. We own and operate two destination casino resorts: “Wynn Las Vegas,” on the “Strip” in Las Vegas, Nevada, “Encore at Wynn Las Vegas” located adjacent to Wynn Las Vegas, and “Wynn Macau,” located in the Macau Special Administrative Region of the People’s Republic of China (“Macau”). We are also currently constructing Encore at Wynn Macau, an expansion of our Wynn Macau resort. We present our results based on the following two segments: Wynn Las Vegas (which includes Encore at Wynn Las Vegas) and Wynn Macau. For more information on the financial results for our segments, see Item 8 “Financial Statements,” Note 17 “Segment Information.”

Due to a number of factors, including disruptions in global economies, stagnant credit markets, and reduced consumer spending, 2009 was a difficult year for the casino resort business, particularly for U.S. operations. Auto traffic into Las Vegas, airline capacity and air travel to McCarran International Airport have declined, resulting in lower casino volumes and a reduced demand for hotel rooms. The current adverse global economic conditions will likely continue to cause us to experience lower than historical hotel occupancy rates, room rates, casino volumes and profitability in Las Vegas.

Unless the context otherwise requires, all references herein to “Wynn Resorts,” the “Company,” “we,” “us” or “our,” or similar terms, refer to Wynn Resorts, Limited and its consolidated subsidiaries.

Wynn Resorts files annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments of such reports with the Securities and Exchange Commission (“SEC”). Any document Wynn Resorts files may be inspected, without charge, at the SEC’s public reference room at 100 F Street, N.E. Washington, D.C. 20549 or at the SEC’s internet site address at <http://www.sec.gov>. Information related to the operation of the SEC’s public reference room may be obtained by calling the SEC at 1-800-SEC-0330. In addition, through our own internet address at www.wynnresorts.com, Wynn Resorts provides a hyperlink to a third-party SEC filing website which posts these filings as soon as reasonably practicable, where they can be reviewed without charge. Information found on our website is not a part of this Annual Report on Form 10-K.

Our Resorts

Wynn Las Vegas

Wynn Las Vegas opened on April 28, 2005. We believe that the resort offers exceptional accommodations, amenities and service with 2,716 rooms and suites, including 36 fairway villas and 6 private-entry villas for our premium guests. In 2010, for the fourth year in a row, The Tower Suites at Wynn Las Vegas has received both the Forbes five-star and AAA five-diamond distinctions. The Spa at Wynn Las Vegas earned five-star recognition from Forbes for the second year in a row. The Spa at Wynn Las Vegas and the Spa at Encore are the only spas in Las Vegas to be recognized with the Forbes five-star award.

The approximately 110,000 square foot casino features approximately 130 table games, a baccarat salon, private VIP gaming rooms, a poker room, approximately 1,920 slot machines, and a race and sports book. The resort’s 22 food and beverage outlets feature six fine dining restaurants, including restaurants helmed by award winning chefs. Wynn Las Vegas also offers two nightclubs, a spa and salon, a Ferrari and Maserati automobile dealership, wedding chapels, an 18-hole golf course, approximately 223,000 square feet of meeting space and an approximately 74,000 square foot retail promenade featuring boutiques from Alexander McQueen, Brioni, Cartier, Chanel, Dior, Graff, Louis Vuitton, Manolo Blahnik, Oscar de la Renta and Vertu. Wynn Las Vegas also has a showroom which features “Le Rêve,” a water-based theatrical production. We believe that the unique experience of Wynn Las Vegas drives the significant visitation experienced since opening.

[Table of Contents](#)

Encore at Wynn Las Vegas

Encore at Wynn Las Vegas opened on December 22, 2008. This resort is located immediately adjacent to and is connected with Wynn Las Vegas and features a 2,034 all-suite hotel as well as an approximately 76,000 square foot casino with approximately 90 table games, a baccarat salon, private VIP gaming rooms, approximately 790 slot machines and a sports book. In its first full year of operations, The Encore Tower Suites has received both the Forbes five star and AAA five diamond awards. The Spa at Encore also earned five-star recognition from Forbes. The resort's 12 food and beverage outlets include five restaurants, many of which feature award winning chefs. Encore at Wynn Las Vegas also offers a night club, a spa and salon, approximately 60,000 square feet of meeting space and approximately 27,000 square feet of upscale retail outlets featuring boutiques from Hermes, Chanel and others. The Encore Theater featured several headliner entertainment acts during 2009, including the return of Garth Brooks. Our agreement with Garth Brooks provides for the performance of 300 shows in the Encore Theater before 2014, but is cancelable by either party under certain conditions.

Construction is currently underway to replace Encore's porte-cochere on Las Vegas Boulevard with the Encore Beach Club that will feature pools, food and beverage, and nightlife offerings. The total project budget for the Encore Beach Club is approximately \$68 million. The Beach Club is expected to open on schedule in the second quarter of 2010.

Wynn Macau

Wynn Macau opened on September 6, 2006. Wynn Macau currently features approximately 600 hotel rooms and suites, approximately 390 table games, 1,200 slot machines and a poker room in approximately 222,000 square feet of casino gaming space, six restaurants, a spa and salon, lounges, meeting facilities and approximately 48,000 square feet of retail space featuring boutiques from Bvlgari, Chanel, Dior, Dunhill, Fendi, Ferrari, Giorgio Armani, Gucci, Hermes, Hugo Boss, Louis Vuitton, Miu Miu, Piaget, Prada, Rolex, Tiffany, Van Cleef & Arpels, Versace, Vertu, Zegna and others. For 2010, Wynn Macau was one of two hotels in Macau to receive the Forbes five-star distinction. The Spa at Wynn Macau also received the Forbes five-star award. Wynn Macau includes a show in its rotunda featuring a Chinese zodiac-inspired ceiling and interchangeable gold "prosperity tree" and "dragon of fortune" attractions.

See Item 7 of Part II, "Management's Discussion and Analysis of Financial Condition and Results of Operations—Results of Operations" for information about our net revenues.

Construction and Development

Encore at Wynn Macau

We are completing construction of Encore at Wynn Macau, a further expansion of Wynn Macau. Encore at Wynn Macau will add a fully-integrated resort hotel to Wynn Macau, planned to include approximately 410 luxury suites and four villas along with restaurants, additional retail space and additional gaming space. We expect Encore at Wynn Macau to open in April 2010. We expect total costs to be approximately \$600 million. As of December 31, 2009, we had incurred approximately \$454.9 million related to the development and construction of Encore at Wynn Macau.

General

In the ordinary course of our business, in response to market developments and customer preferences, we have made and continue to make certain enhancements and refinements to our properties. We have incurred and will continue to incur these capital expenditures at Wynn Las Vegas, Encore at Wynn Las Vegas and Wynn Macau.

[Table of Contents](#)

Other Development Opportunities

On February 24, 2010, we announced we entered into a letter of intent with Philadelphia Entertainment and Development Partners, LP (PEDP), providing that one of our affiliates will become the manager and managing general partner in the PDEP casino project slated for the Philadelphia waterfront. The agreement is subject to the satisfaction of certain conditions including the approval of the Pennsylvania Gaming Board.

Approximately 142 acres of land adjacent to Wynn Las Vegas and Encore at Wynn Las Vegas is currently improved with a golf course. While we may develop this property in the future, due to the current economic environment and certain restrictions in our credit facilities, we have no immediate plans to do so.

We have applied to the government of Macau for a land concession for approximately 52 acres on Cotai and are awaiting final governmental approval of this concession. No construction timeline or budget has yet been developed.

We continually seek out new opportunities for additional gaming or related businesses, in Las Vegas, other markets in the United States, and worldwide.

Our Strategy

We believe that Steve Wynn is the preeminent designer, developer and operator of destination casino resorts and has developed brand name status. Mr. Wynn's involvement with our casino resorts provides a distinct advantage over other gaming enterprises. We integrate luxurious surroundings, distinctive entertainment and superior amenities, including fine dining and premium retail offerings, to create resorts that appeal to a variety of customers.

Our properties were designed and built to provide a premium experience. Wynn Las Vegas, Encore at Wynn Las Vegas and Wynn Macau are positioned as full-service luxury resorts and casinos in the leisure, convention and tour and travel industries. We market these resorts directly to gaming customers using database marketing techniques, as well as traditional incentives, including reduced room rates and complimentary meals and suites. Our rewards system offers discounted and complimentary meals, lodging and entertainment for our guests. We also create general market awareness for our properties through various media channels, including television, radio, newspapers, magazines, the internet, direct mail and billboards.

Mr. Wynn and his team bring significant experience in designing, developing and operating casino resorts. The senior executive team has an average of approximately 25 years of experience in the hotel and gaming industries. We also have an approximately 70-person design, development and construction subsidiary, the senior management of which has significant experience in all major construction disciplines.

Market and Competition

Las Vegas

Las Vegas is the largest gaming market in the United States. The casino/hotel industry in Las Vegas is highly competitive and, prior to the recent economic conditions and interruption in projects under development, had undergone a period of exceptional growth, particularly with the addition of projects targeting the premium customer. Wynn Las Vegas and Encore at Wynn Las Vegas are located on the Las Vegas Strip and compete with other high-quality resorts and hotel casinos on the Strip, those in downtown Las Vegas, as well as a large number of hotels in and near Las Vegas. Many competing properties, such as the Bellagio, Caesars Palace, Luxor Hotel and Casino, Mandalay Bay Resort & Casino, The Mirage, New York-New York Hotel and Casino, Paris Las Vegas, Treasure Island, The Venetian, The Palazzo, the recently opened City Center and others, draw a significant number of visitors and directly compete with our operations. We seek to differentiate Wynn Las Vegas and Encore at Wynn Las Vegas from other major Las Vegas resorts by concentrating on our fundamental elements of design, atmosphere, personal service and luxury.

[Table of Contents](#)

Wynn Las Vegas and Encore at Wynn Las Vegas will face additional competition from new multi-billion dollar resorts including, without limitation, City Center which, when fully opened, will add approximately 6,000 rooms. Cosmopolitan, a \$3.9 billion condo/hotel/casino resort located on the Las Vegas Strip, and the remaining phases of City Center are expected to open in 2010.

Wynn Las Vegas and Encore at Wynn Las Vegas also compete, to some extent, with other hotel/casino facilities in Nevada and Atlantic City, riverboat gaming facilities in other states, casino facilities on Native American lands and elsewhere in the world, as well as state lotteries and other forms of gaming. The proliferation of Native American gaming in California could have a negative impact on our operations. In addition, the legalization of casino gaming in or near metropolitan areas from which we attract customers could have a negative effect on our business. New or renovated casinos in Asia, including our properties in Macau, could draw Asian gaming customers away from Las Vegas.

During 2009, the current economic environment in the gaming and hotel markets in Las Vegas continued to experience declines including, among other things, a 3.0% decrease in visitation to 36.4 million visitors, a 9.4% decrease in Las Vegas Strip gaming revenue and a 22% decrease in average daily room rates, all as compared to the year ended December 2008. We, along with our competitors, have responded to the deterioration in consumer spending by aggressively marketing and pricing our Las Vegas offerings.

Macau

Macau, which was a Portuguese colony for approximately 450 years, was transferred from Portuguese to Chinese political control in December 1999. Macau is governed as a special administrative region of China and is located approximately 37 miles southwest of, and less than one hour away via ferry from, Hong Kong. Macau, which has been a casino destination for more than 40 years, consists principally of a peninsula on mainland China, and two neighboring islands, Taipa and Coloane, connected by bridges. We believe that Macau is located in one of the world's largest concentrations of potential gaming customers. According to Macau Statistical Information, casinos in Macau generated approximately \$15 billion in gaming revenue in 2009, an approximately 10% increase over the approximately \$13.6 billion generated in 2008, making Macau the largest gaming market in the world.

Macau's gaming market is primarily dependent on tourists. The Macau market has experienced tremendous growth in capacity in the last few years. As of December 31, 2009, there were approximately 19,200 hotel rooms and approximately 4,770 table games in Macau, compared to approximately 12,978 hotel rooms and approximately 2,760 table games as of December 31, 2006.

Gaming customers traveling to Macau have typically come from nearby destinations in Asia including Hong Kong, mainland China, Taiwan, South Korea and Japan. According to the Macau Statistics and Census Service Monthly Bulletin of Statistics, approximately 87% of the tourists who visited Macau in 2009 came from mainland China, Hong Kong and Taiwan. Macau completed construction of an international airport in 1995, which accommodates large commercial aircraft and provides direct air service to major cities in Asia, including Beijing, Shanghai, Jakarta, Ho Chi Minh City, Taipei, Manila, Singapore and Bangkok. Travel to Macau by citizens of mainland China requires a visa. Government officials have exercised their authority to adjust the visa policy and may do so in the future.

Prior to 2002, gaming in Macau was permitted as a government-sanctioned monopoly concession awarded to a single concessionaire. However, the government of Macau liberalized the gaming industry in 2002 by granting concessions to operate casinos to three concessionaires (including Wynn Macau), who in turn were permitted, subject to the approval of the government of Macau, to each grant one sub-concession to other gaming operators. There is no limit to the number of casinos each concessionaire is permitted to operate, but each facility is subject to government approval. Currently, there are 33 operating casinos in Macau.

In 2002, the other two concessions were granted to Sociedade de Jogos de Macau ("SJM") and Galaxy Entertainment Group Limited ("Galaxy"). SJM, which is controlled by Stanley Ho, operates 20 of the 33 existing

[Table of Contents](#)

casinos, including two of the larger casinos in Macau: the Hotel Lisboa and The Grand Lisboa. In September 2009, SJM opened le Royal Arc Casino/Hotel which is adjacent to Wynn Macau. In December 2009, SJM opened the Casino Oceanus which is adjacent to the Macau ferry terminal. In addition, an affiliate of SJM owns one of two water ferry services and the helicopter shuttle service that links Macau to Hong Kong.

Galaxy was also awarded a casino concession in June 2002. Galaxy is a Hong Kong Stock Exchange listed company. Galaxy opened the Waldo Hotel/Casino on the Macau peninsula in 2004, the Grand Waldo Cotai in the summer of 2006, and Galaxy Star World hotel casino immediately adjacent to Wynn Macau in October 2006. In addition, Galaxy is currently constructing a resort on Cotai, which is expected to open in 2011.

Las Vegas Sands Corp., the owner and operator of The Venetian and The Palazzo resorts in Las Vegas and a former partner of Galaxy, entered into a sub-concession agreement with Galaxy in 2002 which allows it to independently develop and operate casinos in Macau. The Sands Macao opened in 2004. In August 2007, Las Vegas Sands Corp. opened the Venetian Macao Resort Hotel, the largest casino resort in Macau. In August 2008, Las Vegas Sands Corp. opened the Four Seasons Hotel Macau adjacent to the Venetian Macao. In addition, Las Vegas Sands Corp. has proposed a masterplan for other large developments in Cotai that would include additional hotel properties as well as serviced apartment units and additional retail and related space. In late 2009, Las Vegas Sands completed the initial public offering of Sands China, Ltd. on the Hong Kong Stock Exchange. Las Vegas Sands Corp. has reported that a portion of the proceeds from that offering will be used to restart certain postponed developments in Cotai.

A joint venture consisting of Melco, a Hong Kong stock exchange-listed company, and Crown, Ltd., an Australian company, is currently operating the Altira, which opened in May 2007, and the City of Dreams, a large resort in Cotai, which opened in June 2009. This joint venture operates its properties under a subconcession purchased from us in 2006.

In December 2007, a joint venture of MGM MIRAGE and Pansy Ho Chiu-king (Stanley Ho's daughter) opened the MGM Grand Macau, a resort on the Macau peninsula adjacent to Wynn Macau. The MGM Grand Macau is operated pursuant to a subconcession granted to the joint venture by SJM.

Our casino concession agreement allows the government to grant additional concessions for the operation of casinos commencing April 1, 2009. If the government of Macau awards additional concessions or permits additional sub-concessionaires, Wynn Macau will face increased competition from casino operators in Macau.

Wynn Macau also faces competition from casinos located in other areas of Asia, such as Genting Highlands Resort, a major gaming and resort destination located outside of Kuala Lumpur, Malaysia, and casinos in the Philippines. In addition, one large-scale casino recently opened in Singapore and another is expected to open later in 2010, which will add further competition to the region. Wynn Macau also encounters competition from other major gaming centers located around the world, including Australia and Las Vegas, cruise ships in Asia that offer gaming and other casinos throughout Asia.

Geographic Data

Geographic data are reported in Note 17 to the consolidated financial statements. Additional financial data about our geographic operations is provided in Item 7 "Management's Discussion of Analysis of Financial Condition and Results of Operations."

Regulation and Licensing

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

Nevada

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

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

- preventing unsavory or unsuitable persons from being directly or indirectly involved with gaming at any time or in any capacity;
- establishing and maintaining responsible accounting practices and procedures;
- maintaining effective controls over the financial practices of licensees, including establishing minimum procedures for internal fiscal affairs and safeguarding assets and revenue, providing reliable recordkeeping and requiring the filing of periodic reports with the Nevada Gaming Authorities;
- preventing cheating and fraudulent practices; and
- providing a source of state and local revenue through taxation and licensing fees.

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

Owner and Operator Licensing Requirements. Our subsidiary, Wynn Las Vegas, LLC, as the owner and operator of Wynn Las Vegas and Encore at Wynn Las Vegas, has been approved by the Nevada Gaming Authorities as a limited liability company licensee, referred to as a company licensee, which includes approval to conduct casino gaming operations, including a race book and sports pool and pari-mutuel wagering. These gaming licenses are not transferable.

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

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

Individual Licensing Requirements. No person may become a stockholder or member of, or receive any percentage of the profits of, an intermediary company or company licensee without first obtaining licenses and approvals from the Nevada Gaming Authorities. The Nevada Gaming Authorities may investigate any individual who has a material relationship to or material involvement with us to determine whether the individual is suitable or should be licensed as a business associate of a gaming licensee. Certain of our officers, directors and key

[Table of Contents](#)

employees have been or may be required to file applications with the Nevada Gaming Authorities and are or may be required to be licensed or found suitable by the Nevada Gaming Authorities. All applications required as of the date of this report have been filed. However, the Nevada Gaming Authorities may require additional applications and may also deny an application for licensing for any reason, which they deem appropriate. A finding of suitability is comparable to licensing, and both require submission of detailed personal and financial information followed by a thorough investigation. An applicant for licensing or an applicant for a finding of suitability must pay or must cause to be paid all the costs of the investigation. Changes in licensed positions must be reported to the Nevada Gaming Authorities and, in addition to their authority to deny an application for a finding of suitability or licensing, the Nevada Gaming Authorities have the jurisdiction to disapprove a change in a corporate position.

If the Nevada Gaming Authorities were to find an officer, director or key employee unsuitable for licensing or unsuitable to continue having a relationship with us, we would have to sever all relationships with that person. In addition, the Nevada Gaming Commission may require us to terminate the employment of any person who refuses to file appropriate applications. Determinations of suitability or questions pertaining to licensing are not subject to judicial review in Nevada.

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

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

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

Table of Contents

The Nevada Gaming Control Act requires any person who acquires more than 5% of the voting securities of a registered company to report the acquisition to the Nevada Gaming Commission. The Nevada Gaming Control Act requires beneficial owners of more than 10% of a registered company's voting securities to apply to the Nevada Gaming Commission for a finding of suitability within 30 days after the Chairman of the Nevada State Gaming Control Board mails the written notice requiring such filing. However, an "institutional investor," as defined in the Nevada Gaming Control Act, which beneficially owns more than 10% but not more than 11% of a registered company's voting securities as a result of a stock repurchase by the registered company may not be required to file such an application. Further, an institutional investor which acquires more than 10%, but not more than 25%, of a registered company's voting securities may apply to the Nevada Gaming Commission for a waiver of a finding of suitability if the institutional investor holds the voting securities for investment purposes only. An institutional investor that has obtained a waiver may hold more than 25% but not more than 29% of a registered company's voting securities and maintain its waiver where the additional ownership results from a stock repurchase by the registered company. An institutional investor will not be deemed to hold voting securities for investment purposes unless the voting securities were acquired and are held in the ordinary course of business as an institutional investor and not for the purpose of causing, directly or indirectly, the election of a majority of the members of the board of directors of the registered company, a change in the corporate charter, bylaws, management, policies or operations of the registered company, or any of its gaming affiliates, or any other action which the Nevada Gaming Commission finds to be inconsistent with holding the registered company's voting securities for investment purposes only. Activities which are not deemed to be inconsistent with holding voting securities for investment purposes only include:

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

The articles of incorporation of Wynn Resorts include provisions intended to assist its implementation of the above restrictions.

Wynn Resorts is required to maintain a current stock ledger in Nevada which may be examined by the Nevada Gaming Authorities at any time. If any securities are held in trust by an agent or by a nominee, the record holder may be required to disclose the identity of the beneficial owner to the Nevada Gaming Authorities. A failure to make the disclosure may be grounds for finding the record holder unsuitable. We are required to provide maximum assistance in determining the identity of the beneficial owner of any of Wynn Resorts' voting securities. The Nevada Gaming Commission has the power to require the stock certificates of any registered company to bear a legend indicating that the securities are subject to the Nevada Gaming Control Act. The certificates representing shares of Wynn Resorts' common stock note that the shares are subject to a right of redemption and other restrictions set forth in Wynn Resorts' articles of incorporation and bylaws and that the shares are, or may become, subject to restrictions imposed by applicable gaming laws.

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

- pay that person any dividend or interest upon any voting securities;

[Table of Contents](#)

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

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

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

Approval of Public Offerings. We may not make a public offering without the prior approval of the Nevada Gaming Commission if the proceeds from the offering are intended to be used to construct, acquire or finance gaming facilities in Nevada, or to retire or extend obligations incurred for those purposes or for similar transactions. On March 19, 2009, the Nevada Gaming Commission granted us and Wynn Las Vegas, LLC prior approval, subject to certain conditions, to make public offerings for a period of two years (the "Shelf Approval"). The Shelf Approval also applies to any affiliated company wholly owned by us which is a publicly traded corporation or would thereby become a publicly traded corporation pursuant to a public offering. The Shelf Approval may be rescinded for good cause without prior notice upon the issuance of an interlocutory stop order by the Chairman of the Nevada State Gaming Control Board. The Shelf Approval does not constitute a finding, recommendation or approval by any of the Nevada Gaming Authorities as to the accuracy or adequacy of the offering memorandum or the investment merits of the securities. Any representation to the contrary is unlawful.

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

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

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

- assure the financial stability of corporate gaming licensees and their affiliated companies;

Table of Contents

- preserve the beneficial aspects of conducting business in the corporate form; and,
- promote a neutral environment for the orderly governance of corporate affairs.

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

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

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

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

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

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

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

Macau

General. As a casino concessionaire, Wynn Macau, S.A. is subject to the regulatory control of the Government of Macau. The government has adopted Laws and Administrative Regulations governing the operation of casinos in Macau. Only concessionaires or subconcessionaires are permitted to operate casinos. Subconcessions may be awarded subject to the approval of the Macau government and, to date, each concessionaire has issued one subconcession. Each concessionaire was required to enter into a concession agreement with the Macau government which, together with the Law and Administrative Regulations, forms the framework for the regulation of the activities of the concessionaire.

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

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

Concessionaires are subject to a special gaming tax of 35% of gross gaming revenue, and must also make an annual contribution of up to 4% of gross gaming revenue for the promotion of public interests, social security, infrastructure and tourism. Concessionaires are obligated to withhold, according to the rate in effect as set by the government, from any commissions paid to games promoters. Such withholding rate may be adjusted from time to time.

A games promoter, also known as a junket representative, is a person who, for the purpose of promoting casino gaming activity, arranges customer transportation and accommodations, and provides credit in their sole discretion, food and beverage services and entertainment in exchange for commissions or other compensation from a concessionaire. Macau law provides that games promoters must be licensed by the Macau government in order to do business with and receive compensation from concessionaires. For a license to be obtained, direct and indirect owners of 5% or more of a games promoter (regardless of its corporate form or sole proprietor status), its directors and its key employees must be found suitable. Applicants are required to pay the cost of license investigations, and are required to maintain suitability standards during the period of licensure. The term of a games promoters license is one calendar year, and licenses can be renewed for additional periods upon the submission of renewal applications. Natural person junket representative licensees are subject to a suitability verification process every three years and business entity licensees are subject to the same requirement every six years. The DICJ has recently implemented certain instructions, which have the force of law, relating to commissions paid to and by games promoters. Such instructions also impose certain financial reporting and audit requirements on games promoters.

Under Macau law, licensed games promoters must identify outside contractors who assist them in their promotion activities. These contractors are subject to approval of the Macau government. Changes in the management structure of business entity games promoters licensees must be reported to the Macau government and any transfer or the encumbering of interests in such licensees is ineffective without prior government

[Table of Contents](#)

approval. To conduct gaming promotion activities licensees must be registered with one or more concessionaires and must have written contracts with such concessionaires, copies of which must be submitted to the Macau government.

Macau law further provides that concessionaires are jointly responsible with their games promoters for the activities of such representatives and their directors and contractors in the concessionaires' casinos, and for their compliance with applicable laws and regulations. Concessionaires must submit annual lists of their games promoters for the following year, and must update such lists on a quarterly basis. The Macau government may designate a maximum number of games promoters and specify the number of games promoters a concessionaire is permitted to engage. Concessionaires are subject to periodic reporting requirements with respect to commissions paid to their games promoters representatives and are required to oversee their activities and report instances of unlawful activity.

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

Concession Agreement. The concession agreement between Wynn Macau S.A. and the Macau government required Wynn Macau, S.A. to construct and operate one or more casino gaming properties in Macau, including, at a minimum, one full-service casino resort by the end of December 2006, and to invest not less than a total of 4 billion patacas (approximately US\$500 million) in Macau-related projects by June 2009. This obligation was satisfied upon the opening of Wynn Macau in 2006.

Wynn Macau, S.A. was also obligated to obtain, and did obtain, a 700 million pataca (approximately US\$87 million) bank guarantee from Banco Nacional Ultramarino, S.A. ("BNU") that was effective until March 31, 2007. The amount of this guarantee was reduced to 300 million patacas (approximately US\$37 million) for the period from April 1, 2007 until 180 days after the end of the term of the concession agreement. This guarantee, which is for the benefit of the Macau government, assures Wynn Macau, S.A.'s performance under the casino concession agreement, including the payment of premiums, fines and indemnity for any material failure to perform the concession agreement. Wynn Macau, S.A. is obligated, upon demand by BNU, to promptly repay any claim made on the guarantee by the Macau government. BNU is currently paid an annual fee by Wynn Macau, S.A. for the guarantee not to exceed 5.2 million patacas (approximately US\$0.7 million).

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

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

- conducts unauthorized games or activities that are excluded from its corporate purpose;
- abandons or suspends gaming operations in Macau for more than seven consecutive days (or more than 14 days in a civil year) without justification;
- defaults in payment of taxes, premiums, contributions or other required amounts;
- does not comply with government inspections or supervision;

Table of Contents

- systematically fails to observe its obligations under the concession system;
- fails to maintain bank guarantees or bonds satisfactory to the government;
- is the subject of bankruptcy proceedings or becomes insolvent;
- engages in serious fraudulent activity, damaging to the public interest; or,
- repeatedly and seriously violates applicable gaming laws.

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

Seasonality

We may experience fluctuations in revenues and cash flows from month to month, however, we do not believe that our business is materially impacted by seasonality.

Employees

As of December 31, 2009, we had a total of approximately 18,900 employees (including approximately 6,400 in Macau).

During 2006, we entered into a collective bargaining agreement with the Culinary and Bartenders Union local that covers approximately 5,800 employees at Wynn Las Vegas and Encore at Wynn Las Vegas. In May 2007, the dealers at Wynn Las Vegas elected the Transportation Workers Union to represent them. Contract negotiations have concluded with the only remaining item being the duration of the contract. The negotiated agreement is subject to ratification by the bargaining unit and the Transportation Workers Union has advised the Company that they have recommended ratification to the affected employees. Certain other unions may seek to organize the workers at Wynn Las Vegas and Encore at Wynn Las Vegas. Unionization, pressure to unionize or other forms of collective bargaining could increase our labor costs.

The success of our operations in Macau will be affected by our success in retaining our employees. Wynn Macau competes with the large number of casino resort developments currently underway in Macau for the limited qualified employees. We seek employees from other countries to adequately staff Wynn Macau and recent policies announced publicly by the Macau government have affected our ability to import labor in certain job classifications. We are coordinating with the Macau labor and immigration authorities to ensure our labor demand is satisfied, but cannot be certain that we will be able to recruit and retain a sufficient number of qualified employees for our Wynn Macau operations or that we will be able to obtain required work permits for those employees.

Intellectual Property

Our most important marks are our trademarks and service marks that use the name "WYNN." Wynn Resorts has filed applications with the U.S. Patent and Trademark Office ("PTO"), to register a variety of the WYNN-related trademarks and service marks in connection with a variety of goods and services. These marks include "WYNN RESORTS," "WYNN DESIGN AND DEVELOPMENT," "WYNN LAS VEGAS," "ENCORE" and "WYNN MACAU." Some of the applications are based upon ongoing use and others are based upon a bona fide intent to use the marks in the future.

[Table of Contents](#)

A common element of most of these marks is the use of the surname, “WYNN.” As a general rule, a surname (or a mark primarily constituting a surname) is not registrable unless the surname has acquired “secondary meaning.” To date, Wynn Resorts has been successful in demonstrating to the PTO such secondary meaning for the Wynn name in certain of the applications based upon Mr. Wynn’s prominence as a resort developer.

Federal registrations are not completely dispositive of the right to such marks. Third parties who claim prior rights with respect to similar marks may nonetheless challenge our right to obtain registrations or our use of the marks and seek to overcome the presumptions afforded by such registrations.

We have also filed applications with various foreign patent and trademark registries including registries in Macau, China, Singapore, Hong Kong, Taiwan, Japan, certain European countries and various other jurisdictions throughout the world to register a variety of WYNN-related trademarks and service marks in connection with a variety of goods and services. These marks include many of the same marks filed with the United States Patent and Trademark Office and include “WYNN MACAU,” “WYNN LAS VEGAS” and “ENCORE.” Some of the applications are based upon ongoing use and others are based upon a bona fide intent to use the marks in the future.

We recognize that our intellectual property assets, especially the logo version of “WYNN,” are among our most valuable assets. As a result, and in connection with expansion of our resorts and gaming activities outside the United States, we have undertaken a program to register our trademarks and other intellectual property rights in all relevant jurisdictions. We have retained counsel and intend to take all steps necessary to protect our intellectual property rights against unauthorized use throughout the world.

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

Forward-Looking Statements

The Private Securities Litigation Reform Act of 1995 provides a “safe harbor” for forward-looking statements. Certain information included in this Annual Report on Form 10-K contains statements that are forward-looking, including, but not limited to, statements relating to our business strategy and development activities as well as other capital spending, financing sources, the effects of regulation (including gaming and tax regulations), expectations concerning future operations, profitability and competition. Any statements contained in this report that are not statements of historical fact may be deemed to be forward-looking statements. Without limiting the generality of the foregoing, in some cases you can identify forward-looking statements by terminology such as “may,” “will,” “should,” “would,” “could,” “believe,” “expect,” “anticipate,” “estimate,” “intend,” “plan,” “continue” or the negative of these terms or other comparable terminology. Such forward-looking information involves important risks and uncertainties that could significantly affect anticipated results in the future and, accordingly, such results may differ from those expressed in any forward-looking statements made by us. These risks and uncertainties include, but are not limited to those set forth in Item 1A (Risk Factors) as well as the following:

- adverse tourism and consumer spending trends reflecting current domestic and international economic conditions;
- volatility and weakness in world-wide credit and financial markets;

Table of Contents

- general global macroeconomic conditions;
- further decreases in levels of travel, leisure and consumer spending;
- fluctuations in occupancy rates and average daily room rates;
- conditions precedent to funding under the agreements governing the disbursement of the proceeds of borrowings under our credit facilities;
- continued compliance with all provisions in our credit agreements;
- competition in the casino/hotel and resort industries and actions taken by our competitors in reaction to adverse economic conditions;
- completion of Encore at Wynn Macau on time and within budget;
- our intention to fund a substantial portion of the development and construction costs of Encore at Wynn Macau with anticipated cash flows generated at Wynn Macau;
- doing business in foreign locations such as Macau (including the risks associated with developing gaming regulatory frameworks);
- restrictions or conditions on visitation by citizens of mainland China to Macau;
- new development and construction activities of competitors;
- our dependence on Stephen A. Wynn and existing management;
- our dependence on a limited number of properties and locations for all of our cash flow;
- leverage and debt service (including sensitivity to fluctuations in interest rates);
- changes in federal or state tax laws or the administration of such laws;
- changes in state law regarding water rights;
- changes in gaming laws or regulations (including the legalization of gaming in certain jurisdictions);
- approvals under applicable jurisdictional laws and regulations (including gaming laws and regulations);
- the impact that an outbreak of an infectious disease or the impact of a natural disaster may have on the travel and leisure industry;
- the consequences of the wars in Iraq and Afghanistan and other military conflicts in the Middle East and any future security alerts and/or terrorist attacks; and
- pending or future legal proceedings.

Further information on potential factors that could affect our financial condition, results of operations and business are included in this report and our other filings with the SEC. You should not place undue reliance on any forward-looking statements, which are based only on information currently available to us. We undertake no obligation to publicly release any revisions to such forward-looking statements to reflect events or circumstances after the date of this report.

ITEM 1A. RISK FACTORS

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

Risks Related to our Substantial Indebtedness

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

We have a substantial amount of consolidated debt in relation to our equity. As of December 31, 2009, we had total outstanding debt of approximately \$3.6 billion. In addition, our Wynn Las Vegas credit agreement permits us to incur additional indebtedness in the future and the Wynn Macau credit facilities permit us to incur additional indebtedness if certain conditions are met. Our substantial indebtedness could have important consequences. For example:

- if we fail to meet our payment obligations or otherwise default under the agreements governing our indebtedness, the lenders under those agreements will have the right to accelerate the indebtedness and exercise other rights and remedies against us. These rights and remedies include rights to:
 - repossess and foreclose upon the assets that serve as collateral;
 - initiate judicial foreclosure against us; and
 - petition a court to appoint a receiver for us or for substantially all of our assets.
- we are required to use a substantial portion of our cash flow from the operations of Wynn Las Vegas and Encore at Wynn Las Vegas to service and amortize our Wynn Las Vegas indebtedness, which will reduce the amount of available cash, if any, to fund working capital, other capital expenditures and other general corporate purposes, and may give us greater exposure to the current adverse economic and industry conditions;
- we may experience decreased revenues from our operations attributable to decreases in consumer spending levels due to the adverse economic and industry conditions, and could fail to generate sufficient cash to fund our liquidity needs and/or fail to satisfy the financial and other restrictive covenants to which we are subject to under our existing indebtedness. We cannot provide assurance that our business will generate sufficient cash flow from operations or that future borrowings will be available to us in an amount sufficient to enable us to pay our indebtedness or to fund our other liquidity needs;
- we are dependent on certain amounts of cash flow from Wynn Macau to service Wynn Macau's indebtedness, which reduces the available cash flow to fund working capital, other capital expenditures and other general corporate purposes at Wynn Macau;
- we may have a limited ability to respond to changing business and economic conditions and to withstand competitive pressures, which may affect our financial condition;
- we may not be able to obtain additional financing, if needed, to fund construction costs of Encore at Wynn Macau, satisfy working capital requirements or pay for other capital expenditures, debt service or other obligations;
- while we do hedge a certain amount of our debt under our credit facilities, rates with respect to a portion of the interest we pay will fluctuate with market rates and, accordingly, our interest expense will increase if market interest rates increase; and

Table of Contents

- if we fail to pay our debts generally as they become due, unsecured creditors that we fail to pay may initiate involuntary bankruptcy proceedings against us, subject to the requirements of the United States Bankruptcy Code, and such bankruptcy proceedings will delay or impact the repayment of our secured debt.

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

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

Our debt facilities require us to satisfy various financial covenants, which include requirements for minimum interest coverage ratios (currently required for both Wynn Macau and Wynn Las Vegas credit facilities) and leverage ratios pertaining to total debt to earnings before interest, tax, depreciation and amortization (currently required for Wynn Macau credit facilities and will be required for Wynn Las Vegas commencing June 30, 2011). If our operations fail to generate adequate cash flow, we may violate those covenants causing a default in our agreements. Future indebtedness or other contracts could contain covenants more restrictive than those contained in our existing debt facilities.

Our ability to comply with the terms of our outstanding facilities may be affected by general economic conditions, industry conditions and other events, some of which may be beyond our control. As a result, we may not be able to maintain compliance with these covenants. Our failure to comply with the terms of our debt facilities, including failure as a result of events beyond our control, could result in an event of default, which would materially and adversely affect our operating results and our financial condition or result in our lenders taking action to enforce their security interests in our various assets.

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

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

If there were an event of default under one of our debt instruments, the holders of the defaulted debt could cause all amounts outstanding with respect to that debt to be due and payable immediately. We cannot assure you

[Table of Contents](#)

that our assets or cash flow would be sufficient to fully repay borrowings under our outstanding debt instruments if accelerated upon an event of default, or that we would be able to repay, refinance or restructure the payments on those debt securities.

If Wynn Macau were to cease to produce cash flow sufficient to service its indebtedness or otherwise become unable to make certain payments or dividends to us which we in turn could use to service our indebtedness, our ability to service the indebtedness of Wynn Macau or Wynn Las Vegas, LLC could be negatively impacted.

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

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

Risks Related to our Business

Continued weakness and further weakening in global economic conditions may adversely affect consumer and corporate spending and tourism trends, resulting in additional deterioration in our business.

Discretionary consumer spending has been adversely affected by the current economic crisis. Worldwide, consumers are traveling less and spending less when they do travel. Likewise, corporate spending on conventions and business development is being significantly curtailed as businesses cut their budgets. Since our business model relies on significant expenditure on luxury and discretionary items, continuation or deepening of the crisis will further adversely affect our operations.

The current conditions in the world's financial and credit markets adversely affects prospects of debt refinancing, availability of credit to us and to our customers and the profitability of our business.

There was continued instability in financial and credit markets worldwide in 2009. There can be no assurance that the decline is over and there can be no assurance that government response to these conditions will successfully address the fundamental weakness, restore consumer confidence or lead to improvement of or increase liquidity in the markets. Customer demand for luxury amenities and leisure activities that we offer may be depressed or continue to decline.

There may be excess room supply particularly in the luxury segment in Las Vegas.

There have been and will continue to be large additions to the room supply in Las Vegas. Even after the global economy begins to recover, there may be excess supply, particularly in the luxury segment.

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

We are entirely dependent upon Wynn Las Vegas, Encore at Wynn Las Vegas and Wynn Macau for all of our cash flow. As a result, we are subject to a greater degree of risk than a gaming company with more operating properties. The risks to which we have a greater degree of exposure include the following:

- local economic and competitive conditions;
- changes in local and state governmental laws and regulations, including gaming laws and regulations;
- natural and other disasters;
- a decline in the number of visitors to Las Vegas or Macau;

[Table of Contents](#)

- a decrease in gaming and non-gaming activities at our properties; and
- the outbreak of an infectious disease such as H1N1 or the avian flu.

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

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

Competition for Wynn Las Vegas and Encore at Wynn Las Vegas. The casino/hotel industry is highly competitive and additional developments have recently opened or are currently underway. Resorts located on or near the Las Vegas Strip compete with other Las Vegas Strip hotels and with other hotel casinos in Las Vegas on the basis of overall atmosphere, range of amenities, level of service, price, location, entertainment, theme and size, among other factors.

Wynn Las Vegas and Encore at Wynn Las Vegas also compete with other hotel/casino facilities in other cities, riverboat gaming facilities in other states, casino facilities on Native American lands and elsewhere in the world, state lotteries and other forms of gaming. The proliferation of gaming activities in other areas could significantly harm our business as well. In particular, the legalization or expansion of casino gaming in or near metropolitan areas from which we attract customers could have a negative effect on our business. In addition, new or renovated casinos in Macau, including Encore at Wynn Macau, or elsewhere in Asia could draw Asian gaming customers, away from Wynn Las Vegas and Encore at Wynn Las Vegas.

Competition for Wynn Macau. Currently there are approximately 33 operating casinos in Macau. We hold a concession under one of only three gaming concessions and three sub-concessions authorized by the Macau government to operate casinos in Macau. The Macau government has had the ability to grant additional gaming concessions since April 2009. If the Macau government were to allow additional competitors to operate in Macau through the grant of additional concessions or subconcessions, we would face additional competition, which could have a material adverse effect on our financial condition and results of operations.

Wynn Macau also faces competition from casinos located in other areas of Asia, such as Genting Highlands Resort, a major gaming and resort destination located outside of Kuala Lumpur, Malaysia, and casinos in the Philippines. Also one large-scale casino in Singapore recently opened and another is expected to open later in 2010, which will add further competition to the region. Wynn Macau also encounters competition from other major gaming centers located around the world, including Australia and Las Vegas, cruise ships in Asia that offer gaming, and other casinos throughout Asia. Further, if current efforts to legalize gaming in other Asian countries are successful, Wynn Macau will face additional regional competition.

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

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

We conduct our gaming activities on a credit as well as a cash basis. This credit is unsecured. Table games players typically are extended more credit than slot players, and high-stakes players typically are extended more credit than patrons who tend to wager lower amounts. The collectability of receivables from international customers could be negatively affected by future business or economic trends or by significant events in the countries in which these customers reside. We will extend credit to those customers whose level of play and financial resources, in the opinion of management, warrant such an extension.

[Table of Contents](#)

In addition, high-end gaming is more volatile than other forms of gaming, and variances in win-loss results attributable to high-end gaming may have a positive or negative impact on cash flow and earnings in a particular quarter.

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

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

Currently, the gaming tax in Macau is calculated as a percentage of gross gaming revenue. However, unlike Nevada, the gross gaming revenue calculation in Macau does not include deductions for uncollectible gaming debts. As a result, if we extend credit to our customers in Macau and are unable to collect on the related receivables from them, we remain obligated to pay taxes on our winnings from these customers.

Our business is particularly sensitive to reductions in discretionary consumer and corporate spending as a result of downturns in the economy.

Consumer demand for hotel/casino resorts, trade shows and conventions and for the type of luxury amenities that we offer is particularly sensitive to downturns in the economy which adversely impact discretionary spending on leisure activities. Changes in discretionary consumer spending or consumer preferences brought about by the factors such as perceived or actual general economic conditions, the current housing crisis, the current credit crisis, bank failures and the potential for additional bank failures, perceived or actual changes in disposable consumer income and wealth, the current global economic recession and changes in consumer confidence in the economy, or fears of war and future acts of terrorism could reduce customer demand for the luxury amenities and leisure activities we offer, and may have a significant negative impact on our operating results.

The current recession and economic crisis have resulted in a significant decline in the amount of tourism and spending in Las Vegas. In 2009, the occupancy rates across Las Vegas have declined by approximately 4.5%, room rates have declined by approximately 22% and Las Vegas Strip gaming revenue has declined approximately 9.4%, compared to 2008. We also experienced increased levels of attrition and cancellation in the group business segment during 2009. If these trends continue, our financial condition, results of operations and cash flows will be adversely affected.

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

General. The operations of Wynn Las Vegas, Encore at Wynn Las Vegas and Wynn Macau are contingent upon our obtaining and maintaining all necessary licenses, permits, approvals, registrations, findings of suitability, orders and authorizations. The laws, regulations and ordinances requiring these licenses, permits and other approvals generally relate to the responsibility, financial stability and character of the owners and managers of gaming operations, as well as persons financially interested or involved in gaming operations. The scope of the approvals required to open and operate a facility is extensive. We received all approvals for the opening of Wynn Las Vegas on April 28, 2005, and Encore at Wynn Las Vegas on December 22, 2008. We are subject to ongoing regulation to maintain their operations. We opened Wynn Macau on September 6, 2006, and are subject to ongoing regulation to maintain its operation.

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

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

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

Wynn Macau. Wynn Macau's operations are subject to unique risks, including risks related to Macau's regulatory framework. Wynn Macau has developed certain operating procedures which are different from those used in United States casinos. Failure to adhere to the regulatory and gaming environment in Macau could result in the revocation of Wynn Macau, S.A.'s concession or otherwise negatively affect its operations in Macau. Moreover, we would be subject to the risk that U.S. regulators could determine that Macau's gaming regulatory framework has not developed in a way that would permit us to conduct operations in Macau in a manner consistent with the way in which we intend, or the Nevada gaming authorities require us, to conduct our operations in the United States.

We are subject to taxation by various governments and agencies. The rate of taxation could change.

We are subject to tax by various governments and agencies, both in the United States (at the federal, state and local levels) and in Macau. Various legislative actions could change the rates of taxation or the company's ability to claim foreign tax credits.

If enacted into law, certain provisions of the Administration's 2011 Budget Proposal, could impact the company's ability to claim U.S. foreign tax credits for Macau gaming taxes paid after 2010. Increases in taxation could adversely affect our results.

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

The strength and profitability of our business depends on consumer demand for hotel casino resorts in general and for the type of luxury amenities our properties offer. Changes in consumer preferences or discretionary consumer spending could harm our business. The terrorist attacks of September 11, 2001, other terrorist activities in the United States and elsewhere, military conflicts in Iraq, Afghanistan and in the Middle East, outbreaks of infectious disease and pandemics, and natural disasters such as hurricanes, tsunamis and earthquakes, among other things, have had negative impacts on travel and leisure expenditures. We cannot predict the extent to which similar events and conditions may continue to affect us in the future. An extended period of reduced discretionary spending and/or disruptions or declines in airline travel and business conventions could significantly harm our operations. In particular, because our business relies heavily upon high-end customers, particularly international customers, factors resulting in a decreased propensity to travel internationally could have a negative impact on our operations.

In addition, other factors affecting travel and discretionary consumer spending, including general economic conditions, disposable consumer income, fears of recession and reduced consumer confidence in the economy, may negatively impact our business. Negative changes in any factors affecting discretionary spending could reduce customer demand for the products and services we offer, thus imposing practical limits on pricing and harming our operations.

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

The terrorist attacks of September 11, 2001 have substantially affected the availability of insurance coverage for certain types of damages or occurrences. We currently have insurance coverage for terrorist acts with respect to Wynn Las Vegas, Encore at Wynn Las Vegas and Wynn Macau for up to \$800 million per occurrence for losses that could result from these acts. However, these types of acts could expose us to losses that exceed our coverage and could have a significant negative impact on our operations.

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

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

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

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

[Table of Contents](#)

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

We have also filed applications with various foreign patent and trademark registries including registries in Macau, China, Hong Kong, Singapore, Taiwan, Japan, certain European countries and various other jurisdictions throughout the world to register a variety of WYNN-related trademarks and service marks in connection with a variety of goods and services. These marks include many of the same marks filed with the United States Patent and Trademark Office and include “WYNN MACAU,” “ENCORE,” and “WYNN LAS VEGAS.” Some of the applications are based upon ongoing use and others are based upon a bona fide intent to use the marks in the future.

We have recognized that our intellectual property assets, especially the logo version of “Wynn”, are among our most valuable assets. As a result, and in connection with expansion of our resorts and gaming activities outside the United States, we have undertaken a program to register our trademarks and other intellectual property rights in all relevant jurisdictions, some of which may pose a risk of unauthorized use or counterfeiting. We have retained counsel and will take all steps necessary to not only acquire but protect our intellectual property rights against such unauthorized use throughout the world.

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

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

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

Our ability to maintain our competitive position is dependent to a large degree on the efforts and skills of Stephen A. Wynn, the Chairman of the Board, Chief Executive Officer and one of the principal stockholders of Wynn Resorts. In 2008, we extended the term of Mr. Wynn’s employment agreement until October 2020. However, we cannot assure you that Mr. Wynn will remain with us. If we lose the services of Mr. Wynn, or if he is unable to devote sufficient attention to our operations for any other reason, our business may be significantly impaired. In addition, if Mr. Wynn is no longer either employed by us as Chief Executive Officer or serving as Chairman of the Board, other than as a result of death or disability or other limited circumstances, it would constitute a change of control that would require Wynn Las Vegas to offer to repay the First Mortgage Notes and would constitute an event of default under its credit facilities and Wynn Macau, S.A.’s credit facilities.

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

Mr. Wynn, Elaine P. Wynn, and Aruze USA, Inc., together own approximately 37.9%, of our outstanding common stock. As a result, Mr. Wynn, Elaine P. Wynn, and Aruze USA, Inc., to the extent they vote their shares in a similar manner, may be able to exert significant control over all matters requiring our stockholders’ approval, including the approval of significant corporate transactions.

In November 2006, Mr. Wynn, and Aruze USA, Inc., entered into a stockholders’ agreement. On January 6, 2010, the agreement was amended and restated to, among other things, recognize Mr. Wynn’s transfer of

[Table of Contents](#)

11,076,709 shares to Elaine P. Wynn. Pursuant to the amended and restated stockholders agreement, Elaine P. Wynn became party to the agreement in connection with her ownership of 11,076,709 shares of the Company's common stock. Under the amended and restated stockholders' agreement, Mr. Wynn, Elaine P. Wynn, and Aruze USA, Inc., have agreed to vote their shares of our common stock for a slate of directors supported by Mr. Wynn. As a result of this voting arrangement, Mr. Wynn, as a practical matter, controls the slate of directors to be elected to our board of directors. In addition, with stated exceptions, the agreement requires the written consent of the other parties prior to any party selling any shares of Wynn Resorts that it owns.

In November 2006, the Board of Wynn Resorts approved an amendment of its bylaws that exempts future acquisitions of shares of Wynn Resorts' common stock by either Mr. Wynn or Aruze USA, Inc. from Nevada's acquisition of controlling interest statutes. The Nevada acquisition of controlling interest statutes require stockholder approval in order to exercise voting rights in connection with any acquisition of a controlling interest in certain Nevada corporations unless the articles of incorporation or bylaws of the corporation in effect on the 10th day following the acquisition of a controlling interest by certain acquiring persons provide that these statutes do not apply to the corporation or to the acquisition specifically by types of existing or future stockholders. These statutes define a "controlling interest" as (i) one-fifth or more but less than one-third, (ii) one-third or more but less than a majority, or (iii) a majority or more, of the voting power in the election of directors. As a result of the bylaw amendment, either Mr. Wynn or Aruze USA, Inc. or their respective affiliates may acquire ownership of outstanding voting shares of Wynn Resorts permitting them to exercise more than one-third but less than a majority, or a majority or more, of all of the voting power of the corporation in the election of directors, without requiring a resolution of the stockholders of the corporation granting voting rights in the control shares acquired.

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

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

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

Any violation of the Foreign Corrupt Practices Act or applicable Anti-Money Laundering Regulation could have a negative impact on us.

We are subject to regulations imposed by the Foreign Corrupt Practices Act (the "FCPA"), which generally prohibits U.S. companies and their intermediaries from making improper payments to foreign officials for the purpose of obtaining or retaining business. Any determination that we have violated the FCPA could have a material adverse effect on our financial condition. We also deal with significant amounts of cash in our operations and are subject to various reporting and anti-money laundering regulations. Any violation of anti-money laundering laws or regulations by any of our properties could have a negative effect on our results of operations.

Risks Associated with Wynn Macau

Visitation to Macau may decline due to continued economic disruptions in mainland China as well as increased restrictions on visitations to Macau from citizens of mainland China.

A significant number of our gaming customers at Wynn Macau come from mainland China. A continued slow down in the economic growth of China could disrupt the number of patrons visiting our property or the amount they may be willing to spend. In addition, any travel restrictions imposed by China could disrupt the number of visitors from mainland China to our property. During 2009, certain policies implemented by China limited visitation to Macau and Hong Kong by mainland Chinese residents. It is not known when, or if, these policies will be relaxed. The visa policy may be adjusted further in the future.

We compete for limited labor resources in Macau and Macau government policies may also affect our ability to employ imported labor.

The success of our operations in Macau will be affected by our success in retaining our employees. Wynn Macau competes with the large number of new casino resort developments currently underway in Macau for the limited qualified employees. We have to seek employees from other countries to adequately staff Wynn Macau and recent policies announced by the Macau government have affected our ability to import labor in certain job classifications. We are coordinating with the Macau labor and immigration authorities to ensure our labor demand is satisfied, but cannot be certain that we will be able to recruit and retain a sufficient number of qualified employees for our Wynn Macau operations or that we will be able to obtain required work permits for those employees.

We depend upon games promoters for a significant portion of our gaming revenue. If we are unable to maintain, or develop additional, successful relationships with reputable games promoters, our ability to maintain or grow our gaming revenues could be adversely affected. Increased competition may result in increased pressure on commission rates.

A significant portion of our gaming revenue is generated by clientele of our games promoters. With the rise in gaming in Macau, the competition for services provided by games promoters has increased. We anticipate that this competition will further intensify as additional casinos are expected to open in Macau in the near future. While we believe that we currently maintain good relations with our existing games promoters, there can be no assurance that we will be able to continue to maintain these relationships. If we are unable to maintain, or develop additional, successful relationships with reputable games promoters, or lose a significant number of our games promoters to our competitors, our ability to maintain or grow our gaming revenues will be adversely affected and we will have to seek alternative ways of developing relationships with VIP customers. In addition, if our games promoters are unable to develop or maintain relationships with our VIP customers, our ability to maintain or grow our gaming revenues will be hampered.

In 2008, Macau experienced a consolidation of games promoters. As a consequence, certain game promoters have significant leverage and bargaining strength in negotiating operational agreements with casino operators. Consolidation could result in negative changes in our operational agreements, including higher commissions, the loss of business to a competitor or the loss of our relationships with games promoters. While we have not had to adjust our compensation arrangements with games promoters thus far, we are aware of increased commission rates paid by other casino operators to games promoters in the Macau market. If we need to increase our commission rates, our results of operations could be adversely affected.

In August 2009, the Macau government published, in its official gazette, certain guidelines with respect to caps on the commission rates payable to gaming promoters that became effective December 1, 2009. We do not know the impact that such caps may have on our business. Further changes or tightening of caps may occur and if the Macau government were to implement caps on commission rates payable to gaming promoters that causes us

[Table of Contents](#)

to pay them effectively less than the level we currently pay, gaming promoters may have less incentive to bring travelers to casinos in Macau, including Wynn Macau, or may cease operations, and our business, financial condition and results of operations could be materially and adversely affected.

The reputations of the games promoters we deal with are important to our own reputation and to our ability to operate in compliance with our concession and Macau gaming laws. While we endeavor, through contractual protections and otherwise, to ensure that our games promoters comply with the high standards of probity and integrity under Macau gaming laws, we cannot assure you that our games promoters will always comply with these high standards. In addition, if we enter into a business relationship with a games promoter whose probity is in doubt, this may be considered by regulators or investors to reflect negatively on our own probity. If any of our games promoters violate the Macau gaming laws while on our premises, the Macau government may, in its discretion, take enforcement action against us, the games promoter, or each concurrently, and we may be sanctioned and our reputation could be harmed. If our games promoters are unable to maintain required standards of probity and integrity, we may face consequences from gaming regulators with authority over our operations.

The financial resources of our games promoters may be insufficient to allow them to continue doing business at Wynn Macau.

The global financial crisis may cause our games promoters to encounter decreased liquidity limiting their ability to grant credit to their patrons and thereby decreasing gaming volume at Wynn Macau. Furthermore, credit already extended by our games promoters to their patrons may become increasingly difficult for them to collect. This inability to grant credit and collect amounts due can negatively affect our games promoters' operations at Wynn Macau, and as a result, our results of operations could be adversely impacted.

The development costs of Encore at Wynn Macau are estimates only, and actual development costs may be higher than expected. Not all of the construction costs of Encore at Wynn Macau are covered by a guaranteed maximum price construction contract, and we will be responsible for any cost overruns of these excluded items.

We expect the total development costs of Encore at Wynn Macau to be approximately \$600 million. While we believe that the overall budget for the development costs of Encore at Wynn Macau is reasonable, these development costs are estimates and actual development costs may be higher than expected. Although we have certain contingencies set aside to cover cost overruns, these contingencies may not be sufficient to cover the full amount of such overruns and we may not have the funds required to pay the excess costs.

We have entered into a guaranteed maximum price construction contract for the design and construction of Encore at Wynn Macau with Leighton Contractors (Asia) Limited, China State Construction Engineering (Hong Kong) Limited and China Construction Engineering (Macau) Company Limited, acting together as general contractor ("Leighton/China State"). The contract covers approximately \$417.4 million of the budgeted \$600 million design and construction costs. We are responsible for cost overruns with respect to any budgeted components that are not part of the amended guaranteed maximum price contract.

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

Under the terms and subject to the conditions and limitations of the guaranteed maximum price construction contract, Leighton/China State is responsible for all construction costs covered by the construction contract that exceed the approximately \$417.4 million guaranteed maximum price contained in the contract. The parent companies of the contractor have provided a continuing guaranty by which they guarantee the contractor's full performance under the construction contract until final payment under that contract. We cannot assure you that the contractor or its parent companies will have sufficient financial resources to fund any cost overruns or liquidated damages for which they are responsible under the guaranteed maximum price contract. Furthermore,

[Table of Contents](#)

neither is contractually obligated to maintain the financial resources to cover cost overruns. If they do not have the resources to meet their obligations and we are unable to obtain funds from them in a timely manner, we may need to pay these excess costs in order to complete construction of Encore at Wynn Macau.

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

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

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

In December 2009, Fernando Chui Sai On was inaugurated as the second Chief Executive of Macau. Dr. Chui's government is formulating new policies to further the development of Macau. Certain of these policies could affect the gaming industry.

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

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

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

Macau's subtropical climate and location on the South China Sea are subject to extreme weather conditions including typhoons and heavy rainstorms. Unfavorable weather conditions could negatively affect the profitability of Wynn Macau and prevent or discourage guests from traveling to Macau.

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

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

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

[Table of Contents](#)

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

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

Revenues from our Macau gaming operations will end if we cannot secure an extension of our concession in 2022 or if the Macau government exercises its redemption right in 2017.

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

Conflicts of interest may arise because certain of our directors and officers are also directors of Wynn Macau, Limited.

In October 2009, Wynn Macau, Limited, a newly formed and indirect subsidiary of Wynn Resorts and the developer, owner and operator of Wynn Macau, had its ordinary shares of common stock listed on The Stock Exchange of Hong Kong Limited. Wynn Macau, Limited sold through an initial public offering, 1,437,500,000 shares of this subsidiary's common stock (representing approximately 27.7% of its outstanding shares). As a result of Wynn Macau, Limited having stockholders who are not affiliated with us, we and certain of our officers and directors who also serve as officers and/or directors of Wynn Macau, Limited may have conflicting fiduciary obligations to our stockholders and to the minority stockholders of Wynn Macau, Limited. Decisions that could have different implications for Wynn Resorts and Wynn Macau, Limited, including contractual arrangements that we have entered into or may in the future enter into with Wynn Macau, Limited, may give rise to the appearance of a potential conflict of interest.

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

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

- knowingly violate any Macau laws relating to their Macau gaming operations;

[Table of Contents](#)

- fail to conduct Wynn Macau's operations in accordance with the standards of honesty and integrity required of Nevada gaming operations;
- engage in any activity or enter into any association that is unsuitable for us because it poses an unreasonable threat to the control of gaming in Nevada, reflects or tends to reflect discredit or disrepute upon the State of Nevada or gaming in Nevada, or is contrary to Nevada gaming policies;
- engage in any activity or enter into any association that interferes with the ability of the State of Nevada to collect gaming taxes and fees; or,
- employ, contract with or associate with any person in the foreign gaming operation who has been denied a license or a finding of suitability in Nevada on the ground of unsuitability, or who has been found guilty of cheating at gambling.

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

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

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

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

We cannot assure you that the Hong Kong dollar and the Macau pataca will continue to be linked to the U.S. dollar, which may result in severe fluctuations in the exchange rate for these currencies. We also cannot assure you that the current rate of exchange fixed by the applicable monetary authorities for these currencies will remain at the same level.

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

[Table of Contents](#)

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

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

ITEM 1B. UNRESOLVEDSTAFF COMMENTS

None.

ITEM 2. PROPERTIES

Las Vegas Land

We currently own approximately 240 acres of land on or near the Las Vegas Strip consisting of approximately 75 acres at the northeast corner of the intersection of Las Vegas Boulevard and Sands Avenue on which Wynn Las Vegas and Encore at Wynn Las Vegas are located, the approximately 142-acre golf course behind Wynn Las Vegas, approximately 5 acres adjacent to the golf course on which an office building is located, and approximately 18 acres located across from the Wynn Las Vegas site at Koval Lane and Sands Avenue, a portion of which is improved with an employee parking garage. Our Las Vegas property, with limited exceptions, is encumbered by a first priority security interest in favor of our lenders under our first mortgage notes and our Wynn Las Vegas bank credit facilities.

Las Vegas Water Rights

We own approximately 834 acre-feet of permitted and certificated water rights, which we currently use to irrigate the golf course. We also own approximately 151.5 acre-feet of permitted and certificated water rights for commercial use. There are significant cost savings and conservation benefits associated with using water supplied pursuant to our water rights. We anticipate using our water rights to support future development of the golf course land.

Macau Land Concessions

The government of Macau owns most of the land in Macau. In most cases, private interests in real property located in Macau are obtained through long-term leases and other grants of rights to use land from the government. In July 2004, our subsidiary, Wynn Macau, S.A., entered into a land concession contract under which Wynn Macau, S.A. leases from the Macau government an approximately 16-acre parcel of land in downtown Macau's inner harbor area where Wynn Macau is located. The term of the land concession contract is 25 years, and it may be renewed with government approval for successive periods. Wynn Macau, S.A. was obligated to pay a total land concession premium of approximately 319.4 million patacas (approximately US \$40 million).

In 2009, the Company and the Macau government agreed to modify this land concession as a result of the construction of Encore at Wynn Macau and the additional square footage that will be added as a result of such construction. In November 2009, the Company made an additional one-time land premium payment of approximately 113.4 million patacas (approximately US \$14.2 million). Annual rent of approximately 4.2 million patacas (approximately US \$527,000) is being paid in accordance with the land concession contract.

In addition, we have applied to the government of Macau for a land concession for approximately 52 acres on Cotai for future development and are awaiting final approval. No construction timeline or budget has been prepared.

ITEM 3. LEGAL PROCEEDINGS

We are occasionally party to lawsuits. As with all litigation, no assurance can be provided as to the outcome of such matters and we note that litigation inherently involves significant costs. We are not currently party to any material legal proceedings.

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

There were no matters submitted to a vote of our security holders during the fourth quarter of 2009.

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

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

	<u>High</u>	<u>Low</u>
Year Ended December 31, 2009		
First Quarter	\$ 55.41	\$ 14.50
Second Quarter	\$ 50.77	\$ 19.52
Third Quarter	\$ 74.90	\$ 29.05
Fourth Quarter	\$ 71.50	\$ 51.73
Year Ended December 31, 2008		
First Quarter	\$ 124.77	\$ 90.90
Second Quarter	\$ 116.54	\$ 77.66
Third Quarter	\$ 119.74	\$ 69.27
Fourth Quarter	\$ 83.69	\$ 28.06

Holdings

There were approximately 203 record holders of our common stock as of February 17, 2010.

Dividends

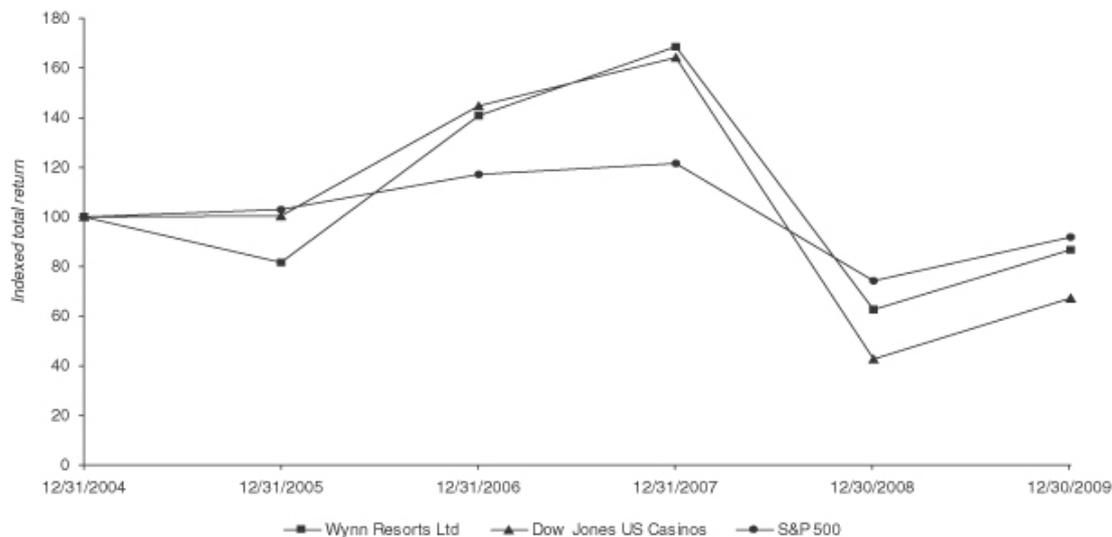
Wynn Resorts is a holding company and, as a result, our ability to pay dividends is dependent on our ability to obtain funds and our subsidiaries' ability to provide funds to us. As a result of the sale of shares in Wynn Macau, Limited in October 2009, we have a total of approximately \$1.2 billion of available cash that is not subject to such restrictions. Restrictions imposed by our subsidiaries' debt instruments significantly restrict certain key subsidiaries holding a majority of our assets, including Wynn Las Vegas, LLC and Wynn Macau, S.A., from making dividends or distributions to Wynn Resorts. Specifically, Wynn Las Vegas, LLC and certain of its subsidiaries are restricted under the indenture governing the first mortgage notes from making certain "restricted payments," as defined in the indenture. These restricted payments include the payment of dividends or distributions to any direct or indirect holders of equity interests of Wynn Las Vegas, LLC. Restricted payments cannot be made unless certain financial and non-financial criteria have been satisfied. In addition, the terms of the other loan agreements of Wynn Las Vegas, LLC and Wynn Macau, S.A. contain similar restrictions.

On November 6, 2009, our Board of Directors declared a cash dividend of \$4.00 per share on our outstanding common stock. This dividend was paid on December 3, 2009, to stockholders of record on November 19, 2009. Our Board of Directors also approved the commencement of a regular cash dividend program beginning in 2010. Our Board of Directors will continue to periodically assess the level and appropriateness of any cash dividends.

In each of November 2006 and 2007, our Board of Directors declared a cash distribution of \$6.00 per common share which was paid in the following month.

Stock Performance Graph

The graph below compares the five year cumulative total return on our common stock to the cumulative total return of the Standard & Poor’s 500 Stock Index (“S&P 500”) and the Dow Jones US Casino Index. The performance graph assumes that \$100 was invested on December 31, 2004 in each of the Company’s common stock, the S&P 500 and the Dow Jones US Casino Index, and that all dividends were reinvested. The stock price performance shown in this graph is neither necessarily indicative of, nor intended to suggest, future stock price performance.



	<u>Wynn Resorts Ltd.</u>	<u>Dow Jones US Casinos</u>	<u>S&P 500</u>
December 04	100.0	100.0	100.0
December 05	82.0	100.5	103.0
December 06	140.2	144.1	117.0
December 07	167.6	163.4	121.2
December 08	63.2	43.6	74.5
December 09	87.0	67.7	92.0

The performance graph should not be deemed filed or incorporated by reference into any other of our filings under the Securities Act of 1933 or the Exchange Act of 1934, unless we specifically incorporate the performance graph by reference therein.

ITEM 6. SELECTED FINANCIAL DATA

The following tables reflect the selected consolidated financial data of Wynn Resorts and its subsidiaries. This data should be read together with our Consolidated Financial Statements and Notes thereto, “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” and the other information contained in this Annual Report on Form 10-K. Operating results for the periods presented are not indicative of the results that may be expected for future years. Significant events impacting our operational results include:

- Prior to April 28, 2005, we were solely a development stage company.
- On April 28, 2005, we opened our Wynn Las Vegas resort.
- On September 6, 2006, we opened our Wynn Macau resort.
- On September 11, 2006 we completed the sale of our Macau sub-concession right and recognized a pre-tax gain of \$899.4 million.
- On December 24, 2007, we opened an expansion of our Wynn Macau resort.
- On December 22, 2008, we opened Encore at Wynn Las Vegas.

	Years Ended December 31,				
	2009	2008	2007	2006	2005
(in thousands, except per share amounts)					
Consolidated Statements of Operations Data:					
Net Revenues	\$ 3,045,611	\$ 2,987,324	\$ 2,687,519	\$ 1,432,257	\$ 721,981
Pre-opening costs	1,817	72,375	7,063	62,726	96,940
Operating income/(loss)	234,963	312,136	427,355	68,367	(26,027)
Net income/(loss)[1]	39,107	210,479	196,336	599,552	(115,705)
Less: Net income attributable to non-controlling interest[2]	(18,453)	—	—	—	—
Net income (loss) attributable to Wynn Resorts	20,654	210,479	196,336	599,552	(115,705)
Basic income/(loss) per share	0.17	1.94	1.85	6.00	(1.18)
Diluted income/(loss) per share	0.17	1.92	1.80	6.00	(1.18)

	As of December 31,				
	2009	2008	2007	2006	2005
(in thousands, except per share amounts)					
Consolidated Balance Sheets Data:					
Cash and cash equivalents	\$ 1,991,830	\$ 1,133,904	\$ 1,275,120	\$ 789,407	\$ 434,289
Restricted cash and investments[3]	—	—	531,120	237,386	442,602
Construction in progress	457,594	221,696	923,325	346,192	287,493
Total assets	7,581,769	6,755,788	6,312,820	4,667,951	3,950,337
Total long-term obligations[4]	3,695,821	4,421,885	3,612,987	2,287,783	1,974,398
Stockholders’ equity	3,160,363	1,601,595	1,956,959	1,727,766	1,675,194
Cash distribution declared per common share	\$ 4.00	\$ 0	\$ 6.00	\$ 6.00	\$ 0

[1] Net income for 2006 includes a pre-tax gain on sale of subconcession right of \$899.4 million.

[2] In October 2009, Wynn Macau, Limited, our newly formed and indirect wholly owned subsidiary and the developer, owner and operator of Wynn Macau, had its ordinary shares of common stock listed on The Stock Exchange of Hong Kong Limited. Wynn Macau, Limited sold 1,437,500,000 (27.7%) shares of its common stock through an initial public offering. The \$18.5 million represents the non-controlling interests share of our net income for the period from October 9, 2009, the date of the IPO, through December 31, 2009.

[3] Restricted cash and investments primarily reflect the proceeds of our debt and equity financings that were restricted for the repurchase of our common stock and construction of Encore at Wynn Las Vegas, and prior to December 31, 2005, for construction of Wynn Las Vegas.

[4] Includes long-term debt, the required contract premium payments under our land concession contract at Wynn Macau, construction retention, and other long term liabilities.

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

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

Overview

We are a developer, owner and operator of destination casino resorts. We currently own and operate Wynn Las Vegas, a destination casino resort in Las Vegas, Nevada, which opened on April 28, 2005, Encore at Wynn Las Vegas, a destination casino resort located adjacent to Wynn Las Vegas, which opened on December 22, 2008, and Wynn Macau, a destination casino resort in the Macau Special Administrative Region of the People's Republic of China ("Macau"), which opened on September 6, 2006. We are completing construction of Encore at Wynn Macau, a further expansion of Wynn Macau, which is expected open in April 2010. We believe that our properties are the preeminent destination casino resorts in their respective markets. Until the opening of Wynn Las Vegas in 2005, we were solely a development stage company.

Our Resorts

The following table sets forth information about our operating properties as of February 2010:

	<u>Hotel Rooms & Suites</u>	<u>Approximate Casino Square Footage</u>	<u>Approximate Number of Table Games</u>	<u>Approximate Number of Slots</u>
Wynn Las Vegas	2,716	110,000	130	1,920
Encore at Wynn Las Vegas	2,034	76,000	90	790
Wynn Macau	600	222,000	390	1,200

Wynn Las Vegas

Wynn Las Vegas is located at the intersection of the Las Vegas Strip and Sands Avenue and occupies approximately 217 acres of land fronting the Las Vegas Strip. In addition, we own approximately 18 additional acres across Sands Avenue, a portion of which is utilized for employee parking and approximately 5 acres adjacent to the golf course on which an office building is located.

Wynn Las Vegas features:

- An approximately 110,000 square foot casino offering 24-hour gaming and a full range of games, including private baccarat salons, a poker room, and a race and sports book;
- Luxury hotel accommodations in 2,716 spacious hotel rooms, suites and villas;
- 22 food and beverage outlets;
- A Ferrari and Maserati automobile dealership;
- Approximately 74,000 square feet of high-end, brand-name retail shopping, including stores and boutiques featuring Alexander McQueen, Brioni, Cartier, Chanel, Dior, Graff, Louis Vuitton, Manolo Blahnik, Oscar de la Renta, Vertu and others;
- Recreation and leisure facilities, including an 18-hole golf course, five swimming pools, private cabanas and a full service spa and salon; and
- A showroom, two nightclubs and lounges.

Encore at Wynn Las Vegas

We opened Encore at Wynn Las Vegas on December 22, 2008. Encore at Wynn Las Vegas features:

- An approximately 76,000 square foot casino offering 24-hour gaming and a full range of games, including private gaming salons and a sports book;

[Table of Contents](#)

- Luxury hotel accommodation in 2,034 all-suite rooms;
- Twelve food and beverage outlets;
- Approximately 27,000 square feet of high-end brand name retail shopping, including stores and boutiques featuring Hermes, Chanel and others;
- Recreation and leisure facilities including swimming pools, private cabanas and a full service spa and salon; and
- A showroom, nightclub and lounges.

In response to the evaluation of our Las Vegas Operations and the reactions of our guests, we have made and expect to continue to make enhancements and refinements to our resorts.

Construction is currently underway to replace Encore's porte-cochere on Las Vegas Boulevard with the Encore Beach Club that will feature pools, food and beverage, and nightlife offerings. The total project budget for the Encore Beach Club is approximately \$68 million. The Beach Club is expected to open on schedule in the second quarter of 2010.

Wynn Macau

We opened Wynn Macau on September 6, 2006 and we completed expansions of this resort in December 2007 and November 2009. We operate Wynn Macau under a 20-year casino concession agreement granted by the Macau government in June 2002. Wynn Macau features:

- An approximately 222,000 square foot casino offering 24-hour gaming and a full range of games, including private gaming salons and a poker room;
- Luxury hotel accommodations in 600 rooms and suites;
- Casual and fine dining in six restaurants;
- Approximately 48,000 square feet of high-end, brand-name retail shopping, including stores and boutiques featuring Bvlgari, Chanel, Dior, Dunhill, Fendi, Ferrari, Giorgio Armani, Gucci, Hermes, Hugo Boss, Louis Vuitton, Miu Miu, Piaget, Prada, Rolex, Tiffany, Van Cleef & Arpels, Versace, Vertu, Zegna and others;
- Recreation and leisure facilities, including a health club, pool and spa; and
- Lounges and meeting facilities.

In response to our evaluation of Wynn Macau and the reactions of our guests, we have made and expect to continue to make enhancements and refinements to the resort.

We are completing construction on Encore at Wynn Macau, a further expansion of Wynn Macau that will add a fully-integrated resort hotel with approximately 410 luxury suites and four villas, as well as additional gaming areas, food and beverage and retail amenities. We expect Encore at Wynn Macau to open in April 2010.

Future Development

On February 24, 2010, we announced we entered into a letter of intent with Philadelphia Entertainment and Development Partners, LP (PEDP), providing that one of our affiliates will become the manager and managing general partner in the PDEP casino project slated for the Philadelphia waterfront. The agreement is subject to the satisfaction of certain conditions including the approval of the Pennsylvania Gaming Board.

Approximately 142 acres of land comprising Wynn Las Vegas and Encore at Wynn Las Vegas is currently improved with a golf course. While we may develop this property in the future, we have no immediate plans to do so.

We have applied to the government of Macau for a land concession for approximately 52 acres on Cotai and are awaiting final governmental approval of this concession. No construction timeline or budget has been prepared.

Current Economic and Operating Environment

Due to a number of factors affecting consumers, including a slowdown in global economies, contracting credit markets, reduced consumer spending, and U.S. political leadership, the outlook for the gaming, travel and entertainment industries both domestically and abroad continues to remain highly uncertain. Auto traffic into Las Vegas, airline capacity and air travel to McCarran International airport have continued to decline year over year, resulting in lower casino volumes and a reduced demand for hotel rooms. This slow down was particularly significant in the fourth quarter of 2008 and continued throughout 2009, most significantly affecting our U.S. operations. Based on our experience over this past year and current market conditions, we believe that our Las Vegas operations will continue to experience lower than historical hotel occupancy rates, room rates, casino volumes and departmental profitability. Significant new supply in Las Vegas will put additional pressure on occupancy and room rates during 2010. As a result of the current economic and market conditions, we have focused on efficiency initiatives that we began implementing at both of our properties and corporate offices in early 2009. These initiatives include reductions in pay for certain salaried employees, reduced work weeks for full-time hourly employees, a reduction of certain 2009 bonus accruals and a suspension of the employer match to the 401(k) plan. We continually review the cost structure of our operating properties and corporate offices to identify further opportunities to reduce costs. In addition to the slowing global economy, Wynn Macau was adversely affected during 2009 by certain visa restrictions implemented in September 2008.

Results of Operations

Our results of operations for the periods presented are not comparable as the year ended December 31, 2009 includes Encore at Wynn Las Vegas for a full year, whereas 2008 included only 10 days of operations for Encore at Wynn Las Vegas. We also believe that our operating results at both properties for the years ended December 31, 2009 and 2008, were adversely impacted by the weakened global economy. Disruptions in the global financial and stock markets and reduced levels of consumer spending have and are likely to continue to adversely impact our financial results. In addition, as noted above, visa restrictions have placed certain limitations on visitation to Macau.

The table below displays our net revenues for the years ended December 31, 2009, 2008 and 2007 (amounts in thousands):

	For the Years Ended December 31,		
	2009	2008	2007
Net Revenues:			
Wynn Las Vegas, including Encore	\$ 1,229,573	\$ 1,098,889	\$ 1,295,381
Wynn Macau	1,816,038	1,888,435	1,392,138
Total Net revenues	<u>\$ 3,045,611</u>	<u>\$ 2,987,324</u>	<u>\$ 2,687,519</u>

Reliance on only two properties (in two geographic regions) for our operating cash flow exposes us to certain risks that competitors, whose operations are more diversified, may be better able to control. In addition to the concentration of operations in two properties, many of our customers are high-end gaming customers who wager on credit, thus exposing us to increased credit risk. High-end gaming also increases the potential for variability in our results.

Operating Measures

Certain key operating statistics specific to the gaming industry are included in our discussion of our operational performance for the periods for which a Consolidated Statement of Income is presented. There are two methods used to calculate win percentage in the casino industry. In Las Vegas and in the general casino at Wynn Macau, customers primarily purchase gaming chips from gaming tables. The cash and net markers used to

[Table of Contents](#)

purchase the gaming chips from gaming tables are deposited in the gaming table's drop box. This is the base of measurement that we use in the casino at our Las Vegas Operations and in the general casino at Wynn Macau for calculating win percentage.

In our VIP casino at Wynn Macau, customers primarily purchase non-negotiable rolling chips from the casino cage and there is no deposit into a gaming table drop box from chips purchased from the cage. Non-negotiable chips can only be used to make wagers. Winning wagers are paid in cash chips. The loss of the non-negotiable rolling chips in the VIP casino is recorded as turnover and provides a base for measuring VIP casino win percentage. Because of this difference in chip purchase activity, the measurement base used in the general casino is not the same that is used in the VIP casino. It is customary in Macau to measure VIP casino play using this Rolling Chip method.

The measurement method in Las Vegas and in the general casino at Wynn Macau effectively tracks the initial purchase of chips while the measurement method in the VIP casino at Wynn Macau effectively tracks the sum of all losing wagers. Accordingly, the base measurement in the VIP casino is much larger than the general casino. As a result, the expected win percent with the same amount of gaming win (numerator) is smaller in the VIP casino at Wynn Macau when compared to the general casino in Las Vegas and Macau.

Even though both use the same measurement method, we experience different win percentages in the general casino activity in Las Vegas versus Macau. This difference is primarily due to the difference in the mix of table games between the two casinos. Each type of table game has its own theoretical win percentage. The life to date table games win percentage for our Las Vegas operations is 21.9% whereas the life to date table games win percentage for the general casino at Wynn Macau is 19.9%.

Below are definitions of the statistics discussed:

- Table games win is the amount of drop or turnover that is retained and recorded as casino revenue.
- Drop is the amount of cash and net markers issued that are deposited in a gaming table's drop box.
- Turnover is the sum of all losing Rolling Chip wagers within our Wynn Macau VIP program.
- Rolling Chips are identifiable chips that are used to track VIP wagering volume (turnover) for purposes of calculating incentives.
- Slot win is the amount of handle (representing the total amount wagered) that is retained by us and is recorded as casino revenue.
- Average Daily Rate ("ADR") is calculated by dividing total room revenue (less service charges, if any) by total rooms occupied.
- Revenue per Available Room ("REVPAR") is calculated by dividing total room revenue (less service charges, if any) by total rooms available.

Financial Results for the Year Ended December 31, 2009 Compared to the Year Ended December 31, 2008

As noted earlier, our financial results for the year ended December 31, 2009 are not comparable to the year ended December 31, 2008, as the year ended December 31, 2009 includes the operations of Encore at Wynn Las Vegas which opened on December 22, 2008, whereas the prior year includes only 10 days of Encore at Wynn Las Vegas.

Revenues

Net revenues for the year ended December 31, 2009 are comprised of \$2,206.8 million in casino revenues (72.5% of total net revenues) and \$838.8 million of net non-casino revenues (27.5% of total net revenues). Net revenues for the year ended December 31, 2008 were comprised of \$2,261.9 million in casino revenues (75.7% of total net revenues) and \$725.4 million of net non-casino revenues (24.3% of total net revenues).

[Table of Contents](#)

Casino revenues are comprised of the net win from our table games and slot machine operations. Casino revenues for the year ended December 31, 2009 of approximately \$2,206.8 million represents a \$55.1 million (or 2.4 %) decrease from casino revenues of \$2,261.9 million for the year ended December 31, 2008. We expanded Wynn Las Vegas with the opening of Encore at Wynn Las Vegas in December 2008. Encore added approximately 90 table games and approximately 800 slot machines to our Las Vegas casino operations. Even with these additions in capacity, our Las Vegas Operations experienced only a 5.4% increase in casino revenues, from \$479.7 million in 2008 to \$505.8 million in 2009, due to an increase in drop of 1.2% and a slight increase in our average table games win percentage. Our average table games win percentage (before discounts) for the year ended December 31, 2009 was 20.2%, which was below the expected range of 21% to 24% and compares to 20.0% for the prior year. Slot handle at our Las Vegas Operations decreased 2.5% during the year ended December 31, 2009 as compared to 2008, and the slot win percentage was within the expected range of 4.5% to 5.5%.

Casino revenues at Wynn Macau decreased \$81.2 million during the year ended December 31, 2009, compared to the prior year. At Wynn Macau, we experienced an 8% decrease in the VIP revenue segment primarily due to a 2% decrease in turnover and a decrease in our win as a percent of turnover. Our win as a percent of turnover was 2.9%, which was within the expected range of 2.7% to 3.0%, and compares to 3.0% in 2008. Our VIP casino segment win as a percent of turnover includes a nominal beneficial effect attributable to non-rolling chip play in that segment. In our general casino at Wynn Macau, drop decreased 12.2% when compared to the prior year and the average table games win percentage was 21.9%, which was above the expected range of 19% to 21%. The average table games win percentage in the general casino at Wynn Macau for the year ended December 31, 2008 was 19.6%. Slot handle at Wynn Macau increased 12.7% compared to the prior year and the slot win percentage was within the expected range of 4.5% to 5.5%. The increase in slot handle was primarily due to the play of high-end slot customers.

For the year ended December 31, 2009, room revenues were approximately \$377.5 million, an increase of \$50.8 million compared to prior year room revenue of \$326.7 million. Room revenue at our Las Vegas Operations increased approximately \$52.6 million compared to the prior year due to the addition of 2,034 suites at Encore at Wynn Las Vegas, which opened December 22, 2008. In Las Vegas, we continued to experience a significant decrease in occupancy and room rates during the year ended December 31, 2009, compared to the year ended December 31, 2008. Room revenue at Wynn Macau decreased approximately \$1.8 million due to a decrease in room rates compared to the prior year.

The table below sets forth key operating measures related to room revenue.

	Year Ended December 31,	
	2009	2008
Average Daily Rate		
Las Vegas	\$ 217	\$ 288
Macau	266	275
Occupancy		
Las Vegas	85.2%	91.8%
Macau	87.5%	87.3%
REVPAR		
Las Vegas	\$ 185	\$ 265
Macau	233	240

Other non-casino revenues for the year ended December 31, 2009 include food and beverage revenues of approximately \$436.4 million, retail revenues of approximately \$165.1 million, entertainment revenues of approximately \$57.1 million, and other revenues from outlets such as the spa and salon, of approximately \$66.2 million. Other non-gaming revenues for the year ended December 31, 2008 include food and beverage revenues

[Table of Contents](#)

of approximately \$358.7 million, retail revenues of approximately \$147.9 million, entertainment revenues of approximately \$66.2 million, and other revenues from outlets, including the spa and salon, of approximately \$56 million. Food and beverage revenues at our Las Vegas Operations increased as a result of the additional 12 food and beverage outlets located in Encore at Wynn Las Vegas, including a new night club, which opened in December 2008, offset by a decrease of \$2.4 million at Wynn Macau, as compared to the prior year. Although we added new retail outlets at Encore at Wynn Las Vegas, overall retail revenues in Las Vegas were flat. Retail revenues at Wynn Macau increased approximately \$16.9 million due primarily to increased sales at several retail outlets and the opening of Wynn and Co. Watches and Jewelry, which sells Cartier, Jaeger Le Coultre, and Kwiat products. Entertainment revenues decreased over the prior year primarily due to the closure of the Spamalot production show at Wynn Las Vegas in July 2008. This decrease was offset in part by revenue from headliner acts that performed during 2009, including Garth Brooks, who began performing in the Encore Theater in December 2009.

Departmental, Administrative and Other Expenses

During the year ended December 31, 2009, departmental expenses include casino expense of \$1,462.3 million, rooms expense of \$109.2 million, food and beverage expense of \$251.2 million, and entertainment, retail and other expense of \$166.6 million. Also included are general and administrative expenses of approximately \$366.8 million and approximately \$13.7 million charged as a provision for doubtful accounts receivable. During the year ended December 31, 2008, departmental expenses include casino expenses of \$1,490.9 million, room expenses of \$78.2 million, food and beverage expenses of \$207.3 million, and entertainment and retail and other expenses of \$161.9 million. Also included are general and administrative expenses of approximately \$319.3 million and approximately \$49.4 million charged as a provision for doubtful accounts receivable. Casino expenses have decreased during the year ended December 31, 2009, due to a decrease in casino revenues especially at Wynn Macau where a gaming tax of 39% is the significant driver of expense in that department. Room, food and beverage and general and administrative expenses increased as a result of the opening of Encore at Wynn Las Vegas in December 2008. Entertainment, retail and other expense increased primarily in the entertainment department due to headliner performances during the year. Our provision for doubtful accounts receivable declined during the year ended December 31, 2009, compared to the prior year due to recent strong collection trends on our casino accounts receivable. This strength has allowed us to reduce the additional reserves we recorded in the third quarter of 2008.

Pre-opening costs

During the year ended December 31, 2009, we incurred pre-opening costs of \$1.8 million compared to \$72.4 million for the year ended December 31, 2008. Pre-opening costs incurred during the year ended December 31, 2009 were related to Encore at Wynn Macau. Pre-opening costs incurred during the year ended December 31, 2008 were related to Encore at Wynn Las Vegas which opened in December 2008. We expect that pre-opening costs related to Encore at Wynn Macau will accelerate as we approach opening in April 2010.

Depreciation and amortization

Depreciation and amortization for the year ended December 31, 2009, of \$410.5 million increased by \$147.3 million when compared to the year ended December 31, 2008, primarily due to depreciation of the assets of Encore at Wynn Las Vegas which were placed into service in December 2008.

During the construction of our properties, costs incurred in the construction of the buildings, improvements to land and the purchases of assets for use in operations are capitalized. Once these properties opened, their assets were placed into service and we began recognizing the associated depreciation expense. Depreciation expenses will continue throughout the estimated useful lives of these assets. In addition, we continually evaluate the useful life of our property and equipment, intangibles and other assets and adjust them when warranted.

[Table of Contents](#)

The maximum useful life of assets at Wynn Macau is the remaining life of the gaming concession or land concession, which currently expire in June 2022 and 2029, respectively. Consequently, depreciation related to Wynn Macau is charged on an accelerated basis when compared to our Las Vegas Operations.

Property charges and other

Property charges and other generally include costs related to the retirement of assets for remodels and asset abandonments. Property charges and other for the year ended December 31, 2009 were \$28.5 million compared to approximately \$32.6 million for the year ended December 31, 2008. Property charges and other for the year ended December 31, 2009 included the following: (a) a \$16.7 million charge for the abandonment of the front porte-cochere at Encore at Wynn Las Vegas to make way for an addition to that property; (b) a \$6.8 million charge for the write-off of 2 aircraft deposits; and (c) \$5 million related to miscellaneous remodels, abandonments and loss on sale of equipment.

Property charges and other for the year ended December 31, 2008 include \$17.8 million of costs associated with Spamalot at Wynn Las Vegas which closed in July 2008. The costs included the production rights that were included in intangible assets, show production costs that were included in other assets and certain other property and equipment. In 2008, we also incurred a \$3.6 million charge at Wynn Macau related to the abandonment of certain existing floor space to begin construction of a new restaurant. The remaining property charges during 2008 were related to miscellaneous renovations and abandonments at both Wynn Las Vegas and Wynn Macau.

We expect to continue to remodel and make enhancements at our resorts.

Other non-operating costs and expenses

Interest income was \$1.7 million for the year ended December 31, 2009, compared to \$21.5 million for the year ended December 31, 2008. Interest income decreased \$19.8 million primarily due to a significant decrease in the average interest rates earned on invested cash balances compared to the prior year. During 2009, our short-term investment strategy was primarily to preserve capital while retaining sufficient liquidity. Accordingly, our short-term investments were primarily in investments in U.S. Treasury Bills with a maturity of three months or less.

Interest expense was \$211.4 million, net of capitalized interest of \$10.7 million, for the year ended December 31, 2009, compared to \$172.7 million, net of capitalized interest of \$87.4 million, for the year ended December 31, 2008. Our interest expense increased due to (i) \$76.7 million less of capitalized interest related to our construction activities with the opening of Encore at Wynn Las Vegas in December 2008, (ii) approximately \$8.4 million of interest related to the 7 7/8% \$500 million First Mortgage Notes issued in October 2009, (iii) approximately \$3.9 million of interest related to additional borrowings on our Wynn Macau credit facilities during the year and (iv) approximately \$0.6 million of interest associated with increased interest rates on the Wynn Las Vegas revolver. These increases were offset by (i) approximately \$38.6 million less interest due to the November 2008 paydown of the Wynn Resorts term loan, as well as the subsequent \$375 million payoff of such term loan in June 2009, (ii) approximately \$3 million less interest related to the purchase of \$65.8 million of 6 5/8% First Mortgage Notes and (iii) approximately \$9.3 million less interest due to lower average interest rates on the remainder of our debt including the expiration of the Wynn Las Vegas interest rate swap in December 2008.

Changes in the fair value of our interest rate swaps are recorded as an increase/ (decrease) in swap fair value in each period. We recorded an expense of approximately \$2.3 million for the year ended December 31, 2009 resulting from the decrease in the fair value of our interest rate swaps from December 31, 2008 to December 31, 2009. During the year ended December 31, 2008 we recorded an expense of \$31.5 million resulting from the net decrease in the fair value of interest rate swaps between December 31, 2007 and December 31, 2008. For further information on our interest rate swaps, see Item 7A—"Quantitative and Qualitative Disclosures about Market Risk."

[Table of Contents](#)

As a result of several debt retirements, we recorded a gain on early extinguishment of debt of \$18.7 million during the year ended December 31, 2009. During 2009, we purchased and retired outstanding loans of \$375 million under the Wynn Resorts term loan at a discounted price of 97.25%. In connection with this transaction, we recognized an \$8.8 million gain on early retirement of debt, net of the write-off of unamortized debt issue cost. We purchased \$65.8 million face amount of the Wynn Las Vegas 6 5/8% First Mortgage Notes due 2014 through open market purchases at a discount. This transaction resulted in a gain on early extinguishment of debt of \$13.7 million, net of the write off of unamortized debt discount and debt issue costs. As of December 31, 2009, Wynn Resorts holds this debt and has not contributed it to its wholly-owned subsidiary, Wynn Las Vegas. However, for accounting purposes this transaction has been treated as an extinguishment of debt by Wynn Resorts. In October 2009, we purchased loans through an offer to purchase loans outstanding under the Wynn Las Vegas credit agreement, with a face-value of \$87.6 million for \$84.4 million, reflecting a discounted price of 96.37%. In connection with this transaction, we recognized a gain of approximately \$2.1 million on early retirement of debt in the fourth quarter of 2009.

Other represents the loss recognized in connection with foreign currency remeasurements of assets and liabilities in Macau that are not denominated in the local currency.

Income Taxes

During the year ended December 31, 2009, we recorded a tax expense of \$3.0 million. Our provision for income taxes primarily relates to an increase in a valuation allowance related to foreign tax credits resulting from the repatriation of Wynn Macau earnings and the Wynn Macau Limited IPO proceeds. As discussed in our footnote on income taxes (Note 15), we currently do not consider forecasted future operating results when scheduling the realization of deferred tax assets and the required valuation allowance but instead rely solely on the reversal of net taxable temporary differences. The ultimate realization of our recorded foreign tax credit deferred tax asset is dependent upon the incurrence of sufficient U.S. income tax liabilities attributable to foreign source income during the 10-year foreign tax credit carryover period.

As of December 31, 2009, we have provided deferred income taxes net of foreign tax credits on the Wynn Macau Limited IPO proceeds (Note 13) planned for repatriation. No deferred income taxes have been provided for earnings of foreign subsidiaries that are considered permanently reinvested. During the year ended December 31, 2008, we recorded a tax benefit of \$61.6 million primarily associated with foreign tax credits applicable to earnings not considered permanently invested abroad. As of December 31, 2008, none of our foreign earnings were considered permanently invested abroad.

Effective September 6, 2006, Wynn Macau, S.A. received a 5-year exemption from Macau's 12% Complementary Tax on casino gaming profits. Accordingly, we were exempted from the payment of approximately \$31.7 million in such taxes for the year ended December 31, 2009. Our non-gaming profits remain subject to the Macau Complementary Tax and casino winnings remain subject to the Macau Special Gaming tax and other levies totaling 39% in accordance with our concession agreement. In June 2009, Wynn Macau, S.A. entered into an agreement with the Macau Special Administrative Region that provides for an annual payment of MOP \$7.2 million (approximately \$900,000 US dollars) to the Macau Special Administrative Region as complementary tax due by shareholders on dividend distributions. This agreement is effective as of 2006. Therefore, included in the tax provision for the year ended December 31, 2009, are the amounts related to the years 2006 through 2009 totaling \$3.6 million. This agreement on dividends is effective through 2010.

In February 2010, we entered into a Pre-Filing Agreement ("PFA") with the Internal Revenue Service ("IRS") providing that the Macau Special Gaming Tax qualifies as a tax paid in lieu of an income tax and can be claimed as a U.S. foreign tax credit. In January 2010, the IRS commenced an examination of the company's 2006, 2007, and 2008 U.S. federal income tax returns. During the year ended December 31, 2009, we received the results of an IRS examination of our 2004 and 2005 tax returns and we filed an appeal of the examination's findings. In connection with that appeal, we agreed to extend the statute of limitations for our 2004 and 2005 tax

returns to March 15, 2011. We do not expect resolution of the findings within 12 months. We believe that our liabilities for uncertain tax positions related to the examination's findings are adequate. The resolution of the 2004 and 2005 IRS examination is not expected to result in any significant cash payment, but rather the utilization of a portion of our 2008 foreign tax credit carryforward.

Net income attributable to non-controlling interests

In October 2009, Wynn Macau, Limited, our newly formed and indirect wholly owned subsidiary and the developer, owner and operator of Wynn Macau, had its ordinary shares of common stock listed on The Stock Exchange of Hong Kong Limited. Wynn Macau, Limited sold 1,437,500,000 (27.7%) shares of its common stock through an initial public offering. The \$18.5 million represents the non-controlling interests share of our net income for the period from October 9, 2009, the date of the IPO, through December 31, 2009.

Financial Results for the Year Ended December 31, 2008 Compared to the Year Ended December 31, 2007

Revenues

Net revenues for the year ended December 31, 2008 are comprised of \$2,261.9 million in casino revenues (75.7% of total net revenues) and \$725.4 million of net non-casino revenues (24.3% of total net revenues). Net revenues for the year ended December 31, 2007 were comprised of \$1,949.9 million in casino revenues (72.6% of total net revenues) and \$737.6 million of net non-casino revenues (27.4% of total net revenues). Encore at Wynn Las Vegas, which opened on December 22, 2008, did not significantly impact our results of operations for the year ended December 31, 2008.

Casino revenues are comprised of the net win from our table games and slot machine operations. Casino revenues for the year ended December 31, 2008 of approximately \$2,261.9 million represents a \$312 million (or 16%) increase from casino revenues of \$1,949.9 million for the year ended December 31, 2007. At Wynn Las Vegas, including Encore at Wynn Las Vegas, we experienced a \$162.6 million decrease in casino revenues compared to the prior year due to a 7.1% decrease in drop and a decrease in our table games win percentage. Our table games win percentage (before discounts) for the year ended December 31, 2008 was 20.0%, which was below the expected range of 21% to 24% and compares to 25.3% for the prior year. Slot handle at Wynn Las Vegas, including Encore at Wynn Las Vegas, decreased 12.9% during the year ended December 31, 2008 as compared to 2007, and the slot win percentage was within the expected range of 4.5% to 5.5%. As noted earlier, we believe the decrease in casino volumes reflect the overall slowdown in the global economy partially offset by the opening of Encore at Wynn Las Vegas. In the fourth quarter of 2008, casino revenue at Wynn Las Vegas, including Encore at Wynn Las Vegas, declined 43.3% compared to the fourth quarter of 2007 as a result of a decrease in table games drop of 20.2% and a decline in our average table games win percentage to 15.3% compared to 23.5% in the prior year fourth quarter. Slot handle at Wynn Las Vegas, including Encore at Wynn Las Vegas, decreased 22.7% during the fourth quarter of 2008 compared to the fourth quarter of 2007.

Casino revenues at Wynn Macau increased \$474.7 million during the year ended December 31, 2008, compared to the prior year. At Wynn Macau, we experienced a 47.4% increase in turnover in the VIP casino segment and our win as a percent of turnover was 3%, which is at the high end of our expected range of 2.7% to 3% compared to 3.1% in the prior year. Our VIP casino segment win as a percent of turnover includes a nominal beneficial effect attributable to non-rolling chip play. In our general casino at Wynn Macau, drop increased 14.2% when compared to the prior year and the table games win percentage was 19.6%, which is within the expected range of 18% to 20%. The table game win percentage at Wynn Macau for the year ended December 31, 2007 was 19%. Slot handle at Wynn Macau increased 79.5% compared to the prior year and the slot win percentage was within the expected range of 4.5% to 5.5%. The increase in casino revenue at Wynn Macau is a result of growth during the first nine months of 2008 in the Macau market as well as our casino expansion which opened in December 2007.

[Table of Contents](#)

For the year ended December 31, 2008, total room revenues were approximately \$326.7 million, a \$12.7 million decrease compared to the year ended December 31, 2007. Room revenue at Wynn Las Vegas, including Encore at Wynn Las Vegas, decreased approximately \$17.2 million compared to the prior year due to lower occupancy and lower rates, while room revenue at Wynn Macau increased approximately \$4.5 million due to increased rates. In the fourth quarter of 2008, room revenue at Wynn Las Vegas, including Encore at Wynn Las Vegas, declined by 14% as our occupancy percentage declined 14.6% and the average daily rate declined 6%, all compared to the fourth quarter of 2007. Room rates have continued to decline as the economic slowdown reduces demand for our product.

The table below sets forth key operating measures related to room revenue for Wynn Macau and Wynn Las Vegas, including Encore at Wynn Las Vegas.

	Year Ended December 31,	
	2008	2007
Average Daily Rate		
Las Vegas	\$ 288	\$ 300
Macau	275	251
Occupancy		
Las Vegas	91.8%	96.0%
Macau	87.3%	88.8%
REVPAR		
Las Vegas	\$ 265	\$ 288
Macau	240	223

Other non-casino revenues for the year ended December 31, 2008 included food and beverage revenues of approximately \$358.7 million, retail revenues of approximately \$147.9 million, entertainment revenues of approximately \$66.2 million, and other revenues from outlets such as the spa and salon, of approximately \$56 million. Other non-gaming revenues for the year ended December 31, 2007 included food and beverage revenues of approximately \$354 million, retail revenues of approximately \$123.4 million, entertainment revenues of approximately \$64.5 million, and other revenues from outlets, including the spa and salon, of approximately \$57.3 million. The increase in food and beverage revenues and retail revenues were primarily driven by our Macau operations and to a lesser extent 10 days of operations of Encore at Wynn Las Vegas, offset by decreases at Wynn Las Vegas due to the economic factors noted earlier. General growth in the Macau market and our expansion, which opened in December 2007 (including additional retail outlets), were primarily responsible for the increases. Entertainment revenues increased approximately \$10.9 million from Le Rêve at Wynn Las Vegas, offset by a decrease of \$9.2 million due to the closure of Spamalot in mid-July 2008. Together with the producers, we elected to end Spamalot's run at Wynn Las Vegas in July 2008 pursuant to the terms of our contract.

Departmental, Administrative and Other Expenses

During the year ended December 31, 2008, departmental expenses included casino expenses of \$1,491 million, rooms expenses of \$78.2 million, food and beverage expenses of \$207.3 million, and entertainment, retail and other expenses of \$161.9 million. Also included are general and administrative expenses of approximately \$319.3 million and approximately \$49.4 million charged as a provision for doubtful accounts receivable. During the year ended December 31, 2007, departmental expenses included casino expenses of \$1,168.1 million, room expenses of \$83.2 million, food and beverage expenses of \$212.6 million, entertainment, retail and other expenses of \$161.1 million, general and administrative expenses of approximately \$310.8 million and approximately \$36.1 million charged as a provision for doubtful accounts receivable. Casino expenses have increased over the prior year primarily related to the increased revenue at Wynn Macau as noted above, including the 39 percent gross win tax on casino revenues. Our casino revenues at Wynn Macau increased significantly during 2008 due to our expansion of that facility, which opened in December 2007, and general growth in the

[Table of Contents](#)

Macau market. Our revenues at Wynn Macau are subject to a 39% gross win tax whereas our Las Vegas revenues are subject to a 6.75% gross win tax. As a result, the ratio of casino departmental expenses to casino revenue is higher in Macau than Las Vegas. Macau accounted for a greater percentage of total casino revenue in 2008. Accordingly, casino expenses as a percent of casino revenues increased when comparing the results for the year ended December 31, 2008 to the year ended December 31, 2007.

Room expenses decreased \$5 million during the year ended December 31, 2008 compared to 2007. During both periods, Wynn Las Vegas had 2,716 rooms and Wynn Macau had 600 rooms. On December 22, 2008, we opened Encore at Wynn Las Vegas (“Encore”), which has 2,034 rooms. The addition of Encore for 10 days during the year ended December 31, 2008 had an immaterial impact on our room expenses for the year ended December 31, 2008. The decrease experienced was primarily a result of reduced occupancy at Wynn Las Vegas due to the economic environment.

Food and beverage expenses decreased \$5.3 million during the year ended December 31, 2008, compared to the year ended December 31, 2007, while food and beverage revenues increased \$4.7 million. During 2008, we provided more complimentary food and beverage service to our casino guests compared to 2007. As disclosed in Note 2, Summary of Significant Accounting Policies, the retail value of food and beverage furnished to guests without charge is included in gross food and beverage revenues and then is deducted as promotional allowances in our Consolidated Statements of Income. In accordance with industry practice, the estimated cost of providing such complimentary food and beverage is charged to the department that benefits from the issuance of the complimentary service, which is primarily the casino department. This resulted in a decrease in food and beverage expense while gross food and beverage revenues increased.

General and administrative expenses have increased primarily related to the opening of our expansion of Wynn Macau in December 2007, offset by a decrease in employee bonuses in Las Vegas. The provision for doubtful accounts increased during the year ended December 31, 2008 compared to 2007, primarily due to an increase in reserves established in light of the current global economic uncertainty.

Pre-opening costs

Pre-opening costs for the year ended December 31, 2008 were \$72.4 million compared to \$7.1 million for the year ended December 30, 2007. Pre-opening costs incurred during the year ended December 31, 2008 related to Encore at Wynn Las Vegas. Pre-opening costs related to Encore at Wynn Las Vegas ceased once it opened on December 22, 2008.

Depreciation and amortization

Depreciation and amortization for the year ended December 31, 2008 was \$263.2 million, an increase of \$43 million when compared to the year ended December 31, 2007, primarily due to (i) depreciation expense associated with the opening of the expansion at Wynn Macau, a portion of which opened in September 2007, and the remainder which opened in December 2007; (ii) shortened estimated lives beginning in March 2008, of certain hotel room furniture, fixtures and equipment at Wynn Las Vegas based on a planned room renovation; and (iii) the opening of Encore at Wynn Las Vegas.

During the construction of our properties, costs incurred in the construction of the buildings, improvements to land and the purchases of assets for use in operations were capitalized. Once these properties opened, their assets were placed into service and we began recognizing the associated depreciation expense. Depreciation expenses will continue throughout the estimated useful lives of these assets. In addition, we continually evaluate the useful lives of our property and equipment, intangibles and other assets and adjust them when warranted.

The maximum useful life of assets at Wynn Macau is the remaining life of the gaming concession or land concession, which currently expire in June 2022 and 2029, respectively. Consequently, depreciation related to Wynn Macau is charged on an accelerated basis when compared to Wynn Las Vegas and Encore at Wynn Las Vegas.

Property charges and other

Based upon our evaluation of our completed properties and the reactions of our guests, we have made and continue to make enhancements and refinements to our properties. Costs relating to assets retired or abandoned as a result of these enhancements and remodel efforts are expensed as property charges. Property charges and other for the year ended December 31, 2008 were \$32.6 million compared to approximately \$70.2 million for the year ended December 31, 2007. Property charges and other for the year ended December 31, 2008 included \$17.8 million of costs associated with Spamalot at Wynn Las Vegas which closed in mid-July 2008. Together with the producers, we elected to end the show's run at Wynn Las Vegas pursuant to the contract. The charge includes production rights that were included in intangible assets, show production costs that were included in other assets and certain other property and equipment. We also incurred a charge of \$3.6 million related to the abandonment of certain existing floor space at Wynn Macau to begin construction on a new restaurant. The remaining property charges were related to miscellaneous renovations and abandonments at both Wynn Las Vegas and Wynn Macau.

Property charges and other for the year ended December 31, 2007 included the following charges at Wynn Macau: (a) a \$10 million charge for the abandonment of our parking garage to make way for Encore at Wynn Macau, (b) a \$10.2 million charge related to abandonment costs for portions of the main kitchen, warehouse and restaurants to enable the main casino to be connected with the expansion that opened in December 2007, (c) a \$22.1 million charge related to significant casino and retail reconfigurations in the expansion that opened in December 2007, and (d) a \$15.5 million charge related to the abandonment of a theater. The remaining property charges were related to renovations to portions of the Le Rêve Theater, the abandonment of a marquee sign and the conversion of two retail outlets and a nightclub at Wynn Las Vegas, as well as the remodeling of certain areas at Wynn Macau. Offsetting these charges for the year ended December 31, 2007 was a gain of \$9.4 million on the sale of a company aircraft.

We expect to continue to remodel and make enhancements at our resorts.

Other non-operating costs and expenses

Interest income decreased by \$25.8 million to \$21.5 million for the year ended December 31, 2008 from \$47.3 million for the year ended December 31, 2007. This decrease was primarily due to a decrease in interest rates as compared to the prior year. During 2008, our short-term investment strategy was primarily to preserve capital while retaining sufficient liquidity. Accordingly, our short-term investments were primarily in investments in U.S. Treasury Bills with a maturity of three months or less.

Interest expense was \$172.7 million, net of capitalized interest of \$87.4 million, for the year ended December 31, 2008, compared to \$145.2 million, net of capitalized interest of \$46 million, for the year ended December 31, 2007. Interest expense increased approximately \$43.4 million due to borrowings under the \$1 billion Wynn Resorts term loan facility drawn in late 2007, approximately \$24.1 million related to the additional \$400 million Wynn Las Vegas first mortgage notes issued in November 2007 and approximately \$12 million net on borrowings from our Wynn Las Vegas, Wynn Macau and other credit facilities. These increases were offset by approximately \$10.6 million less interest expense due to the conversion of the Debentures in July 2007 and an increase of \$41.4 million in capitalized interest related to our construction activities. In future periods, interest expense will increase significantly as we no longer capitalize such costs related to Encore at Wynn Las Vegas.

Changes in the fair value of our interest rate swaps are recorded as an increase (or decrease) in swap fair value in each period. We recorded a net expense of approximately \$31.5 million for the year ended December 31, 2008 due to the net decrease in the fair value of our interest rate swaps from December 31, 2007 to December 31, 2008. During the year ended December 31, 2007, we recorded a net expense of \$6 million due to the net decrease in the fair value of interest rate swaps between December 31, 2006 and December 31, 2007. For further information on our interest rate swaps, see Item 7A—"Quantitative and Qualitative Disclosures about Market Risk."

[Table of Contents](#)

Gain (Loss) on Extinguishment of Debt

In November 2008, the Company purchased \$625 million principal amount of its outstanding loans under the \$1 billion Wynn Resorts term loan facility at a discounted price of 95.375%. This resulted in the retirement of \$625 million of principal for a payment of \$596.1 million. In connection with this transaction, we recorded a gain of \$22.3 million on early retirement of debt, net of the write-off of unamortized debt issue costs and fees.

On June 15, 2007, we announced that we had called for redemption on July 20, 2007, all of the then outstanding principal amount of our 6% Convertible Subordinated Debenture, due July 15, 2015 (the "Debentures"). Prior to redemption, in July 2007 all of the holders converted their Debentures into shares of the Company's common stock. As a result, in July 2007, the outstanding Debentures were converted into 9,744,680 shares of the our common stock. In accordance with accounting standards, we recorded a loss on extinguishment of \$93.4 million, which represents the difference between the fair value of the liability component immediately prior to extinguishment and the carrying amount of the liability on such date.

Other represents the loss recognized in connection with foreign currency remeasurements of assets and liabilities in Macau that are not denominated in the local currency.

Income Taxes

During the year ended December 31, 2008, we recorded a current tax provision of \$1.9 million and a deferred tax benefit of \$63.5 million.

During the year ended December 31, 2008, we completed a study of the taxes, levies and obligations assessed on operations of Wynn Macau under Macau law and its Macau Gaming Concession. As a result, we recognized tax benefits of \$722 million (net of valuation allowance increases) for foreign tax credits applicable to the earnings of Wynn Macau. Of the \$722 million, \$650.6 million was used to offset 2008 U.S. income tax expense incurred as a result of the repatriation of Wynn Macau earnings and \$71.4 million (net of valuation allowance) is recorded as deferred tax asset. As of December 31, 2008, we had no earnings in foreign subsidiaries that are considered permanently invested.

Our effective tax rate/(benefit) for the year ended December 31, 2008, was (41.3%). This rate was 76.3 percentage points lower than the U.S. Federal rate of 35%, primarily due to the repatriation of foreign earnings and related foreign tax credits, a domestic operating loss, and the tax holiday applicable to the earnings of Wynn Macau, S.A.

Effective September 6, 2006, Wynn Macau, S.A. received a 5-year exemption from Macau's 12% Complementary Tax on casino gaming profits. Accordingly, we were exempted from the payment of approximately \$27.7 million in such taxes for the year ended December 31, 2008. Our non-gaming profits remain subject to the Macau Complementary Tax and casino winnings remain subject to the Macau Special Gaming tax and other levies (at a rate equal to 39%) in accordance with its concession agreement.

Liquidity and Capital Resources

Cash Flow from Operations

Net cash provided by operations for the year ended December 31, 2009 was \$594 million compared to \$523.2 million provided by operations for the year ended December 31, 2008. Cash provided by operations was positively impacted by a decrease in preopening costs that were incurred during 2008 related to Encore at Wynn Las Vegas and from ordinary working capital changes. These increases were offset by increased interest costs as we no longer capitalized interest in Las Vegas with the opening of Encore at Wynn Las Vegas in 2008 and a decrease in departmental profit due to the current economic conditions.

Capital Resources

We require a certain amount of cash on hand for operations. At December 31, 2009, we had approximately \$1.99 billion of cash and cash equivalents available for operations, debt service and retirement, development

[Table of Contents](#)

activities, general corporate purposes, enhancements to our resorts, and to support the development and construction costs of Encore at Wynn Macau. Approximately \$85.6 million of our cash balance is held by Wynn Resorts, Limited, which is not a guarantor of the debt of its subsidiaries, including Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp. and Wynn Macau, S.A. In addition, as of December 31, 2009, we had approximately \$185 million of availability under our Wynn Las Vegas Revolving Credit Facility and approximately \$500 million of availability under our Wynn Macau Senior Revolving Credit Facility. Except for scheduled quarterly payments totaling \$2.7 million, we have no debt maturities in 2010. Debt maturities in 2011 are scheduled to be \$77.9 million. We believe that cash flow from operations, availability under our bank credit facilities, and our existing cash balances will be adequate to satisfy our anticipated uses of capital during 2010. If any additional financing became necessary, we cannot provide assurance that future borrowings will be available.

Cash and cash equivalents include investments in U.S. Treasury Bills and bank time deposits, all with maturities of less than 90 days.

Investing Activities

Capital expenditures were approximately \$540.9 million, \$1.3 billion and \$1 billion for the years ended December 31, 2009, 2008 and 2007. Our capital expenditures relate primarily to the construction cost associated with Encore at Wynn Las Vegas, which opened in December 2008, expansions at Wynn Macau and the continued construction of Encore at Wynn Macau.

Encore at Wynn Macau

In June 2007, we commenced construction on Encore at Wynn Macau, a further expansion of Wynn Macau. Encore at Wynn Macau is a second hotel tower for Wynn Macau situated on top of a new low-rise podium. Encore at Wynn Macau will add a fully-integrated resort hotel to Wynn Macau, planned to include approximately 410 luxury suites and four villas along with restaurants, additional retail space and additional gaming space. We expect Encore at Wynn Macau to open in April 2010.

We have executed a guaranteed maximum price contract with Leighton Contractors (Asia) Limited, China State Construction Engineering (Hong Kong) Limited and China Construction Engineering (Macau) Company Limited, acting together as the general contractor for the construction of Encore at Wynn Macau. The current guaranteed maximum price, including change orders as of December 31, 2009, is \$417.4 million.

We expect total development and construction costs to be approximately \$600 million. The project budget is being funded from our cash flow from operations at Wynn Macau and existing cash balances.

As of December 31, 2009, we had incurred approximately \$454.9 million of project costs related to the development and construction of Encore at Wynn Macau.

Financing Activities

Wynn Resorts, Limited

In October 2009, Wynn Macau, Limited, our newly formed and indirect wholly owned subsidiary and the developer, owner and operator of Wynn Macau, listed its ordinary shares of common stock on The Stock Exchange of Hong Kong Limited. Through an initial public offering, including the over allotment, Wynn Macau, Limited sold 1,437,500,000 (27.7%) shares of its common stock. We received proceeds, net of related costs, of approximately \$1.8 billion as a result of this transaction.

In March 2009, we completed a secondary common stock offering of approximately 11 million shares resulting in net proceeds of \$202.3 million. In November 2008, we completed a secondary common stock offering of 8 million shares resulting in net proceeds of \$344.3 million. In October 2007, we completed a secondary common stock offering of 4.3 million shares resulting in net proceeds of \$664.1 million.

[Table of Contents](#)

In June 2009, we purchased and retired the remaining \$375 million of outstanding loans from the \$1 billion term loan we borrowed in June 2007, for the primary purpose of funding our equity repurchase program. The purchase price was \$364.7 million reflecting a discounted price of 97.25%. In November 2008, we purchased and retired \$625 million of this term loan. The purchase price was \$596.1 million, reflecting a discounted price of 95.375%.

During the year ended December 31, 2009, we purchased \$65.8 million face amount of the Wynn Las Vegas 6 5/8% First Mortgage Notes due 2014 through open market purchases for \$50 million, reflecting a discounted price of 76.1%. As of December 31, 2009, we hold this debt and have not contributed it to our wholly-owned subsidiary, Wynn Las Vegas. For accounting purposes, this transaction has been treated as an extinguishment of debt by Wynn Resorts.

In November 2009, our Board of Directors declared a cash dividend of \$4.00 per share on our outstanding common stock. This dividend was paid on December 3, 2009, to stockholders of record on November 19, 2009. Our Board of Directors also approved the commencement of a regular cash dividend program beginning in 2010. Our Board of Directors will continue to periodically assess the level and appropriateness of any cash dividends. In November 2007, our Board of Directors declared a cash distribution of \$6 per share on our outstanding stock. This distribution was paid on December 10, 2007 to stockholders of record on November 30, 2007.

Our Board of Directors has authorized an equity repurchase program of up to \$1.7 billion. The repurchase program may include repurchases from time to time through open market purchases, in privately negotiated transactions, and under plans complying with Rules 10b5-1 and 10b-18 under the Exchange Act. No share repurchases were made during the year ended December 31, 2009. During the year ended December 31, 2008, we repurchased 10,915,633 shares at a net cost of \$940.1 million and during the year ended December 31, 2007, we repurchased 1,889,321 shares at a net cost of \$179.2 million. Accordingly, as of December 31, 2009, we had repurchased a total of 12,804,954 shares of our common stock for a net cost of \$1.1 billion under the program.

Wynn Las Vegas Credit Facilities

As of December 31, 2009, our Wynn Las Vegas Amended and Restated Credit Agreement (the "Credit Agreement"), consisted of a \$457.9 million revolving credit facility (the "Wynn Las Vegas Revolver") and an \$80.4 million term loan facility (the "Wynn Las Vegas Term Loan") (together the "Wynn Las Vegas Credit Facilities"). As of December 31, 2009, we had borrowed \$252.7 million under the Wynn Las Vegas Revolver. We also had \$20.2 million of outstanding letters of credit that reduce our availability under the Wynn Las Vegas Revolver. Consequently, we have availability of \$185 million under the Wynn Las Vegas Revolver as of December 31, 2009. As described below, during the year ended December 31, 2009, we (a) extended the maturity of the Wynn Las Vegas Revolver to July 2013, (b) received relief from certain financial covenants, (c) increased the Wynn Las Vegas Revolver by \$65 million, (d) repurchased \$87.6 million of Wynn Las Vegas Revolver loans at a discount, and (e) used the net proceeds received from our \$500 million 7 7/8 % First Mortgage Notes issuance to repay amounts outstanding, including a permanent reduction of the Wynn Las Vegas Credit Facilities of \$360 million.

In April 2009, we entered into a fourth amendment to our Credit Agreement. This amendment, among other things, (i) provides a waiver of the Consolidated Leverage Ratio, as defined in the Credit Agreement, until the quarter ending June 30, 2011, and increases such thresholds thereafter; (ii) provides additional flexibility with our Consolidated Interest Coverage Ratio, as defined in the Credit Agreement, by reducing such ratio from 1.75 : 1 to 1.25 : 1 beginning June 30, 2009 through March 31, 2011; and (iii) removes the dollar limit on the equity cure provisions for the purpose of the Consolidated Leverage Ratio and the Consolidated Interest Coverage Ratio over the life of the loan. In exchange for the amendments, we (i) repaid 30% of the outstanding revolver loans of lenders consenting to the extension of their commitment (approximately \$238 million) and permanently reduced such lender commitments by 25%; and (ii) agreed to an increase in the interest rate spread on the Wynn Las Vegas Revolver from LIBOR plus 1.625% to LIBOR plus 3.0%.

[Table of Contents](#)

In August 2009, pursuant to the terms of the Credit Agreement, we expanded the availability of the Wynn Las Vegas Revolver by \$65 million.

In September 2009, we entered into a fifth amendment to our Credit Agreement. This amendment, among other things, (i) permitted Wynn Las Vegas to issue, on or before March 31, 2010, up to \$500 million of new senior secured notes and (ii) requires that 75% of the net cash proceeds of any issuance of new senior secured notes be applied to prepay loans and reduce commitments under the Credit Agreement.

In October 2009, pursuant to an offer to purchase loans outstanding under the Credit Agreement, we purchased loans with a face value of \$87.6 million for \$84.4 million, reflecting a discounted price of 96.37%. As a result of this transaction, the Wynn Las Vegas Revolver was permanently reduced by \$43.8 million and the Wynn Las Vegas Term Loan was permanently reduced by \$44.8 million.

In October 2009, Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. (the "Issuers"), our wholly owned subsidiaries, respectively, issued, in a private offering, \$500 million aggregate principal amount of 7 7/8% First Mortgage Notes due November 1, 2017 at a price of 97.823% of the principal amount. The notes rank pari passu with the borrowing under the Wynn Las Vegas Credit Facilities and the outstanding 6 5/8% First Mortgage Notes previously issued by the Issuers. The notes are senior secured obligations of the Issuers, are guaranteed by Wynn Las Vegas, LLC's subsidiaries (subject to some exceptions), and are secured on an equal and ratable basis by a first priority lien on substantially all the existing and future assets of the Issuers and guarantors. In accordance with the fifth amendment to the Wynn Las Vegas Credit Agreement described above, we used the proceeds of this offering to repay amounts outstanding under the Wynn Las Vegas Revolver and Wynn Las Vegas Term Loan.

The Wynn Las Vegas Term Loan will be payable in two installments of \$40.2 million each on September 30, 2012 and August 15, 2013. The Wynn Las Vegas Revolver matures on July 15, 2013.

For borrowings under the Wynn Las Vegas Revolver we have historically elected Eurodollar loans, which bear interest at 1-month LIBOR and currently include a margin of 3.0% on the outstanding balance. We also incur a fee of 1.0% on the daily average of unborrowed amounts. For borrowings under the Wynn Las Vegas Term Loan we have historically elected Eurodollar loans, which bear interest at 1-month LIBOR and currently include a margin of 1.875% on the outstanding balance.

The Wynn Las Vegas Credit Facilities are an obligation of Wynn Las Vegas, LLC and are guaranteed by and secured by substantially all of the assets (except the corporate aircraft) of each of its subsidiaries (other than Wynn Completion Guarantor, LLC). The obligations of Wynn Las Vegas, LLC and the guarantors under the Wynn Las Vegas Credit Agreement rank pari passu in right of payment with their existing and future senior indebtedness, including indebtedness with respect to the First Mortgage Notes and senior in right of payment to all of their existing and future subordinated indebtedness.

The Wynn Las Vegas Credit Agreement contains a requirement that we must make mandatory repayments of indebtedness from specified percentages of excess cash flow. If our Wynn Las Vegas subsidiary meets a Consolidated Leverage Ratio, as defined in the Credit Agreement, of greater than 3.5 to 1, such repayment is defined as 50% of Excess Cash Flow, as defined in the Credit Agreement. If the Consolidated Leverage Ratio is less than 3.5 to 1, then no repayment is required. Based on the current economic conditions in which we are operating, we do not believe that Wynn Las Vegas will have excess cash flow for mandatory repayment pursuant to this provision of the Credit Agreement during the fiscal year ending December 31, 2010, and therefore we do not expect to make any mandatory repayments pursuant to this requirement during 2010.

The Wynn Las Vegas Credit Agreement contains customary covenants restricting our activities including, but not limited to: the ability to sell assets, make capital expenditures, enter into capital leases, make loans or other investments and incur additional indebtedness. In addition, we were required by the financial covenants to

[Table of Contents](#)

maintain a Consolidated Interest Coverage Ratio, as defined, not less than 1.25 to 1 as of December 31, 2009. Management believes that we were in compliance with all covenants at December 31, 2009. We will be required to maintain a Consolidated Leverage Ratio, as defined, of 6.50 to 1 for the quarterly reporting date ending June 30, 2011, 6.25 to 1 for the quarterly reporting date ending September 30, 2011 and 6.00 to 1 for each quarterly reporting date thereafter to maturity. The Consolidated Interest Coverage Ratio remains at 1.25 to 1 for the quarterly reporting dates through March 31, 2011, and then increases to 1.75 to 1 for the quarterly reporting dates June 30, 2011 to maturity.

Wynn Macau Credit Facilities

As of December 31, 2009, our Wynn Macau credit facilities, as amended, consisted of a \$550 million equivalent fully-funded senior term loan facility (the "Wynn Macau Term Loan"), and a \$1 billion equivalent senior revolving credit facility (the "Wynn Macau Revolver") in a combination of Hong Kong and U.S. dollars (together the "Wynn Macau Credit Facilities"). Wynn Macau, S.A. also has the ability to increase the total facilities by an additional \$50 million pursuant to the terms and provisions of the Amended Common Terms Agreement. As of December 31, 2009, the Wynn Macau Term Loan was fully drawn and we had borrowed \$502 million under the Wynn Macau Revolver. Consequently, we have \$498 million of availability as of December 31, 2009.

The Wynn Macau Term Loan matures in June 2014, and the Wynn Macau Revolver matures in June 2012. The principal amount of the term loan is required to be repaid in quarterly installments, commencing in September 2011. Borrowings under the Wynn Macau Credit Facilities bear interest at LIBOR or HIBOR plus a margin of 1.75%.

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

The Wynn Macau Credit Facilities contain a requirement that Wynn Macau must make mandatory repayments of indebtedness from specified percentages of excess cash flow. If our Wynn Macau subsidiary meets a Consolidated Leverage Ratio, as defined, of greater than 4.0 to 1, such repayment is defined as 50% of Excess Cash Flow, as defined. If the Consolidated Leverage Ratio is less than 4.0 to 1, then no repayment is required. Based on current estimates we do not believe that our Consolidated Leverage Ratio during the fiscal year ending December 31, 2010 will exceed 4.0 to 1, and therefore we do not expect to make any mandatory repayments pursuant to this requirement during 2010.

The Wynn Macau Credit Facilities contain customary covenants restricting our activities including, but not limited to: the incurrence of additional indebtedness, the incurrence or creation of liens on any of its property, sales and leaseback transactions, the ability to dispose of assets, and make loans or other investments. In addition, we were required by the financial covenants to maintain a Leverage Ratio, as defined, of not greater than 5.00 to 1 as of December 31, 2009, and Interest Coverage Ratio, as defined, of not less than 2.00 to 1. Management believes that we were in compliance with all covenants at December 31, 2009. The Leverage Ratio decreases to not greater than 4.75 to 1 for the quarterly reporting period ending June 30, 2010, 4.50 to 1 for the quarterly reporting period ending September 30, 2010 and 4.00 to 1 for the quarterly reporting period ending December 31, 2010. The Interest Coverage Ratio requirement remains at not less than 2.00 to 1 for each reporting period during 2010.

Off Balance Sheet Arrangements

We have not entered into any transactions with special purpose entities nor do we engage in any derivatives except for previously discussed interest rate swaps. We do not have any retained or contingent interest in assets transferred to an unconsolidated entity. At December 31, 2009, we had outstanding letters of credit totaling \$20.2 million.

[Table of Contents](#)

Contractual Obligations and Commitments

The following table summarizes our scheduled contractual commitments at December 31, 2009 (amounts in millions):

	Payments Due By Period				
	Less Than 1 Year	1 to 3 Years	4 to 5 Years	After 5 Years	Total
Long-term debt obligations	\$ 2.7	\$ 790.5	\$ 2,261.8	\$ 531.5	\$ 3,586.5
Fixed interest payments	147.6	295.3	286.3	111.6	840.8
Estimated variable interest payments[1]	51.8	91.1	24.2	1.1	168.2
Operating leases	6.8	5.3	.3	3.0	15.4
Construction contracts and commitments	117.4	—	—	—	117.4
Employment agreements	38.6	40.2	9.0	16.0	103.8
Other[2]	72.3	120.0	53.3	71.5	317.1
Total commitments	<u>\$ 437.2</u>	<u>\$ 1,342.4</u>	<u>\$ 2,634.9</u>	<u>\$ 734.7</u>	<u>\$ 5,149.2</u>

[1] Amounts for all periods represent our estimated future interest payments on our debt facilities based upon amounts outstanding and LIBOR or HIBOR rates at December 31, 2009. Such rates are at historical lows as of December 31, 2009. Actual rates will vary.

[2] Other includes open purchase orders, commitments for an aircraft purchase, land concession and fixed gaming tax payments in Macau and other contracts. As further discussed in Item 8 “Financial Statements”, Note 15 “Income Taxes”, of this report, we had \$148.4 million of unrecognized tax benefits as of December 31, 2009. Due to the inherent uncertainty of the underlying tax positions, it is not practicable to assign this liability to any particular year and therefore it is not included in the table above as of December 31, 2009.

Other Liquidity Matters

Wynn Resorts is a holding company and, as a result, our ability to pay dividends is highly dependent on our ability to obtain funds and our subsidiaries' ability to provide funds to us. Restrictions imposed by our Wynn Las Vegas and Wynn Macau debt instruments significantly restrict our ability to pay dividends. Specifically, Wynn Las Vegas, LLC and certain of its subsidiaries are restricted under the indentures governing the 6 5/8% and 7 7/8% First Mortgage Notes from making certain “restricted payments” as defined in the indenture. These restricted payments include the payment of dividends or distributions to any direct or indirect holders of equity interests of Wynn Las Vegas, LLC. These restricted payments may not be made unless certain financial and non-financial criteria have been satisfied. The credit facilities of Wynn Las Vegas, LLC and Wynn Macau, S.A. contain similar restrictions; although the Wynn Macau, S.A. loan agreements permit distribution of the net proceeds of the subconcession sale and, provided certain conditions are met, earnings and the distribution of loan proceeds. As a result of the sale of shares in Wynn Macau, Limited in October 2009, we have approximately \$1.2 billion of available cash that is not subject to such restrictions.

Wynn Las Vegas, LLC intends to fund its operations and capital requirements from operating cash flow, availability under the Wynn Las Vegas Revolver and to the extent additional funds are required, with additional contributions from Wynn Resorts. We cannot assure you, however, that our Las Vegas operations will generate sufficient cash flow from operations or that future contributions from Wynn Resorts or the availability of additional indebtedness will be sufficient to enable us to service and repay Wynn Las Vegas, LLC's indebtedness and to fund its other liquidity needs. Similarly, we expect that Wynn Macau will fund Wynn Macau, S.A.'s debt service obligations with existing cash, operating cash flow and availability under the Wynn Macau Revolver. However, we cannot assure you that operating cash flows will be sufficient to do so. We may refinance all or a portion of our indebtedness on or before maturity. We cannot assure you that we will be able to refinance any of the indebtedness on acceptable terms or at all.

[Table of Contents](#)

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

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

Credit Rating

As of February 17, 2010, we had a rating of "BB" with a "negative" outlook by Standard & Poors and a rating of "Ba3" with a "no" outlook by Moody's Investors Service. For future borrowings, any decrease in our corporate rating could result in an increase in borrowing costs.

Critical Accounting Policies and Estimates

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

Development, Construction and Property and Equipment Estimates

During the construction and development of a resort, pre-opening or start-up costs are expensed when incurred. In connection with the construction and development of our properties, significant start-up costs are incurred and charged to pre-opening costs through their respective openings. Once our properties open, expenses associated with the opening of the resorts are no longer charged as pre-opening costs. Start-up costs relating to Encore at Wynn Macau will be charged to pre-opening costs until it is completed and opened.

During the construction and development stage, direct costs such as those incurred for the design and construction of our properties, including applicable portions of interest, are capitalized. Accordingly, the recorded amounts of property and equipment increase significantly during construction periods. Depreciation expense related to capitalized construction costs is recognized when the related assets are placed in service. Upon the opening of our properties, we began recognizing depreciation expense on the resort's fixed assets.

The remaining estimated useful lives of assets are periodically reviewed.

Our leasehold interest in land in Macau under the land concession contract entered into in June 2004 is being amortized over 25 years, to the initial term of the concession contract, which currently terminates in

[Table of Contents](#)

June 2029. Depreciation on a majority of the assets comprising Wynn Macau commenced in September of 2006, when Wynn Macau opened. The maximum useful life of assets at Wynn Macau is deemed to be the remaining life of the gaming concession, which currently expires in June 2022. Consequently, depreciation related to Wynn Macau will generally be charged over shorter periods when compared to Wynn Las Vegas.

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

We also evaluate our property and equipment and other long-lived assets for impairment in accordance with applicable accounting standards. For assets to be disposed of, we recognize the asset at the lower of carrying value or fair market value less costs of disposal, as estimated based on comparable asset sales, solicited offers, or a discounted cash flow model. For assets to be held and used, we review for impairment whenever indicators of impairment exist. In reviewing for impairment, we compare the estimated future cash flows of the asset, on an undiscounted basis, to the carrying value of the asset. If the undiscounted cash flows exceed the carrying value, no impairment is indicated. If the undiscounted cash flows do not exceed the carrying value, then an impairment is recorded based on the fair value of the asset, typically measured using a discounted cash flow model. If an asset is still under development, future cash flows include remaining construction costs. All recognized impairment losses, whether for assets to be disposed of or assets to be held and used, are recorded as operating expenses.

Allowance for Estimated Doubtful Accounts Receivable

A substantial portion of our outstanding receivables relates to casino credit play. Credit play, through the issuance of markers, represents a significant portion of the table games volume at Wynn Las Vegas. While offered, the issuance of credit at Wynn Macau is less significant when compared to Wynn Las Vegas. Our goal is to maintain strict controls over the issuance of credit and aggressively pursue collection from those customers who fail to pay their balances in a timely fashion. These collection efforts may include the mailing of statements and delinquency notices, personal contacts, the use of outside collection agencies, and litigation. Markers issued at Wynn Las Vegas are generally legally enforceable instruments in the United States, and United States assets of foreign customers may be used to satisfy judgments entered in the United States.

The enforceability of markers and other forms of credit related to gaming debt outside of the United States varies from country to country. Some foreign countries do not recognize the enforceability of gaming related debt, or make enforcement burdensome. We closely consider the likelihood and difficulty of enforceability, among other factors, when issuing credit to customers who are not residents of the United States. In addition to our internal credit and collection departments, located in both Las Vegas and Macau, we have a network of legal, accounting and collection professionals to assist us in our determinations regarding enforceability and our overall collection efforts.

As of December 31, 2009 and December 31, 2008, approximately 76% and 78% of our casino accounts receivable were owed by customers from foreign countries, primarily in Asia. In addition to enforceability issues, the collectability of markers given by foreign customers is affected by a number of factors including changes in currency exchange rates and economic conditions in the customers' home countries.

We regularly evaluate our reserve for bad debts based on a specific review of customer accounts as well as management's prior experience with collection trends in the casino industry and current economic and business conditions. In determining our allowance for estimated doubtful accounts receivable, we apply industry standard reserve percentages to aged account balances and we specifically analyze the collectability of each account with a balance over a specified dollar amount, based upon the age, the customer's financial condition, collection history and any other known information. The standard reserve percentages applied are based on our historical experience and take into consideration current industry and economic conditions.

[Table of Contents](#)

The following table presents key statistics related to our casino accounts receivable (amounts in thousands):

	December 31, 2009	December 31, 2008
Casino accounts receivable	\$ 205,330	\$ 200,115
Allowance for doubtful casino accounts receivable	\$ 100,959	\$ 101,880
Allowance as a percentage of casino accounts receivable	49.2%	50.9%
Percentage of casino accounts receivable outstanding over 180 days	41.1%	30.7%

Our reserve for doubtful casino accounts receivable is based on our estimates of amounts collectible and depends on the risk assessments and judgments by management regarding realizability, the state of the economy and our credit policy. Our reserve methodology is applied similarly to credit extended at Wynn Las Vegas, Encore at Wynn Las Vegas and Wynn Macau. As of December 31, 2009 and December 31, 2008, approximately 27% and 29% respectively, of our outstanding casino account receivable balance originated at Wynn Macau.

At December 31, 2009, a 100 basis-point change in the allowance for doubtful accounts as a percentage of casino accounts receivable would change the provision for doubtful accounts by approximately \$2.1 million.

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

Derivative Financial Instruments

We seek to manage our market risk, including interest rate risk associated with variable rate borrowings, through balancing fixed-rate and variable-rate borrowings and the use of derivative financial instruments. We account for derivative financial instruments in accordance with applicable accounting standards. Derivative financial instruments are recognized as assets or liabilities, with changes in fair value affecting net income. As of December 31, 2009, changes in the swap fair values are being recorded in our Consolidated Statements of Income, as the swaps do not qualify for hedge accounting.

We measure the fair value of our interest rate swaps on a recurring basis. Accounting standards establish a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. These tiers include: Level 1, defined as observable inputs such as quoted prices in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions. We categorize these swap contracts as Level 2. The fair value approximates the amount we would receive (pay) if these contracts were settled at the respective valuation dates. Fair value is estimated based upon current, and predictions of future, interest rate levels along a yield curve, the remaining duration of the instruments and other market conditions, and therefore is subject to significant estimation and a high degree of variability of fluctuation between periods. We adjust this amount by applying a non-performance valuation, considering our creditworthiness or the creditworthiness of our counterparties at each settlement date, as applicable.

Share-Based Compensation

Accounting standards for share-based payments establishes standards for the accounting for transactions in which an entity exchanges its equity instruments for goods and services or incurs a liability in exchange for goods and services that are based on the fair value of the entity's equity instruments or that may be settled by the

[Table of Contents](#)

issuance of those equity instruments. It requires an entity to measure the costs of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award and recognize that cost over the service period. We use the Black-Scholes valuation model to value the equity instruments we issue. The Black-Scholes valuation model uses assumptions of expected volatility, risk-free interest rates, the expected term of options granted, and expected rates of dividends. Management determines these assumptions by reviewing current market rates, making industry comparisons and reviewing conditions relevant to our Company.

The expected volatility and expected term assumptions can significantly impact the fair value of stock options. We believe that the valuation techniques and the approach utilized to develop our assumptions are reasonable in calculating the fair value of the options we grant. We estimate the expected stock price volatility using a combination of implied and historical factors related to our stock price in accordance with applicable accounting standards. As our stock price fluctuates, this estimate will change. For example, a 10% change in the volatility assumption for 2009 would have resulted in an approximate \$5.7 million change in fair value. Expected term represents the estimated average time between the option's grant date and its exercise date. Because of our limited trading history as a public company we have elected to use the simplified method prescribed by applicable accounting standards, for companies with a limited trading history to estimate the expected term. Once we have sufficient trading history, we will estimate the expected term using historical experience for options that have been granted to employees within our stock option plan. A 10% change in the expected term assumption for 2009 would have resulted in an approximate \$3.3 million change in fair value. These assumed changes in fair value would have been recognized over the vesting schedule of such awards.

Accounting standards also require the classification of stock compensation expense in the same financial statement line items as cash compensation, and therefore impacts our departmental expenses (and related operating margins), pre-opening costs and construction in progress for our development projects, and our general and administrative expenses (including corporate expenses).

Significant Judgmental Accruals

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

Income Taxes

We are subject to income taxes in the United States and other foreign jurisdictions where we operate. Accounting standards require the recognition of deferred tax assets, net of applicable reserves, and liabilities for the estimated future tax consequences attributable to differences between financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. The effect of a change in tax rates on the income tax provision and deferred tax assets and liabilities is recognized in the results of operations in the period that includes the enactment date. Accounting standards require recognition of a future tax benefit to the extent that realization of such benefit is more likely than not. Otherwise, a valuation allowance is applied.

As of December 31, 2009, we have a foreign tax credit carryover of \$835.4 million and we have recorded a valuation allowance of \$689.4 million against this asset based on our estimate of future realization. The foreign tax credits are attributable to the Macau special gaming tax which is 35% of gross gaming revenue in Macau. The U.S. taxing regime only allows a credit for 35% of "net" foreign source income. Due to our current operating history of U.S. losses, we currently do not rely on forecasted taxable income in order to support the utilization of the foreign tax credits. The estimated future foreign tax credit realization was based upon the estimated future taxable income from the reversal of "net" U.S. taxable temporary differences that we expect will reverse during the 10-year foreign tax credit carryover period. The amount of the valuation allowance is subject to change based upon the actual reversal of temporary differences and future taxable income exclusive of reversing temporary differences.

[Table of Contents](#)

Our income tax returns are subject to examination by the Internal Revenue Service (“IRS”) and other tax authorities in the locations where we operate. We assess potentially unfavorable outcomes of such examinations based on accounting standards for uncertain income taxes which we adopted on January 1, 2007. The accounting standards prescribe a minimum recognition threshold a tax position is required to meet before being recognized in the financial statements.

Uncertain tax position accounting standards apply to all tax positions related to income taxes. These accounting standards utilize a two-step approach for evaluating tax positions. Recognition (Step I) occurs when the Company concludes that a tax position, based on its technical merits, is more likely than not to be sustained upon examination. Measurement (Step II) is only addressed if the position is deemed to be more likely than not to be sustained. Under Step II, the tax benefit is measured as the largest amount of benefit that is more likely than not to be realized upon settlement. Use of the term “more likely than not” is consistent with how that term is used in accounting for income taxes (i.e. likelihood of occurrence is greater than 50%).

Tax positions failing to qualify for initial recognition are recognized in the first subsequent interim period that they meet the “more likely than not” standard. If it is subsequently determined that a previously recognized tax position no longer meets the “more likely than not” standard, it is required that the tax position is derecognized. Accounting standards for uncertain tax positions specifically prohibit the use of a valuation allowance as a substitute for derecognition of tax positions. As applicable, we recognize accrued penalties and interest related to unrecognized tax benefits in the provision for income taxes. During the years ended December 31, 2009, 2008 and 2007, we recognized no amounts for interest or penalties.

Effective September 6, 2006, we received a 5-year exemption from Macau’s 12% Complementary Tax on casino gaming profits. Accordingly, during 2009 we were exempted from the payment of approximately \$31.7 million in such taxes. Wynn Macau’s non-gaming profits remain subject to the Macau Complementary Tax and Wynn Macau’s casino winnings remain subject to the Macau Special Gaming tax and other levies in accordance with its concession agreement.

Recently Issued Accounting Standards

In June 2009, the Financial Accounting Standards Board (the “FASB”) issued new accounting standards regarding the consolidation of variable interest entities. These new accounting standards address the effects of elimination of the qualifying special-purpose entity concept from previous standards. These new accounting standards amend previous guidance in determining whether an enterprise has a controlling financial interest in a variable interest entity. This determination identifies the primary beneficiary of a variable interest entity as the enterprise that has both the power to direct the activities of a variable interest entity that most significantly impacts the entity’s economic performance and the ability to absorb losses or the right to receive benefits of the entity that could potentially be significant to the variable interest entity. These new accounting standards are effective January 1, 2010. We are currently evaluating the impact, if any, of adopting these new accounting standards on our consolidated financial statements.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

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

Interest Rate Risks

One of our primary exposures to market risk is interest rate risk associated with our debt facilities that bear interest based on floating rates. See “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Financing Activities.” We attempt to manage interest rate risk by managing the mix of long-term fixed rate borrowings and variable rate borrowings supplemented by hedging activities as believed by us to be appropriate. We cannot assure you that these risk management strategies have had the desired effect, and interest rate fluctuations could have a negative impact on our results of operations.

The following table provides estimated future cash flow information derived from our best estimates of repayments at December 31, 2009 of our expected long-term indebtedness. However, we cannot predict the LIBOR or HIBOR rates that will be in effect in the future. As of December 31, 2009, such rates were at historic lows. Actual rates will vary. The one-month LIBOR and HIBOR rates at December 31, 2009 of 0.23% and 0.08%, respectively were used for all variable rate calculations in the table below. The information is presented in U.S. dollar equivalents as applicable.

	Year Ending December 31,						Total
	Expected Maturity Date						
	2010	2011	2012	2013	2014	Thereafter	
	(in millions)						
Long-term debt:							
Fixed rate	—	—	—	—	\$1,634.2	\$ 500.0	\$2,134.2
Average interest rate	—	—	—	—	6.6%	7.9%	6.9%
Variable rate	\$ 2.7	\$77.9	\$712.6	\$438.0	\$ 189.6	\$ 31.5	\$1,452.3
Average interest rate	1.4%	1.8%	1.9%	2.7%	1.9%	1.5%	2.1%

Interest Rate Swap Information

We have entered into floating-for-fixed interest rate swap arrangements relating to certain of our floating-rate debt facilities. We measure the fair value of our interest rate swaps on a recurring basis.

Wynn Las Vegas

We entered into an interest rate swap agreement on August 14, 2009, with an effective date of November 27, 2009, to hedge a portion of the underlying interest rate risk on borrowings under the Wynn Las Vegas Credit Agreement. Under this swap agreement, beginning November 27, 2009, we pay a fixed interest rate of 2.485% on borrowings of \$250 million incurred under the Wynn Las Vegas Credit Agreement in exchange for receipts on the same amount at a variable interest rate based on the applicable LIBOR at the time of payment. This interest rate swap fixes the interest rate on \$250 million of borrowings under the Wynn Las Vegas Credit Agreement at approximately 5.485%. This interest rate swap agreement matures in November 2012. Changes in the fair value of this interest rate swap have and will continue to be recorded as an increase/ (decrease) in swap fair value in our Consolidated Statements of Income as the swap does not qualify for hedge accounting.

Wynn Macau

As of December 31, 2009, we had three interest rate swaps intended to hedge a portion of the underlying interest rate risk on borrowings under the Wynn Macau credit facilities. Under the first swap agreement, we pay a

[Table of Contents](#)

fixed interest rate of 3.632% on U.S. dollar borrowings of \$153.8 million incurred under the Wynn Macau Term Loan in exchange for receipts on the same amounts at a variable interest rate based on the applicable LIBOR at the time of payment. This interest rate swap fixes the interest rate on \$153.8 million of the current U.S. dollar borrowings under the Wynn Macau Term Loan at approximately 5.382%. Under the second swap agreement, we pay a fixed interest rate of 3.39% on Hong Kong dollar borrowings of approximately HK \$991.6 million (approximately U.S. \$127.9 million) incurred under the Wynn Macau Term Loan in exchange for receipts on the same amounts at a variable interest rate based on the applicable HIBOR at the time of payment. This interest rate swap fixes the interest rate on approximately \$127.9 million of the current Hong Kong dollar borrowings under the Wynn Macau Term Loan at approximately 5.14%. Both of these interest rate swap agreements mature in August 2011. We entered into a third interest rate swap agreement on August 17, 2009, with an effective date of November 27, 2009, to hedge a portion of the underlying interest rate risk on borrowings under the Wynn Macau Senior Revolving Credit Facility. Under this swap agreement, beginning November 27, 2009, we pay a fixed interest rate of 2.15% on borrowings of approximately HK\$2.3 billion (approximately U.S. \$300 million) incurred under the Wynn Macau Senior Revolving Credit Facility in exchange for receipts on the same amount at a variable interest rate based on the applicable HIBOR at the time of payment. This interest rate swap fixes the interest rate on HK\$2.3 billion (approximately U.S. \$300 million) of borrowings under the Wynn Macau Senior Revolving Credit Facility at approximately 3.9%. This interest rate swap agreement matures in June 2012.

Changes in the fair values of these interest rate swaps for each reporting period recorded are, and will continue to be, recognized as an increase/(decrease) in swap fair value in our Consolidated Statements of Income, as the swaps do not qualify for hedge accounting.

Summary of Historical Fair Values

The following table presents the historical liability fair values as of December 31, 2009 and 2008, of our interest rate swap arrangements (amounts in thousands):

	Wynn Resorts	Wynn Las Vegas	Wynn Macau	Total Interest Rate Swaps
Liability fair value at:				
December 31, 2009	\$ —	\$ 4,224	\$ 16,345	\$ 20,569
December 31, 2008	\$ 15,334	\$ —	\$ 12,539	\$ 27,873

The fair value approximates the amount we would pay if these contracts were settled at the respective valuation dates. Fair value is estimated based upon current, and predictions of future, interest rate levels along a yield curve, the remaining duration of the instruments and other market conditions, and therefore, is subject to significant estimation and a high degree of variability of fluctuation between periods. We adjust this amount by applying a non-performance valuation, considering our creditworthiness or the creditworthiness of our counterparties at each settlement date as applicable.

Other Interest Rate Swap Information

The following table provides information about our interest rate swaps, by contractual maturity dates, as of December 31, 2009 and using estimated future LIBOR and HIBOR rates based upon implied forward rates in the yield curve. The information is presented in U.S. dollar equivalents, which is our reporting currency:

	Years Ending December 31,						
	Expected Maturity Date						
	2010	2011	2012	2013 (in millions)	2014	Thereafter	Total
Average notional amount	\$ —	\$ 281.7	\$ 550.0	\$ —	\$ —	\$ —	\$ 831.7
Average pay rate	—	3.52%	2.30%	—	—	—	2.72%
Average receive rate	—	1.04%	1.66%	—	—	—	1.45%

[Table of Contents](#)

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

Interest Rate Sensitivity

As of December 31, 2009, approximately 83% of our long-term debt was based on fixed rates, including the notional amounts related to interest rate swaps. Based on our borrowings as of December 31, 2009, an assumed 1% change in variable rates would cause our annual interest cost to change by \$6.2 million.

Foreign Currency Risks

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

If the Hong Kong dollar and the Macau pataca are not linked to the U.S. dollar in the future, severe fluctuations in the exchange rate for these currencies may result. We also cannot assure you that the current rate of exchange fixed by the applicable monetary authorities for these currencies will remain at the same level.

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

[Table of Contents](#)

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

	<u>Page</u>
Report of Independent Registered Public Accounting Firm on Internal Controls over Financial Reporting	64
Report of Independent Registered Public Accounting Firm on the Consolidated Financial Statements	65
Consolidated Balance Sheets	66
Consolidated Statements of Income	67
Consolidated Statements of Stockholders' Equity	68
Consolidated Statements of Cash Flows	69
Notes to Consolidated Financial Statements	70

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of Wynn Resorts, Limited:

We have audited Wynn Resorts, Limited and subsidiaries' (the "Company") internal control over financial reporting as of December 31, 2009, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). The Company's management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management Report on Internal Control Over Financial Reporting, included in Item 9A. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

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

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

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

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2009, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of the Company as of December 31, 2009 and 2008, and the related consolidated statements of income, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2009 and our report dated February 26, 2010 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP
Las Vegas, Nevada
February 26, 2010

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of Wynn Resorts, Limited:

We have audited the accompanying consolidated balance sheets of Wynn Resorts, Limited and subsidiaries (the “Company”) as of December 31, 2009 and 2008, and the related consolidated statements of income, stockholders’ equity, and cash flows for each of the three years in the period ended December 31, 2009. Our audits also included the financial statement schedules listed in the index at item 15(a)2. These financial statements and schedules are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements and schedules based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of the Company at December 31, 2009 and 2008, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 2009, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedules referred to above, when considered in relation to the basic financial statements taken as a whole, present fairly in all material respects the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company’s internal control over financial reporting as of December 31, 2009, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 26, 2010 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP
Las Vegas, Nevada
February 26, 2010

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

	December 31,	
	2009	2008
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 1,991,830	\$ 1,133,904
Receivables, net	152,879	125,196
Inventories	107,005	120,944
Prepaid expenses and other	31,242	31,047
Total current assets	<u>2,282,956</u>	<u>1,411,091</u>
Property and equipment, net	5,062,059	5,118,646
Intangibles, net	44,659	49,049
Deferred financing costs	62,227	65,877
Deposits and other assets	99,380	106,429
Investment in unconsolidated affiliates	4,102	4,696
Deferred income taxes	26,386	—
Total assets	<u>\$ 7,581,769</u>	<u>\$ 6,755,788</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts and construction payable	\$ 135,501	\$ 232,136
Current portion of long-term debt	2,675	2,685
Current portion of land concession obligation	—	6,068
Income taxes payable	1,176	1,283
Accrued interest	17,520	21,485
Accrued compensation and benefits	69,825	85,803
Gaming taxes payable	100,980	66,954
Other accrued expenses	26,751	24,824
Customer deposits	318,755	200,902
Construction retention	9,546	78,599
Deferred income taxes	42,856	3,018
Total current liabilities	<u>725,585</u>	<u>723,757</u>
Long-term debt	3,566,428	4,290,424
Other long-term liabilities	120,726	124,511
Deferred income taxes	—	8,551
Construction retention	8,667	6,950
Total liabilities	<u>4,421,406</u>	<u>5,154,193</u>
Commitments and contingencies (Note 16)		
Stockholders' equity:		
Preferred stock, par value \$0.01; 40,000,000 shares authorized; zero shares issued and outstanding	—	—
Common stock, par value \$0.01; 400,000,000 shares authorized; 136,098,410 and 124,817,994 shares issued; 123,293,456 and 112,013,040 shares outstanding	1,361	1,248
Treasury stock, at cost; 12,804,954 shares	(1,119,407)	(1,119,407)
Additional paid-in capital	4,239,497	2,734,276
Accumulated other comprehensive income	2,446	2,614
Accumulated deficit	(89,559)	(17,136)
Total Wynn Resorts, Limited stockholders' equity	<u>3,034,338</u>	<u>1,601,595</u>
Noncontrolling interest	126,025	—
Total equity	<u>3,160,363</u>	<u>1,601,595</u>
Total liabilities and stockholders' equity	<u>\$ 7,581,769</u>	<u>\$ 6,755,788</u>

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

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

	Year Ended December 31,		
	2009	2008	2007
Operating revenues:			
Casino	\$2,206,829	\$ 2,261,932	\$ 1,949,870
Rooms	377,520	326,655	339,391
Food and beverage	436,361	358,715	353,983
Entertainment, retail and other	288,432	270,065	245,201
Gross revenues	3,309,142	3,217,367	2,888,445
Less: promotional allowances	(263,531)	(230,043)	(200,926)
Net revenues	<u>3,045,611</u>	<u>2,987,324</u>	<u>2,687,519</u>
Operating costs and expenses:			
Casino	1,462,346	1,490,927	1,168,119
Rooms	109,184	78,238	83,237
Food and beverage	251,192	207,281	212,622
Entertainment, retail and other	166,612	161,862	161,087
General and administrative	366,785	319,303	310,820
Provision for doubtful accounts	13,707	49,405	36,109
Pre-opening costs	1,817	72,375	7,063
Depreciation and amortization	410,547	263,213	220,250
Property charges and other	28,458	32,584	60,857
Total operating costs and expenses	<u>2,810,648</u>	<u>2,675,188</u>	<u>2,260,164</u>
Operating income	<u>234,963</u>	<u>312,136</u>	<u>427,355</u>
Other income (expense):			
Interest income	1,740	21,517	47,259
Interest expense, net of capitalized interest	(211,385)	(172,693)	(145,177)
Decrease in swap fair value	(2,258)	(31,485)	(6,001)
Gain (loss) from extinguishment of debt	18,734	22,347	(93,526)
Equity in income from unconsolidated affiliates	121	1,353	1,721
Other	191	(4,257)	506
Other income (expense), net	<u>(192,857)</u>	<u>(163,218)</u>	<u>(195,218)</u>
Income before income taxes	42,106	148,918	232,137
(Provision) benefit for income taxes	(2,999)	61,561	(35,801)
Net income	39,107	210,479	196,336
Less: Net income attributable to noncontrolling interests	(18,453)	—	—
Net income attributable to Wynn Resorts, Limited	<u>\$ 20,654</u>	<u>\$ 210,479</u>	<u>\$ 196,336</u>
Basic and diluted income per common share:			
Net income attributable to Wynn Resorts, Limited:			
Basic	\$ 0.17	\$ 1.94	\$ 1.85
Diluted	\$ 0.17	\$ 1.92	\$ 1.80
Weighted average common shares outstanding:			
Basic	119,840	108,408	106,030
Diluted	120,185	109,441	112,685

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

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

	Common stock			Additional paid-in capital	Accumulated other comprehensive income (loss)	Accumulated deficit	Total Wynn Resorts, Ltd stockholders' equity	Noncontrolling interest	Total stockholders' equity
	Shares outstanding	Par value	Treasury stock						
Balances, January 1, 2007	101,887,031	\$1,018	\$ —	\$2,127,586	\$ (94)	\$ (400,744)	\$ 1,727,766	\$ —	\$ 1,727,766
Net income	—	—	—	—	—	196,336	196,336	—	196,336
Currency translation adjustment	—	—	—	—	(2,811)	—	(2,811)	—	(2,811)
Comprehensive income	—	—	—	—	—	—	193,525	—	193,525
Exercise of stock options	270,700	3	—	9,177	—	—	9,180	—	9,180
Issuance of restricted stock	56,500	1	—	(1)	—	—	—	—	—
Cancellation of restricted stock	(12,000)	—	—	—	—	—	—	—	—
Purchase of treasury stock	(1,889,321)	—	(179,277)	—	—	—	(179,277)	—	(179,277)
Issuance of common stock, net	4,312,500	43	—	663,894	—	—	663,937	—	663,937
Cash Distribution	—	—	—	(663,894)	—	(22,255)	(686,149)	—	(686,149)
Stock-based compensation	—	—	—	19,336	—	—	19,336	—	19,336
Conversion of 6% convertible debentures	9,744,680	97	—	210,589	—	—	210,686	—	210,686
Uncertain tax positions	—	—	—	—	—	(2,045)	(2,045)	—	(2,045)
Balances, December 31, 2007	114,370,090	1,162	(179,277)	2,366,687	(2,905)	(228,708)	1,956,959	—	1,956,959
Net income	—	—	—	—	—	210,479	210,479	—	210,479
Currency translation adjustment	—	—	—	—	5,519	—	5,519	—	5,519
Comprehensive income	—	—	—	—	—	—	215,998	—	215,998
Exercise of stock options	94,583	1	—	2,781	—	—	2,782	—	2,782
Issuance of restricted stock	560,000	6	—	(6)	—	—	—	—	—
Cancellation of restricted stock	(96,000)	(1)	—	1	—	—	—	—	—
Purchase of treasury stock	(10,915,633)	—	(940,130)	—	—	—	(940,130)	—	(940,130)
Forfeited cash distribution upon cancellation of restricted stock	—	—	—	—	—	1,093	1,093	—	1,093
Issuance of common stock, net	8,000,000	80	—	343,905	—	—	343,985	—	343,985
Stock-based compensation	—	—	—	20,908	—	—	20,908	—	20,908
Balances, December 31, 2008	112,013,040	1,248	(1,119,407)	2,734,276	2,614	(17,136)	1,601,595	—	1,601,595
Net income	—	—	—	—	—	20,654	20,654	18,453	39,107
Currency translation adjustment	—	—	—	—	876	—	876	(106)	770
Comprehensive income	—	—	—	—	—	—	21,530	18,347	39,877
Exercise of stock options	244,916	3	—	6,344	—	—	6,347	—	6,347
Cancellation of restricted stock	(4,500)	—	—	—	—	—	—	—	—
Forfeited cash distribution upon cancellation of restricted stock	—	—	—	—	—	55	55	—	55
Issuance of common stock, net	11,040,000	110	—	202,035	—	—	202,145	—	202,145
Sale of Wynn Macau, Ltd common stock, net	—	—	—	1,623,228	(1,044)	—	1,622,184	107,358	1,729,542
Cash distribution	—	—	—	(400,000)	—	(93,132)	(493,132)	—	(493,132)
Excess tax benefits from stock-based compensation	—	—	—	49,013	—	—	49,013	—	49,013
Stock-based compensation	—	—	—	24,601	—	—	24,601	320	24,921
Balances, December 31, 2009	<u>123,293,456</u>	<u>\$1,361</u>	<u>\$(1,119,407)</u>	<u>\$4,239,497</u>	<u>\$ 2,446</u>	<u>\$ (89,559)</u>	<u>\$ 3,034,338</u>	<u>\$ 126,025</u>	<u>\$ 3,160,363</u>

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

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

	Year Ended December 31,		
	2009	2008	2007
Cash flows from operating activities:			
Net income	\$ 39,107	\$ 210,479	\$ 196,336
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	410,547	263,213	220,250
Deferred income taxes	(656)	(63,460)	34,868
Stock-based compensation	24,336	20,328	18,527
Excess tax benefits from stock-based compensation	(44,909)	—	—
Amortization and write-offs of deferred financing costs, and other	26,160	21,951	22,120
(Gain) loss on extinguishment of debt	(18,734)	(22,347)	93,526
Provision for doubtful accounts	13,707	49,405	36,109
Property charges and other	28,458	32,584	60,857
Equity in income of unconsolidated affiliates, net of distributions	594	804	481
Decrease in swap fair value	2,258	31,485	6,001
Increase (decrease) in cash from changes in:			
Receivables, net	(41,416)	4,621	(75,029)
Inventories and prepaid expenses and other	3,265	(49,417)	(7,565)
Accounts payable and accrued expenses	151,239	23,537	54,093
Net cash provided by operating activities	<u>593,956</u>	<u>523,183</u>	<u>660,574</u>
Cash flows from investing activities:			
Capital expenditures, net of construction payables and retention	(540,929)	(1,333,182)	(1,008,772)
Restricted cash	—	31,052	206,334
Deposits and purchase of other assets	(11,258)	(43,589)	(43,216)
Proceeds from sale of equipment	1,107	6,720	21,581
Net cash used in investing activities	<u>(551,080)</u>	<u>(1,338,999)</u>	<u>(824,073)</u>
Cash flows from financing activities:			
Proceeds from exercise of stock options	6,347	2,782	9,180
Excess tax benefits from stock-based compensation	44,909	—	—
Proceeds from issuance of common stock	202,145	344,250	664,125
Proceeds from Wynn Macau, Ltd IPO	1,869,653	—	—
Cash distributions	(489,876)	—	(683,299)
Proceeds from issuance of long-term debt	1,151,781	1,379,968	1,672,987
Principal payments on long-term debt	(1,799,040)	(600,260)	(297,321)
Repurchase of Wynn Las Vegas First Mortgage Notes	(50,048)	—	—
Cash restricted for stock repurchases	—	500,068	(500,068)
Purchase of treasury stock	—	(940,130)	(179,277)
Interest rate swap transactions	(9,561)	(6,300)	—
Payments on long-term land concession obligation	(6,065)	(5,751)	(7,411)
Payment of deferred financing costs and other	(104,730)	(7,055)	(27,045)
Net cash provided by financing activities	<u>815,515</u>	<u>667,572</u>	<u>651,871</u>
Effect of exchange rate on cash	(465)	7,028	(2,659)
Cash and cash equivalents:			
Increase (decrease) in cash and cash equivalents	857,926	(141,216)	485,713
Balance, beginning of period	1,133,904	1,275,120	789,407
Balance, end of period	<u>\$ 1,991,830</u>	<u>\$ 1,133,904</u>	<u>\$ 1,275,120</u>
Supplemental cash flow disclosures:			
Cash paid for interest, net of amounts capitalized	\$ 209,093	\$ 232,019	\$ 178,072
Change in Property and Equipment included in Accounts and Construction Payables	(181,366)	83,683	56,554
Cash paid for income taxes	2,894	695	79,168
Stock-based compensation capitalized into construction in progress	585	580	809
Liability of cash distributions declared on non-vested stock	3,556	—	2,850

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

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization

Wynn Resorts, Limited, a Nevada corporation (together with its subsidiaries, “Wynn Resorts” or the “Company”), was formed in June 2002 and completed an initial public offering of its common stock on October 25, 2002.

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

The Company currently owns and operates the following casino hotel resort properties, Wynn Las Vegas, which opened on April 28, 2005, Encore at Wynn Las Vegas, which opened on December 22, 2008 and is fully integrated with Wynn Las Vegas, and Wynn Macau, which opened on September 6, 2006. In addition, the Company is constructing Encore at Wynn Macau which will be fully integrated with Wynn Macau and is expected to open in April 2010.

In October 2009, Wynn Macau, Limited, a newly formed and indirect wholly owned subsidiary of the Company and the developer, owner and operator of Wynn Macau, had its ordinary shares of common stock listed on The Stock Exchange of Hong Kong Limited. Through an initial public offering, including the over allotment, Wynn Macau, Limited sold 1,437,500,000 (27.7%) shares of this subsidiary’s common stock.

2. Summary of Significant Accounting Policies

Principles of Consolidation

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

Use of Estimates

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

Cash and Cash Equivalents

Cash and cash equivalents are comprised of highly liquid investments with original maturities of three months or less. Cash equivalents are carried at cost, which approximates fair value. Cash equivalents of \$1.4 billion and \$762.1 million at December 31, 2009 and 2008, respectively, were invested in money market accounts and U.S. treasuries. The Company utilized Level 1 inputs as described in Note 8 to determine fair value.

Accounts Receivable and Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of casino accounts receivable. The Company issues credit in the form of markers to approved casino

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

customers following investigations of creditworthiness. At December 31, 2009 and 2008, approximately 76% and 78%, respectively, of the Company's markers were due from customers residing outside the United States, primarily in Asia. Business or economic conditions or other significant events in these countries could affect the collectability of such receivables.

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

Inventories

Inventories consist of retail merchandise, food and beverage items which are stated at the lower of cost or market value and certain operating supplies. Cost is determined by the first-in, first-out, average and specific identification methods.

Property and Equipment

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

Buildings and improvements	10 to 45 years
Land improvements	10 to 45 years
Leasehold interest in land	25 years
Airplanes	7 to 20 years
Furniture, fixtures and equipment	3 to 20 years

Costs related to improvements are capitalized, while costs of repairs and maintenance are charged to expense as incurred. The cost and accumulated depreciation of property and equipment retired or otherwise disposed of are eliminated from the respective accounts and any resulting gain or loss is included in operations.

Capitalized Interest

The interest cost associated with major development and construction projects is capitalized and included in the cost of the project. Interest capitalization ceases once a project is substantially complete or no longer undergoing construction activities to prepare it for its intended use. When no debt is specifically identified as being incurred in connection with a construction project, the Company capitalizes interest on amounts expended on the project at the Company's weighted average cost of borrowed money. Interest of \$10.7 million, \$87.4 million and \$46 million was capitalized for the years ended December 31, 2009, 2008 and 2007, respectively.

Intangibles

The Company's indefinite-lived intangible assets consist primarily of water rights acquired as part of the original purchase price of the property on which Wynn Las Vegas is located, and trademarks. Indefinite-lived intangible assets are not amortized, but are reviewed for impairment annually. The Company's finite-lived intangible assets consist of a Macau gaming concession and show production rights. Finite-lived intangible assets are amortized over the shorter of their contractual terms or estimated useful lives.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

Long-Lived Assets

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

Deferred Financing Costs

Direct and incremental costs incurred in obtaining loans or in connection with the issuance of long-term debt are capitalized and amortized to interest expense over the terms of the related debt agreements. Approximately \$15.4 million, \$17.8 million and \$13 million were amortized to interest expense during the years ended December 31, 2009, 2008 and 2007, respectively. Debt discounts incurred in connection with the issuance of debt have been capitalized and are being amortized to interest expense using the effective interest method.

Derivative Financial Instruments

The Company seeks to manage its market risk, including interest rate risk associated with variable rate borrowings, through balancing fixed-rate and variable-rate borrowings with the use of derivative financial instruments. The fair value of derivative financial instruments are recognized as assets or liabilities at each balance sheet date, with changes in fair value affecting net income as the Company's current interest rate swaps do not qualify for hedge accounting. Accordingly, changes in the fair value of the interest rate swaps are presented as an increase (decrease) in swap fair value in the accompanying Consolidated Statements of Income. The differentials paid or received on interest rate swap agreements are recognized as adjustments to interest expense.

Revenue Recognition and Promotional Allowances

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

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

Revenues are recognized net of certain sales incentives which are required to be recorded as a reduction of revenue; consequently, the Company's casino revenues are reduced by discounts, commissions and points earned in customer loyalty programs, such as the player's club loyalty program.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

The retail value of accommodations, food and beverage, and other services furnished to guests without charge is included in gross revenues. Such amounts are then deducted as promotional allowances. These amounts have increased with the opening of Encore at Wynn Las Vegas in December 2008. The estimated cost of providing such promotional allowances is primarily included in casino expenses as follows (amounts in thousands):

	Years Ended December 31,		
	2009	2008	2007
Rooms	\$ 49,026	\$ 36,155	\$ 31,518
Food and beverage	85,689	79,828	70,827
Entertainment, retail and other	12,849	10,486	9,827
	<u>\$ 147,564</u>	<u>\$ 126,469</u>	<u>\$ 112,172</u>

Gaming Taxes

The Company is subject to taxes based on gross gaming revenue in the jurisdictions in which it operates, subject to applicable jurisdictional adjustments. These gaming taxes are an assessment on the Company's gaming revenue and are recorded as an expense within the "Casino" line item in the accompanying Consolidated Statements of Income. These taxes totaled approximately \$892.2 million, \$919.2 million and \$685.3 million for the years ended December 31, 2009, 2008 and 2007, respectively.

Advertising Costs

The Company expenses advertising costs the first time the advertising takes place. Advertising costs incurred in development periods are included in pre-opening costs. Once a project is completed, advertising costs are included in general and administrative expenses. Total advertising costs were \$20.4 million, \$31.2 million, including \$11.1 million in pre-opening related to Encore at Wynn Las Vegas, and \$25.8 million for the years ended December 31, 2009, 2008 and 2007, respectively.

Pre-Opening Costs

Pre-opening costs consists primarily of direct salaries and wages, legal and consulting fees, insurance, utilities and advertising, and are expensed as incurred. The Company incurred pre-opening costs in connection with Encore at Wynn Las Vegas, prior to its opening on December 22, 2008, and continues to incur such costs related to Encore at Wynn Macau.

Income Taxes

The Company is subject to income taxes in the United States and other foreign jurisdictions where it operates. Accounting standards require the recognition of deferred tax assets, net of applicable reserves, and liabilities for the estimated future tax consequences attributable to differences between financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. The effect of a change in tax rates on the income tax provision and deferred tax assets and liabilities is recognized in the results of operations in the period that includes the enactment date. Accounting standards also require recognition of a future tax benefit to the extent that realization of such benefit is more likely than not. Otherwise, a valuation allowance is applied.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

The Company's income tax returns are subject to examination by the Internal Revenue Service ("IRS") and other tax authorities in the locations where it operates. The Company assesses potentially unfavorable outcomes of such examinations based on accounting standards for uncertain income taxes which the Company adopted on January 1, 2007. The accounting standards prescribe a minimum recognition threshold a tax position is required to meet before being recognized in the financial statements.

Uncertain tax position accounting standards apply to all tax positions related to income taxes. These accounting standards utilize a two-step approach for evaluating tax positions. Recognition (Step I) occurs when the Company concludes that a tax position, based on its technical merits, is more likely than not to be sustained upon examination. Measurement (Step II) is only addressed if the position is deemed to be more likely than not to be sustained. Under Step II, the tax benefit is measured as the largest amount of benefit that is more likely than not to be realized upon settlement. Use of the term "more likely than not" is consistent with how that term is used in accounting for income taxes (i.e. likelihood of occurrence is greater than 50%).

Tax positions failing to qualify for initial recognition are recognized in the first subsequent interim period that they meet the "more likely than not" standard. If it is subsequently determined that a previously recognized tax position no longer meets the "more likely than not" standard, it is required that the tax position is derecognized. Accounting standards for uncertain tax positions specifically prohibit the use of a valuation allowance as a substitute for derecognition of tax positions. As applicable, the Company will recognize accrued penalties and interest related to unrecognized tax benefits in the provision for income taxes. During the years ended December 31, 2009, 2008 and 2007, the Company recognized no amounts for interest or penalties.

Currency Translation

Gains or losses from foreign currency remeasurements are included in other income/expense in the accompanying Consolidated Statements of Income. The results of operations and the balance sheet of Wynn Macau, S.A. are translated from Macau Patacas to U.S. dollars. Balance sheet accounts are translated at the exchange rate in effect at each year-end. Income statement accounts are translated at the average rate of exchange prevailing during the year. Translation adjustments resulting from this process are charged or credited to other comprehensive income.

Comprehensive Income

Comprehensive income includes net income and all other non-stockholder changes in equity, or other comprehensive income. Components of the Company's comprehensive income are reported in the accompanying Consolidated Statements of Stockholders' Equity. The cumulative balance of other comprehensive income consists solely of currency translation adjustments.

Earnings Per Share

Basic earnings per share ("EPS") is computed by dividing net income attributable to Wynn Resorts by the weighted average number of shares outstanding during the year. Diluted EPS reflects the addition of potentially dilutive securities which for the Company include: stock options, nonvested stock, and the 6% Convertible Subordinated Debentures due 2015 (the "Debentures") which were all converted into common stock in July 2007.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

The weighted average number of common and common equivalent shares used in the calculation of basic and diluted EPS for the years ended December 31, 2009, 2008 and 2007, consisted of the following (amounts in thousands):

	2009	2008	2007
Weighted average common shares outstanding (used in calculation of basic earnings per share)	119,840	108,408	106,030
Potential dilution from the assumed exercise of stock options, nonvested stock, and the Debentures	345	1,033	6,655
Weighted average common and common equivalent shares outstanding (used in calculation of diluted earnings per share)	<u>120,185</u>	<u>109,441</u>	<u>112,685</u>

The calculation of diluted EPS for the year ended December 31, 2007 includes an addition to net income to reflect the interest expense, net of related tax effects, of \$6.9 million that would not have been incurred on the Debentures had they been converted as of the beginning of the year up to the conversion date.

A total of 4,899,918 and 880,000 stock options were excluded from the calculation of diluted EPS at December 31, 2009 and 2008, respectively, because including them would have been anti-dilutive.

Share-Based Compensation

Accounting standards require the Company to measure the cost of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award and recognize that cost over the service period. The Company uses the Black-Scholes valuation model to determine the estimated fair value for each option grant issued. The Black-Scholes determined fair value net of estimated forfeitures is amortized as compensation cost on a straight line basis over the service period.

Further information on the Company's share-based compensation arrangements is included in Note 14 "Benefit Plans—Share-Based Compensation".

Recently Issued Accounting Standards

In June 2009, the Financial Accounting Standards Board (the "FASB") issued new accounting standards regarding the consolidation of variable interest entities. These new accounting standards address the effects of elimination of the qualifying special-purpose entity concept from previous standards. These new accounting standards amend previous guidance in determining whether an enterprise has a controlling financial interest in a variable interest entity. This determination identifies the primary beneficiary of a variable interest entity as the enterprise that has both the power to direct the activities of a variable interest entity that most significantly impacts the entity's economic performance and the ability to absorb losses or the right to receive benefits of the entity that could potentially be significant to the variable interest entity. These new accounting standards are effective January 1, 2010. The Company is currently evaluating the impact, if any, of adopting these new accounting standards on its consolidated financial statements.

Reclassifications

Certain amounts in the consolidated financial statements for 2008 and 2007 have been reclassified to be consistent with the current year presentation. These reclassifications had no effect on the previously reported net income.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

3. Receivables, net

Receivables, net consisted of the following (amounts in thousands):

	As of December 31,	
	2009	2008
Casino	\$ 205,330	\$ 200,115
Hotel	18,177	15,146
Other	31,453	12,754
	<u>254,960</u>	<u>228,015</u>
Less: allowance for doubtful accounts	(102,081)	(102,819)
	<u>\$ 152,879</u>	<u>\$ 125,196</u>

4. Property and Equipment, net

Property and equipment, net consisted of the following (amounts in thousands):

	As of December 31,	
	2009	2008
Land and improvements	\$ 704,733	\$ 707,531
Buildings and improvements	3,215,400	3,164,082
Airplanes	77,326	77,326
Furniture, fixtures and equipment	1,585,495	1,556,507
Leasehold interest in land	81,521	67,358
Construction in progress	457,594	221,696
	<u>6,122,069</u>	<u>5,794,500</u>
Less: accumulated depreciation	(1,060,010)	(675,854)
	<u>\$ 5,062,059</u>	<u>\$ 5,118,646</u>

Depreciation expense for the years ended December 31, 2009, 2008 and 2007, was \$395.2 million, \$247.6 million and \$204.5 million, respectively. The increase during 2009 is due to the depreciation of assets placed in service for Encore at Wynn Las Vegas in December 2008.

As of December 31, 2009 and 2008, construction in progress primarily includes construction, development, interest and other costs capitalized in conjunction with Encore at Wynn Macau.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

5. Intangibles, net

Intangibles, net consisted of the following (amounts in thousands):

	<u>Macau Gaming Concession</u>	<u>Show Production Rights</u>	<u>Water Rights</u>	<u>Trademarks</u>	<u>Total Intangibles, Net</u>
January 1, 2008	\$ 34,549	\$ 17,826	\$6,400	\$ 1,299	\$ 60,074
Additions	—	—	—	35	35
Write offs	—	(6,340)	—	—	(6,340)
Amortization	(2,381)	(2,339)	—	—	(4,720)
December 31, 2008	<u>32,168</u>	<u>9,147</u>	<u>6,400</u>	<u>1,334</u>	<u>49,049</u>
Additions	—	—	—	65	65
Amortization	(2,384)	(2,071)	—	—	(4,455)
December 31, 2009	<u>\$ 29,784</u>	<u>\$ 7,076</u>	<u>\$6,400</u>	<u>\$ 1,399</u>	<u>\$ 44,659</u>

The Macau gaming concession intangible is being amortized over the 20-year life of the concession. The Company expects that amortization of the Macau gaming concession will be approximately \$2.4 million each year from 2010 through 2021, and approximately \$1 million in 2022.

Show production rights represent amounts paid to purchase the rights to the “Le Rêve” and “Monty Python’s Spamalot” production shows. During the year ended December 31, 2008, the Company wrote off the show production rights associated with Spamalot as the contract for that show was terminated. The Company expects that amortization of show production rights will be approximately \$2.1 million for each of the years 2010 through 2012, and approximately \$0.8 million in 2013.

Water rights reflect the fair value allocation determined in the purchase of the property on which Wynn Las Vegas is located in April 2000. The value of the trademarks primarily represents the costs to acquire the “Le Rêve” name. The water rights and trademarks are indefinite-lived assets and, accordingly, not amortized.

6. Deposits and Other Assets

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

	<u>As of December 31,</u>	
	<u>2009</u>	<u>2008</u>
Entertainment production costs	\$ 11,826	\$ 21,878
Base stock	25,549	32,511
Deposits and other	58,255	48,290
Golf memberships	3,750	3,750
	<u>\$ 99,380</u>	<u>\$ 106,429</u>

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

7. Long-Term Debt

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

	<u>As of December 31,</u>	
	<u>2009</u>	<u>2008</u>
6 ⁵ / ₈ % Wynn Las Vegas First Mortgage Notes, due December 1, 2014, net of original issue discount of \$6,852 and \$9,561, respectively	\$1,627,378	\$1,690,439
7 ⁷ / ₈ % Wynn Las Vegas First Mortgage Notes, due November 1, 2017, net of original issue discount of \$10,529 at December 31, 2009	489,471	—
Wynn Resorts Term Loan Facility, due June 21, 2010; interest at LIBOR plus 2.25% (approximately 2.8% at December 31, 2008)	—	375,000
Wynn Las Vegas Revolving Credit Facility; due July 15, 2013; interest at LIBOR plus 3% and 1.625% respectively, (approximately 3.2% and 2.2%, respectively)	252,717	879,484
Wynn Las Vegas Term Loan Facility; \$40.2 million due September 30, 2012 with remaining \$40.2 million due August 15, 2013; interest at LIBOR plus 1.875% (approximately 2.1% and 3.1% respectively)	80,446	225,000
Wynn Macau Senior Term Loan Facilities (as amended June 2007); due June 27, 2014; interest at LIBOR or HIBOR plus 1.75% (approximately 1.9% and 5.3% respectively)	552,292	552,561
Wynn Macau Senior Revolving Credit Facility, due June 2012; interest at LIBOR or HIBOR plus 1.75% (approximately 1.9% and 5.1% respectively)	502,108	502,356
\$42 million Note Payable; due April 1, 2017; interest at LIBOR plus 1.25% (approximately 1.8% and 3.0% respectively)	38,150	39,550
\$32.5 million Note Payable; due August 10, 2012; interest at LIBOR plus 1.15% (approximately 1.4% and 2.4% respectively)	26,541	28,709
Other	—	10
	<u>3,569,103</u>	<u>4,293,109</u>
Current portion of long-term debt	(2,675)	(2,685)
	<u>\$3,566,428</u>	<u>\$4,290,424</u>

6⁵/₈% Wynn Las Vegas First Mortgage Notes

On December 14, 2004, Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. (together, the “Issuers”) issued \$1.3 billion aggregate principal amount of 6⁵/₈% first mortgage notes due December 1, 2014. On November 6, 2007, the Issuers issued, in a private offering, \$400 million aggregate principal amount of 6⁵/₈% first mortgage notes due December 1, 2014 at a price of 97.25% of the principal amount. These notes were issued under the same indenture as the original \$1.3 billion first mortgage notes. Both offerings are referred to herein as the “6⁵/₈% First Mortgage Notes”. The Company pays interest on the 6⁵/₈% First Mortgage Notes on June 1st and December 1st of each year. Commencing December 1, 2009, the 6⁵/₈% First Mortgage Notes are redeemable at the Company’s option at a price equal to 103.313% of the principal amount redeemed and decline ratably on December 1st of each year thereafter to zero on or after December 1, 2012.

The indenture governing the 6⁵/₈% First Mortgage Notes contains covenants limiting the ability of the Issuers to incur additional debt, make distributions, investments and restricted payments, create liens, enter into transactions with affiliates, sell assets, enter into sale leaseback transactions, permit restrictions on dividends and other payments by subsidiaries, or engage in mergers, consolidations, sales of substantially all assets, sales of subsidiary stock and other specified types of transactions.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

The 6⁵/₈% First Mortgage Notes are obligations of the Issuers, guaranteed by each of the subsidiaries of Wynn Las Vegas, LLC, other than Wynn Completion Guarantor, LLC. Wynn Resorts, Limited does not guarantee the obligations of the Issuers. Subject to an intercreditor agreement and certain exceptions, the 6⁵/₈% First Mortgage Notes and the guarantees thereof are secured by: (1) a first priority pledge of all of the member's interests owned by Wynn Las Vegas, LLC in its subsidiaries (other than Wynn Completion Guarantor, LLC) and of Wynn Resorts Holdings, LLC's 100% member's interest in Wynn Las Vegas, LLC; (2) first mortgages on all real property constituting Wynn Las Vegas, its golf course and Encore at Wynn Las Vegas; and (3) a first priority security interest in substantially all other existing and future assets of Wynn Las Vegas, LLC and the guarantors, excluding, among other things, an aircraft beneficially owned by World Travel, LLC.

The obligations of the Issuers and the guarantors under the 6⁵/₈% First Mortgage Notes rank equal to the right of payment with their existing and future senior secured indebtedness, including indebtedness with respect to the Wynn Las Vegas, LLC credit facilities described below, and rank senior in right of payment to all of their existing and future subordinated indebtedness.

During the year ended December 31, 2009, Wynn Resorts purchased \$65.8 million face amount of the 6⁵/₈% First Mortgage Notes through open market purchases at a discount. These transactions resulted in gains on early extinguishment of debt, net of the write-off of unamortized debt discount and debt issue costs, of \$13.7 million for the year ended December 31, 2009. As of December 31, 2009, Wynn Resorts holds this debt and has not contributed it to its wholly-owned subsidiary, Wynn Las Vegas. For accounting purposes this transaction has been treated as an extinguishment of debt by Wynn Resorts.

7⁷/₈% Wynn Las Vegas First Mortgage Notes

In October 2009, the Issuers issued, in a private offering, \$500 million aggregate principal amount of 7⁷/₈% First Mortgage Notes due November 1, 2017 at a price of 97.823% of the principal amount. Net proceeds to the Company were approximately \$480 million, after deducting the original issue discount and underwriting fees and other expenses. The Company pays interest on the 7⁷/₈% First Mortgage Notes on May 1st and November 1st of each year. Commencing November 1, 2013, the 7⁷/₈% First Mortgage Notes are redeemable at the Company's option at a price equal to 103.938% of the principal amount redeemed and decline ratably on November 1st of each year thereafter to zero on or after November 1, 2015. The notes rank pari passu with the borrowings under the Wynn Las Vegas credit facilities and the 6⁵/₈% First Mortgage Notes. The notes are senior secured obligations of the Issuers, are guaranteed by Wynn Las Vegas, LLC's subsidiaries (subject to some exceptions), and are secured on an equal and ratable basis by a first priority lien on substantially all the existing and future assets of the Issuers and guarantors.

The 7⁷/₈% First Mortgage Notes have not been registered under the Securities Act of 1933 or under any state securities laws. Therefore, the holders may not offer or sell the notes within the United States to, or for the account or benefit of, any United States person unless the offer or sale would qualify for a registration exemption from the Securities Act and applicable state securities laws. The Issuers have agreed to make an offer to exchange the notes for registered, publically traded notes that have substantially identical terms as the notes.

Wynn Resorts Term Loan

On June 21, 2007, the Company entered into a \$1 billion term loan (the "Wynn Resorts Term Loan"). Borrowings under the Wynn Resorts Term Loan were available in the form of a delayed-draw term loan facility available through December 31, 2007. As of December 31, 2007, the Company had borrowed \$1 billion under the Wynn Resorts Term Loan. The Wynn Resorts Term Loan was available to fund (a) the Company's equity repurchase program announced on June 7, 2007 and (b) up to \$350 million for general corporate purposes.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

On August 1, 2008, the Company amended the Wynn Resorts Term Loan to allow Stephen A. Wynn, the Company's Chairman and Chief Executive Officer, to purchase an interest in the debt. On August 1, 2008, Mr. Wynn advised the Company that he purchased \$198,250,000 of the face amount of the outstanding debt under the Wynn Resorts Term Loan from a third party. On November 13, 2008, the Company further amended the Wynn Resorts Term Loan to purchase loans outstanding up to \$650 million prior to March 31, 2009. On November 26, 2008, the Company purchased \$625 million of loans under the Wynn Resorts Term Loan for \$596.1 million, reflecting a discounted price of 95.375%. The loans purchased included the interests held by Mr. Wynn. In connection with this transaction, the Company recognized a \$22.3 million gain on early retirement of debt, net of the write-off of unamortized debt issue costs and fees during 2008.

In June 2009, the Company purchased and retired the remaining outstanding loans of \$375 million under the Wynn Resorts Term Loan for \$364.7 million, reflecting a discounted price of 97.25%. In connection with this transaction, the Company recognized an \$8.8 million gain on early retirement of debt, net of the write-off of unamortized debt issue cost during 2009.

Wynn Las Vegas Credit Facilities

As of December 31, 2009, the Wynn Las Vegas Amended and Restated Credit Agreement (the "Credit Agreement"), consisted of a \$457.9 million revolving credit facility (the "Wynn Las Vegas Revolver") and an \$80.4 million term loan facility (the "Wynn Las Vegas Term Loan") (together the "Wynn Las Vegas Credit Facilities"). As of December 31, 2009, the Company had borrowed \$252.7 million under the Wynn Las Vegas Revolver. The Company also had \$20.2 million of outstanding letters of credit that reduce the availability under the Wynn Las Vegas Revolver. Consequently, there was availability of \$185 million under the Wynn Las Vegas Revolver as of December 31, 2009. As described below, during the year ended December 31, 2009, the Company (a) extended the maturity of the Wynn Las Vegas Revolver to July 2013, (b) received relief from certain financial covenants, (c) increased the Wynn Las Vegas Revolver by \$65 million, (d) repurchased \$87.6 million of Wynn Las Vegas Revolver loans at a discount, and (e) used the net proceeds received from the \$500 million 7⁷/₈% First Mortgage Notes issuance to repay amounts outstanding, including a permanent reduction of \$360 million.

In April 2009, the Company entered into a fourth amendment to the Credit Agreement. This amendment, among other things, (i) provides a waiver of the Consolidated Leverage Ratio, as defined in the Credit Agreement, until the quarter ending June 30, 2011, and increases such thresholds thereafter; (ii) provides additional flexibility with the Consolidated Interest Coverage Ratio, as defined in the Credit Agreement, by reducing such ratio from 1.75 : 1 to 1.25 : 1 beginning June 30, 2009 through March 31, 2011; and (iii) removes the dollar limit on the equity cure provisions for the purpose of the Consolidated Leverage Ratio and the Consolidated Interest Coverage Ratio over the life of the loan. In exchange for the amendments, the Company (i) repaid 30% of the outstanding revolver loans of lenders consenting to the extension of their commitment (approximately \$238 million) and permanently reduced such lender commitments by 25%; and (ii) agreed to an increase in the interest rate spread on the Wynn Las Vegas Revolver from LIBOR plus 1.625% to LIBOR plus 3.0%.

In August 2009, pursuant to the terms of the Credit Agreement, the Company expanded the availability of the Wynn Las Vegas Revolver by \$65 million.

In September 2009, the Company entered into a fifth amendment to the Credit Agreement. This amendment, among other things, (i) permits Wynn Las Vegas to issue, on or before March 31, 2010, up to \$500 million of new senior secured notes and (ii) requires that 75% of the net cash proceeds of any issuance of new senior secured notes be applied to prepay loans and reduce commitments under the Credit Agreement.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

In October 2009, pursuant to an offer to purchase loans outstanding under the Credit Agreement, the Company purchased loans with a face value of \$87.6 million for \$84.4 million, reflecting a discounted price of 96.37%. As a result of this transaction, the Wynn Las Vegas Revolver was permanently reduced by \$43.8 million and the Wynn Las Vegas Term Loan was permanently reduced by \$44.8 million.

In October 2009, in accordance with the fifth amendment to the Wynn Las Vegas Credit Agreement described above, the Company used the proceeds of the \$500 million 7⁷/₈% First Mortgage Notes to repay amounts outstanding under the Wynn Las Vegas Revolver and Wynn Las Vegas Term Loan.

The Wynn Las Vegas Term Loan is payable in two installments of \$40.2 million each on September 30, 2012 and August 15, 2013. The Wynn Las Vegas Revolver matures on July 15, 2013.

For purposes of calculating interest, loans under the Wynn Las Vegas Credit Facilities will be designated, at the election of Wynn Las Vegas, LLC, as Eurodollar Loans or, in certain circumstances, Base Rate Loans. As of December 31, 2009, Eurodollar Loans under the Wynn Las Vegas Revolver and Wynn Las Vegas Term Loan bear interest initially at the Eurodollar rate plus 3.0% and the Eurodollar rate plus 1.875%, respectively. Interest on Eurodollar Loans is payable at the end of the applicable interest period in the case of interest periods of one, two or three months, and every three months in the case of interest periods of six months. Base Rate Loans bear interest at (a) the greatest of (i) the rate most recently announced by Deutsche Bank as its “prime rate,” (ii) the Federal Funds Rate plus 1/2 of 1% per annum, and (iii) in the case of a Wynn Las Vegas Revolver loan the one month Eurodollar rate; plus (b) a borrowing margin of 2.0% for Wynn Las Vegas Revolver loans and 0.875% for Wynn Las Vegas Term Loans. Interest on Base Rate Loans will be payable quarterly in arrears. Wynn Las Vegas, LLC also pays, quarterly in arrears, 1.0% per annum on the daily average of unborrowed amounts under the Wynn Las Vegas Revolver

The Wynn Las Vegas Credit Facilities are obligations of Wynn Las Vegas, LLC, guaranteed by each of the subsidiaries of Wynn Las Vegas, LLC, other than Wynn Completion Guarantor, LLC. Subject to an intercreditor agreement, and certain exceptions, the obligations of Wynn Las Vegas, LLC and each of the guarantors under the Wynn Las Vegas Credit Facilities are secured by: (1) a first priority pledge of all member’s interests owned by Wynn Las Vegas, LLC in its subsidiaries (other than Wynn Completion Guarantor, LLC) and Wynn Resorts Holdings, LLC’s 100% member’s interest in Wynn Las Vegas, LLC; (2) first mortgages on all real property constituting Wynn Las Vegas, its golf course and Encore at Wynn Las Vegas; and (3) a first priority security interest in substantially all other existing and future assets of Wynn Las Vegas, LLC and the guarantors, excluding an aircraft beneficially owned by World Travel, LLC.

The obligations of Wynn Las Vegas, LLC and the guarantors under the Wynn Las Vegas Credit Facilities rank equal in right of payment with their existing and future senior indebtedness, including indebtedness with respect to the 6⁵/₈% and 7⁷/₈% First Mortgage Notes and ranks senior in right of payment to all of their existing and future subordinated indebtedness.

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

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

The Credit Agreement contains customary negative covenants and financial covenants, including negative covenants that restrict Wynn Las Vegas, LLC's ability to: incur additional indebtedness, including guarantees; create, incur, assume or permit to exist liens on property and assets; declare or pay dividends and make distributions or restrict the ability of Wynn Las Vegas, LLC's subsidiaries to pay dividends and make distributions; engage in mergers, investments and acquisitions; enter into transactions with affiliates; enter into sale-leaseback transactions; execute modifications to material contracts; engage in sales of assets; make capital expenditures; and make optional prepayments of certain indebtedness. The financial covenants include maintaining a Consolidated Interest Coverage Ratio, as defined, not less than 1.25 to 1 as of December 31, 2009. Management believes that the Company was in compliance with all covenants at December 31, 2009. The Company will be required to maintain a Consolidated Leverage Ratio, as defined, of 6.50 to 1 for the quarterly reporting date ending June 30, 2011, 6.25 to 1 for the quarterly reporting date ending September 30, 2011 and 6.00 to 1 for each quarterly reporting date thereafter to maturity. The Consolidated Interest Coverage Ratio remains at 1.25 to 1 for the quarterly reporting dates through March 31, 2011, and then increases to 1.75 to 1 for the quarterly reporting dates June 30, 2011 to maturity.

Wynn Macau Credit Facilities

As of December 31, 2009 and 2008, the Company's Wynn Macau credit facilities, as amended, consisted of a \$550 million equivalent fully-funded senior term loan facility (the "Wynn Macau Term Loan"), and a \$1 billion senior revolving credit facility (the "Wynn Macau Revolver") in a combination of Hong Kong and U.S. dollars (together the "Wynn Macau Credit Facilities"). Wynn Macau, S.A. also has the ability to increase the total facilities by an additional \$50 million pursuant to the terms and provisions of the Amended Common Terms Agreement. As of December 31, 2009, the Wynn Macau Term Loan was fully drawn and approximately \$502 million was outstanding under the Wynn Macau Revolver. Consequently, there was availability of approximately \$498 million under the Wynn Macau Revolver as of December 31, 2009.

The Wynn Macau Term Loan matures in June 2014, and the Wynn Macau Revolver matures in June 2012. The principal amount of the Wynn Macau Term Loan is required to be repaid in quarterly installments, commencing in September 2011. Borrowings under the Wynn Macau Credit Facilities currently bear interest at LIBOR or the Hong Kong Interbank Offer Rate ("HIBOR") plus a margin of 1.75%.

Collateral for the Wynn Macau Credit Facilities consists of substantially all of the assets of Wynn Macau, S.A. Certain affiliates of the Company that own interests in Wynn Macau, S.A., either directly or indirectly through other subsidiaries, have executed guarantees of the loans and pledged their interests in Wynn Macau, S.A. as additional security for repayment of the loans. In addition, the Wynn Macau Credit Facilities' governing documents contain capital spending limits and other affirmative and negative covenants.

The Wynn Macau Credit Facilities contain a requirement that the Company must make mandatory repayments of indebtedness from specified percentages of excess cash flow. If the Wynn Macau subsidiary meets a Consolidated Leverage Ratio, as defined, of greater than 4.0 to 1, such repayment is defined as 50% of Excess Cash Flow, as defined. If the Consolidated Leverage Ratio is less than 4.0 to 1, then no repayment is required. Based on current estimates the Company does not believe that the Wynn Macau Consolidated Leverage Ratio during the fiscal year ending December 31, 2010 will exceed 4.0 to 1. Accordingly, the Company does not expect to make any mandatory repayments pursuant to this requirement during 2010.

The Wynn Macau Credit Facilities contain customary covenants restricting certain activities including, but not limited to: the incurrence of additional indebtedness, the incurrence or creation of liens on any of its property, sales and leaseback transactions, the ability to dispose of assets, and make loans or other investments. In

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

addition, Wynn Macau was required by the financial covenants to maintain a Leverage Ratio, as defined, of not greater than 5.00 to 1 as of December 31, 2009, and an Interest Coverage Ratio, as defined, of not less than 2.00 to 1. The Company believes that it was in compliance with all covenants at December 31, 2009. The Leverage Ratio decreases to not greater than 4.75 to 1 for the quarterly reporting period ending June 30, 2010, 4.50 to 1 for the quarterly reporting period ending September 30, 2010 and 4.00 to 1 for the quarterly reporting period ending December 31, 2010. The Interest Coverage Ratio requirement remains at not less than 2.00 to 1 for each reporting period during 2010.

In connection with the initial financing of the Wynn Macau project, Wynn Macau, S.A. entered into a Bank Guarantee Reimbursement Agreement with Banco Nacional Ultramarino, S.A. (“BNU”) for the benefit of the Macau government. This guarantee assures Wynn Macau, S.A.’s performance under the casino concession agreement, including the payment of premiums, fines and indemnity for any material failure to perform under the terms of the concession agreement. As of December 31, 2009, the guarantee was in the amount of \$300 million Macau Patacas (approximately US\$37 million) and will remain at such amount until 180 days after the end of the term of the concession agreement. BNU, as issuer of the guarantee, is currently secured by a second priority security interest in the senior lender collateral package. From and after repayment of all indebtedness under the Wynn Macau Credit Facilities, Wynn Macau, S.A. is obligated to promptly, upon demand by BNU, repay any claim made on the guarantee by the Macau government. BNU is paid an annual fee for the guarantee not to exceed approximately \$5.2 million Macau Patacas (approximately US\$0.7 million).

\$42 Million Note Payable for Aircraft

On March 30, 2007, World Travel, LLC, a subsidiary of Wynn Las Vegas, entered into a loan agreement with a principal balance of \$42 million. The loan is guaranteed by Wynn Las Vegas, LLC and secured by a first priority security interest in one of the Company’s aircraft. Principal payments of \$350,000 plus interest are made quarterly with a balloon payment of \$28 million due at maturity, April 1, 2017. Interest is calculated at 90-day LIBOR plus 125 basis points.

\$32.5 Million Note Payable for Aircraft

On May 10, 2007, World Travel G-IV, LLC, a subsidiary of Wynn Resorts, entered into a \$32.5 million term loan credit facility to finance the purchase of an aircraft. Principal payments of \$542,000 plus interest are made quarterly with a balloon payment of \$21.1 million due at maturity, August 10, 2012. Interest is calculated at LIBOR plus 115 basis points.

Fair Value of Long-Term Debt

The net book value of the 6 5/8% and 7 7/8% First Mortgage Notes at December 31, 2009 and 2008, was approximately \$2.1 billion and \$1.7 billion, respectively. The estimated fair value of the 6 5/8% and 7 7/8% First Mortgage Notes was approximately \$2.1 billion and \$1.25 billion as of December 31, 2009 and 2008, respectively. The net book value of the Company’s other debt was approximately \$1.5 billion and \$2.6 billion as of December 31, 2009 and 2008, respectively. The estimated fair value of the Company’s other debt instruments was approximately \$1.3 billion and \$1.6 billion at December 31, 2009 and 2008.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

Scheduled Maturities of Long-Term Debt

Scheduled maturities of long-term debt including the accretion of debt discounts of approximately \$17.4 million are as follows (amounts in thousands):

<u>Years Ending December 31,</u>	
2010	\$ 2,675
2011	77,900
2012	712,647
2013	438,006
2014	1,823,756
Thereafter	531,500
	<u>\$ 3,586,484</u>

8. Interest Rate Swaps

The Company has entered into floating-for-fixed interest rate swap arrangements in order to manage interest rate risk relating to certain of its debt facilities. These interest rate swap agreements modify the Company's exposure to interest rate risk by converting a portion of the Company's floating-rate debt to a fixed rate. These interest rate swaps essentially fix the interest rate at the percentages noted below; however, changes in the fair value of the interest rate swaps for each reporting period have been recorded in the increase/decrease in swap fair value in the accompanying Consolidated Statements of Income, as the interest rate swaps do not qualify for hedge accounting.

The Company measures the fair value of its interest rate swaps on a recurring basis pursuant to accounting standards for fair value measurements. These standards establish a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. These tiers include: Level 1, defined as observable inputs such as quoted prices in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions. The Company categorizes these swap contracts as Level 2.

The following table presents the historical fair value of the interest rate swaps recorded in the accompanying Consolidated Balance Sheets as of December 31, 2009 and 2008. The fair value approximates the amount the Company would pay if these contracts were settled at the respective valuation dates. Fair value is estimated based upon current, and predictions of future, interest rate levels along a yield curve, the remaining duration of the instruments and other market conditions, and therefore, is subject to significant estimation and a high degree of variability and fluctuation between periods. The fair value is adjusted, to reflect the impact of credit ratings of the counterparties or the Company, as applicable. These adjustments resulted in a reduction in the fair values as compared to their settlement values. As of December 31, 2009, these interest rate swaps are included in other long-term liabilities.

<u>Liability fair value:</u>	<u>Wynn Resorts</u>	<u>Wynn Las Vegas</u> (amounts in thousands)	<u>Wynn Macau</u>	<u>Total Interest</u> <u>Rate Swaps</u>
December 31, 2009	\$ —	\$ 4,224	\$ 16,345	\$ 20,569
December 31, 2008	\$ 15,334	\$ —	\$ 12,539	\$ 27,873

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

Wynn Resorts Swap

On February 1, 2008, the Company entered into an interest rate swap to hedge the underlying interest rate risk on all of the borrowings under the Wynn Resorts Term Loan. Pursuant to the terms of this interest rate swap, the Company paid a fixed rate of 2.836% on the \$1 billion notional amount and received payments based on LIBOR. This swap fixed the interest rate at approximately 5.09%. On December 8, 2008, the Company modified the terms of this swap so that the notional amount was \$375 million matching the debt then outstanding. Pursuant to the terms of the amendment, the Company paid a fixed rate of 3.95% which fixed the interest rate at approximately 6.2%. In October 2009, the Company terminated this interest rate swap for a payment of \$ 9.9 million.

Wynn Las Vegas Swap

The Company currently has one interest rate swap agreement to hedge a portion of the underlying interest rate risk on borrowings under the Wynn Las Vegas Credit Facilities. Under this swap agreement, beginning November 27, 2009, the Company pays a fixed interest rate of 2.485% on borrowings of \$250 million incurred under the Wynn Las Vegas Credit Facilities in exchange for receipts on the same amount at a variable interest rate based on the applicable LIBOR at the time of payment. This interest rate swap fixes the interest rate on \$250 million of borrowings at approximately 5.485%. This interest rate swap agreement matures in November 2012.

In December 2008, the Company's \$200 million notional amount interest rate swap to essentially fix the interest rate on \$200 million of the \$225 million of Wynn Las Vegas Term Loan borrowings matured. Pursuant to the terms of this interest rate swap, the Company paid a fixed rate of 3.793% on the \$200 million notional amount and received payments based on LIBOR. This swap fixed the interest rate at approximately 5.7% on \$200 million of the then outstanding \$225 million term loan.

Wynn Macau Swaps

The Company has two interest rate swap agreements to hedge a portion of the underlying interest rate risk on borrowings under the Wynn Macau Term Loan. Under the first swap agreement, the Company pays a fixed interest rate of 3.632% on U.S. dollar borrowings of approximately \$153.8 million incurred under the Wynn Macau Term Loan in exchange for receipts on the same amount at a variable interest rate based on the applicable LIBOR at the time of payment. Under the second swap agreement, the Company pays a fixed interest rate of 3.39% on Hong Kong dollar borrowings of approximately HK \$991.6 million (approximately U.S. \$127.9 million) incurred under the Wynn Macau Term Loan in exchange for receipt on the same amount at a variable interest rate based on the applicable HIBOR at the time of payment. These interest rate swaps fix the interest rates on the U.S. dollar and the Hong Kong dollar borrowings under the Wynn Macau Term Loan at approximately 5.382% and 5.14%, respectively. These interest rate swap agreements mature in August 2011.

The Company entered into a third interest rate swap agreement effective November 27, 2009, to hedge a portion of the underlying interest rate risk on borrowings under the Wynn Macau Revolver. Under this swap agreement, the Company pays a fixed interest rate of 2.15% on borrowings of approximately HK\$2.3 billion (approximately U.S. \$300 million) incurred under the Wynn Macau Revolver in exchange for receipts on the same amount at a variable interest rate based on the applicable HIBOR at the time of payment. This interest rate swap fixes the interest rate on such borrowings at approximately 3.9%. This interest rate swap agreement matures in June 2012.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

9. Related Party Transactions

Amounts Due to Officers

The Company periodically provides services to Stephen A. Wynn, Chairman of the Board of Directors and Chief Executive Officer (“Mr. Wynn”), and certain other officers and directors of the Company, including the personal use of employees, construction work and other personal services. Mr. Wynn and other officers and directors have deposits with the Company to prepay any such items, which are replenished on an ongoing basis as needed. At December 31, 2009 and 2008, Mr. Wynn and the other officers and directors had a net deposit balance with the Company of \$789,095 and \$434,003 respectively.

Villa Suite Lease

Effective July 1, 2005, Mr. Wynn and Elaine P. Wynn, who is also a director of Wynn Resorts, lease from year to year a villa suite in the Wynn Las Vegas resort. In March 2009, this lease was amended to add an additional unit to the leased premises. Rent is determined by the Audit Committee of the Board of Directors of Wynn Resorts (the “Audit Committee”), and is based on the fair market value of the use of the suite accommodations. Based on third-party appraisals, the Audit Committee determined the rent for each year in the three year period commencing July 1, 2005 and ended June 30, 2008 to be \$580,000. Certain services for, and maintenance of, the suites are included in the rental. For the two year period commencing July 1, 2008 and ending June 30, 2010, based on a third-party appraisal and a reduction in housekeeping services to be provided, the Audit Committee determined the rent for each year will be \$520,000. There was no change in the rent when the additional unit was added to the lease in March 2009 due to significant deterioration in the Las Vegas rental market.

The “Wynn” Surname Rights Agreement

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

Wynn Macau—Intellectual Property License Agreement and Corporate Support Services

Wynn Resorts has licensed to Wynn Macau certain trademarks and service marks, other marks and works, and hotel/casino design, development and management know-how through an Intellectual Property License Agreement. Wynn Macau pays to Wynn Resorts a royalty fee pursuant to this agreement as a fixed percent of gross revenue. Wynn Macau was charged royalty fees of \$71.5 million, \$73.4 million and \$36.5 million during the years ended December 31, 2009, 2008 and 2007, respectively. In the accompanying Consolidated Statements of Income these royalty fees have been eliminated in consolidation.

Wynn Resorts also provides corporate support and other services in large part related to assisting Wynn Macau with U.S. regulatory requirements. The costs of these services are billed to Wynn Macau based on the estimated time spent by the departments involved. Wynn Macau was charged \$12.8 million, \$9.2 million and \$12.7 million during the years ended December 31, 2009, 2008 and 2007, respectively. In the accompanying Consolidated Statements of Income these corporate support service costs and other have been eliminated in consolidation.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

10. Property Charges and Other

Property charges and other consisted of the following (amounts in thousands):

	<u>Years Ended December 31,</u>		
	<u>2009</u>	<u>2008</u>	<u>2007</u>
Loss on assets abandoned/retired for remodels	\$21,696	\$32,584	\$70,242
Loss/(gain) on termination agreement/ sale of aircraft	6,762	—	(9,385)
Total property charges and other	<u>\$28,458</u>	<u>\$32,584</u>	<u>\$60,857</u>

Property charges and other generally include costs related to the retirement of assets for remodels and asset abandonments. Property charges and other for the year ended December 31, 2009 included the following: (a) a \$16.7 million charge for the abandonment of the front porte-cochere at Encore at Wynn Las Vegas to make way for an addition at that property, (b) a \$6.8 million charge for the write-off of two aircraft deposits, and (c) \$5 million related to miscellaneous remodels, abandonments and loss on sale of equipment.

Property charges and other for the year ended December 31, 2008 were \$32.6 million and include \$17.8 million of costs associated with Spamalot at Wynn Las Vegas which closed in mid-July 2008. The charge includes production rights that were included in intangible assets, show production costs that were included in other assets and certain other property and equipment. The Company also incurred a charge of \$3.6 million related to the abandonment of certain existing floor space at Wynn Macau to begin construction on a new restaurant. The remaining property charges were related to miscellaneous renovations and abandonments at both Wynn Las Vegas and Wynn Macau.

Property charges and other for the year ended December 31, 2007 included the following charges at Wynn Macau: (a) a \$10 million charge for the abandonment of a parking garage to make way for Encore at Wynn Macau, (b) a \$10.2 million charge related to abandonment costs for portions of the main kitchen, warehouse and restaurants to enable the main casino to be connected with the expansion that opened in December 2007, (c) a \$22.1 million charge related to significant casino and retail reconfigurations in the expansion that opened in December 2007, and (d) a \$15.5 million charge related to the abandonment of a theater. The remaining property charges were related to renovations to portions of the Le Rêve Theater, the abandonment of a marquee sign and the conversion of two retail outlets and a nightclub at Wynn Las Vegas, as well as the remodeling of certain areas at Wynn Macau. Offsetting these charges for the year ended December 31, 2007 was a gain of \$9.4 million on the sale of a company aircraft.

11. Stockholders' Equity**Common Stock**

The Company is authorized to issue up to 400,000,000 shares of its common stock, \$0.01 par value per share (the "Common Stock"). As of December 31, 2009 and 2008, 123,293,456 shares and 112,013,040 shares, respectively, of the Company's Common Stock were outstanding. Except as otherwise provided by the Company's articles of incorporation or Nevada law, each holder of the Common Stock is entitled to one vote for each share held of record on each matter submitted to a vote of stockholders. Holders of the Common Stock have no cumulative voting, conversion, redemption or preemptive rights or other rights to subscribe for additional shares. Subject to any preferences that may be granted to the holders of the Company's preferred stock, each holder of Common Stock is entitled to receive ratably such dividends as may be declared by the Board of Directors out of funds legally available therefore, as well as any distributions to the stockholders and, in the event of liquidation, dissolution or winding up of the Company, is entitled to share ratably in all assets of the Company remaining after payment of liabilities.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

On June 6, 2007, the Board of Directors of Wynn Resorts authorized an equity repurchase program of up to \$1.2 billion that allowed purchases of both its Common Stock and its Debentures. On July 10, 2008, the Board of Directors of the Company authorized an increase of \$500 million to its previously announced equity repurchase program bringing the total authorized to \$1.7 billion. The repurchase program may include repurchases from time to time through open market purchases or negotiated transactions, depending upon market conditions. No repurchases were made during the year ended December 31, 2009. During the year ended December 31, 2008, the Company repurchased 10,915,633 shares for a net cost of \$940.1 million. As of December 31, 2009, the Company had repurchased a cumulative total of 12,804,954 shares of the Company's Common Stock for a net cost of \$1.1 billion under the program.

On March 20, 2009, the Company completed a secondary common stock offering of 11,040,000 shares with net proceeds of \$202.1 million.

On November 18, 2008, the Company completed a secondary common stock offering of 8 million shares with net proceeds of \$344.3 million.

On October 3, 2007, the Company completed a secondary common stock offering of 4,312,500 shares with net proceeds of \$664.1 million.

Preferred Stock

The Company is authorized to issue up to 40,000,000 shares of undesignated preferred stock, \$0.01 par value per share (the "Preferred Stock"). As of December 31, 2009, the Company had not issued any Preferred Stock. The Board of Directors, without further action by the holders of Common Stock, may designate and issue shares of Preferred Stock in one or more series and may fix or alter the rights, preferences, privileges and restrictions, including the voting rights, redemption provisions (including sinking fund provisions), dividend rights, dividend rates, liquidation rates, liquidation preferences, conversion rights and the description and number of shares constituting any wholly unissued series of Preferred Stock. The issuance of such shares of Preferred Stock could adversely affect the rights of the holders of Common Stock. The issuance of shares of Preferred Stock under certain circumstances could also have the effect of delaying or preventing a change of control of the Company or other corporate action.

12. Cash Distributions

On November 6, 2009, the Company's Board of Directors declared a cash dividend of \$4 per share on its outstanding Common Stock. This dividend was paid on December 3, 2009, to stockholders of record on November 19, 2009. For the year ended December 31, 2009, \$493.1 million was recorded as a distribution in the accompanying Consolidated Statements of Stockholders' Equity. Of this amount approximately \$3.7 million was recorded as a liability which will be paid to the holders of nonvested stock upon the vesting of that stock.

On November 19, 2007, the Company's Board of Directors declared a cash distribution of \$6 per share on its outstanding Common Stock. This distribution was paid on December 10, 2007 to stockholders of record on November 30, 2007. For the year ended December 31, 2007, \$686.1 million was recorded as a distribution in the accompanying Consolidated Statements of Stockholders' Equity. Of this amount approximately \$3.3 million was recorded as a liability which will be paid to the holders of nonvested stock upon the vesting of that stock.

The Company's Board of Directors has approved the commencement of a regular cash dividend program beginning in 2010. The Board of Directors will continue to periodically assess the level and appropriateness of any cash dividends.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

13. Non-controlling Interest

In October 2009, Wynn Macau, Limited, a newly formed and indirect wholly owned subsidiary of the Company and the developer, owner and operator of Wynn Macau, had its ordinary shares of common stock listed on The Stock Exchange of Hong Kong Limited. Through an initial public offering, including the over allotment, Wynn Macau, Limited sold 1,437,500,000 (27.7%) shares of this subsidiary's common stock (the "Wynn Macau Limited IPO"). Proceeds to the Company as a result of this transaction were approximately \$1.8 billion, net of transaction costs of approximately \$84 million. The shares of Wynn Macau, Limited were not and will not be registered under the Securities Act of 1933, as amended, and may not be offered or sold in the United States absent a registration under the Securities Act of 1933, as amended, or an applicable exception from such registration requirements. In connection with this transaction, the Company recorded approximately \$107.4 million of non-controlling interest as a separate component of equity in the accompanying Consolidated Balance Sheets and has followed accounting standards for non-controlling interest in the consolidated financial statements beginning in October 2009.

14. Benefit Plans

Employee Savings Plan

The Company established a retirement savings plan under Section 401(k) of the Internal Revenue Code covering its non-union employees in July 2000. The plan allows employees to defer, within prescribed limits, a percentage of their income on a pre-tax basis through contributions to this plan. Prior to March 16, 2009, the Company matched the contributions, within prescribed limits, with an amount equal to 100% of the participant's initial 2% tax deferred contribution and 50% of the tax deferred contribution between 2% and 4% of the participant's compensation. The Company recorded an expense for matching contributions of approximately \$1.4 million, \$5.3 million and \$4.9 million for the years ended December 31, 2009, 2008 and 2007, respectively. Effective March 16, 2009, the Company suspended matching contributions to this plan.

Union employees are covered by various multi-employer pension plans. The Company recorded an expense of approximately \$6.2 million, \$4.6 million and \$4.5 million under such plans for the years ended December 31, 2009, 2008 and 2007, respectively. Information from the plans' sponsors is not available to permit the Company to determine its share of unfunded vested benefits, if any.

Share-Based Compensation

The Company established the 2002 Stock Incentive Plan (the "Stock Plan") to provide for the grant of (i) incentive stock options, (ii) compensatory (i.e. nonqualified) stock options, and (iii) nonvested shares of Common Stock of Wynn Resorts, Limited. Employees, directors (whether employee or nonemployee) and independent contractors or consultants of the Company are eligible to participate in the Stock Plan. However, only employees of the Company are eligible to receive incentive stock options.

A maximum of 9,750,000 shares of Common Stock were reserved for issuance under the Stock Plan. As of December 31, 2009, 419,545 shares remain available for the grant of stock options or nonvested shares of Common Stock.

Stock Options

Options are granted at the current market price at the date of grant. The Stock Plan provides for a variety of vesting schedules, including: immediate; 25% each year over four years; 33.33% for each of the third, fourth and fifth years with no vesting in the first two years; 10% each year over ten years; cliff vesting at a determined date; and others to be determined at the time of grant. All options expire ten years from the date of grant.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

A summary of option activity under the Stock Plan as of December 31, 2009, and the changes during the year then ended is presented below:

	<u>Options</u>	<u>Weighted Average Exercise Price</u>	<u>Weighted Average Remaining Contractual Term</u>	<u>Aggregate Intrinsic Value</u>
Outstanding at January 1, 2009	2,782,342	\$ 66.80		
Granted	2,882,500	\$ 48.26		
Exercised	(244,916)	\$ 25.92		
Canceled/Expired	(173,333)	\$ 69.44		
Outstanding at December 31, 2009	<u>5,246,593</u>	\$ 58.43	7.98	\$ 43,245,827
Fully vested and expected to vest at December 31, 2009	<u>4,840,437</u>	\$ 57.66	7.91	\$ 40,639,013
Exercisable at December 31, 2009	<u>1,230,916</u>	\$ 50.33	5.03	\$ 13,109,258

The weighted average grant date fair value of stock options granted during the years ended December 31, 2009, 2008 and 2007, was \$28.25, \$61.50 and \$52.40, respectively. The total intrinsic value of stock options exercised for the years ended December 31, 2009, 2008 and 2007, was \$8.2 million, \$6.1 million and \$21.4 million, respectively. Net cash proceeds from the exercise of stock options were \$6.3 million, \$2.8 million, and \$9.2 million for the years ended December 31, 2009, 2008 and 2007, respectively. The Company recorded tax benefits resulting from the exercise of non-qualified stock options and the vesting of restricted stock of approximately \$49.0 million, \$0 million, and \$0 million for the years ended December 31, 2009, 2008, and 2007, respectively. As of December 31, 2009, there was a total of \$105.7 million of unamortized compensation related to stock options, which is expected to be recognized over the vesting period of the related grants through December 2019.

Nonvested Shares

A summary of the status of the Stock Plan's nonvested shares as of December 31, 2009 and changes during the year then ended is presented below:

	<u>Shares</u>	<u>Weighted Average Grant Date Fair Value</u>
Nonvested at January 1, 2009	918,500	\$ 87.41
Granted	—	—
Vested	(25,000)	\$ 67.40
Canceled	(4,500)	\$ 69.05
Nonvested at December 31, 2009	<u>889,000</u>	\$ 88.06

The weighted average grant date fair value of nonvested shares granted during the years ended December 31, 2008 and 2007 was \$97.88 and \$107.28, respectively. The total fair value of the shares vested during the years ended December 31, 2009, 2008, and 2007, was \$1.7 million, \$2.5 million and \$3.9 million, respectively. Approximately \$45.2 million of unamortized compensation cost relating to nonvested shares of Common Stock at December 31, 2009 will be recognized as compensation over the vesting period of the related grants through December 2016.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

Compensation Cost

The Company uses the Black-Scholes valuation model to determine the estimated fair value for each option grant issued, with highly subjective assumptions, changes in which could materially affect the estimated fair value. Expected volatility is based on implied and historical factors related to the Company's Common Stock. Expected term represents the weighted average time between the option's grant date and its exercise date. The Company uses the simplified method for companies with a limited trading history to estimate the expected term. The risk-free interest rate used for each period presented is based on the U.S. Treasury yield curve at the time of grant for the period equal to the expected term.

The fair value per option was estimated on the date of grant using the following weighted-average assumptions:

	Years Ended December 31,		
	2009	2008	2007
Expected dividend yield	0.12%	—	—
Expected stock price volatility	54.6%	44.1%	37.1%
Risk-free interest rate	2.7%	3.6%	3.3%
Expected average life of options (years)	7.6	9.2	5.0

The total compensation cost relating both to stock options and nonvested stock is allocated as follows (amounts in thousands):

	Years Ended December 31,		
	2009	2008	2007
Casino	\$ 8,740	\$ 6,799	\$ 4,692
Rooms	460	586	667
Food and beverage	305	845	878
Entertainment, retail and other	19	210	267
General and administrative	14,812	11,634	12,023
Pre-opening	—	254	—
Total stock-based compensation expense	24,336	20,328	18,527
Total stock-based compensation capitalized	585	580	809
Total stock-based compensation costs	<u>\$24,921</u>	<u>\$20,908</u>	<u>\$19,336</u>

15. Income Taxes

Consolidated income (loss) before taxes for domestic and foreign operations consisted of the following (amounts in thousands):

	Years Ended December 31,		
	2009	2008	2007
Domestic	\$(229,861)	\$(105,096)	\$ 56,294
Foreign	271,967	254,014	175,843
Total	<u>\$ 42,106</u>	<u>\$ 148,918</u>	<u>\$ 232,137</u>

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

The Company's benefit (provision) for income taxes consist of the following (amounts in thousands):

	Years Ended December 31,		
	2009	2008	2007
Current			
Federal	\$ —	\$ —	\$ —
Foreign	(3,679)	(1,899)	(933)
	<u>(3,679)</u>	<u>(1,899)</u>	<u>(933)</u>
Deferred			
Federal	(2,090)	58,606	(37,002)
Foreign	2,770	4,854	2,134
	<u>680</u>	<u>63,460</u>	<u>(34,868)</u>
Total	<u><u>\$ (2,999)</u></u>	<u><u>\$ 61,561</u></u>	<u><u>\$ (35,801)</u></u>

The tax effects of significant temporary differences representing net deferred tax assets and liabilities consisted of the following (amounts in thousands):

	As of December 31,	
	2009	2008
Deferred tax assets—U.S.:		
Current:		
Receivables, inventories, accrued liabilities and other	\$ 34,709	\$ 29,896
Less: valuation allowance	(25,543)	(23,324)
	<u>9,166</u>	<u>6,572</u>
Long-term:		
Foreign tax credit carryforwards	835,370	698,371
Pre-opening costs	23,130	32,073
Intangibles and related other	21,647	23,992
Stock compensation	18,002	12,232
Interest rate swap valuation adjustment	1,478	5,367
Other credit carryforwards	5,224	4,041
Syndication costs	3,780	3,780
Other	369	324
	<u>909,000</u>	<u>780,180</u>
Less: valuation allowance	(668,966)	(608,681)
	<u>240,034</u>	<u>171,499</u>

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

	As of December 31,	
	2009	2008
Deferred tax liabilities—U.S.:		
Current:		
Undistributed IPO proceeds of foreign subsidiary	(41,515)	—
Prepaid insurance, Maintenance and taxes	(10,509)	(10,333)
	(52,024)	(10,333)
Long-term:		
Property and equipment	(222,899)	(184,305)
Foreign currency translation	—	(1,409)
	(222,899)	(185,714)
Deferred tax assets—Foreign:		
Current:		
Pre-opening costs and other	4	1,506
Less: valuation allowance	(2)	(762)
	2	744
Long-term:		
Pre-opening costs and other	—	13
Net operating loss carryforwards	27,598	19,484
Less: valuation allowance	(17,208)	(9,863)
	10,390	9,634
Deferred tax liabilities—Foreign:		
Long-term:		
Property equipment and other	(1,139)	(3,970)
Net deferred tax asset (liability)	\$ (16,470)	\$ (11,569)

The income tax provision differs from that computed at the federal statutory corporate tax rate as follows:

	Years Ended December 31,		
	2009	2008	2007
Federal statutory rate	35.0%	35.0%	35.0%
Foreign tax rate differential	(133.3)%	(38.6)%	(12.7)%
Other items, net:			
Foreign tax credits, net of valuation allowance	77.0%	(484.9)%	—
Repatriation of Foreign earnings	113.8%	472.7%	—
Excess executive compensation	5.4%	—	—
Non-taxable Foreign income	(108.6)%	(29.6)%	(14.0)%
Non-deductible foreign property charges	2.4%	—	3.0%
Increase (decrease) in liability for uncertain tax positions	—	(3.7)%	2.6%
General Business Credits	(2.8)%	—	—
Other, net	2.6%	2.8%	—
Valuation allowance, other	15.6%	5.0%	1.5%
Effective tax rate	7.1%	(41.3)%	15.4%

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

The Company does not have any U.S. tax loss carryforwards for the years ended December 31, 2009 and 2008. The Company has incurred foreign tax losses of approximately \$66.8 million, \$124.0 million, and \$145.3 million during the tax years ended December 31, 2009, 2008, and 2007, respectively. These tax loss carryforwards are partially reserved and expire in 2010, 2011, and 2012. The Company recorded tax benefits resulting from the exercise of nonqualified stock options and the value of vested restricted stock of \$49.0 million, \$0, and \$0 as of December 31, 2009, 2008, and 2007, respectively, in excess of the amounts reported for such items as compensation costs under accounting standards related to stock-based compensation. The Company uses a with-and-without approach to determine if the excess tax deductions associated with compensation costs have reduced income taxes payable.

Accounting standards require recognition of a future tax benefit to the extent that realization of such benefit is more likely than not. Otherwise, a valuation allowance is applied. During 2009 and 2008, the aggregate valuation allowance for deferred tax assets increased by \$69.1 million and \$634.9 million, respectively. The 2009 and 2008 increases are primarily related to foreign tax credit carryforwards that are not considered more likely than not realizable. As discussed in the succeeding paragraph, the Company does not consider forecasted future operating results when scheduling the realization of deferred tax assets and the required valuation allowance but instead rely solely on the reversal of net taxable temporary differences. The ultimate realization of our recorded foreign tax credit deferred tax asset is dependent upon the incurrence of sufficient US income tax liabilities attributable to foreign source income during the 10-year foreign tax credit carryover period. The 2007 increase of \$3.4 million is primarily due to foreign tax loss carryforwards that are not more likely than not realizable.

The Macau special gaming tax is 35% of gross gaming revenue. The U.S. taxing regime only allows a credit for 35% of “net” foreign source income. In determining the valuation allowance in accordance with accounting standards, due to the significant U.S. operating losses, the Company currently could not rely on forecasted future U.S. taxable income. Instead, the valuation allowance was determined by scheduling the existing U.S. “net” taxable temporary differences that were expected to reverse during the 10-year foreign tax credit carryover period and then applying U.S. income tax rules applicable to foreign tax credit utilization to the results in order to determine the amount of foreign tax credit expected to be utilized in the future.

During the year ended December 31, 2008, the Company completed a study of the taxes, levies and obligations assessed on operations of Wynn Macau under Macau law and the Macau Gaming Concession. The study concluded the Macau Special Gaming Tax more likely than not qualified as a tax paid in lieu of an income tax under the Internal Revenue Code. In February 2010, the Company and the IRS entered into a Pre-Filing Agreement (“PFA”) providing that the Macau Special Gaming Tax qualifies as a tax paid in lieu of an income tax and could be claimed as a U.S. foreign tax credit.

During the years ended December 31, 2009 and 2008, the Company recognized tax benefits of \$125.3 million and \$722 million (net of valuation allowance increases) for foreign tax credits applicable to the earnings of Wynn Macau. A significant portion of these credits result from the treatment of the Macau Special Gaming Tax as a U.S. foreign tax credit. Of the \$125.3 million, \$121.5 million was used to offset 2009 U.S. income tax expense incurred as a result of the repatriation of Wynn Macau earnings and a portion of the Wynn Macau Limited IPO proceeds. The remaining \$3.8 million (net of valuation allowance) is recorded as a deferred tax asset. Of the \$722 million, \$650.6 million was used to offset 2008 U.S. income tax expense incurred as a result of the repatriation of Wynn Macau earnings and \$71.4 million (net of valuation allowance) was recorded as a deferred tax asset. The Company’s foreign tax credit carryforwards as of December 31, 2009 of \$835.4 million before valuation allowance will expire in 2018 and 2019.

Of the December 31, 2009 U.S. valuation allowance totaling \$694.5 million, \$689.4 million relates to U.S. foreign tax credits expected to expire unutilized, \$1.3 million represents stock-based compensation that may be

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

nondeductible under IRC §162(m), and \$3.8 million is attributable to syndication costs. Of the 2008 U.S. valuation allowance totaling \$632 million, \$626.9 million relates to U.S. foreign tax credits expected to expire unutilized, \$1.3 million represents stock-based compensation that may be nondeductible under IRC §162(m), and \$3.8 million is attributable to syndication costs. Subsequent recognition of income tax benefits associated with syndication costs will be allocated to additional paid-in capital.

As of December 31, 2009, the Company has not provided deferred U.S. income taxes or foreign withholding taxes on temporary differences of approximately \$358.2 million resulting from earnings of certain non-U.S. subsidiaries which are permanently reinvested outside of the U.S. The amount of the unrecognized deferred tax liability without regard to potential foreign tax credits associated with these temporary differences is approximately \$125.4 million for the year ended December 31, 2009. At December 31, 2008, the Company had no earnings in foreign subsidiaries that were considered permanently reinvested. Deferred income taxes are provided for foreign earnings planned for repatriation. In connection with the Wynn Macau Limited IPO (Note 13) the Company recorded a deferred tax liability net of expected foreign tax credits of \$56.1 million to the extent that the book basis of the investment exceeded the tax basis and where that difference is expected to reverse in the foreseeable future. The deferred tax liability was recorded as a reduction in additional paid-in capital. In 2009, the Company repatriated approximately \$400 million from the Wynn Macau Limited IPO proceeds leaving a deferred tax liability net of expected foreign tax credits of \$41.5 million as of December 31, 2009. The amounts repatriated were used to fund domestic operations, to provide additional U.S. liquidity, and to fund a dividend to the Company's shareholders. During 2008, the Company repatriated \$1.071 billion in earnings from Wynn Macau. The 2008 earnings were repatriated to fund the repurchase of \$625 million in principal of the Term Loan Facility, to provide available funding for possible future debt repurchases, to provide funding for the completion of Encore at Wynn Las Vegas, and to provide liquidity.

Effective September 6, 2006, Wynn Macau, S.A. received a 5-year exemption from Macau's 12% Complementary Tax on casino gaming profits. Accordingly, the Company was exempted from the payment of approximately \$31.7 million, \$27.7 million, and \$26.4 million in such taxes for the years ended December 31, 2009, 2008 and 2007, respectively. The Company's non-gaming profits remain subject to the Macau Complementary Tax and its casino winnings remain subject to the Macau Special Gaming tax and other levies in accordance with its concession agreement. In June 2009, Wynn Macau, S.A. entered into an agreement with the Macau Special Administrative Region that provides for an annual payment of MOP \$7.2 million (approximately \$900,000 US dollars) to the Macau Special Administrative Region as complementary tax otherwise due by shareholders on dividend distributions. This agreement is effective as of 2006. Therefore, included in the tax provision for the year ended December 31, 2009, are the amounts related to the years 2006 through 2009 totaling \$3.6 million. This agreement on dividends is effective through 2010.

Effective January 1, 2007, the Company adopted the accounting standards related to accounting for uncertain tax positions. This standard requires that tax positions be assessed using a two-step process. A tax position is recognized if it meets a "more likely than not" threshold, and is measured at the largest amount of benefit that is greater than 50 percent likely of being realized. Uncertain tax positions must be reviewed at each balance sheet date. Liabilities recorded as a result of this analysis must generally be recorded separately from any current or deferred income tax accounts.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows (amounts in thousands):

	As of December 31,	
	2009	2008
Balance—beginning of year	\$ 120,779	\$ 89,216
Additions based on tax positions of the current year	27,496	15,135
Additions based on tax positions of prior years	185	23,348
Reductions for tax positions of prior years	(95)	(6,920)
Settlements	—	—
Lapses in statutes of limitations	—	—
Balance—end of year	<u>\$ 148,365</u>	<u>\$ 120,779</u>

As of December 31, 2009 and 2008, the Company has recorded a liability related to uncertain tax positions of \$90.3 million and \$90.3 million, respectively. These amounts are included in Other Long Term Liabilities in the accompanying financial statements. As of December 31, 2009 and 2008, approximately \$58.0 million and \$30.5 million, respectively, of liabilities related to U.S. and foreign uncertain tax positions that increase the NOL and foreign tax credit carryforward deferred tax assets are classified as reductions of the NOL and foreign tax credit carryforward deferred tax assets in the net deferred tax asset and liability table above. During 2008, \$56.4 million of uncertain tax positions originating in years 2007 and prior that were previously netted against the domestic NOL deferred tax asset were reclassified to the liability for uncertain positions in connection with the 2008 utilization of the domestic NOL carryforward. Other uncertain tax positions not increasing the NOL and foreign tax credit carryforward deferred tax assets have been recorded as increases in the liability for uncertain tax positions.

As of December 31, 2009 and 2008, approximately \$16.6 million and \$14.2 million, respectively, of unrecognized tax benefit would, if recognized, impact the effective tax rate. If incurred, the Company would recognize penalties and interest related to unrecognized tax benefits in the provision for income taxes. During the years ended December 31, 2009, 2008 and 2007, the Company recognized no interest or penalties.

The Company's unrecognized tax benefits include certain income tax accounting methods. These accounting methods govern the timing and deductibility of income tax deductions. As a result the Company's unrecognized tax benefits could increase by a range of \$0 to \$15.0 million over the next 12 months.

The Company files income tax returns in the U.S. federal jurisdiction, various states and foreign jurisdictions. The Company's income tax returns are subject to examination by the Internal Revenue Service ("IRS") and other tax authorities in the locations where it operates. As of December 31, 2009, the Company has filed domestic income tax returns for the years 2002 to 2008 and foreign income tax returns for 2002 to 2008. The Company's 2002 to 2008 domestic income tax returns remain subject to examination by the IRS and the Company's 2006 to 2008 Macau income tax returns remain subject to examination by the Macau Finance Bureau. During 2009, the Company received the results of an Internal Revenue Service examination of its 2004 and 2005 tax returns and filed its appeal of the examination's findings. In connection with that appeal, the Company agreed to extend the statute of limitations for its 2004 and 2005 tax returns to March 15, 2011. The Company does not expect resolution of the findings within 12 months. The Company believes that its liabilities for uncertain tax positions related to the examination's findings are adequate. The resolution of the 2004 and 2005 IRS examination is not expected to result in any significant cash payment, but rather the utilization of a portion of its 2008 foreign tax credit carryforward. In January 2010, the IRS commenced an examination of the Company's 2006 through 2008 income tax returns.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

16. Commitments and Contingencies

Wynn Macau

Encore at Wynn Macau Construction Development. Construction continues on a further expansion of Wynn Macau. Encore at Wynn Macau is expected to open in April 2010, and will add a fully-integrated resort hotel to Wynn Macau with approximately 410 luxury suites and four villas along with restaurants, additional retail space and additional gaming space. Wynn Macau, S.A. has executed a guaranteed maximum price contract with Leighton Contractors (Asia) Limited, China State Construction Engineering (Hong Kong) Limited and China Construction Engineering (Macau) Company Limited, acting together as the general contractor for the construction of the Encore at Wynn Macau. The contract sum, including change orders through December 31, 2009, totals \$417.4 million. The current project budget is approximately \$600 million.

Through December 31, 2009, the Company had incurred approximately \$454.9 million of costs related to Encore at Wynn Macau.

Land Concession Contract. Wynn Macau, S.A. has entered into a land concession contract for the land on which Wynn Macau is located. Under the land concession contract, Wynn Macau, S.A. leases a parcel of approximately 16 acres from the government for an initial term of 25 years, with a right to renew for additional periods with government approval. Wynn Macau, S.A. has made payments to the Macau government under the land concession contract totaling approximately \$42.7 million. Wynn Macau, S.A. also paid approximately \$18.4 million to an unrelated third party for its relinquishment of rights to a portion of the land. In 2009, the Company and the Macau government agreed to modify this land concession as a result of the construction of Encore at Wynn Macau and the additional square footage that will be added as a result of such construction. In November 2009, the Company made an additional one-time land premium payment of approximately \$14.2 million. During the term of the land concession contract, Wynn Macau, S.A. is required to make annual lease payments of up to \$527,000.

Cotai Land Agreement. On August 1, 2008, subsidiaries of Wynn Resorts, Limited entered into an agreement with an unrelated third party to make a one-time payment in the amount of \$50 million in consideration of the unrelated third party's relinquishment of certain rights with respect to a portion of approximately 52 acres of land in the Cotai area of Macau. The payment will be made within 15 days after the Government of the Special Administrative Region of the People's Republic of China publishes the Company's rights to the land in the government's official gazette. The Company has filed an application for the land with the government of Macau and is awaiting final approval.

Philadelphia Casino Project

On February 24, 2010, the Company announced that it had entered into a letter of intent with Philadelphia Entertainment and Development Partners, LP (PEDP), providing that an affiliate of Wynn Resorts will become the manager and managing general partner in the PDEP casino project slated for the Philadelphia waterfront. The agreement is subject to the satisfaction of certain conditions including the approval of the Pennsylvania Gaming Board.

Aircraft Deposits

The Company had made deposits on three aircraft purchases totaling \$19.4 million which are included in other assets in the accompanying Consolidated Balance Sheets as of December 31, 2008. The Company was scheduled to take delivery of those aircraft in 2009, 2012 and 2017 with additional payments to be made totaling \$142.2 million. On February 19, 2009, the Company cancelled the agreements to purchase two of these aircraft.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

In connection with the cancellation the Company wrote-off \$6.8 million of the deposits, net of amounts refunded. The delivery date for the third aircraft is scheduled for June 2012, and as of December 31, 2009, the Company has made deposits of \$8 million toward the purchase of this aircraft, with additional payments to be made totaling \$49.3 million.

Leases and other arrangements

The Company is the lessor under several retail leases and has entered into license and distribution agreements for several additional retail outlets. The Company also is a party to joint venture agreements for the operation of one other retail outlet and the Ferrari and Maserati automobile dealership at Wynn Las Vegas.

The following table presents the future minimum rentals to be received under the operating leases (amounts in thousands):

<u>Years Ending December 31,</u>	
2010	\$ 15,810
2011	13,217
2012	10,232
2013	1,936
2014	1,356
Thereafter	1,670
	<u>\$ 44,221</u>

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

At December 31, 2009, the Company was obligated under non-cancelable operating leases to make future minimum lease payments as follows (amounts in thousands):

<u>Years Ending December 31,</u>	
2010	\$ 6,834
2011	3,649
2012	1,681
2013	140
2014	140
Thereafter	2,941
	<u>\$ 15,385</u>

Rent expense for the years ended December 31, 2009, 2008 and 2007, was \$17.2 million, \$17.8 million and \$18.4 million, respectively.

Self-insurance

The Company's domestic subsidiaries are covered under a self-insured medical plan up to a maximum of \$300,000 per year for each insured person. Amounts in excess of these thresholds are covered by the Company's insurance programs, subject to customary policy limits. The Company's foreign subsidiaries are fully-insured.

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

Employment Agreements

The Company has entered into employment agreements with several executive officers, other members of management and certain key employees. These agreements, other than Mr. Wynn's, generally have three- to five-year terms and typically indicate a base salary and often contain provisions for discretionary bonuses. Certain of the executives are also entitled to a separation payment if terminated without "cause" or upon voluntary termination of employment for "good reason" following a "change of control" (as these terms are defined in the employment contracts).

Litigation

The Company does not have any material litigation as of December 31, 2009.

Sales and Use Tax on Complimentary Meals

In March 2008, the Nevada Supreme Court ruled, in the matter captioned *Sparks Nugget, Inc. vs. The State of Nevada Ex Rel. Department of Taxation*, that food and non-alcoholic beverages purchased for use in providing complimentary meals to customers and to employees was exempt from sales and use tax. In July 2008, the Court denied the State's motion for rehearing. Through April 2008, Wynn Las Vegas has paid use tax on these items and has filed for refunds for the periods from April 2005 to April 2008. The amount subject to these refunds is approximately \$5.4 million. Due to the uncertainty surrounding this matter, a receivable has not been recorded as of December 31, 2009.

17. Segment Information

The Company monitors its operations and evaluates earnings by reviewing the assets and operations of Wynn Las Vegas (including Encore at Wynn Las Vegas) and Wynn Macau. Wynn Las Vegas opened on April 28, 2005, Encore at Wynn Las Vegas opened on December 22, 2008, and Wynn Macau opened on September 6, 2006. The Company's total assets and capital expenditures by segment consisted of the following (amounts in thousands):

	As of December 31,	
	2009	2008
Assets		
Wynn Las Vegas (including Encore at Wynn Las Vegas)	\$ 4,254,324	\$ 4,584,271
Wynn Macau (including Encore at Wynn Macau)	1,990,273	1,415,325
Corporate and other assets	1,337,172	756,192
Total consolidated assets	\$ 7,581,769	\$ 6,755,788
	Years ended December 31,	
	2009	2008
Capital expenditures		
Wynn Las Vegas (including Encore at Wynn Las Vegas)	\$ 245,040	\$ 1,129,525
Wynn Macau (including Encore at Wynn Macau)	295,889	202,808
Corporate and other	—	849
Total capital expenditures	\$ 540,929	\$ 1,333,182

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

The Company's results of operations by segment for the years ended December 31, 2009, 2008 and 2007 consisted of the following (amounts in thousands):

	Years Ended December 31,		
	2009	2008	2007
Net revenues(1)			
Wynn Las Vegas, including Encore	\$1,229,573	\$ 1,098,889	\$ 1,295,381
Wynn Macau	1,816,038	1,888,435	1,392,138
Total net revenues	<u>\$3,045,611</u>	<u>\$2,987,324</u>	<u>\$2,687,519</u>
Adjusted Property EBITDA(1, 2)			
Wynn Las Vegas, including Encore	\$ 244,065	\$ 252,875	\$ 417,028
Wynn Macau	502,087	485,857	364,113
Total adjusted property EBITDA	<u>746,152</u>	<u>738,732</u>	<u>781,141</u>
Other operating costs and expenses			
Pre-opening costs	1,817	72,375	7,063
Depreciation and amortization	410,547	263,213	220,250
Property charges and other	28,458	32,584	60,857
Corporate expenses and other	70,246	57,071	63,895
Equity in income from unconsolidated affiliates	121	1,353	1,721
Total other operating costs and expenses	<u>511,189</u>	<u>426,596</u>	<u>353,786</u>
Operating income	<u>234,963</u>	<u>312,136</u>	<u>427,355</u>
Other non-operating costs and expenses			
Interest income	1,740	21,517	47,259
Interest expense, net of capitalized interest	(211,385)	(172,693)	(145,177)
Decrease in swap fair value	(2,258)	(31,485)	(6,001)
Gain (loss) from extinguishment of debt	18,734	22,347	(93,526)
Equity in income from unconsolidated affiliates	121	1,353	1,721
Other	191	(4,257)	506
Total other non-operating costs and expenses	<u>(192,857)</u>	<u>(163,218)</u>	<u>(195,218)</u>
Income before provision for income taxes	42,106	148,918	232,137
(Provision) benefit for income taxes	(2,999)	61,561	(35,801)
Net income	<u>\$ 39,107</u>	<u>\$ 210,479</u>	<u>\$ 196,336</u>

(1) Encore at Wynn Las Vegas opened December 22, 2008 and is included with Wynn Las Vegas as the two properties operate as one segment.

(2) "Adjusted Property EBITDA" is earnings before interest, taxes, depreciation, amortization, pre-opening costs, property charges and other, corporate expenses, stock-based compensation, contract termination fee, and other non-operating income and expenses and includes equity in income from unconsolidated affiliates. Adjusted Property EBITDA is presented exclusively as a supplemental disclosure because management believes that it is widely used to measure the performance, and as a basis for valuation, of gaming companies. Management uses Adjusted Property EBITDA as a measure of the operating performance of its segments and to compare the operating performance of its properties with those of its competitors. The Company also presents Adjusted Property EBITDA because it is used by some investors as a way to measure a company's ability to incur and service debt, make capital expenditures and meet working capital requirements. Gaming companies have historically reported EBITDA as a supplement to financial measures

WYNN RESORTS, LIMITED
NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

in accordance with U.S. generally accepted accounting principles (“GAAP”). In order to view the operations of their casinos on a more stand-alone basis, gaming companies, including Wynn Resorts, Limited, have historically excluded from their EBITDA calculations pre-opening expenses, property charges and corporate expenses, which do not relate to the management of specific casino properties. However, Adjusted Property EBITDA should not be considered as an alternative to operating income as an indicator of the Company’s performance, as an alternative to cash flows from operating activities as a measure of liquidity, or as an alternative to any other measure determined in accordance with GAAP. Unlike net income, Adjusted Property EBITDA does not include depreciation or interest expense and therefore does not reflect current or future capital expenditures or the cost of capital. The Company has significant uses of cash flows, including capital expenditures, interest payments, debt principal repayments, taxes and other non-recurring charges, which are not reflected in Adjusted Property EBITDA. Also, Wynn Resorts’ calculation of Adjusted Property EBITDA may be different from the calculation methods used by other companies and, therefore, comparability may be limited.

18. Quarterly Financial Information (Unaudited)

The following tables (amounts in thousands, except per share data) present selected quarterly financial information for 2009 and 2008, as previously reported. Because income (loss) per share amounts are calculated using the weighted average number of common and dilutive common equivalent shares outstanding during each quarter, the sum of the per share amounts for the four quarters may not equal the total income (loss) per share amounts for the year.

	Year Ended December 31, 2009				
	First	Second	Third	Fourth	Year
Net revenues	\$ 739,955	\$ 723,256	\$ 773,071	\$ 809,329	\$ 3,045,611
Operating income	27,149	82,798	79,499	45,517	234,963
Net income (loss)	(33,814)	25,479	34,210	13,232	39,107
Net income (loss) attributable to Wynn Resorts	(33,814)	25,479	34,210	(5,221)	20,654
Basic income (loss) per share	\$ (0.30)	\$ 0.21	\$ 0.28	\$ (0.04)	\$ 0.17
Diluted income (loss) per share	\$ (0.30)	\$ 0.21	\$ 0.28	\$ (0.04)	\$ 0.17

	Year Ended December 31, 2008				
	First	Second	Third	Fourth	Year
Net revenues	\$ 778,706	\$ 825,157	\$ 769,186	\$ 614,275	\$ 2,987,324
Operating income (loss)	90,603	144,169	77,668	(304)	312,136
Net income (loss)	46,877	271,970	51,199	(159,567)	210,479
Basic income (loss) per share	\$ 0.42	\$ 2.45	\$ 0.50	\$ (1.49)	\$ 1.94
Diluted income (loss) per share	\$ 0.41	\$ 2.42	\$ 0.49	\$ (1.49)	\$ 1.92

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

None.

ITEM 9A. CONTROLS AND PROCEDURES

(a) *Disclosure Controls and Procedures.* The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving the desired control objectives and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on such evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that, as of December 31, 2009, the Company's disclosure controls and procedures are effective, at the reasonable assurance level, in recording, processing, summarizing and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act and in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including the Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely discussions regarding required disclosure.

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

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

Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2009. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in Internal Control-Integrated Framework.

Based on our assessment, management believes that, as of December 31, 2009, the Company's internal control over financial reporting was effective.

The Company's independent registered public accounting firm has issued an audit report on our internal control over financial reporting. This report appears under "Report of Independent Registered Public Accounting Firm on Internal Controls Over Financial Reporting" on page 64.

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

ITEM 9B. OTHER INFORMATION

None.

PART III**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

The information required by this item will be contained in the Registrant's definitive Proxy Statement for its Annual Stockholder Meeting to be held on May 12, 2010, to be filed with the Securities and Exchange Commission within 120 days after December 31, 2009 (the "2010 Proxy Statement") under the captions "Directors and Executive Officers," "Further Information Concerning the Board of Directors-Corporate Governance," "Section 16(a) Beneficial Ownership Reporting Compliance," and "Code of Ethics", and is incorporated herein by reference.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this item will be contained in the 2010 Proxy Statement under the caption "Directors and Executive Officer Compensation and Other Matters," and is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**Securities Authorized for Issuance Under Equity Compensation Plans**

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

<u>Plan Category</u>	<u>Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights (a)</u>	<u>Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights (b)</u>	<u>Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (excluding securities reflected in column (a)) (c)</u>
Equity compensation plans approved by security holders	5,246,593	\$ 58.43	419,545
Equity compensation plans not approved by security holders	—	—	—
Total	5,246,593	\$ 58.43	419,545

Certain information required by this item will be contained in the 2010 Proxy Statement under the caption "Security Ownership of Certain Beneficial Owners and Management," and is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this item will be contained in the 2010 Proxy Statement under the caption "Certain Relationships and Related Transactions," and "Further Information Concerning the Board of Directors-Corporate Governance," and is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this item will be contained in the 2010 Proxy Statement under the caption "Ratification of Appointment of Independent Public Accountants," and is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)1. The following consolidated financial statements of the Company are filed as part of this report under “Item. 8—Financial Statements and Supplementary Data.”

- Reports of Independent Registered Public Accounting Firm
- Consolidated Balance Sheets as of December 31, 2009 and 2008
- Consolidated Statements of Income for the years ended December 31, 2009, 2008 and 2007
- Consolidated Statements of Stockholders’ Equity for the years ended December 31, 2009, 2008 and 2007
- Consolidated Statements of Cash Flows for the years ended December 31, 2009, 2008 and 2007
- Notes to Consolidated Financial Statements

(a)2. Financial Statement Schedules filed in Part IV of this report are listed below;

- Schedule I—Condensed financial information of the registrant
- Schedule II—Valuation and Qualifying Accounts

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

WYNN RESORTS, LIMITED
(Parent Company Only)
CONDENSED BALANCE SHEETS
(amounts in thousands, except share data)

	December 31,	
	2009	2008
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 85,648	\$ 662,285
Other receivables	363	—
Prepaid expenses	999	2,160
Total current assets	87,010	664,445
Property and equipment, net	13,374	13,932
Deferred financing costs	—	2,251
Due from subsidiaries	50,940	11,127
Deferred income taxes	17,136	—
Investment in subsidiaries	3,091,550	1,414,191
Total assets	<u>\$ 3,260,010</u>	<u>\$ 2,105,946</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accrued interest	\$ —	\$ 978
Accrued compensation and benefits	9,358	9,589
Other accrued expenses	1,515	1,544
Deferred income taxes	1,343	3,762
Total current liabilities	12,216	15,873
Long term debt payable	—	375,000
Other long term liabilities	7,345	19,177
Uncertain tax position liability	80,086	80,086
Deferred income taxes	—	14,215
Total liabilities	<u>99,647</u>	<u>504,351</u>
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, par value \$0.01; 40,000,000 shares authorized; zero shares issued and outstanding	—	—
Common stock, par value \$0.01; 400,000,000 shares authorized; 136,098,410 and 124,817,994 shares issued; and, 123,293,456 and 112,013,040 shares outstanding	1,361	1,248
Treasury stock, at cost; 12,804,954 shares	(1,119,407)	(1,119,407)
Additional paid-in capital	4,239,497	2,734,276
Accumulated other comprehensive income	2,446	2,614
Accumulated deficit	(89,559)	(17,136)
Total Wynn Resorts, Limited stockholders' equity	3,034,338	1,601,595
Noncontrolling interest	126,025	—
Total equity	<u>3,160,363</u>	<u>1,601,595</u>
Total liabilities and stockholders' equity	<u>\$ 3,260,010</u>	<u>\$ 2,105,946</u>

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

WYNN RESORTS, LIMITED
(Parent Company Only)
CONDENSED STATEMENTS OF INCOME
(amounts in thousands, except per share data)

	Year Ended December 31,		
	2009	2008	2007
Operating revenues:			
Wynn Las Vegas management fees	\$ 18,434	\$ 16,504	\$ 19,473
Wynn Macau royalty fees	71,537	73,423	36,538
Net revenues	<u>89,971</u>	<u>89,927</u>	<u>56,011</u>
Operating costs and expenses:			
General and administrative	21,099	14,126	19,772
Provision for doubtful accounts	(234)	(250)	(48)
Depreciation and amortization	558	524	464
Property charges and other	—	—	500
Total operating costs and expenses	<u>21,423</u>	<u>14,400</u>	<u>20,688</u>
Operating income	<u>68,548</u>	<u>75,527</u>	<u>35,323</u>
Other income (expense):			
Interest and other income	623	9,437	8,812
Interest expense	(12,746)	(59,320)	(26,255)
Increase (decrease) in swap fair value	5,773	(19,434)	—
Gain (loss) on early extinguishment of debt	22,512	22,347	(93,369)
Equity in income (loss) of subsidiaries	(28,951)	123,779	308,827
Other	—	(463)	—
Other income (expense), net	<u>(12,789)</u>	<u>76,346</u>	<u>198,015</u>
Income before income taxes	55,759	151,873	233,338
(Provision) benefit for income taxes	<u>(16,652)</u>	<u>58,606</u>	<u>(37,002)</u>
Net income	\$ 39,107	\$ 210,479	\$ 196,336
Less: Net income attributable to noncontrolling interests	<u>(18,453)</u>	<u>—</u>	<u>—</u>
Net income attributable to Wynn Resorts, Limited	<u>\$ 20,654</u>	<u>\$ 210,479</u>	<u>\$ 196,336</u>
Basic and diluted earnings per common share:			
Net income:			
Basic	\$ 0.17	\$ 1.94	\$ 1.85
Diluted	\$ 0.17	\$ 1.92	\$ 1.80
Weighted average common shares outstanding:			
Basic	119,840	108,408	106,030
Diluted	120,185	109,441	112,685

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

WYNN RESORTS, LIMITED
(Parent Company Only)
CONDENSED STATEMENTS OF CASH FLOWS
(amounts in thousands)

	Year Ended December 31,		
	2009	2008	2007
Cash flows from operating activities:			
Net income	\$ 39,107	\$ 210,479	\$ 196,336
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	558	524	464
Deferred income taxes	16,652	(58,606)	37,002
Stock-based compensation	10,937	6,687	7,396
(Gain) loss on early extinguishment of debt	(22,512)	(22,347)	93,369
Provision for doubtful accounts	234	—	—
Amortization of deferred financing costs and other	718	3,836	3,630
(Increase) decrease in swap fair value	(5,773)	19,434	—
Property charges and other	—	—	500
Dividends received from subsidiary	529,846	1,071,148	—
Equity in (income) loss of subsidiaries	28,951	(123,779)	(308,827)
Increase (decrease) in cash from changes in:			
Receivables	(597)	37	(37)
Prepaid expenses and other	1,161	(28)	(1,288)
Accounts payable and accrued expenses	(938)	(9,083)	(619)
Due to (from) affiliates	(18,434)	(52,912)	7,451
Net cash provided by operating activities	<u>579,910</u>	<u>1,045,390</u>	<u>35,377</u>
Cash flows from investing activities:			
Capital expenditures	—	—	(1,666)
Restricted cash	—	—	161
Other assets	—	—	10,163
Due to (from) subsidiaries	(37,918)	(9,017)	3,424
Net cash provided by (used in) investing activities	<u>(37,918)</u>	<u>(9,017)</u>	<u>12,082</u>
Cash flows from financing activities:			
Proceeds from issuance of long term debt	—	—	1,000,000
Principal payments on long term debt	(364,688)	(596,094)	—
Repurchase of Wynn Las Vegas First Mortgage Notes	(50,048)	—	—
Note payable to Wynn Las Vegas, LLC	—	(80,000)	—
Borrowings from Wynn Resorts International	—	150,000	—
Repayments to Wynn Resorts International	—	(150,000)	—
Capital contribution to Wynn Las Vegas LLC	(412,951)	—	—
Proceeds from issuance of common stock	209,760	344,250	664,125
Cash distributions	(489,876)	—	(683,299)
Exercise of stock options	6,347	2,782	9,180
Cash restricted for stock repurchases	—	500,068	(500,068)
Purchase of treasury stock	—	(940,130)	(179,277)
Interest rate swap transactions	(9,561)	(4,100)	—
Payments for deferred financing costs and other	(7,612)	(3,132)	(10,594)
Net cash provided by (used in) financing activities	<u>(1,118,629)</u>	<u>(776,356)</u>	<u>300,067</u>
Cash and cash equivalents:			
Increase (decrease) in cash and cash equivalents	(576,637)	260,017	347,526
Balance, beginning of period	662,285	402,268	54,742
Balance, end of period	<u>\$ 85,648</u>	<u>\$ 662,285</u>	<u>\$ 402,268</u>

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

WYNN RESORTS, LIMITED
(Parent Company Only)
NOTES TO CONDENSED FINANCIAL STATEMENTS

1. Basis of Presentation

The accompanying condensed financial statements include only the accounts of Wynn Resorts, Limited (the “Company”). Investments in the Company’s subsidiaries are accounted for under the equity method.

In October 2009, Wynn Macau, Limited, a newly formed and indirect wholly owned subsidiary of the Company and the developer, owner and operator of Wynn Macau, had its ordinary shares of common stock listed on The Stock Exchange of Hong Kong Limited. Wynn Macau, Limited sold through an initial public offering, including the over allotment, 1,437,500,000 (27.7%) shares of this subsidiary’s common stock.

Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted since this information is included in the Company’s consolidated financial statements included elsewhere in this Form 10-K.

2. Commitments and Contingencies

The Company is a holding company and, as a result, its ability to pay dividends is dependent on its subsidiaries’ ability to provide funds to it. Restrictions imposed by Wynn Las Vegas, LLC’s (a wholly-owned indirect subsidiary of the Company) debt instruments significantly restrict certain of the Company’s key subsidiaries holding a majority of the consolidated group’s total assets, including Wynn Las Vegas, LLC, from making dividends or distributions to the Company, subject to certain exceptions for affiliated overhead expenses as defined in the agreements governing Wynn Las Vegas, LLC’s debt instruments, unless certain financial and non-financial criteria have been satisfied. In addition, the terms of the loan agreement of Wynn Resorts (Macau), S.A. noted below contains similar restrictions. The Company received a cash dividend of \$530 million from Wynn Group Asia in 2009. The Company received a cash dividend of \$1.072 billion from Wynn Group Asia in November 2008.

3. Long-term Debt

\$1 Billion Term Loan

On June 21, 2007, the Company entered into a \$1 billion term loan (the “Wynn Resorts Term Loan”). Borrowings under the Wynn Resorts Term Loan were available in the form of a delayed-draw term loan facility available through December 31, 2007. As of December 31, 2007, the Company had borrowed \$1 billion under the Wynn Resorts Term Loan. The Wynn Resorts Term Loan was available to fund (a) the Company’s equity repurchase program announced on June 7, 2007 and (b) up to \$350 million for general corporate purposes.

On August 1, 2008, the Company amended the Wynn Resorts Term Loan to allow Stephen A. Wynn, the Company’s Chairman and Chief Executive Officer, to purchase an interest in the debt. On August 1, 2008, Mr. Wynn advised the Company that he purchased \$198,250,000 of the face amount of the outstanding debt under the Wynn Resorts Term Loan from a third party. On November 13, 2008, the Company further amended the Wynn Resorts Term Loan to purchase loans outstanding up to \$650 million prior to March 31, 2009. On November 26, 2008, the Company purchased \$625 million of loans under the Wynn Resorts Term Loan for \$596.1 million, reflecting a discounted price of 95.375%. The loans purchased included the interests held by Mr. Wynn. In connection with this transaction, the Company recognized a \$22.3 million gain on early retirement of debt, net of the write-off of unamortized debt issue costs and fees during 2008.

WYNN RESORTS, LIMITED
(Parent Company Only)

NOTES TO CONDENSED FINANCIAL STATEMENTS—(Continued)

In June 2009, the Company purchased and retired the remaining outstanding loans of \$375 million under the Wynn Resorts Term Loan for \$364.7 million, reflecting a discounted price of 97.25%. In connection with this transaction, the Company recognized an \$8.8 million gain on early retirement of debt, net of the write-off of unamortized debt issue cost during 2009.

4. Equity Repurchase Program

On June 6, 2007, the Board of Directors of Wynn Resorts authorized an equity repurchase program of up to \$1.2 billion which may include purchases of both its common stock and its Debentures. On July 10, 2008, the Board of Directors authorized an increase of \$500 million to the previously announced equity repurchase program bringing the total authorized to \$1.7 billion. The repurchase program may include repurchases from time to time through open market purchases or negotiated transactions, depending upon market conditions. No repurchases were made during the year ended December 31, 2009. During the year ended December 31, 2008, the Company repurchased 10,915,633 shares for a net cost of \$940.1 million. As of December 31, 2009, the Company had repurchased 12,804,954 shares of the Company's common stock through open market purchases for a net cost of \$1.1 billion, at an average cost of \$87.42 per share.

5. Common Stock Secondary Offering

On March 20, 2009, the Company completed a secondary common stock offering of 11,040,000 shares with net proceeds of \$202.3 million.

On November 18, 2008, the Company completed a secondary common stock offering of 8,000,000 shares with net proceeds of \$344.3 million.

On October 3, 2007, the Company completed a secondary common stock offering of 4,312,500 shares with net proceeds of \$664.1 million.

6. Non-Controlling Interest

In October 2009, Wynn Macau, Limited, a newly formed and indirect wholly owned subsidiary of the Company and the developer, owner and operator of Wynn Macau, had its ordinary shares of common stock listed on The Stock Exchange of Hong Kong Limited. Through an initial public offering, including the over allotment, Wynn Macau, Limited sold 1,437,500,000 (27.7%) shares of this subsidiary's common stock. Net proceeds to the Company as a result of this transaction were approximately \$1.8 billion. The shares of Wynn Macau, Limited were not and will not be registered under the Securities Act of 1933, as amended, and may not be offered or sold in the United States absent a registration under the Securities Act of 1933, as amended, or an applicable exception from such registration requirements. In connection with this transaction, the Company recorded approximately \$107.4 million of non-controlling interest as a separate component of equity in the accompanying Condensed Balance Sheets as of December 31, 2009.

SCHEDULE II-VALUATION AND QUALIFYING ACCOUNTS**(In Thousands)**

<u>Description</u>	<u>Balance at January 1, 2009</u>	<u>Provisions for Doubtful Accounts</u>	<u>Write-offs, Net of Recoveries</u>	<u>Balance at December 31, 2009</u>
Allowance for doubtful accounts	\$ 102,819	13,707	(14,445)	\$ 102,081

<u>Description</u>	<u>Balance at January 1, 2008</u>	<u>Provisions for Doubtful Accounts</u>	<u>Write-offs, Net of Recoveries</u>	<u>Balance at December 31, 2008</u>
Allowance for doubtful accounts	\$ 66,146	49,405	(12,732)	\$ 102,819

<u>Description</u>	<u>Balance at January 1, 2007</u>	<u>Provisions for Doubtful Accounts</u>	<u>Write-offs, Net of Recoveries</u>	<u>Balance at December 31, 2007</u>
Allowance for doubtful accounts	\$ 35,527	36,109	(5,490)	\$ 66,146

Table of Contents

(a)3. Exhibits

Exhibits that are not filed herewith have been previously filed with the SEC and are incorporated herein by reference.

<u>Exhibit No.</u>	<u>Description</u>
3.1	Second Amended and Restated Articles of Incorporation of the Registrant.(1)
3.2	Fourth Amended and Restated Bylaws of the Registrant, as amended.(31)
4.1	Specimen certificate for shares of Common Stock, \$0.01 par value per share of the Registrant.(1)
4.2	Indenture, dated as of December 14, 2004, among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., the Guarantors set forth therein and U.S. Bank National Association, as trustee.(4)
4.3	First Supplemental Indenture, dated as of June 29, 2005, among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., the Guarantors set forth therein and U.S. Bank National Association, as trustee.(20)
4.4	Indenture, dated as of October 19, 2009, among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., the Guarantors set forth therein and U.S. Bank National Association, as trustee.(51)
10.1	Completion Guaranty, dated December 14, 2004, by Wynn Completion Guarantor, LLC in favor of Deutsche Bank Trust Company Americas, as the Bank Agent, and U.S. Bank National Association, as Indenture Trustee.(17)
*10.2	Employment Agreement, dated as of October 4, 2002, by and between Wynn Resorts, Limited and Stephen A. Wynn.(1)
*10.3	First Amendment to Employment Agreement, dated as of August 6, 2004, by and between Stephen A. Wynn and Wynn Resorts, Limited.(10)
*10.4	Second Amendment to employment agreement between Wynn Resorts, Limited and Stephen A. Wynn dated January 31, 2007.(35)
*10.5	Third Amendment to Employment Agreement, dated as of September 11, 2008, between Wynn Resorts, Limited and Stephen A. Wynn.(37)
*10.6	Fourth Amendment to Employment Agreement dated as of December 31, 2008, between Wynn Resorts, Limited and Stephen A. Wynn.(42)
*10.7	Amendment to Employment Agreement, dated as of February 16, 2009, by and between Wynn Resorts, Limited and Stephen A. Wynn.(44)
*10.8	Employment Agreement, dated as of March 4, 2008, by and between Wynn Resorts, Limited and Marc D. Schorr.(27)
*10.9	First Amendment to Employment Agreement dated as of December 31, 2008, between Wynn Resorts, Limited and Marc D. Schorr.(42)
*10.10	Amendment to Employment Agreement, dated as of February 12, 2009, by and between Wynn Resorts, Limited and Marc D. Schorr.(44).
*10.11	Employment Agreement, dated as of October 1, 2005, by and between Wynn Las Vegas, LLC and Matt Maddox.(42)
*10.12	First Amendment to Employment Agreement, dated as of May 5, 2008, by and between Wynn Resorts, Limited and Matt Maddox.(41)

Table of Contents

<u>Exhibit No.</u>	<u>Description</u>
*10.13	Second Amendment to Employment Agreement dated as of December 31, 2008, between Wynn Resorts, Limited and Matt Maddox.(42)
*10.14	Amendment to Employment Agreement, dated as of February 13, 2009, by and between Wynn Resorts, Limited and Matt Maddox.(44)
*10.15	Fourth Amendment to Employment Agreement, dated as of March 5, 2009, by and between Wynn Resorts, Limited and Matt Maddox.(45)
*10.16	Employment Agreement, dated as of August 31, 2005, between Wynn Resorts, Limited and John Strzemp.(23)
*10.17	First Amendment to Employee Agreement, dated as of March 26, 2008, between Wynn Resorts, Limited and John Strzemp(39)
*10.18	Second Amendment to Employment Agreement dated as of December 31, 2008, between Wynn Resorts, Limited and John Strzemp.(42)
*10.19	Amendment to Employment Agreement, dated as of February 12, 2009, by and between Wynn Resorts, Limited and John Strzemp.(44)
*10.20	Fourth Amendment to Employment Agreement, dated as of March 23, 2009, by and between Wynn Resorts, Limited and John Strzemp.(46)
*10.21	Employment Agreement dated October 27, 2006, by and between World Wide Wynn, LLC and Linda C. Chen(29)
*10.22	First Amendment to Employment Agreement, dated as of December 31, 2008, by and between World Wide Wynn, LLC and Linda C. Chen.(42)
*10.23	Amendment to Employment Agreement, dated as of February 16, 2009, by and between Worldwide Wynn and Linda E. Chen.(44)
*10.24	Employment Agreement, dated as of April 24, 2007, by and between Wynn Resorts, Limited and Kim Sinatra.(52)
*10.25	First Amendment to Employment Agreement, dated as of December 31, 2008 by and between Wynn Resorts, Limited and Kim Sinatra.(52)
*10.26	Amendment to Employment Agreement, dated as of February 12, 2009, by and between Wynn Resorts, Limited and Kim Sinatra.(52)
*10.27	Second Amendment to Employment Agreement, dated as of November 30, 2009, by and between Wynn Resorts, Limited and Kim Sinatra.(52)
10.28	Tax Indemnification Agreement, effective as of September 24, 2002, by and among Stephen A. Wynn, Aruze USA, Inc., Baron Asset Fun on behalf of the Baron Asset Fund Series, Baron Asset Fund on behalf of the Baron Growth Fund Series, Kenneth R. Wynn Family Trust dated February 20, 1985, Valvino Lamore, LLC and Wynn Resorts, Limited.(1)
*10.29	2002 Stock Incentive Plan.(2)
*10.30	Form of Stock Option Agreement.(14)
*10.31	Form of Stock Option Grant Notice.(13)
*10.32	Form of Restricted Stock Agreement.(13)
*10.33	Form of Indemnity Agreement.(13)

Table of Contents

<u>Exhibit No.</u>	<u>Description</u>
10.34	Stockholders Agreement, dated as of April 11, 2002, by and among Stephen A. Wynn, Baron Asset Fund and Aruze USA, Inc.(7)
10.35	Amendment to Stockholders Agreement as of November 8, 2006(30)
10.36	Waiver and Consent, dated as of July 31, 2009, by and among Stephen A. Wynn, Baron Investment Funds Trust (formerly known as Baron Asset Fund) and Aruze USA, Inc.(49)
10.37	Waiver and Consent, dated as of August 13, 2009, by and between Stephen A. Wynn and Aruze USA, Inc.(50)
10.38	Amended and Restated Shareholders Agreement, dated as of September 16, 2004 by and among Wynn Resorts (Macau), Ltd., Wong Chi Seng and Wynn Resorts (Macau), S.A.(10)
10.39	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).(8)
10.40	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).(12)
10.41	Unofficial English translation of Land Concession Contract between the Macau Special Administrative Region and Wynn Resorts (Macau) S.A.(9)
10.42	Agreement, dated as of June 13, 2002, by and between Stephen A. Wynn and Wynn Resorts, Limited.(8)
10.43	Surname Rights Agreement, dated as of August 6, 2004, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.(10)
10.44	Rights of Publicity License, dated as of August 6, 2004, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.(10)
10.45	Termination Agreement, dated as of August 6, 2004, by and between Stephen A. Wynn and Valvino Lamore, LLC.(10)
10.46	Trademark Assignment, dated as of August 6, 2004, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.(10)
10.47	Registration Rights Agreement, dated October 30, 2002, by and between the Registrant and Stephen A. Wynn.(2)
10.48	Registration Rights Agreement, dated as of June 12, 2003, by and between Wynn Resorts, Limited and Societe des Bains de Mer et du Cercle des Etrangers a Monaco.(5)
10.49	Registration Rights Agreement, dated as of July 7, 2003, by and among Wynn Resorts, Limited, Wynn Resorts Funding, LLC, Deutsche Bank Securities Inc. and SG Cowen Securities Corporation.(3)
10.50	Registration Rights Agreement, dated as of August 28, 2004, by and between S.H.W. & Co. Limited and Wynn Resorts, Limited.(6)
10.51	Registration Rights Agreement, dated as of September 1, 2004, by and between Classic Wave Limited and Wynn Resorts, Limited.(6)
10.52	Registration Rights Agreement, dated as of September 1, 2004, by and between L'Arc de Triomphe Limited and Wynn Resorts, Limited.(6)

Table of Contents

<u>Exhibit No.</u>	<u>Description</u>
10.53	Registration Rights Agreement, dated as of September 1, 2004, by and between SKKG Limited and Wynn Resorts, Limited.(6)
10.54	Registration Rights Agreement, dated as of December 14, 2004, by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., the Guarantor signatories thereto and Deutsche Bank Securities Inc., Banc of America Securities LLC, Bear, Stearns & Co. Inc., J.P. Morgan Securities Inc. and SG Americas Securities, LLC.(17)
10.55	Registration Rights Agreement, dated as of November 6, 2007, by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., the guarantors party thereto, Deutsche Bank Securities Inc. and Banc of America Securities LLC.(33)
10.56	Registration Rights Agreement, dated as of October 19, 2009, by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., the Guarantors set forth therein, Deutsche Bank Securities Inc. and Banc of America Securities LLC.(51)
10.57	Pledge and Security Agreement, dated as of July 7, 2003, by and between Wynn Resorts, Limited, as pledgor, and U.S. Bank National Association, as trustee and collateral agent.(3)
10.58	Collateral Pledge and Security Agreement, dated as of July 7, 2003, by and between Wynn Resorts Funding, LLC, as the pledgor, and U.S. Bank National Association, as collateral agent and trustee.(3)
10.59	Supplement No. 1, dated as of July 30, 2003, to the Collateral Pledge and Security Agreement dated as of July 7, 2003, by and between Wynn Resorts Funding, LLC, as pledgor and U.S. Bank National Association, as collateral agent and trustee.(3)
10.60	Acknowledgement and Agreement, dated as of September 1, 2004, among Wynn Las Vegas, LLC, Wells Fargo Bank, National Association and the lenders named therein.(15)
10.61	Common Terms Agreement, dated as of September 14, 2004, among Wynn Resorts (Macau), S.A., certain financial institutions as Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, Deutsche Bank AG, Hong Kong Branch and Societe Generale Asia Limited as Global Coordinating Lead Arrangers and Societe Generale Asia Limited as Hotel Facility Agent, Project Facility Agent, Intercreditor Agent and Security Agent.(10)
10.62	Common Terms Agreement Amendment Agreement, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. as the Company, Certain Financial Institutions as Hotel Facility Lenders, Project Facility Lenders, Revolving Credit Facility Lenders and Hedging Counterparties, Bank of America Securities Asia Limited, Deutsche Bank AG, Hong Kong Branch and Societe Generale Asia Limited as Global Coordinating Lead Arrangers, Societe Generale Asia Limited as Hotel Facility Agent and Project Facility Agent, Societe Generale Asia Limited as Intercreditor Agent, and Societe Generale, Hong Kong Branch as Security Agent.(22)
10.63	Second Amendment Agreement to the Common Terms Agreement dated June 27, 2007 among Wynn Resorts (Macau), S.A., certain financial institutions as Hotel Facility Lenders, Project Facility Lenders, and Revolving Credit Facility Lenders, Banc of America Securities Asia Limited, Deutsche Bank A.G. Hong Kong Branch, and Societe Generale Asia Limited as Global Lead Arrangers and Societe Generale Asia Limited as Hotel Facility Agent and Project Facility Agent and Societe Generale Hong Kong Branch as Intercreditor Agent.(31)
10.64	Common Terms Agreement Third Amendment Agreement dated September 8, 2009 between, among others, Wynn Resorts (Macau) S.A. as the company and Société Générale, Hong King Branch as security agent.(52)

Table of Contents

<u>Exhibit No.</u>	<u>Description</u>
10.65	Hotel Facility Agreement, dated as of September 14, 2004, among Wynn Resorts (Macau), S.A., Societe Generale Asia Limited as Hotel Facility Agent and the several Hotel Facility Lenders named therein.(10)
10.66	Hotel Facility Agreement Amendment Agreement, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. as Company, Societe Generale Asia Limited, as Hotel Facility Agent and Certain Financial Institutions as Hotel Facility Lenders.(22)
10.67	Second Amendment Agreement to the Hotel Facility Agreement dated June 27, 2007 among Wynn Resorts (Macau), S.A., Societe Generale Asia Limited as Hotel Facility Agent, and certain financial institutions as Hotel Facility Lenders.(31)
10.68	Project Facility Agreement, dated as of September 14, 2004, among Wynn Resorts (Macau), S.A., Societe Generale Asia Limited as Project Facility Agent and the several Project Facility Lenders named therein.(10)
10.69	Project Facility Agreement Amendment Agreement, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. as Company, Societe Generale Asia Limited, as Project Facility Agent and Certain Financial Institutions as Project Facility Lenders.(22)
10.70	Second Amendment Agreement to the Project Facility Agreement dated June 27, 2007 among Wynn Resorts (Macau), S.A., Societe Generale Asia Limited as Project Facility Agent, and certain financial institutions as Project Facility Lenders.(31)
10.71	Revolving Credit Facility Agreement, dated as of September 14, 2004, among Wynn Resorts (Macau), S.A. and the several Revolving Credit Facility Lenders named therein.(10)
10.72	Revolving Credit Facility Agreement Amendment Agreement, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. as Company and Certain Financial Institutions as Revolving Credit Facility Lenders.(22)
10.73	Revolving Credit Facility Second Amendment Agreement dated June 27, 2007 among Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as Revolving Credit Facility Agent and certain financial institutions as revolving credit facility lenders.(31)
10.74	Deed of Appointment and Priority, dated as of September 14, 2004, among Wynn Resorts (Macau), S.A., certain financial institutions as Original First Ranking Lenders, Banco Nacional Ultramarino, S.A. as Second Ranking Finance Party, Wynn Group Asia, Inc. as Third Ranking Finance Party, Societe Generale -Hong Kong Branch as Security Agent, Societe Generale Asia Limited as Intercreditor Agent and Hotel Facility Agent and Project Facility Agent and others.(10)
10.75	Floating Charge (unofficial English Translation), dated September 14, 2004 between Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as the Security Agent.(10)
10.76	Debenture, dated September 14, 2004 between Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as the Security Agent.(10)
10.77	Wynn Resorts Support Agreement, dated September 14, 2004 between Wynn Resorts, Limited, Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as the Security Agent.(10)
10.78	Wynn Pledgors' Guarantee, dated September 14, 2004 between Wynn Group Asia, Inc., Wynn Resorts International, Ltd., Wynn Resorts (Macau) Holdings, Ltd. and Wynn Resorts (Macau), Ltd. as Guarantors; and Societe Generale, Hong Kong Branch as the Security Agent.(10)
10.79	Sponsors' Subordination Deed, dated September 14, 2004 between Wynn Resorts (Macau), S.A., Wynn Group Asia, Inc., Wynn Resorts International, Ltd., Wynn Resorts (Macau) Holdings, Ltd. and Wynn Resorts (Macau), Ltd. as the Wynn Companies and Societe Generale, Hong Kong Branch as the Security Agent.(10)

Table of Contents

<u>Exhibit No.</u>	<u>Description</u>
10.80	Bank Guarantee Reimbursement Agreement, dated September 14, 2004, between Wynn Resorts (Macau), S.A. and Banco Nacional Ultramarino. (10)
10.81	Wynn Resorts Support Agreement Deed of Amendment, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as Security Agent.(22)
10.82	Deed of Appointment and Priority Deed of Amendment, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. as Company, Certain Financial Institutions as Original First Ranking Lenders, Certain Financial Institutions as Original Hedging Counterparties, Banco Nacional Ultramarino, S.A. as Second Ranking Finance Party, Wynn Group Asia, Inc. as Third Ranking Finance Party, Societe Generale Asia Limited as Security Agent, Societe Generale Asia Limited as Intercreditor Agent, Societe Generale Asia Limited as Hotel Facility Agent and Project Facility Agent, and Others.(22)
10.83	Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of December 14, 2004, made by Wynn Las Vegas, LLC, as trustor, to Nevada Title Company, as trustee, for the benefit of Deutsche Bank Trust Company Americas, as collateral agent.(17)
10.84	Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of December 14, 2004, made by Wynn Sunrise, LLC, as trustor, to Nevada Title Company, as trustee, for the benefit of Deutsche Bank Trust Company Americas, as collateral agent.(17)
10.85	Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of December 14, 2004, made by Wynn Golf, LLC, as trustor, to Nevada Title Company, as trustee, for the benefit of Deutsche Bank Trust Company Americas, as collateral agent.(17)
10.86	Guarantee and Collateral Agreement, dated as of December 14, 2004, made by Wynn Resorts Holdings, LLC, Wynn Las Vegas, LLC, Wynn Show Performers, LLC, Wynn Las Vegas Capital Corp., Wynn Golf, LLC, World Travel, LLC, Las Vegas Jet, LLC, Wynn Sunrise, LLC and the other Grantors from time to time party thereto in favor of Deutsche Bank Trust Company Americas, as administrative agent.(17)
10.87	Amended and Restated Master Disbursement Agreement, dated as of October 25, 2007, by and among Wynn Las Vegas, LLC, Deutsche Bank Trust Company Americas, as the initial Bank Agent, and Deutsche Bank Trust Company America, as the initial Disbursement Agent.(34)
10.88	First Amendment to Amended and Restated Master Disbursement Agreement, dated as of October 31, 2007, by and among Wynn Las Vegas, LLC, Deutsche Bank Trust Company Americas, as the initial Bank Agent, and Deutsche Bank Trust Company America, as the initial Disbursement Agent.(32)
10.89	Second Amendment to Amended and Restated Master Disbursement Agreement, dated as of November 6, 2007, by and among Wynn Las Vegas, LLC, Deutsche Bank Trust Company Americas, as the Bank Agent, and Deutsche Bank Trust Company Americas, as the Disbursement Agent.(33)
10.90	Third Amendment to Amended and Restated Master Disbursement Agreement, dated October 19, 2009, by and among Wynn Las Vegas, LLC, Deutsche Bank Trust Company Americas, as the Bank Agent, and Deutsche Bank Trust Company Americas, as the Disbursement Agent.(51)
10.91	Intercreditor Agreement, dated as of December 14, 2004, among Deutsche Bank Trust Company Americas, as bank agent, Deutsche Bank Trust Company Americas, as collateral agent, and U.S. Bank National Association, as trustee.(4)

Table of Contents

<u>Exhibit No.</u>	<u>Description</u>
10.92	Pledge and Security Agreement, dated as of December 14, 2004, made by Wynn Resorts Holdings, LLC, Wynn Las Vegas, LLC, Wynn Show Performers, LLC, Wynn Las Vegas Capital Corp., Wynn Golf, LLC, World Travel, LLC, Las Vegas Jet, LLC, Wynn Sunrise, LLC and the other Grantors from time to time party thereto in favor of Deutsche Bank Trust Company Americas, as administrative agent.(17)
10.93	Management Fees Subordination Agreement, dated as of December 14, 2004, by Wynn Resorts, Limited, Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., and those subsidiaries of Wynn Las Vegas, LLC listed on <i>Exhibit A</i> hereto in favor of Deutsche Bank Trust Company Americas, as administrative agent, and U.S. Bank National Association, as trustee.(17)
10.94	Management Agreement, made as of December 14, 2004, by and among Wynn Las Vegas, LLC, Wynn Show Performers, LLC, Wynn Las Vegas Capital Corp., Wynn Golf, LLC, World Travel, LLC, Las Vegas Jet, LLC, Wynn Sunrise, LLC, and Wynn Resorts, Limited.(17)
10.95	Irrevocable Trust Agreement, dated as of December 14, 2004, by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., and Wells Fargo Bank, National Association, as Trustee.(17)
10.96	Amended and Restated Project Administration Services Agreement, dated December 14, 2004, between Wynn Las Vegas, LLC and Wynn Design & Development, LLC.(17)
10.97	Intellectual Property License Agreement, dated as of December 14, 2004, by and among Wynn Resorts Holdings, Wynn Resorts, Limited and Wynn Las Vegas, LLC.(17)
10.98	Agreement of Lease, dated January 10, 2005, by and between Stephen A. Wynn and Wynn Las Vegas, LLC.(18)
10.99	Amendment No. 1 to Agreement of Lease, dated April 21, 2005, by and between Stephen A. Wynn and Wynn Las Vegas, LLC.(18)
10.100	Second Amendment to Agreement of Lease, made as of June 10, 2008, by and between Wynn Las Vegas, LLC and Stephen A. Wynn.(40)
10.101	Third Amendment to Agreement to Lease made as of March 18, 2009, by and between Wynn Las Vegas, LLC and Stephen A. Wynn.(44)
10.102	Agreement of Termination, dated June 30, 2005, by and between Stephen A. Wynn and Wynn Las Vegas, LLC.(19)
10.103	Fourth Amended and Restated Art Rental and Licensing Agreement, dated as of June 30, 2005, between Stephen A. Wynn, as lessor, Wynn Gallery, LLC, as lessee.(19)
10.104	Aircraft Time Sharing Agreement dated as of November 25, 2002, by and between Las Vegas Jet, LLC and Stephen A. Wynn.(52)
10.105	Amendment No. 1 to Aircraft Time Sharing Agreement, entered into as of January 1, 2004, by and between Las Vegas Jet, LLC and Stephen A. Wynn.(52)
10.106	Amendment No. 2 to Aircraft Time Sharing Agreement, entered into as of October 31, 2009, by and between Las Vegas Jet, LLC and Stephen A. Wynn.(52)
10.107	Aircraft Time Sharing Agreement dated as of November 26, 2002, by and between Las Vegas Jet, LLC and Marc Schorr.(52)
10.108	Amendment No. 1 to Aircraft Time Sharing Agreement, entered into as of January 1, 2004, by and between Las Vegas Jet, LLC and Marc Schorr.(52)
10.109	Amendment No. 2 to Aircraft Time Sharing Agreement, entered into as of October 31, 2009, by and between Las Vegas Jet, LLC and Marc Schorr.(52)

Table of Contents

<u>Exhibit No.</u>	<u>Description</u>
10.110	Commitment to Pay Project Costs, dated as of March 31, 2006, by and between Wynn Resorts, Limited in favor of Deutsche Bank Trust Company Americas, as administrative agent, and US Bank National Association, as Trustee.(25)
10.111	Amended and Restated Credit Agreement, dated as of August 15, 2006 among Wynn Las Vegas, LLC, as the Borrower, several lenders and agents, and Deutsche Bank Trust Company Americas, as Administrative Agent.(28)
10.112	First Amendment to Amended and Restated Credit Agreement dated April 9, 2007 among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., Wynn Show Performers, LLC, Wynn Golf, LLC, Wynn Sunrise, LLC, World Travel, LLC, Kevyn, LLC, Las Vegas Jet, LLC, and Deutsche Bank Trust Company Americas, as Administrative Agent on behalf of the several banks and other financial institutions or entities from time to time party to Wynn Las Vegas LLC's Amended and Restated Credit Agreement, dated as of August 15, 2006.(31)
10.113	Second Amendment to Amended and Restated Credit Agreement dated October 31, 2007 among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., Wynn Show Performers, LLC, Wynn Golf, LLC, Wynn Sunrise, LLC, World Travel, LLC, Kevyn, LLC, Las Vegas Jet, LLC, Wynn Resorts Holdings, LLC, Wynn Completion Guarantors, LLC and Deutsche Bank Trust Company Americas, as Administrative Agent on behalf of the several banks and other financial institutions or entities from time to time party to Wynn Las Vegas LLC's Amended and Restated Credit Agreement, dated as of August 15, 2006.(32)
10.114	Third Amendment to Amended and Restated Credit Agreement dated as of September 17, 2008 among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., Wynn Show Performers, LLC, Wynn Golf, LLC, Wynn Sunrise, LLC, World Travel, LLC, Kevyn, LLC, Las Vegas Jet, LLC, Wynn Resorts Holdings, LLC, Wynn Completion Guarantor, LLC and Deutsche Bank Trust Company Americas, as Administrative Agent on behalf of the several banks and other financial institutions or entities from time to time party to Wynn Las Vegas, LLC's Amended and Restated Credit Agreement, dated as of August 15, 2006.(38)
10.115	Fourth Amendment to Amended and Restated Credit Agreement, dated as of April 17, 2009, among Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp., Wynn Show Performers, LLC, Wynn Golf, LLC, Wynn Sunrise, LLC, World Travel, LLC, Kevyn, LLC, Las Vegas Jet, LLC, Wynn Resorts Holdings, LLC, Wynn Completion Guarantors, LLC and Deutsche Bank Trust Company Americas, as Administrative Agent on behalf of the several banks and other financial institutions or entities from time to time party to Wynn Las Vegas LLC's Amended and Restated Credit Agreement, dated as of August 15, 2006.(47)
10.116	Fifth Amendment to Amended and Restated Credit Agreement, dated as of September 10, 2009, among Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp., Wynn Show Performers, LLC, Wynn Golf, LLC, Wynn Sunrise, LLC, World Travel, LLC, Kevyn, LLC, Las Vegas Jet, LLC, Wynn Resorts Holdings, LLC, Wynn Completion Guarantors, LLC and Deutsche Bank Trust Company Americas, as Administrative Agent on behalf of the several banks and other financial institutions or entities from time to time party to Wynn Las Vegas LLC's Amended and Restated Credit Agreement, dated as of August 15, 2006.(48)
10.117	Credit Agreement dated June 21, 2007 among Wynn Resorts, Limited and Deutsche Bank Securities, Inc and Bank of America Securities LLC. (31)
10.118	First Amendment to Credit Agreement, dated as of August 1, 2008, among Wynn Resorts, Limited and Deutsche Bank Trust Company Americas, as Administrative Agent on behalf of the several banks and other financial institutions or entities from time to time party to the Credit Agreement. (36)

Table of Contents

<u>Exhibit No.</u>	<u>Description</u>
10.119	Second Amendment to Credit Agreement, dated as of November 13, 2008, among Wynn Resorts, Limited and Deutsche Bank Trust Company Americas, as Administrative Agent on behalf of the several banks and other financial institutions or entities from time to time party to the Credit Agreement.(43)
14.1	Code of Ethics for the Chief Executive Officer, President and Senior Financial Officers (adopted November 12, 2003)(16)
21.1	Subsidiaries of the Registrant(52)
23.1	Consent of Ernst & Young LLP(52)
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.(52)
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.(52)
32	Certification of CEO and CFO Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.(52)

* Denotes management contract or compensatory plan or arrangement.

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

Table of Contents

- (20) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on June 29, 2005.
- (21) Not used.
- (22) Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on November 8, 2005.
- (23) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on September 1, 2005.
- (24) Not used.
- (25) Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on May 10, 2006.
- (26) Not used.
- (27) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on March 4, 2008.
- (28) Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on November 9, 2006.
- (29) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on November 2, 2006.
- (30) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on November 14, 2006.
- (31) Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on August 9, 2007.
- (32) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on November 1, 2007.
- (33) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on November 13, 2007.
- (34) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on October 31, 2007.
- (35) Incorporated by reference from the Annual Report on Form 10-K filed by the Registrant on March 1, 2007.
- (36) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on August 5, 2008.
- (37) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on September 15, 2008.
- (38) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on September 19, 2008.
- (39) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on March 28, 2008.
- (40) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on June 12, 2008.
- (41) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on May 7, 2008.
- (42) Incorporated by reference from the Annual Report on Form 10-K filed by the Registrant on March 2, 2009.
- (43) Incorporated by reference from the Current Report on Form 8-K filed by the Registrant on November 13, 2008.
- (44) Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on May 11, 2009.
- (45) Incorporated by reference from the Current Report on Form 8-K filed by the registrant on March 9, 2009.
- (46) Incorporated by reference from the Current Report on Form 8-K filed by the registrant on March 23, 2009.
- (47) Incorporated by reference from the Current Report on Form 8-K filed by the registrant on April 21, 2009.
- (48) Incorporated by reference from the Current Report on Form 8-K filed by the registrant on September 14, 2009.
- (49) Incorporated by reference from the Current Report on Form 8-K filed by the registrant on August 3, 2009.
- (50) Incorporated by reference from the Current Report on Form 8-K filed by the registrant on August 19, 2009.
- (51) Incorporated by reference from the Current Report on Form 8-K filed by the registrant on October 20, 2009.
- (52) Filed herein.

EMPLOYMENT AGREEMENT

(“Agreement”)

- by and between -

WYNN RESORTS, LIMITED

(“Employer”)

- and -

KIM SINATRA

(“Employee”)

DATED: as of April 24, 2007

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into as of the 24th day of April 2007, by and between **WYNN RESORTS, LIMITED (“Employer”)** and **Kim Sinatra (“Employee”)**.

WITNESSETH:

WHEREAS, Employer is a corporation duly organized and existing under the laws of the State of Nevada, maintains its principal place of business at 3131 Las Vegas Blvd. South, Las Vegas, Nevada 89109, and is engaged in the business of developing casino resorts; and,

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

WHEREAS, Employee is an adult individual residing at 10308 Summit Canyon Drive, Las Vegas, Nevada 89144; and,

WHEREAS, Employee has represented and warranted to Employer that Employee possesses sufficient qualifications and expertise in order to fulfill the terms of the employment stated in this Agreement; and,

WHEREAS, Employer is willing to employ Employee, and Employee is desirous of accepting employment from Employer under the terms and pursuant to the conditions set forth herein;

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

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

(a) “**Affiliate**”—means with respect to a specified Person, any other Person who or which is (i) directly or indirectly controlling, controlled by or under common control with the specified Person, or (ii) any member, director, officer or manager of the specified Person. For purposes of this definition, only, “control”, “controlling”, and “controlled” mean the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting power of the stockholders, members or owners and, with respect to any individual, partnership, trust or other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity. For purposes hereof, “Person” shall mean an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture or other entity of whatever nature.

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

(c) “**Cause**”—means

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

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

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

(iv) Employee’s breach, neglect, refusal, or failure to materially discharge her duties (other than due to physical or mental illness) commensurate with her title and function, or Employee’s failure to comply with the lawful directions of Employer’s or an Affiliate’s Board of Directors, that is not cured within fifteen (15) days after Employee has received written notice thereof from the Board;

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

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

or

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

provided, however, that Employee's disability due to illness or accident or any other mental or physical incapacity shall not constitute "Cause" as defined herein.

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

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

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

(iii) the consummation of (x) a merger, consolidation or reorganization to which WRL is a party, whether or not WRL is the Person surviving or resulting therefrom, or (y) a sale, assignment, lease, conveyance or other disposition of all or substantially all of the assets of Employer or WRL, in one transaction or a series of related transactions, to any Person other than WRL or an Affiliate,

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

For purposes of the foregoing definition of “Change in Control,” the term “Excluded Stockholder” means Stephen A. Wynn, the spouse, siblings, children, grandchildren or great grandchildren of Stephen A. Wynn, any trust primarily for the benefit of the foregoing persons, or any Affiliate of any of the foregoing persons.

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

(f) “**Effective Date**”—means January 21, 2007.

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

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

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

(iii) Employer materially reduces the aggregate benefits and perquisites to Employee from those being provided immediately before the Change in Control;

(iv) Employer or any of its Affiliates requires Employee to change the location of Employee's job or office, so that Employee will be based at a location more than 25 miles from the location of Employee's job or office immediately before the Change in Control;

(v) Employer or any of its Affiliates reduces Employee's responsibilities or directs Employee to report to a person of lower rank or responsibilities than the person to whom Employee reported immediately before the Change in Control; or

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

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

(h) "**Separation Payment**"—means a lump sum equal to (A) Employee's Base Salary for the remainder of the Term (but not less than 12 months) (as defined in Subsection 8(a) of this Agreement), plus (B) the bonus that was paid to Employee under Subsection 8(b) for the preceding bonus period (projected over twelve (12) months if the bonus was for less than a year), plus (C) any accrued but unpaid vacation pay, plus (D) any Gross-Up Payment required by Exhibit 1 to this Agreement, which is incorporated herein by reference.

(i) "**Trade Secrets**"—means unpublished inventions or works of authorship, as well as all information possessed by or developed by or for Employer or its Affiliate, including without limitation any formula, pattern, compilation, program device, method, technique, product, system, process, design, prototype, procedure, computer programming or code

that (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable to maintain its secrecy.

(j) “**Work of Authorship**”—means any computer program, code or system as well as any literary, pictorial, sculptural, graphic or audio visual work, whether published or unpublished, and whether copyrightable or not, in whatever form and jointly with others that (i) relates to any of Employer’s or its Affiliate’s existing or potential products, practices, processes, formulations, manufacturing, engineering, research, equipment, applications or other business or technical activities or investigations; or (ii) relates to ideas, work or investigations conceived or carried on by Employer or its Affiliate or by Employee in connection with or because of performing services for Employer or its Affiliate.

2. PRIOR EMPLOYMENT. This Agreement supersedes and replaces any and all prior employment agreements, consulting agreements, change of control agreements and severance plans or agreements, whether written or oral, by and between Employee, on the one side, and Employer or any of Employer’s Affiliates, on the other side, or under which Employee is a participant. From and after the Effective Date, Employee shall be the employee of Employer under the terms and pursuant to the conditions set forth in this Agreement.

3. BASIC EMPLOYMENT AGREEMENT. Subject to the terms and pursuant to the conditions hereinafter set forth, Employer hereby employs Employee during the Term hereinafter specified to serve in a managerial or executive capacity, under a title and with such duties not inconsistent with those set forth in Section 4 of this Agreement, as the same may be modified and/or assigned to Employee by Employer from time to time; provided, however, that no change in Employee’s duties shall be permitted if it would result in a material reduction in the level of Employee’s duties as in effect prior to the change.

4. DUTIES OF EMPLOYEE. Employee shall perform such duties assigned to Employee by Employer as are generally associated with the duties of **Senior Vice President – General Counsel** of Employer or such similar duties as may be assigned to Employee by Employer as Employer may determine, including, but not limited to (a) the efficient and continuous operation of Employer and Employer’s Affiliates, (b) the preparation of relevant budgets and allocation of relevant funds, (c) the selection and delegation of duties and responsibilities of subordinates, (d) the direction, review and oversight of all programs and projects under Employee’s supervision, and (e) such other and further related duties as specifically assigned by Employer to Employee. The foregoing notwithstanding, Employee shall devote such time to Employer’s other Affiliates as may be required by Employer, provided such duties are not inconsistent with Employee’s primary duties to Employer hereunder and that Employee is located in Las Vegas, Nevada.

5. ACCEPTANCE OF EMPLOYMENT. Employee hereby unconditionally accepts the employment set forth hereunder, under the terms and pursuant to the conditions set forth in this Agreement. Employee hereby covenants and agrees that, during the Term of this Agreement, Employee will devote the whole of Employee's normal and customary working time and best efforts solely to the performance of Employee's duties under this Agreement and that, except upon Employer's prior express written authorization to that effect, Employee shall not perform any services for any casino, hotel/casino or other similar gaming or gambling operation not owned by Employer or any of Employer's Affiliates.

6. TERM. Unless sooner terminated as provided in this Agreement, the term of this Agreement (the "**Term**") shall consist of three (3) years commencing as of the Effective Date of this Agreement and terminating on the third Anniversary Date of the Effective Date. Following the Term, unless the parties enter into a new written contract of employment, (a) any continued employment of Employee shall be at-will, and (b) the employment relationship may be terminated at any time by either party, with or without cause or notice.

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

- (a) the death of Employee;
- (b) the giving of written notice from Employer to Employee of the termination of this Agreement upon the Complete Disability of Employee;
- (c) the giving of written notice by Employer to Employee of the termination of this Agreement upon the discharge of Employee for Cause (Employer's right to terminate for Cause (as defined in Section 1(c) shall survive the expiration of this Agreement);
- (d) the giving of written notice by Employer to Employee of the termination of this Agreement following a disapproval of this Agreement or denial or revocation of Employee's License (as defined in Subsection 9(b) of this Agreement).
- (e) the giving of written notice by Employer to Employee of the termination of this Agreement without Cause, *provided, however,* that, within ten (10) calendar days after such notice, Employer must tender the Separation Payment to Employee;
- (f) the giving of written notice by Employee to Employer upon a material breach of this Agreement by Employer, which material breach remains uncured for a period of thirty (30) days after the giving of such

notice, *provided, however*, that, within ten (10) calendar days after the expiration of such cure period without the cure having been effected, Employer must tender the Separation Payment to Employee; or

(g) at Employee's sole election in writing as provided in Section 17 of this Agreement, after both a Change of Control and as a result of Good Reason, *provided, however*, that, within ten (10) calendar days after Employer's receipt of Employee's written election, Employer must tender the Separation Payment to Employee.

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

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

(a) **Base Salary.** Employer hereby covenants and agrees to pay to Employee, and Employee hereby covenants and agrees to accept from Employer, a base salary at the rate of Five Hundred Thousand Dollars

(\$500,000.00) per annum during the Term, payable in such weekly, biweekly or semi-monthly installments as shall be convenient to Employer (the “**Base Salary**”). Employee’s Base Salary shall be exclusive of and in addition to any other benefits which Employer, in its sole discretion, may make available to Employee, including, but not limited to, those benefits described in Subsections 8(b) through (e) of this Agreement. Employee’s Base Salary shall be subject to merit review by Employer’s Board of Directors periodically, and may be increased, but not decreased, as a result of any such review.

(b) **Bonus Compensation.** Employee also will be eligible to receive a bonus at such times and in such amounts as Employer’s Board of Directors, in its sole and exclusive discretion, may determine, until such time as the Board may adopt a performance-based bonus plan, and thereafter in accordance with such plan. Nothing in this Agreement shall limit the Board’s discretion to adopt, amend or terminate any performance-based bonus plan at any time prior to a Change of Control.

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

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

(e) **Vacations And Holidays.** Employee shall be entitled to (i) annual paid vacation leave in accordance with Employer’s standard policy, but in no event less than four (4) weeks each year of the Term, to be taken at such times as selected by Employee and approved by Employer, and (ii) paid holidays (or, at Employer’s option, an equivalent number of paid days off) in accordance with Employer’s standard policy.

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

9. LICENSING REQUIREMENTS.

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

(b) Employer and Employee hereby covenant and agree that, in order for Employee to discharge the duties required under this Agreement, Employee may be required to apply for or hold a license, registration, permit or other approval as issued by the Gaming Authorities pursuant to the terms of the applicable Gaming Laws and as otherwise required by this Agreement (the “**License**”). In the event Employee fails to apply for and secure, or the Gaming Authorities refuse to issue or renew, or revoke or suspend any required License, then Employee, at Employer’s sole cost and expense, shall promptly defend such action and shall take such reasonable steps as may be required to either remove the objections, secure the Gaming Authorities’ approval, or reinstate the License, respectively. The foregoing notwithstanding, if the source of the objections or the Gaming Authorities’ refusal to renew the License or their imposition of disciplinary action against Employee is any of the events described in Subsection 1(c) of this Agreement, then Employer’s obligations under this Section 9 shall not be operative and Employee shall promptly reimburse Employer upon demand for any expenses incurred by Employer pursuant to this Section 9.

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

10. CONFIDENTIALITY.

(a) Employee hereby warrants, covenants and agrees that Employee shall not directly or indirectly use or disclose any Confidential Information, Trade Secrets, or Works of Authorship, whether in written, verbal, or model form, at any time or in any manner, except as required in the conduct of Employer's business or as expressly authorized by Employer in writing. Employee shall take all necessary and available precautions to protect against the unauthorized disclosure of Confidential Information, Trade Secrets, or Works of Authorship. Employee acknowledges and agrees that such Confidential Information, Trade Secrets, or Works of Authorship are the sole and exclusive property of Employer or its Affiliate.

(b) Employee shall not remove from Employer's premises any Confidential Information, Trade Secrets, Works of Authorship, or any other documents pertaining to Employer's or its Affiliate's business, unless expressly authorized by Employer in writing. Furthermore, Employee specifically covenants and agrees not to make any duplicates, copies, or reconstructions of such materials and that, if any such duplicates, copies, or reconstructions are made, they shall become the property of Employer or its Affiliate upon their creation.

(c) Upon termination of Employee's employment with Employer, Employee shall turn over to Employer the originals and all copies of any and all papers, documents and things, including information stored for use in or with computers and software, all files, Rolodex cards, phone books, notes, price lists, customer contracts, bids, customer lists, notebooks, books, memoranda, drawings, or other documents: (i) made, compiled by, or delivered to Employee concerning any customer served by Employer or its Affiliate or any product, apparatus, or process manufactured, used, developed or investigated by Employer; (ii) containing any Confidential Information, Trade Secret or Work of Authorship; or (iii) otherwise relating to Employee's performance of duties under this Agreement. Employee further acknowledges and agrees that all such documents are the sole and exclusive property of Employer or its Affiliate.

(d) Employee hereby warrants, covenants and agrees that Employee shall not disclose to Employer, or any Affiliate, officer, director, employee or agent of Employer, any proprietary or confidential information or property, including but not limited to any trade secret, formula, pattern, compilation, program, device, method, technique or process, which Employee is prohibited by contract, or otherwise, to disclose to Employer

(the "Restricted Information"). In the event, Employer requests Restricted Information from Employee, Employee shall advise Employer that the information requested is Restricted Information and may not be disclosed by Employee.

(e) The obligations of this Section 9 are continuing and shall survive the termination of Employee's employment with Employer.

11. RESTRICTIVE COVENANT/NO SOLICITATION.

(a) Employee hereby covenants and agrees that during the Term, or for such period as Employer continues to employ or compensate Employee in accordance with the terms of this Agreement, whichever is longer, Employee shall not directly or indirectly, either as a principal, agent, employee, employer, consultant, partner, member of a limited liability company, shareholder of a closely held corporation, or shareholder in excess of two (2%) per cent of a publicly traded corporation, corporate officer or director, manager, or in any other individual or representative capacity, engage or otherwise participate in any manner or fashion in any business that is in competition in any manner whatsoever with the principal business activity of Employer or its Affiliates, in or about any market in which Employer or its Affiliates have or have publicly announced a plan to have hotel or gaming operations.

(b) Employee hereby further covenants and agrees that, during the Term and for a period of one (1) year following the expiration of the Term, Employee shall not directly or indirectly solicit or attempt to solicit for employment any management level employee of Employer or its Affiliates with or on behalf of any business that is in competition in any manner whatsoever with the principal business activity of Employer or its Affiliates, in or about any market in which Employer or its Affiliates have or have publicly announced a plan to have hotel or gaming operations.

(c) Employee hereby further covenants and agrees that the restrictive covenants contained in this Section 11 are reasonable as to duration, terms and geographical area and that they protect the legitimate interests of Employer, impose no undue hardship on Employee, and are not injurious to the public. In the event that any of the restrictions and limitations contained in this Section 11 are deemed to exceed the time, geographic or other limitations permitted by Nevada law, the parties agree that a court of competent jurisdiction shall revise any offending provisions so as to bring this Section 11 within the maximum time, geographical or other limitations permitted by Nevada law.

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

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

14. ASSIGNMENT. Employee shall not assign this Agreement or delegate her duties hereunder without the express written prior consent of Employer thereto. Any purported assignment by Employee in violation of this Section 14 shall be null and void and of no force or effect. Employer shall have the right to assign this Agreement to any of its Affiliates, provided that this Agreement shall be reassigned to Employer upon a sale of that Affiliate or substantially all of that Affiliate's assets to an unaffiliated third party, provided further that, in any event, Employer shall have the right to assign this Agreement to any successor of Employer that is not an Affiliate of Employer.

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

16. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada, without regard to its choice of laws principles.

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

TO EMPLOYER: Wynn Resorts, Limited
3131 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: COO

**WITH A COPY
THAT SHALL NOT BE
NOTICE TO:** Wynn Resorts, Limited
3131 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Legal Department

TO EMPLOYEE: Kim Sinatra
10308 Summit Canyon Drive
Las Vegas, Nevada 89144

All notices hand-delivered shall be deemed delivered as of the date actually delivered. All notices mailed shall be deemed delivered as of three (3) business days after the date postmarked. Any changes in any of the addresses listed herein shall be made by notice as provided in this Section 17.

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

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

20. DISPUTE RESOLUTION. Except for equitable actions seeking to enforce the covenants in Sections 10 or 11 of this Agreement, jurisdiction and venue for which is hereby granted to the court of general trial jurisdiction in the state and county where Employer's or its applicable Affiliate's principal place of business is located, any and all claims, disputes, or controversies arising between the parties regarding any of the terms of this Agreement or the breach thereof, shall, on the written demand of either of the parties, be submitted to and be determined by final and binding arbitration held in the local jurisdiction where Employer's or Employer's Affiliate's principal place of business is located, in accordance with Employer's or Employer's Affiliate's arbitration policy governing employment disputes. This agreement to arbitrate shall be specifically enforceable in any court of competent jurisdiction,

21. WAIVER. None of the terms of this Agreement, including this Section 21, or any term, right or remedy hereunder shall be deemed waived unless such waiver is in writing and signed by the party to be charged therewith and in no event by reason of any failure to assert or delay in asserting any such term, right or remedy or similar term, right or remedy hereunder.

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

23. REMEDIES. Employee acknowledges that Employer has and will continue to deliver, provide and expose Employee to certain knowledge, information, practices, and procedures possessed or developed by or for Employer at a considerable investment of time and expense, which are protected as confidential and which are essential for carrying out Employer's business in a highly competitive market. Employee also acknowledges that Employee will be exposed to Confidential Information, Trade Secrets, Works of Authorship, inventions and business relationships possessed or developed by or for Employer or its Affiliates, and that Employer or its Affiliates would be irreparably harmed if Employee were to improperly use or disclose such items to competitors, potential competitors or other parties. Employee further acknowledges that the protection of Employer's and its Affiliates' customers and businesses is essential, and understands and agrees that Employer's and its Affiliates'

relationships with its customers and its employees are special and unique and have required a considerable investment of time and funds to develop, and that any loss of or damage to any such relationship will result in irreparable harm. Consequently, Employee covenants and agrees that any violation by Employee of Section 10 or 11 shall entitle Employer to immediate injunctive relief in a court of competent jurisdiction. Employee further agrees that no cause of action for recovery of materials or for breach of any of Employee's representations, warranties or covenants shall accrue until Employer or its Affiliate has actual notice of such breach.

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

WYNN RESORTS, LIMITED

EMPLOYEE

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

/s/ Kim Sinatra
Kim Sinatra

EXHIBIT 1

Indemnification and Gross-Up for Excise Taxes

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

(b) Upon payment to Employee of a Gross-Up Payment, Employer shall provide Employee with a written statement showing Employer's computation of such Gross-Up Payment and the Excess Parachute Payments and Excise Tax to which it relates, and setting forth Employer's determination of the amount of gross income Employee is required to recognize as a result of such payments and Employee's liability for the Excise Tax. Employee shall cause his or her federal, state, and local income tax returns for the period in which Employee receive such Gross-Up Payment to be prepared and filed in accordance with

such statement, and, upon such filing, Employee shall certify in writing to Employer that such returns have been so prepared and filed. Notwithstanding the provisions of paragraph (a), above, Employer shall not be obligated to indemnify Employee from and against any tax liability, cost or expense (including, without limitation, any liability for the Excise Tax or attorney's fees or costs) to the extent such tax liability, cost or expense is attributable to your failure to comply with the provisions of this paragraph (b).

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

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

**FIRST AMENDMENT TO
EMPLOYMENT AGREEMENT**

This FIRST AMENDMENT TO EMPLOYMENT AGREEMENT (this "**Amendment**") is entered into as of the 31 day of December, 2008, by and between Wynn Resorts, Limited ("**Employer**") and Kim Sinatra ("**Employee**"). Capitalized terms that are not defined herein shall have the meanings ascribed to them in the Agreement (as defined below).

RECITALS

WHEREAS, Employer and Employee have entered into that certain Employment Agreement, dated as of April 24, 2007 (the "**Agreement**"); and

WHEREAS, Employer is willing and Employee desires to modify certain terms and conditions to the Agreement as more fully set forth herein;

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

1. Termination of Affiliate Positions. Concurrent with Employee's resignation from Employer or upon expiration or termination of the Agreement, Employee agrees to resign, and shall be deemed to have resigned, all other positions and Board of Director memberships that Employee may have held immediately prior to Employee's resignation from Employer or expiration or termination of the Agreement.

2. Section 409A Provision. Notwithstanding any provision of the Agreement to the contrary, if, at the time of Employee's termination of employment with the Employer, he or she is a "specified employee" as defined in Section 409A of the Internal Revenue Code (the "Code"), and one or more of the payments or benefits received or to be received by Employee pursuant to the Agreement would constitute deferred compensation subject to Section 409A, no such payment or benefit will be provided under the Agreement until the earlier of: (a) the date that is six (6) months following Employee's termination of employment with the Employer or (b) the Employee's death. The provisions of this Section shall only apply to the extent required to avoid Employee's incurrence of any penalty tax or interest under Section 409A of the Code or any regulations or Treasury guidance promulgated thereunder. In addition, if any provision of the Agreement would cause Employee to incur any penalty tax or interest under Section 409A of the Code or any regulations or Treasury guidance promulgated thereunder, the Employer may reform such provision to maintain the maximum extent practicable the original intent of the applicable provision without violating the provisions of Section 409A of the Code.

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

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

WYNN RESORTS, LIMITED

EMPLOYEE

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

/s/ Kim Sinatra
Kim Sinatra

AMENDMENT TO EMPLOYMENT AGREEMENT

This Amendment to Employment Agreement is by and between Kim Sinatra (“Employee”) and Wynn Resorts, Limited (“Employer”).

WHEREAS, Employee and Employer have entered in to that certain Employment Agreement dated as of April 24, 2007, as amended (the “Employment Agreement”);

WHEREAS, due to the ongoing negative economic climate, Employee and Employer desire to amend the Employment Agreement in order to assist Employer to maintain business stability thereby preserving Employee’s employment.

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

1. Amendment to Base Salary. Effective February 16, 2009, the term “**Base Salary**” shall be mean \$425,000 per annum.
2. Other Provisions of Agreement. The parties acknowledge that the Employment Agreement is being modified only as stated herein, and agree that nothing else in the Employment Agreement shall be affected by this Amendment.

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

WYNN RESORTS, LIMITED

EMPLOYEE

/s/ Matt Maddox

/s/ Kim Sinatra

By: Matt Maddox

Kim Sinatra

Its: CFO & Treasurer

Date: 2/12/09

**SECOND AMENDMENT TO
EMPLOYMENT AGREEMENT**

This SECOND AMENDMENT TO EMPLOYMENT AGREEMENT (this “**Amendment**”) is entered into as of the 30th day of November, 2009, by and between Wynn Resorts, Limited (“**Employer**”) and Kim Sinatra (“**Employee**”). Capitalized terms that are not defined herein shall have the meanings ascribed to them in the Agreement (as defined below).

RECITALS

WHEREAS, Employer and Employee have entered into that certain Employment Agreement, dated as of April 24, 2007 as amended by that certain First Amendment to Employment Agreement Dated as of December 31, 2008 (collectively, the “**Agreement**”); and

WHEREAS, Employer is willing and Employee desires to modify certain terms and conditions to the Agreement as more fully set forth herein;

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

1. Amendments.

a. Employer and Employee agree to amend Section 6 of the Agreement in its entirety to read as follows:

“6. TERM. Unless sooner terminated as provided in this Agreement, the term of this Agreement (the “**Term**”) shall commence on the Effective Date of this Agreement and terminating on May 5, 2014 at which time the terms of this Agreement shall expire and shall not apply to any continued employment of Employee by Employer, except for those obligations under Paragraphs 10 and 11. Following the Term, unless the parties enter into a new written contract of employment, (a) any continued employment of Employee shall be at-will, (b) any or all of the other terms and conditions of Employee’s employment may be changed by Employer at its discretion, with or without notice, and (c) the employment relationship may be terminated at any time by either party, with or without cause or notice.”

b. Employer and Employee agree to amend Subparagraph 8(a) of the Agreement in its entirety to read as follows:

(a) Base Salary. Subject to Section 7(g), Employer hereby covenants and agrees to pay to Employee, and Employee hereby covenants and agrees to accept from Employer, a base salary at

the rate of Six Hundred-Fifty Thousand Dollars (\$650,000.00) per annum, payable in such installments as shall be convenient to Employer (the “**Base Salary**”). Employee’s Base Salary shall be exclusive of and in addition to any other benefits which Employer, in its sole discretion, may make available to Employee, including, but not limited to, those benefits described in Subsections 8(b) through (e) of this Agreement. Employee’s Base Salary shall be subject to merit review by Employer’s Board of Directors periodically, and may be increased, but not decreased, as a result of such review.

c. Employer and Employee agree to amend Paragraph 8 of the Agreement by adding a new Subparagraph 8(g) to read as follows:

“(g) Salary Reduction. On February 16, 2009, Employer instituted a Salary Reduction Program for all Employees. Therefore, the Employee’s Base Salary shall be reduced by Fifteen Percent (15%) to Five Hundred Fifty-Two Thousand Five Hundred Dollars (\$552,500.00) until such time as the salaries of all the Employer’s senior executives are restored to the levels at or above such executives’ pre-February 16, 2009 salaries.”

2. **Effective Date of Amendments.** The amendment set forth herein shall become effective as of May 5, 2009

3. **Other Provisions of Agreement.** The parties acknowledge that the Agreement is being modified only as stated herein, and agree that nothing else in the Agreement shall be affected by this Amendment.

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

WYNN RESORTS, LIMITED

EMPLOYEE

/s/ Marc Schorr

Marc D. Schorr

Chief Operating Officer

/s/ KimSinatra

Kim Sinatra

DATED 8 September 2009

WYNN RESORTS (MACAU) S.A.
the Company

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH
as Hotel Facility Agent

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH
as Project Facility Agent

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH
as Revolving Credit Facility Agent

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH
as Intercreditor Agent

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH
as Security Agent

COMMON TERMS AGREEMENT
THIRD AMENDMENT AGREEMENT

CONTENTS

<u>Clause</u>	<u>Page</u>
1. DEFINITIONS AND INTERPRETATION	2
2. AMENDMENT	4
3. REPRESENTATIONS	5
4. SECURITY	5
5. SUBSTITUTION	5
6. CONTINUITY AND FURTHER ASSURANCE	6
7. MISCELLANEOUS	6
8. GOVERNING LAW	6
SIGNATURES	7
SCHEDULE 1 Conditions Precedent	13
SCHEDULE 2 Amended Common Terms Agreement	18

THIS AGREEMENT is dated September 2009 and made between:

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (2) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as Intercreditor Agent acting on the instructions and on behalf of the Hotel Facility Lenders under and as defined in the Hotel Facility Agreement;
- (3) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as Intercreditor Agent acting on the instructions and on behalf of the Project Facility Lenders under and as defined in the Project Facility Agreement;
- (4) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as Intercreditor Agent acting on the instructions and on behalf of the Revolving Credit Facility Lenders under and as defined in the Revolving Credit Facility Agreement;
- (5) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as Hotel Facility Agent;
- (6) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as Project Facility Agent;
- (7) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as Revolving Credit Facility Agent;
- (8) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as Intercreditor Agent; and
- (9) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as Security Agent.

RECITALS:

- (A) The Company in its Letter requested that the Intercreditor Agent obtain the consent of the Required Lenders in respect of the matters referred to in paragraph C.1 (*Waiver Request*) of the Letter (such matters being, the “**Request**”). Required Lender consent was granted in respect of the Request on 3 July 2009.
- (B) Pursuant to clause 34.1 (*Amendments and waiver of common terms*) of Schedule 2 (*Amended Common Terms Agreement*) and the Required Lender consent referred to in paragraph (A) above, certain Senior Finance Documents will be amended and additional Senior Finance Documents and certain other documents will be entered into to give effect to the Request.
- (C) It has been agreed to further amend the Common Terms Agreement as set out below.

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions and incorporation of defined terms**

(a) In this Agreement:

“**Acquisition Agreement**” means the acquisition agreement and instrument of transfer dated on the Third Amendment Effective Date between Wynn Asia as seller and Wynn Asia 2 as purchaser in respect of the entire issued share capital of Wynn International;

“**English Security Confirmation**” means the document so entitled dated on or about the Third Amendment Effective Date between the Company and the Security Agent;

“**First Macau Security Confirmation**” means the document so entitled dated on or about the Third Amendment Effective Date between the Company and the Security Agent;

“**Hong Kong Security Confirmation**” means the document so entitled dated on or about the Third Amendment Effective Date between the Company, Wynn Holdings and the Security Agent;

“**Irish Security Confirmation**” means the document so entitled dated on or about the Third Amendment Effective Date between the Company and the Security Agent;

“**Lender List**” means the list of Lenders as at the Third Amendment Effective Date initialled for the purposes of identification by the Intercreditor Agent;

“**Letter**” means the letter entitled “Waiver Request Letter” from the Company to the Intercreditor Agent and the Security Agent dated 22 June 2009;

“**Macau Security Confirmation**” means the First Macau Security Confirmation and the Second Macau Security Confirmation.

“**New York Security Confirmation**” means the document so entitled dated on or about the Third Amendment Effective Date between the Company and the Security Agent;

“**Nevada Security Confirmation**” means the document so entitled dated on or about the Third Amendment Effective Date between the Company and the Security Agent;

“**Request**” has the meaning given to it in the Recitals to this Agreement;

“**Required Filings**” means any filing, notification, recording, stamping and registration required in respect of any of the Senior Finance Documents referred to in paragraph 2(a), 2(b), (c), (d) or (e) of Schedule 1 (*Conditions Precedent*) to this Agreement at Companies House in England and Wales, the Companies Registry in Hong Kong, the Companies Registration Office in Ireland, the Financial Supervision Commission in the Isle of Man, the Gaming Commission in Macau, the Gaming Inspection and Coordination Bureau in Macau and in the register of charges of Wynn Asia 2;

“Second Macau Security Confirmation” means the document so entitled dated on or about the Third Amendment Effective Date between the Company, Wynn HK, Wynn International and the Security Agent;

“Security Confirmation Documents” means:

- (i) each Macau Security Confirmation;
- (ii) the Hong Kong Security Confirmation;
- (iii) the English Security Confirmation;
- (iv) the Irish Security Confirmation;
- (v) the New York Security Confirmation; and
- (vi) the Nevada Security Confirmation;

“Sponsors’ Subordination Deed Second Deed of Amendment and Acknowledgment of Security” means the Sponsors’ Subordination Deed Second Deed of Amendment and Acknowledgment of Security dated on or about the date hereof between, among others, the Company, Wynn Resorts, Wynn Resorts Holdings, LLC, Wynn Asia, Wynn Asia 2, Wynn International, Wynn Holdings, Wynn HK and the Security Agent;

“Substitution” means the transactions by which:

- (i) Wynn Asia incorporates Wynn Asia 2 as its wholly-owned Subsidiary;
- (ii) Wynn Asia 2 acquires Wynn International as its wholly-owned Subsidiary from Wynn Asia pursuant to and in accordance with the Acquisition Agreement; and
- (iii) Wynn Asia 2 becomes an Obligor, a Wynn Obligor, a Guarantor (as defined in the Wynn Pledgors’ Guarantee), a Wynn Company and a Wynn Assignor (as each term is defined in the Sponsors’ Subordination Deed) and a Chargor (as defined in the Wynn International Share Charge) and Wynn Asia ceases being an Obligor, a Wynn Obligor, a Guarantor (as defined in the Wynn Pledgors’ Guarantee), a Wynn Company and a Wynn Assignor (as each term is defined in the Sponsors’ Subordination Deed) and a Chargor (as defined in the Wynn International Share Charge);

“Wynn Asia 2” means WM Cayman Holdings Limited II, a company to be incorporated under the laws of the Cayman Islands whose registered office will be at the offices of Maples Corporate Services Limited, PO Box 309, Uglan House, Grand Cayman, KY1 -1104, Cayman Islands;

“Wynn International Share Charge Second Deed of Amendment and Acknowledgment of Security” means the Wynn International Share Charge Second Deed of Amendment and Acknowledgment of Security dated on or about the date hereof between Wynn Asia, Wynn Asia 2, the Company and the Security Agent; and

“Wynn Pledgors’ Guarantee Second Deed of Amendment and Acknowledgment” means the Wynn Pledgors’ Guarantee Second Deed of Amendment and Acknowledgment dated on or about the date hereof between Wynn Asia 2, Wynn Asia, Wynn International, Wynn Holdings, Wynn HK and the Security Agent.

- (b) Unless a contrary indication appears, a term defined in or by reference in Schedule 2 (*Amended Common Terms Agreement*) or, if not defined in or by reference in such Schedule, the Deed of Appointment and Priority, has the same meaning in this Agreement.
- (c) The principles of construction and rules of interpretation set out in Schedule 2 (*Amended Common Terms Agreement*) shall have effect as if set out in this Agreement.

1.2 Clauses

In this Agreement any reference to a “Clause” or a “Schedule” is, unless the context otherwise requires, a reference to a Clause or a Schedule to this Agreement.

1.3 Security Documents

The Company and the Intercreditor Agent agree that:

- (a) the Sponsors’ Subordination Deed Second Deed of Amendment and Acknowledgment of Security;
- (b) the Wynn Pledgors’ Guarantee Second Deed of Amendment and Acknowledgment;
- (c) the Wynn International Share Charge Second Deed of Amendment and Acknowledgment of Security; and
- (d) each of the Security Confirmation Documents,

are each Security Documents pursuant to paragraph (u) of the definition of “Security Documents” set out in clause 1.1 (*Definitions*) of the amended Common Terms Agreement set out as Schedule 2 (*Amended Common Terms Agreement*) to this Agreement.

2. AMENDMENT

With effect from the date upon which the Intercreditor Agent confirms to the Lenders and the Company that it has received each of the documents listed in Schedule 1 (*Conditions Precedent*) (or the Intercreditor Agent has waived receipt of, as the case may be) in a form and substance satisfactory to the Intercreditor Agent, (such date being the “**Third Amendment Effective Date**”), the Common Terms Agreement shall be amended so that it shall be read and construed for all purposes as set out in Schedule 2 (*Amended Common Terms Agreement*).

3. REPRESENTATIONS

3.1 Prior to the Third Amendment Effective Date

The representations and warranties set out in schedule 4 of the Common Terms Agreement in effect prior to the Third Amendment Effective Date are deemed to be made by the Company (by reference to the facts and circumstances then existing) on the date of this Agreement.

3.2 On the Third Amendment Effective Date

The representations and warranties set out in schedule 4 of the amended Common Terms Agreement set out as Schedule 2 (*Amended Common Terms Agreement*) to this Agreement are deemed to be made by the Company (by reference to the facts and circumstances then existing) on the Third Amendment Effective Date, as if any reference therein to any Senior Finance Document in respect of which any amendment, acknowledgement, confirmation, consolidation, novation, restatement, replacement or supplement is expressed to be made by any of the documents referred to in Clause 1.3 (*Security Documents*) included, to the extent relevant, such document and the Senior Finance Document as so amended, acknowledged, confirmed, consolidated, novated, restated, replaced or supplemented.

3.3 Palo Real Estate Company Limited

For the purposes of any applicable provision of the Senior Finance Documents (including, without limitation, this Clause 3 (*Representations*)), the Company (for the benefit of itself and each other Obligor) has disclosed to the Lenders that, as at the date hereof, Wynn International and Wynn HK each legally and beneficially own 0.1% of the total issued share capital of Palo Real Estate Company Limited.

4. SECURITY

The Security Agent shall execute and deliver each of the Security Confirmation Documents, the Sponsors' Subordination Deed Second Deed of Amendment and Acknowledgment of Security, the Wynn Pledgors' Guarantee Second Deed of Amendment and Acknowledgment and the Wynn International Share Charge Second Deed of Amendment and Acknowledgment of Security and is authorised and instructed by the Intercreditor Agent to do so accordingly.

5. SUBSTITUTION

Subject to the Third Amendment Effective Date occurring on the date of the acquisition by Wynn Asia 2 of Wynn International as its wholly-owned Subsidiary from Wynn Asia, the Intercreditor Agent hereby waives, for the purposes of (and only for the purposes of) the Substitution, any breach of paragraphs 15 (*Additional Collateral, Discharge of Liens, etc.*) and 27 (*Additional Obligors*) of Part A (*Affirmative Covenants*) of Schedule 5 (*Covenants*) of Schedule 2, paragraphs 4 (*Limitation on Fundamental Changes*), 5 (*Limitation on Disposition of Property*), 8 (*Limitation on Investments*), 10 (*Limitation on Transactions with Affiliates*) and 14.2 (*Limitation on Lines of Business*) of Part B (*Negative Covenants*) of Schedule 5 (*Covenants*) of Schedule 2 and clauses 4.1.4(a) (*General Undertakings*) and 4.1.5(e) and (f) (*General Undertakings*) of the Wynn

Pledgors' Guarantee and any misrepresentation arising pursuant to the repetition on the date of this Agreement and on or prior to the Third Amendment Effective Date of paragraph 11 (*Business, Debt, Etc.*) of Schedule 4 (*Representations and Warranties*) of Schedule 2. Without prejudice to the Required Lender consents granted in respect of the Request, if the Third Amendment Effective Date does not occur on the date of the acquisition by Wynn Asia 2 of Wynn International, the waivers referred to in this Clause shall be deemed to have never been given.

6. CONTINUITY AND FURTHER ASSURANCE

6.1 Continuing obligations

The provisions of the Common Terms Agreement shall, save as amended by this Agreement, continue in full force and effect. In particular, nothing in this Agreement shall affect the rights of the Senior Secured Creditors in respect of the occurrence of any Default which is continuing or which arises on or after the date of this Agreement.

6.2 Further assurance

The Company shall, upon the written request of the Intercreditor Agent and the Company's expense, do all such acts and things reasonably necessary to give effect to the amendments effected or to be effected pursuant to this Agreement.

7. MISCELLANEOUS

7.1 Incorporation of terms

The provisions of Clauses 1.5.1(e), 1.5.2 and 1.5.3 (*Third Party Rights*), Clause 16.2 (*Transaction Expenses*), Clause 16.4 (*Enforcement costs*), Clause 28 (*Non-recourse Liability*), Clause 29.1 to 29.5 (*Notices*), Clause 31 (*Partial Invalidity*), Clause 32 (*Remedies and Waivers*) and Clause 38 (*Jurisdiction*) of Schedule 2 shall be incorporated into this Agreement as if set out in full herein and as if references in those clauses to "Agreement" are references to this Agreement and cross-references to specified clauses thereof are references to the equivalent clauses set out or incorporated herein.

7.2 Counterparts

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

8. GOVERNING LAW

This Agreement is governed by English law.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

The Company

WYNN RESORTS (MACAU) S.A.

By: _____

Address: Rua Cidade de Sintra, NAPE
Hotel Wynn
Macau

Tel: (853) 2888 9966

Fax: (853) 2832 9966

Attention: Chief Financial Officer

Copy to: Wynn Resorts, Limited
3131 Las Vegas Boulevard South
Las Vegas, Nevada 89109
USA

Tel: (1) 702 770 2112

Fax: (1) 702 770 1518

Attention: General Counsel

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH

By: _____

Address: Level 38, Three Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5665 / (852) 2166 5667

Fax: (852) 2166 4631

Attention: Michael Poon / Kenneth Choi

Copy to:

Société Générale, Hong Kong Branch

Address: Level 38, 3 Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5414/(852) 2166 5316

Fax: (852) 2868 1874

Attention: Kenny Chan/Karen Cheung
Asia Loan Operation Centre

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH

By: _____

Address: Level 38, Three Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5665 / (852) 2166 5667

Fax: (852) 2166 4631

Attention: Michael Poon / Kenneth Choi

Copy to:

Société Générale, Hong Kong Branch

Address: Level 38, 3 Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5414/(852) 2166 5316

Fax: (852) 2868 1874

Attention: Kenny Chan/Karen Cheung
Asia Loan Operation Centre

The Project Facility Agent

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH

By: _____

Address: Level 38, Three Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5665 / (852) 2166 5667

Fax: (852) 2166 4631

Attention: Michael Poon / Kenneth Choi

Copy to:
Société Générale, Hong Kong Branch

Address: Level 38, 3 Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5414/(852) 2166 5316

Fax: (852) 2868 1874

Attention: Kenny Chan/Karen Cheung
Asia Loan Operation Centre

The Revolving Credit Facility Agent

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH

By: _____

Address: Level 38, Three Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5665 / (852) 2166 5667

Fax: (852) 2166 4631

Attention: Michael Poon / Kenneth Choi

Copy to:
Société Générale, Hong Kong Branch

Address: Level 38, 3 Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5414/(852) 2166 5316

Fax: (852) 2868 1874

Attention: Kenny Chan/Karen Cheung
Asia Loan Operation Centre

The Security Agent

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH

By: _____

Address: Level 38, Three Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5665 / (852) 2166 5667

Fax: (852) 2166 4631

Attention: Michael Poon / Kenneth Choi

Copy to:
Société Générale, Hong Kong Branch

Address: Level 38, 3 Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5414/(852) 2166 5316

Fax: (852) 2868 1874

Attention: Kenny Chan/Karen Cheung
Asia Loan Operation Centre

SCHEDULE 1
CONDITIONS PRECEDENT

1. Due establishment, authority and certification

In relation to each Obligor and Wynn Asia 2, receipt by the Intercreditor Agent of a certificate signed by a duly authorised signatory of that Person and which:

- (a) either (A) attaches a copy of that Person's Governing Documents or (B) certifies that the copy of that Person's Governing Documents (which was previously delivered to the Intercreditor Agent on or about 14 September 2005) remains correct, complete and in full force and effect as at a date no earlier than the Third Amendment Effective Date;
- (b) attaches a copy of a board resolution or such other equivalent corporate authorisation approving the execution, delivery and performance of the Senior Finance Documents referred to in paragraph 2 below to which it is a party, the terms and conditions thereof and the transactions contemplated thereby, authorising a named person or persons to sign such Senior Finance Documents and any document to be delivered by that Person pursuant to such Senior Finance Documents and authorising the signatory of the relevant certificate to sign certificates in connection therewith;
- (c) (in the case of Wynn Asia 2 only) (A) certifies that guaranteeing or securing the Secured Obligations would not cause any guarantee, security or similar limit binding on it to be exceeded and (B) attaches a copy of a certificate of good standing issued by the Cayman Islands Registrar of Companies and dated no earlier than 30 days prior to the Third Amendment Effective Date;
- (d) (in the case of the Company only) certifies that each copy document listed in this Schedule 1 and delivered by an Obligor is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the Third Amendment Effective Date; and
- (e) (in the case of the Company only) certifies that no Default is continuing or would occur as a result of Wynn Asia 2 becoming an Obligor.

2. Senior Finance Documents

Receipt by the Intercreditor Agent of an original of each of the following Senior Finance Documents, in each case duly executed by the parties thereto:

- (a) this Agreement;
- (b) the Sponsors' Subordination Deed Second Deed of Amendment and Acknowledgment of Security;
- (c) the Wynn Pledgors' Guarantee Second Deed of Amendment and Acknowledgment;

- (d) the Wynn International Share Charge Second Deed of Amendment and Acknowledgment of Security;
- (e) each of the Security Confirmation Documents; and
- (f) any other document entered into which the Intercreditor Agent and the Company agree prior to the Third Amendment Signing Date to designate as a Senior Finance Document.

3. **Legal opinions**

Receipt by the Intercreditor Agent of legal opinions (substantially in the form distributed to the Intercreditor Agent prior to the Third Amendment Signing Date) from:

- (a) Mr Henrique Saldanha, Macanese legal adviser to the Senior Secured Creditors;
- (b) Lionel Sawyer & Collins, Nevada legal adviser to the Senior Secured Creditors;
- (c) M&P Legal, Isle of Man legal adviser to the Senior Secured Creditors;
- (d) Arthur Cox, Irish legal adviser to the Senior Secured Creditors;
- (e) Walkers, Cayman legal adviser to the Senior Secured Creditors;
- (f) Clifford Chance US LLP, New York legal advisers to the Senior Secured Creditors;
- (g) Clifford Chance, Hong Kong SAR legal advisers to the Senior Secured Creditors; and
- (h) Clifford Chance, English legal advisers to the Senior Secured Creditors.

4. **Fees and expenses**

Receipt by the Intercreditor Agent of evidence that:

- (a) all taxes, fees and other costs payable in connection with the execution, delivery, filing, recording, stamping and registering of the documents referred to in this Schedule 1; and
- (b) all fees, costs and expenses due to the Senior Secured Creditors and their advisers under the Senior Finance Documents on or before the Third Amendment Effective Date,

have been paid or shall be paid (to the extent that such amounts have been duly invoiced) by no later than the Third Amendment Effective Date.

5. **Security**

Receipt by the Intercreditor Agent of the following documents evidencing perfection of the Security:

- (a) each of the Macau Security Confirmations, duly stamped and notarised; and

- (b) the notice delivered to Wynn International by Wynn Asia 2 as chargor and the acknowledgement of such notice by Wynn International and the copy of such notice and acknowledgement delivered to the Security Agent pursuant to clause 4.3 of the Wynn International Share Charge.

6. Process agents

Where such appointment is required under any Senior Finance Document referred to in paragraph 2(b), (c) and (d) above that Wynn Asia 2 is a party to, a copy of process agent acceptance of its appointment by Wynn Asia 2 for the acceptance of legal proceedings.

7. Substitution

- (a) A copy of the Acquisition Agreement executed by the parties thereto.
- (b) A copy of Wynn Asia 2's register of members evidencing that (i) Wynn Asia 2 is Wynn Asia's directly wholly owned Subsidiary and (ii) Wynn Asia is the registered holder of one subscriber share (with a par value of USD1) issued by Wynn Asia 2.
- (c) In relation to Wynn Asia and Wynn Asia 2, receipt by the Intercreditor Agent of a certificate signed by a duly authorised signatory of that Person and which:
 - (i) attaches a copy of a board resolution or such other equivalent corporate authorisation approving the Substitution and the execution, delivery and performance of the documents referred to in paragraph (a) above to which it is a party, the terms and conditions thereof and the transactions contemplated thereby, authorising a named person or persons to sign such documents and any document to be delivered by that Person pursuant to such documents and authorising the signatory of the relevant certificate to sign certificates in connection therewith;
 - (ii) (in the case of Wynn Asia 2 only) certifies that all conditions precedent to the effectiveness of the Acquisition Agreement (other than any such conditions relating to the occurrence of the Third Amendment Effective Date) have been satisfied or waived in accordance with its respective terms and the Acquisition Agreement (save as provided in this sub-paragraph (c)(ii)) is in full force and effect accordingly; and
 - (iii) (in the case of Wynn Asia 2 only) certifies that neither that Person nor Wynn Asia is or, but for the passage of time and/or giving of notice will be, in breach of any obligation under the Acquisition Agreement.
- (d) Receipt by the Intercreditor Agent of confirmation (substantially in the form distributed to the Intercreditor Agent prior to the Third Amendment Signing Date) from M&P Legal (in their capacity as Isle of Man legal adviser to the Senior Secured Creditors), that:
 - (i) the instrument of transfer referred to in the definition of "Acquisition Agreement" has been delivered, duly executed but undated, to M&P Legal, together with the share certificate evidencing Wynn Asia's right, title and interest in respect of the Shares (as defined in the Wynn International Share Charge);

- (ii) the instrument of transfer has been dated, a new share certificate in respect of the Shares has been issued to Wynn Asia 2 and the existing share certificates issued to Wynn Asia in respect of the Shares have been cancelled;
 - (iii) the relevant particulars relating to the transfer of the Shares from Wynn Asia to Wynn Asia 2 have been entered in Wynn International's register of members; and
 - (iv) the new share certificate in respect of the Shares referred to in paragraph (d)(ii) is held to the order of the Security Agent.
- (e) Receipt by the Intercreditor Agent of an undated instrument of transfer in respect of the Shares referred to in paragraph (d)(ii) above (executed in blank by or on behalf of Wynn Asia 2), an undated letter of resignation executed by each director of Wynn International in substantially the form set out in Schedule 2 (*Form of Letter of Resignation*) of the Wynn International Share Charge, undated, written resolutions of the board of directors of Wynn International executed by all of the directors of Wynn International in substantially the form set out in Schedule 3 (*Form of Written Resolutions*) of the Wynn International Share Charge and a letter of undertaking and authorisation executed by each of the directors of Wynn International in substantially the form set out in Schedule 4 (*Form of Letter of Undertaking and Authorisation*) of the Wynn International Share Charge.
- (f) Receipt by the Intercreditor Agent of such evidence as the Intercreditor Agent notifies the Company by the date falling no later than two (2) Business Days prior to the Third Amendment Effective Date that it may reasonably require in order for the Intercreditor Agent or any Secured Party to carry out and be satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in respect of Wynn Asia 2.
- (g) Receipt by the Intercreditor Agent of a notice signed by a Responsible Officer of Wynn Asia 2 listing its Responsible Officers (including a certified specimen signature of each such Responsible Officer), together with evidence of the authority of each such Responsible Officer.

8. Other documents and evidence

- (a) A copy of any authorisation issued by the government of the Macau SAR (under the Macau Gaming Laws and the Concession Contract) in respect of the transactions contemplated by paragraphs (i) and (ii) of the definition of Substitution.

- (b) A copy of any other authorisation or other document, opinion or assurance which the Intercreditor Agent considers to be necessary or desirable (if it has notified the Company accordingly prior to the Third Amendment Effective Date) in connection with the entry into and performance of the transactions contemplated by any Senior Finance Document or for the validity and enforceability of any Senior Finance Document.

SCHEDULE 2

AMENDED COMMON TERMS AGREEMENT

DATED 14 SEPTEMBER 2004

WYNN RESORTS (MACAU) S.A.
the Company

CERTAIN FINANCIAL INSTITUTIONS

as Hotel Facility Lenders, Project Facility Lenders, Revolving Credit Facility Lenders
and Hedging Counterparties

BANC OF AMERICA SECURITIES ASIA LIMITED
DEUTSCHE BANK AG, HONG KONG BRANCH
SG AMERICAS SECURITIES, LLC
as Global Coordinating Lead Arrangers

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH
as Hotel Facility Agent and Project Facility Agent

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH
as Revolving Credit Facility Agent

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH
as Intercreditor Agent

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH
as Security Agent

COMMON TERMS AGREEMENT

(As amended by the Common Terms Agreement Amendment Agreement
dated 14 September 2005,
the Common Terms Agreement Second Amendment Agreement
dated 27 June 2007
and the Common Terms Agreement Third Amendment Agreement
dated September 2009)

CONTENTS

<u>Clause</u>	<u>Page</u>
1. Definitions And Interpretation	23
2. Conditions Precedent	74
3. Drawdown Of Advances	77
4. Availability Periods	80
5. Purpose	81
6. Pro Rata Drawings	81
7. [Not Used]	81
8. Repayments, Prepayments And Cancellation	81
9. Interest, Interest Periods And Default Interest	87
10. Changes To The Calculation Of Interest	89
11. Tax Gross Up And Indemnities	91
12. Increased Costs	93
13. Currency And Other Indemnities	94
14. Illegality	95
15. Mitigation By The Senior Secured Creditors	96
16. Fees, Costs And Expenses	96
17. Representations And Warranties	97
18. Covenants	97
19. Events Of Default	98
20. Application Of Enforcement Proceeds	99
21. Changes To The Parties	99
22. Hedging Counterparties	103
23. Agents And Global Coordinating Lead Arrangers	105
24. Conduct Of Business By The Senior Secured Creditors	112
25. Sharing Among The Senior Secured Creditors	112
26. Payment Mechanics	114
27. Set-Off	116
28. Non-Recourse Liability	116
29. Notices	117
30. Calculations And Certificates	120

31. Partial Invalidity	120
32. Remedies And Waivers	121
33. Intercreditor Arrangements	121
34. Amendments And Waivers	124
35. Counterparts	125
36. Language	125
37. Governing Law	125
38. Jurisdiction	125
39. Confidentiality	126
40. Gaming Authorities	126
SCHEDULE 1 The Lenders and Hedging Counterparties	127
SCHEDULE 2 Conditions Precedent	128
SCHEDULE 3 Form of Advance Request	150
SCHEDULE 4 Representations and Warranties	153
SCHEDULE 5 Covenants	165
SCHEDULE 6 Accounts	197
SCHEDULE 7 Insurance	205
SCHEDULE 8 Hedging Arrangements	246
SCHEDULE 9 Mandatory Prepayment	250
SCHEDULE 10 Events of Default	253
SCHEDULE 11 Transfers and Accession	260
SCHEDULE 12 Permits	269

SCHEDULE 13	[Not used]	271
SCHEDULE 14	Form of Additional Lender's Accession Deed	272
SCHEDULE 15	Form of Compliance Certificate	273
SCHEDULE 16	[Not used]	274
SCHEDULE 17	[Not used]	275
SCHEDULE 18	Monthly Construction Period Report	276
SCHEDULE 19	Forms of Opening Conditions Certificates	278

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

BETWEEN:

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

WHEREAS:

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

NOW IT IS HEREBY AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

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

“**Acceptable Bank**” means a bank notified by the Company to the Security Agent which is confirmed by the Security Agent (acting reasonably) as acceptable.

“**Account**” means an account:

- (i) held in Macau, Hong Kong, the United States or any other jurisdiction, and on terms, reasonably acceptable to the Security Agent, by a member of the Restricted Group with an Acceptable Bank; and
- (ii) subject to Liens in favour of the Security Agent in form and substance satisfactory to the Security Agent.

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

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

“**Acquisition Agreement**” has the meaning given to that term in the Common Terms Agreement Third Amendment Agreement.

“**Additional Lender Agent**” means:

- (a) the bank or financial institution appointed as facility agent for the Additional Lenders under the Additional Lender Facility Agreement and which has executed and delivered to the Intercreditor Agent:

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

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

- (b) its successor appointed in accordance with this Agreement.

“**Additional Lender Facility**” means the revolving credit facility provided by the Additional Lenders to the Company.

“Additional Lender Facility Agreement” means the agreement between the Additional Lenders, the Additional Lender Agent and the Company for the provision of the Additional Lender Facility.

“Additional Lender Facility Availability Period” means, in relation to the Additional Lender Facility, the period specified in respect thereof in Clause 4.4 (*Additional Lender Facility Availability Period*).

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

“Additional Lenders” means the parties who have agreed to provide the Company with loan facilities permitted by paragraph 2.1(f) of Part B of Schedule 5 (*Covenants*) and who have each executed and delivered to the Intercreditor Agent:

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

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

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

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

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

“Advance Request” means, in relation to an Advance under the Term Loan Facilities, a request for an Advance in substantially the form set out in Schedule 3 (*Form of Advance Request*) and, in relation to an Advance under the Revolving Credit Facilities, in substantially the form set out in schedule 2 to the Revolving Credit Facility Agreement or the equivalent schedule to the Additional Lender Facility Agreement setting out the form of advance request, as the case may be.

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

“Affiliate” as applied to any Person, means any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by,” and “under common control with”) as applied to any Person means the power, directly or indirectly, to (a) vote 10% or more of the shares or other securities having ordinary voting power for the election of the Board of Directors (or persons performing similar functions) of such Person or (b) direct or cause

the direction of the management and policies of such Person, whether by contract or otherwise (*provided* that Mr Wong Chi Seng shall not, by virtue of fulfilling either of these requirements alone as a result of the shares held by him in the Company as at the Signing Date or as a result of his role as executive director of the Company, be an Affiliate of the Company).

“**Affiliate Agreement**” means any agreement entered into by any Obligor with an Affiliate of that Obligor involving expenditures by any party thereto or any other flow of funds of not less than USD1,000,000 or its equivalent.

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

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

“**Agreed Form**” means, in relation to any document, the form most recently initialled for the purposes of identification as such by the Company and the Intercreditor Agent with such changes as the Intercreditor Agent may agree with the Company.

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

“**Ancillary Finance Documents**” means:

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

“**Anti-Terrorism Law**” means each of:

- (a) Executive Order No. 13224 of September 23, 2001 - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism (the Executive Order);
- (b) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (commonly known as the USA Patriot Act);
- (c) the Money Laundering Control Act of 1986, Public Law 99-570;
- (d) the International Emergency Economic Powers Act, 50 U.S.C. App. §§ 1701 et seq, the Trading with the Enemy Act, 50 U.S.C. App. §§ 1 et seq, any Executive Order or regulation promulgated thereunder and administered by the Office of Foreign Assets Control (“**OFAC**”) of the U.S. Department of the Treasury; and
- (e) any similar law enacted in the United States of America subsequent to the date of this Agreement.

“**Approved Corporate Administrative Fees**” means, for any Fiscal Year, an amount, when added to any other Corporate Administrative Fees paid by or on behalf of the Company during such Fiscal Year, as does not exceed 50% of the corporate administrative overhead costs incurred by Wynn Resorts during such Fiscal Year in relation to its management of the Wynn Resorts Group.

“**Approved IP Fees**” means the IP Fees as set out in the IP Agreement but without regard to any amendment, variation or supplement, whether pursuant to the terms of the IP Agreement or otherwise, subsequent to the Third Amendment to Intellectual Property License Agreement referred to in the definition thereof in this Clause 1.1.

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

- (a) the granting of any Lien permitted by paragraph 3 of Part B of Schedule 5 (*Covenants*);
- (b) any Disposition permitted by paragraph 5 of Part B of Schedule 5 (*Covenants*) (*provided* that, in the case of paragraph 5(a) of Part B of Schedule 5 (*Covenants*), Dispositions of Property thereunder shall be considered “Asset Sales” to the extent of any proceeds thereof not applied to the replacement of Property pursuant to paragraph 5(a)(ii) of Part B of Schedule 5 (*Covenants*)).

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

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

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

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

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

“**Available Commitment**”, in relation to each Lender under each Facility Agreement, has the meaning given in that Facility Agreement.

“**Board of Directors**” means:

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

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

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

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the London interbank market (or, in the case of any principal amount or Unpaid Sum denominated in HK dollars, the Hong Kong interbank market) for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period,

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

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in the Macau SAR, Hong Kong SAR and New York and, save for the purposes of Clause 3.1.1 (*Drawdown conditions*), London, Singapore and Tokyo.

“**Capital Expenditure**” means, in relation to any Person, for any period, the aggregate of all expenditures by such Person for the acquisition or leasing (pursuant to a capital lease or a finance lease) of fixed or capital assets (including, without limitation, real property) or additions to equipment (including replacements, capitalized repairs and improvements during such period) which should be capitalized under applicable GAAP.

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

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

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

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

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

- (c) increases in Working Capital for such period;
- (d) any other non-cash credits;
- (e) the aggregate amount actually paid by each member of the Restricted Group in cash during such period on account of Capital Expenditures;

(f) the aggregate amount actually paid by each member of the Restricted Group in cash during such period on account of any accrued charges from any prior period; and

(g) Tax paid by each member of the Restricted Group during such period,

determined on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of increasing Cash Flow Available for Debt Service and (ii) is in any way derived from or attributable or otherwise related to or connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof).

“**Certificate of Substantial Completion**” means, in relation to the Projects, any “Original Project Certificate of Substantial Completion” or “Expansion Project Certificate of Substantial Completion”, each as defined in the Construction Contract.

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

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

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

“**Charges over Accounts**” means the Pledge over Onshore Accounts, the Charge over HK Accounts, the US Operating Account Control Agreement and the documents granting the Liens referred to in the definition of “Account” in this Clause 1.1.

“**Claim Proceeds**” means the proceeds of a claim (a “**Recovery Claim**”) against any party to a Project Document or any of such party’s Affiliates (or any employee, officer or adviser) in relation to the Project Documents except for Excluded Claim Proceeds, and after deducting:

- (a) any reasonable expenses which are incurred by any member of the Restricted Group to persons who are not members of the Restricted Group; and
- (b) any Tax incurred and required to be paid by a member of the Restricted Group (as reasonably determined by the relevant member of the Restricted Group on the basis of existing rates and taking into account any available credit, deduction or allowance),

“Construction Contract” means the amended and restated construction contract dated 14 September 2005 between the Prime Contractor and the Company for the construction of the Original Project and the Expansion.

“Construction Contract Direct Agreement” means the Amended and Restated Construction Contract Direct Agreement dated 14 September 2005 between the Prime Contractor, the Company and the Security Agent in the Agreed Form.

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

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

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

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

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

“Corporate Administrative Fees” means any fees payable by the Company to Wynn Resorts pursuant to the Corporate Administrative Fees Agreement in respect of any corporate administrative overhead costs incurred by Wynn Resorts in relation to its management of the Wynn Resorts Group.

“Corporate Administrative Fees Agreement” means the agreement dated as of 1 January 2007 between the Company and Wynn Resorts regarding, among other things, the payment of the Company’s portion of any Corporate Administrative Fees.

“Corporate Services Provider” means Wynn Resorts in its capacity as a party to the Corporate Administrative Fees Agreement.

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

“Current Assets” means, at any date, all amounts (other than cash) which would, in conformity with applicable GAAP, be set forth opposite the caption “total current assets” (or any like caption) on a balance sheet of the Restricted Group at such date prepared on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of increasing Current Assets and (ii) is in any way derived from or attributable or otherwise connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof).

“Current Liabilities” means, at any date, all amounts that would, in conformity with applicable GAAP, be set forth opposite the caption “total current liabilities” (or any like caption) on a balance sheet of the Restricted Group at such date prepared on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of reducing Current Liabilities and (ii) is in any way derived from or attributable or otherwise connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof), but excluding:

- (a) the current portion of any Funded Debt of any member of the Restricted Group; and
- (b) without duplication of paragraph (a) above, all Financial Indebtedness consisting of Revolving Credit Facilities Advances to the extent otherwise included therein.

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

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

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

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

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

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

“Diamond Completion Date” means the date of completion of the Diamond Expansion as notified to the Intercreditor Agent by the Company.

“**Diamond Construction Contract**” means the contract for the design, engineering and construction of the Diamond Expansion to be entered into by the Company and the Prime Contractor (or any of its Affiliates).

“**Diamond Expansion**” means that part of the Projects which, as of the Second Amendment Signing Date, is being constructed on the site of the above-ground parking garage comprised in the Original Project and is contemplated to include the 40 floor Wynn Diamond suites, a parking facility, restaurants, retail space and gaming areas.

“**Diamond Opening Date**” means the date upon which all Licenças de Ocupação required pursuant to applicable Legal Requirements in respect of the Diamond Expansion have been issued by the Macau SAR and the Diamond Expansion is fully open for business to the general public.

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

- (a) the Gaming Concession Consent Agreement;
- (b) the Land Concession Consent Agreement;
- (c) the Construction Contract Direct Agreement;
- (d) the PASA Direct Agreement;
- (e) the Account Bank Notices and Acknowledgements; and
- (f) the Insurer Notices and Acknowledgements.

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

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

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

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

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

- (a) income Tax expense (whether or not paid during such period) other than Tax on gross gaming revenue;

- (b) amortization or write-off of debt discount and debt issuance costs and interest, commissions, discounts and other fees and charges associated with Financial Indebtedness (including the Advances);
- (c) depreciation and amortization expense;
- (d) amortization of intangibles (including goodwill);
- (e) an amount equal to the aggregate net non-cash loss on the Disposition of Property during such period (other than sales of inventory in the ordinary course of business); and
- (f) any extraordinary expenses or losses,

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

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

all (including Net Income) as determined on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of increasing EBITDA and (ii) is in any way derived from or attributable or otherwise related to or connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof) and otherwise in accordance with applicable GAAP.

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

- (a) 50% of the Excess Cash Flow if the Leverage Ratio as of the last day of such period is greater than 4:1; or
- (b) zero if the Leverage Ratio as of the last day of such period is 4:1 or less.

“**Effective Date**” has the meaning given in the Common Terms Agreement Second Amendment Agreement.

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

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

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

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

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

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

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

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

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

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

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

“Equity Issuance” means:

- (a) any allotment or issuance (or the entering into by the Company or any other member of the Restricted Group of any agreement to allot or issue), or any grant to any Person of any right (whether conditional or unconditional) to call for or require the allotment or issuance of, any share or equity interest, or other securities (including without limitation bonds, notes, debentures, stock or similar instrument) which are convertible (whether at the option of the holder(s) thereof, the Company or otherwise) into shares or equity interests in the Company or other member of the Restricted Group, or any depositary receipt(s) in respect of any such share or equity interest; or

(b) any grant of any option, warrant or other right of acquisition in respect of any such share, equity interest, other security or depositary receipt, *provided* that for the avoidance of doubt, “Equity Issuance” shall not include any secondary sales of any shares, equity interests or other securities of the Company or any other member of the Restricted Group by any or all of the holders of such shares, equity interests or other securities.

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

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

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

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

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

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

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

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

“**Excess Cash Flow**” means, in relation to any period, CFADS for such period *plus*, without duplication the US dollar equivalents of:

- (a) to the extent included in Net Income for such period, interest income received during such period, *minus*, without duplication, the US dollar equivalents of:

- (b) the aggregate amount of Financing Costs paid by the Company or any other member of the Restricted Group in cash during such period;
- (c) the aggregate amount of all prepayments of Advances under the Revolving Credit Facilities during such period to the extent accompanying permanent voluntary reductions of the commitments thereunder and all voluntary prepayments of Term Loan Facility Advances during such period;
- (d) the aggregate amount of all scheduled principal payments of the Company under the Facility Agreements made during such period (other than in respect of any Revolving Credit Facility to the extent there is not an equivalent permanent reduction in commitments thereunder such that after giving effect to such commitment reduction the Company would not be able to reborrow all or any of the amount so prepaid); and
- (e) the aggregate of all other scheduled payments of any Financial Indebtedness permitted to be incurred by a member of the Restricted Group pursuant to paragraphs 2.1(e) and 2.1(f) of Part B of Schedule 5 (*Covenants*) falling due and any voluntary prepayments thereof made during such period (other than in respect of any overdraft or revolving facility to the extent there is not an equivalent permanent reduction in commitments thereunder such that after giving effect to such commitment reduction the relevant member of the Restricted Group would not be able to reborrow all or any of the amount so prepaid),

determined on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of increasing Excess Cash Flow and (ii) is in any way derived from or attributable or otherwise related to or connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof).

“Excluded Claim Proceeds” means any proceeds of a Recovery Claim which the Company notifies the Intercreditor Agent are, or are to be, applied:

- (a) to satisfy (or reimburse a member of the Restricted Group which has discharged) any liability, charge or claim upon a member of the Restricted Group by a person which is not a member of the Restricted Group; or
- (b) in the replacement, reinstatement and/or repair of assets of members of the Restricted Group which have been lost, destroyed or damaged,

in each case as a result of the events or circumstances giving rise to that Recovery Claim, if those proceeds are deposited into and retained in an Account pending such application and are so applied as soon as possible (but in any event within 3 months, or such longer period as the Intercreditor Agent may agree) after receipt.

“Excluded Project” means any gaming, hotel or resort related business, development or undertaking of any kind in the Macau SAR other than the Projects and, save as contemplated by any Resort Management Agreement therefor in the case of the Company, neither involving nor permitting any claim, interest, liability, right of recourse of any kind in connection therewith against or in any member of the Restricted Group or its assets, including either of the Projects.

“Excluded Subsidiary” means a Subsidiary of the Company exclusively engaged in the development, financing, ownership, leasing or operation of Excluded Projects on terms which, save as contemplated by any Resort Management Agreement to which such Subsidiary is party in the case of the Company, neither involve nor permit any claim, interest, liability, right of recourse of any kind in connection therewith against or in any member of the Restricted Group or its assets, including either of the Projects.

“Expansion” means that part of the Projects comprised in the “Expansion Project Casino” as defined in the Construction Contract as at the date hereof, but excluding the Diamond Expansion.

“Expansion Opening Date” means the date upon which all Licenças de Ocupação required pursuant to applicable Legal Requirements in respect of the Expansion have been issued by the Macau SAR and the Expansion is fully open for business to the general public.

“Facility” means any of:

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

“Facility Agents” means the Hotel Facility Agent, the Project Facility Agent, the Revolving Credit Facility Agent and the Additional Lender Agent.

“Facility Agreements” means:

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

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

“**Fee Letters**” means each of the fee letters entered into from time to time between the Company on the one hand and any of the Agents and the Security Agent on the other hand.

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

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

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

- (a) all indebtedness of such Person for borrowed money;
- (b) all obligations of such Person for the purchase price of Property or services to the extent the payment of such obligations is deferred for a period in excess of 90 days (other than trade payables incurred in the ordinary course of such Person’s business);
- (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments;
- (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (unless the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property);
- (e) all Capital Lease Obligations (to the extent treated as finance or capital lease obligations in accordance with applicable GAAP) or Synthetic Lease Obligations of such Person;
- (f) any indebtedness of such Person for or in respect of receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis or on a basis where recourse is limited solely to warranty claims relating to title or objective characteristics of the relevant receivables);
- (g) any indebtedness of such Person in respect of any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (h) all indebtedness of such Person, contingent or otherwise, as an account party under acceptance, letter of credit, completion guaranties, performance bonds or similar facilities;
- (i) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Capital Stock of such Person;
- (j) all obligations of such Person in respect of Swap Agreements or any other derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price;

- (k) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in paragraphs (a) through (j) above;
- (l) all obligations of the kind referred to in paragraphs (a) through (k) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation; and
- (m) the liquidation value of any preferred Capital Stock of such Person or its Subsidiaries held by any Person other than such Person and its Wholly Owned Subsidiaries.

“**Financial Model**” means the computer model, stored on computer disc(s), and consisting of algorithms as set out on the print-out from such disc(s), each to be initialled at the Second Amendment Signing Date by the Intercreditor Agent and the Company solely for the purposes of identification.

“**Financing Costs**” means:

- (a) interest, fees, commissions, costs and expenses payable by the Company under the Senior Finance Documents;
- (b) interest, fees, commissions, costs and expenses payable by the Company under the Performance Bond Facility;
- (c) amounts payable by the Company under Clause 10 (*Changes to the Calculation of Interest*), Clause 11 (*Tax Gross Up and Indemnities*), Clause 12 (*Increased Costs*) and Clause 13 (*Currency and Other Indemnities*);
- (d) any other amounts of interest, fees, commissions, discounts, prepayment penalties or premiums and other finance payments payable in respect of Financial Indebtedness permitted to be incurred by a member of the Restricted Group pursuant to paragraphs 2.1(e) and 2.1(f) of Part B of Schedule 5 (*Covenants*);
- (e) net amounts payable by the Company under any Hedging Agreement; and
- (f) any value added or other taxes payable by the Company or any other member of the Restricted Group in respect of paragraphs (a) through (e) above and, save to the extent already included in paragraph (c) above, any withholding tax on a party under a Senior Finance Document, the Performance Bond Facility or any other agreement relating to the provision of Financial Indebtedness referred to above in respect of which the Company or any other member of the Restricted Group has an obligation to gross up.

“**FinCEN**” means the Financial Crimes Enforcement Network of the U.S. Department of the Treasury.

“First Repayment Date” means, in relation to each of the Term Loan Facilities, the date falling 51 months from the Second Amendment Signing Date.

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

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

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

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

- (a) the lists of documents comprising Senior Finance Documents and Security Documents set out in the definitions thereof and the definitions of Required Lenders and Fundamental Term in Clause 1.1;
- (b) the provisions setting out the date for, or the amount of, or the currency of, any payment of principal or interest under a Senior Finance Document or any interest rate hedging payment to a Hedging Counterparty;
- (c) Clause 2.1 (*Conditions Precedent to the CP Satisfaction Date*) (save in relation to the identity of the opinion providers as set forth in paragraph 14 of Part A of Schedule 2 (*Conditions Precedent*) and paragraph 30 of Part A of Schedule 2 (*Conditions Precedent*));
- (d) the provisions setting out the amount of a Lender’s Available Commitment under a Facility (otherwise than by a transfer in accordance with the terms of this Agreement) or the duration of its availability or any additional obligation on a Lender to lend money or provide any other form of credit;
- (e) a term which expressly requires the consent of each Lender or Senior Secured Creditor;
- (f) the provisions dealing with the conditions under which assets may be released from the Security or the priority or ranking thereof;
- (g) the provisions dealing with the order of distribution on partial payment by the Company or the proceeds of Security;
- (h) paragraph 2.1(e) of Part B of Schedule 5 (*Covenants*), paragraph 2.1(f) of Part B of Schedule 5 (*Covenants*), the provisions setting out the priority and ranking of the Secured Obligations (and any other provisions which, if amended, would have the effect of changing the priority or ranking thereof) and the provisions dealing with the designation of a document as a Senior Finance Document (to the extent it involves any sharing in the Security or the granting, creating or sharing in any other Lien over the Project Security and is not a document necessary for the purposes of incurring the Financial Indebtedness referred to in paragraphs 2.1(e) or 2.1(f) of Part B of Schedule 5 (*Covenants*)) and any provision which, if amended, would have the effect of permitting such a designation;

- (i) Clause 25 (*Sharing Among the Senior Secured Creditors*); and
- (j) Clause 33 (*Intercreditor Arrangements*).

Notwithstanding the above, unanimity among the Lenders and Hedging Counterparties shall not be required with respect to any changes, additions, deletions, modifications or supplements (herein “changes”) comprised in any amendment to the Deed of Appointment and Priority made in accordance with clause 24.1(c) (*Required Consents*) thereof with respect to subparagraphs (a), (e), (f), (g), (h) and (j) above and any Decision related to such changes shall be effected pursuant to subparagraph (a) of the definition of Required Lenders (and as if a Hedging Voting Right Event had occurred and was continuing in relation to each Hedging Counterparty) provided that, in each case, the Senior Secured Creditors’ rights, benefits and interests in respect of the First Ranking Liabilities (as defined in the Deed of Appointment and Priority) and the Security, the enforcement thereof and the priority and ranking of their claims in respect thereof and the subordination thereto of all other claims, remain unaffected by any such changes.

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

“**Funds**” means any funds that are unconditionally available and have been made available, raised, procured or obtained in a manner that does not breach the terms of this Agreement including such amount of Financial Indebtedness permitted to be created, incurred, assumed or suffered to exist pursuant to paragraph 2.1(e) of Part B of Schedule 5 as, when aggregated with all other amounts of Financial Indebtedness permitted to be created, incurred, assumed or suffered to exist pursuant to paragraph 2.1(e), does not exceed USD500,000,000 or its equivalent.

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

“**Gaming Concession Consent Agreement**” means the Agreement Relating to Security (with the Exclusion of Land Concession and Immovable Property) dated on or about the date of this Agreement between the Government of the Macau SAR, the Company and the Security Agent and the Supplement in respect thereof dated 14 September 2005.

“**Global Coordinating Lead Arrangers**” or “**GCLAs**” means Banc of America Securities Asia Limited, Deutsche Bank AG, Hong Kong Branch and SG Americas Securities, LLC acting as such under the Senior Finance Documents.

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

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

“Group” means the Company and each of the Company’s Subsidiaries (other than any Excluded Subsidiary) for the time being (including, without limitation, any Subsidiary of the Company which becomes an Obligor pursuant to paragraph 27 of Part A of Schedule 5).

“Guaranteed Date of Substantial Completion” means, in respect of the Original Project, the “Guaranteed Date of Original Project Substantial Completion” and, in respect of the Expansion, the “Guaranteed Date of Expansion Project Substantial Completion”, each as defined in the Construction Contract.

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

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

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

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

“Hedging Counterparties” means a financial institution identified as such in Part D of Schedule 1 (*Hedging Counterparties*) and the parties, other than the Company, to the Hedging Agreements and who have executed a Hedging Counterparty’s Deed of Accession.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Hotel Revolving Credit Facility” has the meaning given in the Revolving Credit Facility Agreement.

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

“Information Memorandums” means the information memorandum dated June 2004, the information memorandum dated June 2005 and the information memorandum dated April 2007 prepared by the Company in relation to the Projects for the purposes of the financing of any or all of the Facilities.

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

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

“Insurance” means a Direct Insurance or a Reinsurance.

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

- (a) JLT Risk Solutions Asia as the insurance adviser acting on behalf of all Senior Secured Creditors pursuant to the engagement letters dated 15 September 2003, 27 April 2005 and 10 May 2007;
- (b) the insurance adviser acting on behalf of all Senior Secured Creditors according to the scope of work and fees agreed by the Senior Secured Creditors and approved by the Company (such approval not to be unreasonably withheld or delayed) before the CP Satisfaction Date; or
- (c) the insurance adviser appointed by the Intercreditor Agent and, unless an Event of Default has occurred and is continuing, approved by the Company (such approval not to be unreasonably withheld or delayed) from time to time after the CP Satisfaction Date to act on behalf of the Senior Secured Creditors as and when required to advise the Senior Secured Creditors in respect of Projects.

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

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

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

“Insurer” means a Direct Insurer or a Reinsurer.

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

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

“Intercreditor Agent” means Société Générale, Hong Kong Branch in its capacity as intercreditor agent for the Senior Secured Creditors or its successor appointed in accordance with this Agreement.

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

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

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

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

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

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

“**IP Agreement**” means the Intellectual Property License Agreement dated 1 January 2003 between the Licensor and the Company, as amended by the First Amendment to Intellectual Property License Agreement dated 1 April 2004, the Second Amendment to Intellectual Property License Agreement dated 7 March 2005 and the Third Amendment to Intellectual Property License Agreement dated on or about the date of the Common Terms Agreement Second Amendment Agreement.

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

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

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

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

“**Land Concession Consent Agreement**” means the Agreement relating to Security under the Land Concession Contract dated on or about the date of this Agreement between the Government of the Macau SAR, the Company and the Security Agent and the Supplement in respect thereof dated 14 September 2005.

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

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

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

“**Lending Group**” means the Hotel Lending Group, the Project Lending Group, the Revolving Lending Group and the Additional Lending Group.

“**Lender List**” has the meaning given to that term in the Common Terms Agreement Third Amendment Agreement.

“**Letter**” has the meaning given to that term in the Common Terms Agreement Third Amendment Agreement.

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

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

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

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

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

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

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

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

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

“**London Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

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

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

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

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

- (a) the Concession Contract;
- (b) the Land Concession Contract;
- (c) the Construction Contract;
- (d) the Diamond Construction Contract;
- (e) the Prime Contractor’s Completion Guarantee;
- (f) the Prime Contractor’s Performance Bond;
- (g) the Project Administration Services Agreement;
- (h) the IP Agreement;
- (i) the Performance Bond Facility Agreement;
- (j) the Concession Contract Performance Bond;
- (k) any Resort Management Agreement; and

- (l) any other Project Document with a total contract price payable (or expected aggregate amount to be paid in the case of “cost plus” contracts) by any member of the Restricted Group or which may otherwise involve liabilities, actual or contingent, of any member of the Restricted Group in each case in an amount in excess of USD25,000,000 or its equivalent.

“**Major Project Participants**” means:

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

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

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

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

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

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

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

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

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

“**Mr Okada**” means Mr. Kazuo Okada (who, as of the Second Amendment Signing Date, is the Vice Chairman of the board of directors of Wynn Resorts).

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

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

“**Net Cash Proceeds**” means:

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

“**Net Income**” means, in relation to any period, the net income (or loss) of the Restricted Group for such period, determined on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of increasing Net Income and (ii) is in any way derived from or attributable or otherwise related to or connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof) and otherwise in accordance with GAAP without taking account of any amount of cash or cash proceeds paid or received in respect of the grant or entry into any Subconcession and before any reduction in respect of preferred equity dividends.

“Notice to Proceed” has the meaning given to such term in the Construction Contract.

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

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

“Obligations” means:

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

“Obligors” means the Company, the other members of the Restricted Group, the Wynn Obligors, Wynn Resorts (solely with respect to its obligations under the Corporate Administrative Fees Agreement and the Sponsors’ Subordination Deed), the Licensor (solely with respect to its obligations under the IP Agreement and the Sponsors’ Subordination Deed), any assignee or transferee of the Licensor under the IP Agreement and any party to a Senior Finance Document referred to in paragraph (f) of the definition of Senior Finance Document (other than, in each case, Wynn Asia, a Secured Party or a Person who is solely party to an acknowledgement of Security).

“Opening Conditions” means, collectively, the following in respect of the Original Project:

- (a) the Intercreditor Agent shall have received from the Company a certificate, substantially in the form set out in Part A of Schedule 19 (*Forms of Opening Conditions Certificates*), pursuant to which the Company certifies that:
 - (i) furnishings, fixtures and equipment necessary to use and occupy the various portions of each Project comprised in the Original Project for their intended uses shall have been installed and shall be operational;
 - (ii) the Project Certificates of Occupancy for the Original Project shall have been issued, each area of the Original Project in which any operation of casino games of chance or other forms of gaming will be carried out shall have been classified as a casino or gaming zone in accordance with Article 9 of the Concession Contract and (other than any Permit made or issued by or with a Governmental Authority the failure of which to obtain could not reasonably be expected to affect the operations of the Original Project in any material respect) each other Permit made or issued by or with a Governmental Authority required under applicable Legal Requirements to be obtained prior to the Opening Date for the Original Project shall have been obtained;
 - (iii) the Original Project (other than the premises to be occupied by individual retail and restaurant tenants) shall be fully open for business to the general public and at least, notwithstanding the foregoing, in the case of the Original Project, 80% of each of the projected 380 slot machines and 200 gaming tables shall be operating, 80% of all rooms shall be ready for occupancy, at least 80% of restaurant outlets shall be open for business and at least 80% of the floor space comprised in the Original Project and designated in the Plans and Specifications for retail tenants has been occupied (save for facilities which by their nature are not open to the general public in the ordinary course of business but are operating);
 - (iv) any remaining work (including, in the case of the Original Project, any work on the Expansion) shall be such that it will not materially affect the operation of the Original Project;
 - (v) the failure to complete the remaining work would not materially affect the operation of the Original Project; and
 - (vi) the Company shall have available a fully trained staff to operate the Original Project; and
- (b) the Intercreditor Agent shall have received from the Technical Adviser a certificate, substantially in the form set out in Part B of Schedule 19 (*Forms of Opening Conditions Certificates*) in respect of the Original Project.

“Opening Date” means, in relation to the Original Project, the date on which all the Project Certificates of Occupancy required for the Original Project have been issued.

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

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

“**Original Project**” means that part of the Projects the construction of which was contemplated by the original Construction Contract entered into by the Company and the Prime Contractor and dated 10 May 2004 as amended by the change order and amendment thereto dated 14 September 2004.

“**PASA Agent**” means Wynn Design & Development, LLC.

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

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

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

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

“**Performance Bond Facility**” means a facility extended to the Company by the Performance Bond Provider in accordance with the terms of the Performance Bond Facility Agreement for the issuance of the Concession Contract Performance Bond and subordinated to amounts owed to the Senior Secured Creditors under the Senior Finance Documents in accordance with the Deed of Appointment and Priority.

“**Performance Bond Facility Agreement**” means the agreement dated as of 14 September 2004 between the Performance Bond Provider and the Company.

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

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

“Permitted Businesses” means the Projects, including:

- (a) in the case of the Company only, the operation of casino games of chance or other forms of gaming in one or more locations in the Macau SAR in connection with the Projects or any Excluded Project, in each case as permitted under the Concession Contract and, in the case of any Excluded Project, as contemplated by the Resort Management Agreement entered into by the Company in respect thereof;
- (b) the development, construction, ownership and operation of a hotel resort and casino as contemplated in the Concession Contract; and
- (c) food and beverage, spa, entertainment production, convention, retail, foreign exchange, transportation and outsourcing of in-house facilities, businesses or other activities which are necessary for, incident to, arising out of, supportive of or connected to the development, construction, ownership or operation of such hotel resort and casino,

and, in the case of the Company and other members of the Restricted Group, the holding of shares and other interests permitted hereunder in Excluded Subsidiaries.

“Permitted Financial Indebtedness” has the meaning given in paragraph 2.1 of Part B of Schedule 5 (*Covenants*).

“Permitted Investments” means the following:

- (a) securities issued, or directly and fully guaranteed or insured, by the United States government or any agency or instrumentality of the United States government (as long as the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than nine months from the date of acquisition;
- (b) securities issued, or directly and fully guaranteed or insured, by the government of the Hong Kong SAR or any agency or instrumentality of the government of the Hong Kong SAR (as long as the full faith and credit of the Hong Kong SAR is pledged in support of those securities) having maturities of not more than nine months from the date of acquisition;
- (c) interest-bearing demand or time deposits (which may be represented by certificates of deposit) issued by banks having general obligations rated (on the date of acquisition thereof) at least “A” or the equivalent by S&P or Moody’s or, if not so rated, secured at all times, in the manner and to the extent provided by law, by collateral security in paragraph (a) or (b) above, of a market value of no less than the amount of monies so invested;
- (d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in paragraphs (a), (b) and (c) above entered into with any financial institution meeting the qualifications specified in paragraph (c) above;
- (e) commercial paper having a rating of A-1 or P-1 from S&P or Moody’s respectively and in each case maturing within nine months after the date of acquisition; and

(f) money market or mutual funds which are rated at least AAA by S&P or Aaa by Moody's or have an equivalent rating from another internationally recognised rating agency.

"Permitted Liens" means the collective reference to:

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

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

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

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

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

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

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

"Post-Amendment Global Transfer Agreement" has the meaning given in the Common Terms Agreement Second Amendment Agreement.

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

"Pre-Amendment Global Transfer Agreement" has the meaning given in the Common Terms Agreement Second Amendment Agreement.

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

“Prime Contractor’s Completion Guarantee” means:

- (a) the Amended and Restated Parent Completion Guarantee dated 14 September 2005 given by Leighton Holdings Limited and China Overseas Holdings Limited to the Company in support of the Prime Contractor’s obligations under the Construction Contract; and
- (b) the completion guarantee, if any, given by Leighton Holdings Limited and China Overseas Holdings Limited to the Company in support of the Prime Contractor’s obligations under the Diamond Construction Contract.

“Prime Contractor’s Performance Bond” means:

- (a) the two Payment and Performance Bonds dated 14 September 2005 in an aggregate amount of not less than USD45,722,399 and delivered to the Company in support of the Prime Contractor’s obligations under the Construction Contract; and
- (b) the Payment and Performance Bond, if any, delivered to the Company in support of the Prime Contractor’s obligations under the Diamond Construction Contract.

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

“Project” means:

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

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

“Project Administration Services Agreement” (or **“PASA”**) means the Amended and Restated Project Administration Services Agreement between the PASA Agent and the Company dated 14 September 2005.

“Project Certificates of Occupancy” means the Licenças de Ocupação issued by the Macau SAR pursuant to applicable Legal Requirements for the Original Project.

“Project Costs” means all costs incurred, or to be incurred, in respect of the Projects, comprising, without double counting:

- (a) all costs incurred under the Construction Contract and the Diamond Construction Contract;
- (b) interest, commissions or other Financing Costs payable under the Senior Finance Documents prior to the Diamond Opening Date;
- (c) commitment commission payable under the Performance Bond Facility prior to the Diamond Opening Date;
- (d) guarantee fees, legal fees and expenses, financial advisory fees and expenses, technical fees and expenses (including fees and expenses of the Technical Adviser and the Insurance Advisor), commitment fees, management fees and corporate overhead agency fees (including fees and expenses of the Agents), interest, taxes (including value added tax) and other out-of-pocket expenses payable by the Company or any other member of the Restricted Group under any documents related to the financing and administration of the Projects prior to the Diamond Opening Date;
- (e) the costs of acquiring Permits for the Projects prior to the Diamond Opening Date;
- (f) costs incurred in settling insurance claims in connection with Events of Loss and collecting Loss Proceeds at any time prior to the Diamond Opening Date;
- (g) working capital costs incurred prior to the Diamond Opening Date; and
- (h) cash to collateralise commercial letters of credit to the extent that payment of any such cash amount to the vendor or materialman who is the beneficiary of such letter of credit would have constituted a “Project Cost”.

“Project Documents” means:

- (a) the Concession Contract, the Land Concession Contract, the Construction Contract, the Prime Contractor’s Completion Guarantee, the Prime Contractor’s Performance Bond, the Project Administration Services Agreement, the IP Agreement and each Payment and Performance Bond issued to the Company or any other member of the Restricted Group; and
- (b) any other document or agreement entered into by the Company or any other member of the Restricted Group (other than the Senior Finance Documents),

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

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

“Project Facility Agent” means Société Générale, Hong Kong Branch as facility agent for the Project Facility Lenders or its successor appointed in accordance with this Agreement.

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

“Project Facility Availability Period” means, in relation to the Project Facility, the period specified in respect thereof in Clause 4.2 (*Project Facility Availability Period*).

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

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

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

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

“Project Revenues” means all income and receipts of the Restricted Group, including those derived from the ownership or operation of the Projects or the Permitted Businesses, including payments received under any Project Document, net payments, if any, received under Hedging Agreements, Liquidated Damages, Insurance Proceeds, Eminent Domain Proceeds, together with any receipts derived from the sale of any property pertaining to the Projects or the Permitted Businesses or incidental to the operation of the Projects or the Permitted Businesses, all as determined in conformity with cash accounting principles, and the proceeds of any condemnation awards relating to the Projects or the Permitted Businesses *provided always* that Project Revenues shall not include any amounts derived from or under (i) the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary.

“Project Revolving Credit Facility” has the meaning given in the Revolving Credit Facility Agreement.

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

“Project Schedule” means the schedule referred to in paragraph 25 of Part A of Schedule 2 (*Conditions Precedent*).

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

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

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

“Quarterly Date” means:

- (a) with respect to the first Quarterly Date, the last day of the first full Fiscal Quarter falling after the Second Amendment Signing Date; and
- (b) with respect to each subsequent Quarterly Date, the last day of the next succeeding Fiscal Quarter.

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

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

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

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

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

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

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

“Related Party” means:

- (a) any 80% (or more) owned Subsidiary, heir, estate, lineal descendent or immediate family member of each of Mr Wynn or Mr Okada; and
- (b) any trust, corporation, partnership or other entity, the beneficiaries, equity holders, partners, owners or Persons directly or indirectly beneficially holding an 80% or more controlling interest of which consist of Mr Wynn and/or such other Persons referred to in paragraph (a) above.

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

- (a) receipt by the Intercreditor Agent of confirmation from each Agent and Hedging Counterparty that all liabilities to its Lending Group or, as the case may be, to it have been discharged in full under the Senior Finance Documents; and
- (b) unless the discharge in paragraph (a) above is effected using the proceeds of Financial Indebtedness incurred pursuant to paragraph 2.1(d) of Part B of Schedule 5 (*Covenants*), receipt by the Intercreditor Agent of a legal opinion from the Lenders’ Macanese counsel in a form satisfactory to the Intercreditor Agent on the basis of which the Intercreditor Agent is able to determine that the risk of the discharge of the Financial Indebtedness owed by the Company to the Senior Secured Creditors in accordance with the Senior Finance Documents not being recognised or deemed to be discharged under the insolvency laws of the Macau SAR is acceptable to the Intercreditor Agent.

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

“**Relevant Party’s Undertaking**” means the undertakings set out in paragraph 3 of schedule 4 of the term sheet referred to in the underwriting agreement between Wynn Resorts, the Company, Banc of America Securities Asia Limited, Deutsche Bank AG, Hong Kong Branch and Société Générale Asia Limited dated 23 June 2005.

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

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

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

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

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

“Request” has the meaning given to that term in the Common Terms Agreement Third Amendment Agreement.

“Required Filings” has the meaning given to that term in the Common Terms Agreement Third Amendment Agreement.

“Required Lenders” means:

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

“Resort Management Agreement” means any agreement entered into by the Company in accordance with the Concession Contract and all other applicable Legal Requirements with an Excluded Subsidiary or other third party for the management or operation by the Company in accordance with the Concession Contract and all other applicable Legal Requirements of an Excluded Project.

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

“Restricted Group” means the Group other than any Excluded Subsidiary.

“Restricted Party” means any person listed:

- (a) in the Annex to the Executive Order;
- (b) on the “Specially Designated Nationals and Blocked Persons” maintained by the OFAC; or
- (c) in any successor list to either of the foregoing.

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

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

“Revolving Credit Facilities” means each of the revolving loan facilities to be provided under the Revolving Credit Facility Agreements.

“Revolving Credit Facility Agent” means Société Générale, Hong Kong Branch as facility agent for the Revolving Credit Facility Lenders.

“Revolving Credit Facility Agreements” means:

- (a) the agreement so entitled between the Company, the Revolving Credit Facility Agent and the Revolving Credit Facility Lenders; and
- (b) the Additional Lender Facility Agreement.

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

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

“Revolving Credit Facility Termination Date” means, in relation to the Revolving Credit Facilities, the fifth anniversary of the Second Amendment Signing Date.

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

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

“Second Amendment Signing Date” means the date of the Common Terms Agreement Second Amendment Agreement.

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

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

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

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

“**Security Confirmation Documents**” has the meaning given to that term in the Common Terms Agreement Third Amendment Agreement.

“**Security Documents**” means:

- (a) the Mortgage;
- (b) the Power of Attorney;
- (c) the Land Security Assignment;
- (d) the Assignment of Rights;
- (e) the Pledge over Gaming Equipment and Utensils;
- (f) the Pledge over Onshore Accounts;
- (g) the Assignment of Insurances;
- (h) the Assignment(s) of Reinsurances;
- (i) the Floating Charge;
- (j) the Livranças and the Livrança Covering Letter;
- (k) the Debenture;
- (l) the US Operating Account Control Agreement;
- (m) the Wynn Pledgors’ Guarantee;
- (n) the Wong Share Pledge and the Wong Consent;
- (o) the Company Share Pledge;
- (p) the Wynn International Share Charge;
- (q) the Wynn HK Share Charge;
- (r) the Sponsors’ Subordination Deed;
- (s) the Deed of Appointment and Priority;
- (t) each Direct Agreement;
- (u) any other document from time to time creating, evidencing or entered into as security for or guaranteeing the Obligations of the Company or any other Obligor or member of the Restricted Group (including, if and when entered into, the Charge over HK Accounts) and any documents entered into pursuant to any of the documents referred to in this definition, including any such document notifying or acknowledging the granting or creation of such security or creating or evidencing security over an Account; and

- (v) any document entered into pursuant to any further assurance provisions set out in any of the documents referred to in this definition which the Intercreditor Agent and the Company (both acting reasonably) agree to designate as a Security Document and any other document which the Intercreditor Agent and the Company (both acting reasonably) agree to designate as a Security Document.

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

“**Senior Finance Documents**” means:

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

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

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

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

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

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

“**Shareholders’ Agreement**” means the amended and restated shareholders’ agreement entered into between the Shareholders and the Company dated 16 September 2004.

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

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

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

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

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

“**Site Facilities**” means

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

“**Solvent**” means, when used with respect to any Person, as of any date of determination, (a) the amount of the “present fair saleable value” of the assets of such Person will, as of such date, exceed the amount of all “liabilities of such Person, contingent or otherwise”, as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, (d) such Person will be able to pay its debts as they mature, and (e) such Person is not insolvent within the meaning of any applicable Legal Requirements. For purposes of this definition, (i) “debt” means liability on a “claim”, and (ii) “claim” means any (A) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, legal, equitable, secured or unsecured or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, secured or unsecured.

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

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

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

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

“**Subcontract**” means any subcontract or purchase order entered into with any Subcontractor.

“**Subcontractor**” means any direct or indirect subcontractor of any tier under any Project Document.

“**Subordinated Debt**” means Financial Indebtedness that is subordinated in accordance with the terms provided by the Sponsors’ Subordination Deed.

“**Subsidiary**” means as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person.

“**Substantial Completion**” means, in relation to the Original Project, “Original Project Substantial Completion” (as defined in the Construction Contract) in respect of the Original Project taken as a whole and, in relation to the Expansion, “Expansion Project Substantial Completion” (as defined in the Construction Contract) in respect of the Expansion taken as a whole.

“**Substantial Shareholder**” means any Person (other than in respect only of his direct shareholding in the Company as at the Signing Date, Mr Wong Chi Seng) who, legally or beneficially, directly or indirectly, owns or holds 5% or more of the outstanding Capital Stock of the Company other than directly or indirectly through Wynn International.

“**Substantial Shareholder’s Undertaking**” means the undertakings set out in paragraph 2 of schedule 4 of the term sheet referred to in the underwriting agreement between Wynn Resorts, the Company, Banc of America Securities Asia Limited, Deutsche Bank AG, Hong Kong Branch and Société Générale Asia Limited dated 23 June 2005 given by each Substantial Shareholder on or about 14 September 2005.

“**Substitution**” has the meaning given to that term in the Common Terms Agreement Third Amendment Agreement.

“**Swap Agreements**” means interest rate swaps, caps or collar agreements or similar arrangements providing for protection against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies.

“**Synthetic Lease Obligations**” means all monetary obligations of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations which do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the Financial Indebtedness of such Person (without regard to accounting treatment).

“**Taking**” means a taking or voluntary conveyance of all or part of any of the Project Security, or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any condemnation or other eminent domain proceeding by any Governmental Authority affecting any of the Project Security or any portion thereof.

“**Tax**” means any tax (including, without limitation, value-added and income), levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

“**Tax Adviser**” means Ernst & Young as the tax adviser acting on behalf of all Senior Secured Creditors pursuant to the engagement letter dated 10 June 2004.

“**Tax Credit**” means a credit against, relief or remission for, or repayment of any Tax.

“**Tax Deduction**” means any deduction or withholding for or on account of Tax.

“**Tax Payment**” means an increased payment made by the Company to a Senior Secured Creditor under Clause 11.2 (*Tax gross-up*) or a payment under Clause 11.3 (*Tax indemnity*).

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

- (a) Mott Connell Ltd. as the technical adviser acting on behalf of all Senior Secured Creditors pursuant to the engagement letters dated 3 February 2004, 27 April 2005, 30 April 2007 and any subsequent engagement letter to be entered into;
- (b) the technical adviser acting on behalf of all Senior Secured Creditors according to the scope of work and fees agreed by the Senior Secured Creditors and approved by the Company (such approval not to be unreasonably withheld or delayed) before the CP Satisfaction Date; or
- (c) the technical adviser appointed by the Intercreditor Agent and, unless an Event of Default has occurred and is continuing, approved by the Company (such approval not to be unreasonably withheld or delayed) from time to time after the CP Satisfaction Date to act on behalf of the Senior Secured Creditors as and when required to advise the Senior Secured Creditors in respect of the Projects.

“**Technical Adviser’s Advance Certificate**” has the meaning given in paragraph 5 of sub-section I of Part B of Schedule 2 (*Conditions Precedent*).

“**Technical Adviser’s Monthly Report**” means a monthly status report, in form and substance acceptable to the Intercreditor Agent, delivered to the Intercreditor Agent on or before the fifteenth day of each calendar month up to and including the calendar month immediately following the Expansion Opening Date and describing in reasonable detail the progress of the construction of the Projects, including reviews and assessments of the Project Schedule and the Monthly Construction Period Report and each of its attachments delivered during the preceding calendar month.

“**Term Loan Facilities**” means each of the term loan facilities provided pursuant to the Term Loan Facilities Agreements.

“**Term Loan Facilities Agreements**” means the Hotel Facility Agreement and the Project Facility Agreement.

“**Term Loan Facility Lender**” means a Hotel Facility Lender or a Project Facility Lender.

“**Termination Event**” has the meaning given in paragraph 2 (*Certificates; Other Information*) of Part A of Schedule 5 (*Covenants*).

“**Termination Proceeds**” means compensation or other proceeds paid by the Macau SAR in relation to the termination or rescission of the Concession Contract.

“**Third Amendment Effective Date**” has the meaning given in the Common Terms Agreement Third Amendment Agreement.

“**Third Amendment Signing Date**” means the date of the Common Terms Agreement Third Amendment Agreement.

“**Total Debt**” means, in relation to the Restricted Group at any time, the aggregate principal amount of all Financial Indebtedness of each member of the Restricted Group at such time but:

- (a) excluding Financial Indebtedness referred to in paragraph (j) of the definition thereof (save in relation to any Realised Hedge Loss);
- (b) excluding Financial Indebtedness arising in respect of the Performance Bond Facility (save in relation to any drawing under the Concession Contract Performance Bond);
- (c) excluding Financial Indebtedness arising in respect of any Shareholder Loans;
- (d) excluding such Financial Indebtedness to the extent it is owed to another member of the Restricted Group;
- (e) including the amount of any liability or obligation, whether or not contingent, assumed by the Company under any Resort Management Agreement and quantified in the same manner as though it were a Guarantee Obligation, in accordance with the deeming provision set out in the definition thereof in this Clause 1.1; and
- (f) deducting the aggregate amount of any balances standing to the credit of, amounts on deposit in and any Permitted Investments held, in each case, in any Account.

“**Transaction Document**” means a Senior Finance Document or a Major Project Document (other than any Resort Management Agreement).

“**Transfer Date**” means, in relation to a Transferee, the later of:

- (a) the proposed Transfer Date specified in the Novation Certificate; and
- (b) the date on which the Intercreditor Agent executes the Novation Certificate.

“**Transferee**” means a Person to whom the rights and obligations of a Lender under the Senior Finance Documents to which that Lender is a party are transferred in accordance with Clause 21.6 (*Transfers by Lenders*).

“**UCC**” means the Uniform Commercial Code of any State in the United States of America, as in effect from time to time.

“Underwriting Agreement” means the underwriting agreement between the Company and the GCLAs dated 30 April 2007.

“Unpaid Sum” means any sum due and payable by an Obligor but unpaid under the Senior Finance Documents.

“Upfront Premium Account” means the account so designated in Schedule 6 (*Accounts*).

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

“US Operating Account Control Agreement” means the bank account control agreement so entitled dated 14 September 2005 between the Company, the Security Agent and Bank of America, N.A.

“USD” or **“US dollars”** denotes the lawful currency of the United States of America.

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

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

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

“Voting Entitlement” means, in respect of a Decision:

- (a) in relation to a Lender, the sum of the US dollar equivalent amounts, as at the Decision Date for such Decision, of its participations in the outstanding Advances and the aggregate undrawn Available Commitments of such Lender under the Facilities;
- (b) in relation to each Hedging Counterparty (after a Hedging Voting Right Event has occurred in relation to such Hedging Counterparty and is continuing), the US dollar equivalent value, as at the Decision Date for such Decision, of the Realised Hedge Loss due and payable but unpaid by the Company to such Hedging Counterparty under the Hedging Agreement to which such Hedging Counterparty is party.

“Voting Stock” means, with respect to any Person as of any date, the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

“Wholly Owned Subsidiary” means, as to any Person, any other Person all of the Capital Stock of which (other than directors’ qualifying shares required by any Legal Requirement) is beneficially owned by such Person directly and/or through other Wholly Owned Subsidiaries.

“Wong Consent” means the written consent dated 2 September 2004 given by Mrs Cheung Wai Hing in relation to the obligations of Mr Wong Chi Seng under and the Security granted pursuant to the Wong Share Pledge.

“**Wong Option Agreement**” means the option agreement between Mr Wong Chi Seng, Wynn International and the Company delivered on or about 14 September 2004.

“**Wong Share Pledge**” means the document so entitled dated on or about 14 September 2004 between Mr Wong Chi Seng and the Security Agent.

“**Working Capital**” means, at any date, an amount equal to Current Assets on such date minus Current Liabilities on such date.

“**Wynn Asia**” means Wynn Group Asia, Inc.

“**Wynn Asia 2**” has the meaning given to that term in the Common Terms Agreement Third Amendment Agreement.

“**Wynn Event**” means:

- (a) the first day on which
 - (i) Mr Wynn and his Related Parties as a group control less than 20% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than size of equity interests (excluding, for purposes of calculating the outstanding Voting Stock of Wynn Resorts pursuant to this paragraph (a)(i), shares of Voting Stock issued in a primary issuance by Wynn Resorts in one or more bona fide public offerings of additional Voting Stock of Wynn Resorts); or
 - (ii) Mr Wynn and his Related Parties as a group (excluding Mr Okada and his Related Parties) control less than 10% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than size of equity interests;
- (b) the first day prior to 31 December 2007 on which Mr Wynn does not act as either the Chairman of the Board of Directors of Wynn Resorts or the Chief Executive Officer of Wynn Resorts, other than:
 - (i) as a result of death or disability; or
 - (ii) if the Board of Directors of Wynn Resorts, exercising their fiduciary duties in good faith, removes or fails to re-appoint Mr Wynn as Chairman of the Board of Directors of Wynn Resorts or Chief Executive Officer of Wynn Resorts;
- (c) the first day on which Wynn Resorts ceases to beneficially own, directly or indirectly, 51% of the outstanding Capital Stock of the Company (measured by both voting power and size of equity interests); or
- (d) the first day on which Wynn Resorts otherwise ceases to have, directly or indirectly, the ability or the right to direct or procure the direction of the management and policies of the Company.

“**Wynn HK**” means Wynn Resorts (Macau), Limited.

“**Wynn HK Share Charge**” means the share charge so entitled dated on or about the date of this Agreement between Wynn Holdings and the Security Agent.

“**Wynn Holdings**” means Wynn Resorts (Macau) Holdings, Ltd.

“**Wynn International**” means Wynn Resorts International, Ltd.

“**Wynn International Share Charge**” means the share charge so entitled dated on or about the date of this Agreement between Wynn Asia and the Security Agent.

“**Wynn Obligor**” means Wynn Holdings, Wynn Asia 2, Wynn International and Wynn HK.

“**Wynn Pledgors’ Guarantee**” means the guarantee so entitled dated on or about the date of this Agreement between Wynn Asia, Wynn Holdings, Wynn HK, Wynn International and the Security Agent.

“**Wynn Resorts**” means Wynn Resorts, Limited.

“**Wynn Resorts Group**” means Wynn Resorts and each of its Subsidiaries for the time being.

1.2 Principles of Construction

Any reference in this Agreement to:

“**continuing**”, in relation to a Default or an Event of Default, shall be construed as a reference to a Default or an Event of Default which has not been remedied or waived;

the “**equivalent**” of one currency (the “**original currency**”) in another currency (the “**conversion currency**”) shall (unless otherwise specified) be determined by the Intercreditor Agent or such Person nominated by the Intercreditor Agent for that purpose by reference to its spot rate of exchange in Hong Kong for the purchase of the conversion currency with the original currency at or about 11:00 a.m. on the date of the determination or if no such spot rate of exchange exists on that date, by such other method as the Intercreditor Agent (in consultation with the Company) shall reasonably determine;

“**including**” is without limitation;

a “**month**” is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next succeeding calendar month save that:

- (a) if any such numerically corresponding day is not a Business Day, such period shall end on the immediately succeeding Business Day to occur in that next succeeding calendar month or, if none, it shall end on the immediately preceding Business Day; and
- (b) if there is no numerically corresponding day in that next succeeding calendar month, that period shall end on the last Business Day in that next succeeding calendar month,

(and references to “months” shall be construed accordingly);

“repay” (or any derivative form thereof) shall, subject to any contrary indication, be construed to include “prepay” (or, as the case may be, the corresponding derivative form thereof); and

a document being in “substantially the Agreed Form” or in substantially a specified form shall be construed as meaning such document being in the same form as the Agreed Form or the specified form save for the insertion of information left in blank or typographical errors.

1.3 Rules of Interpretation

In this Agreement, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include every gender;
- (c) references to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, confirmed, novated or replaced from time to time;
- (d) references to this Agreement are references to this Agreement and the Schedules;
- (e) references to clauses and Schedules are references to clauses of, and Schedules to, this Agreement;
- (f) headings are for convenience only and shall be ignored in construing this Agreement;
- (g) references to any party to this Agreement include references to its respective successors, permitted transferees and permitted assigns;
- (h) references to law shall be construed as references to any constitutional provision, treaty, decree, convention, statute, act, regulation, rule, ordinance, subordinate legislation, rule of common law and of equity and judgement;
- (i) references to any law are references to that law as amended, consolidated, supplemented or replaced from time to time;
- (j) references to any judgement include references to any order, injunction, decree, determination or award of any court or tribunal; and
- (k) a time of day is a reference to Hong Kong time unless otherwise stated.

1.4 Conflict with a Senior Finance Document

In the case of any conflict between:

- 1.4.1 the terms of this Agreement and the terms of any other Senior Finance Document (save for the Facility Agreements and the Deed of Appointment and Priority), the terms of this Agreement shall prevail;

- 1.4.2 the terms of this Agreement and the terms of any Facility Agreement, the terms of that Facility Agreement shall prevail (save in the case of Clause 33 (*Intercreditor Arrangements*) which shall prevail over the terms of the Facility Agreement);
- 1.4.3 the terms of this Agreement and the terms of the Deed of Appointment and Priority, the terms of the Deed of Appointment and Priority shall prevail; or
- 1.4.4 the terms of the Deed of Appointment and Priority and the terms of any Facility Agreement, the terms of the Deed of Appointment and Priority shall prevail.

1.5 **Third party rights**

- 1.5.1 The Contracts (Rights of Third Parties) Act 1999 applies to:
 - (a) sub-clause 3.2.5 of Clause 3.2 (*Completion of an Advance Request*) but only for the benefit of the relevant officer of the Company;
 - (b) Clause 23.10 (*No Actions*) but only for the benefit of any director, officer or employee of any of the Agents or any of the GCLAs;
 - (c) paragraph 5 of Part A of Schedule 2 (*Conditions Precedent*) but only for the benefit of the relevant Responsible Officer;
 - (d) paragraph 1 of Part A of Schedule 5 (*Covenants*) but only for the benefit of the relevant Responsible Officers of the Company; and
 - (e) Clause 28 (*Non-Recourse Liability*) but only for the benefit of the Operatives,subject always to the terms of Clause 37 (*Governing Law*) and Clause 38 (*Jurisdiction*).
- 1.5.2 Except as provided in sub-clause 1.5.1 above, a Person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
- 1.5.3 Notwithstanding any term of any Senior Finance Document, the consent of any Person who is not a party to this Agreement is not required to rescind or vary this Agreement.

1.6 **Advisers**

Where this Agreement contemplates the doing of any act or thing by an Adviser, the Intercreditor Agent shall use its reasonable endeavours to ensure that such act or thing is done by such Adviser in a timely manner.

1.7 Confirmation

Without prejudice to Clause 1.3(c) (*Rules of Interpretation*) of this Agreement, for the avoidance of doubt, any reference to the Sponsors' Subordination Deed, the Wynn International Share Charge or the Wynn Pledgors' Guarantee are references to such documents as amended by, respectively, the Sponsors' Subordination Deed Second Deed of Amendment and Acknowledgment of Security, the Wynn International Share Charge Second Deed of Amendment and Acknowledgment of Security and the Wynn Pledgors' Guarantee Second Deed of Amendment and Acknowledgment.

2. CONDITIONS PRECEDENT

2.1 Conditions Precedent to the CP Satisfaction Date

- 2.1.1 The right of the Company to submit an Advance Request for the Initial Advance is subject to the Company having satisfied the conditions precedent set out in Part A of Schedule 2 (*Conditions Precedent*) in form and substance acceptable to the Intercreditor Agent.
- 2.1.2 In relation to each Facility, the Company shall be deemed to have satisfied:
- (a) the conditions precedent set out in
 - (i) paragraph 1(a) (in respect only of the Concession Contract, the Land Concession Contract, the Concession Contract Performance Bond and the IP Agreement);
 - (ii) paragraph 1(c) (in respect only of the Notice to Proceed);
 - (iii) paragraph 2(a) (in respect only of the Power of Attorney, the Livranças and the Livrança Covering Letter);
 - (iv) paragraph 2(b);
 - (v) paragraph 2(c) (in respect only of the Power of Attorney, the Livranças and the Livrança Covering Letter);
 - (vi) paragraph 3(a);
 - (vii) paragraph 3(c);
 - (viii) paragraph 3(d);
 - (ix) paragraph 4;
 - (x) paragraph 5(a)(i);
 - (xi) paragraph 5(b)(i) (in respect only of: China Overseas Holdings Limited, China State Construction Engineering (Hong Kong) Limited, Leighton Contractors (Asia) Limited, Leighton Holdings Limited, Wynn Asia, Wynn Resorts Holdings LLC, Wynn International, Wynn Resorts, Wynn HK, Wynn Holdings, Wynn Design & Development, LLC);
 - (xii) paragraph 8(b);
 - (xiii) paragraph 13;

- (xiv) paragraph 14(o);
- (xv) paragraph 14(p);
- (xvi) paragraph 16;
- (xvii) paragraph 17(a)(i);
- (xviii) paragraph 17(a)(ii);
- (xix) paragraph 17(a)(iv);
- (xx) paragraph 17(a)(v);
- (xxi) paragraph 17(a)(vi);
- (xxii) paragraph 17(a)(vii);
- (xxiii) paragraph 17(b);
- (xxiv) paragraph 17(c);
- (xxv) paragraph 18;
- (xxvi) paragraph 19;
- (xxvii) paragraph 25;
- (xxviii) paragraph 26; and
- (xxix) paragraph 28,

of Part A of Schedule 2 (*Conditions Precedent*) following execution and delivery of this Agreement by each of the Persons expressed to be a party hereto; and

- (b) the remaining conditions precedent in this Clause 2.1 if, prior to the date of the Advance Request for the Initial Advance, the Intercreditor Agent has notified the Company and the Facility Agents accordingly.

2.1.3 Notwithstanding anything in this Agreement to the contrary, the Company may, from time to time prior to the CP Satisfaction Date, but no more frequently than once every five Business Days, submit or resubmit to the Intercreditor Agent for approval (if such approval is required) additional documents, instruments, agreements, certificates and other items listed under conditions precedent in Part A of Schedule 2 (*Conditions Precedent*) that were not deemed satisfied under Clause 2.1.2(a). The Intercreditor Agent agrees to promptly review and, where it considers appropriate under the terms of the Senior Finance Documents, determine whether to approve any such submittals or resubmittals by the Company (or, if it considers it not appropriate to make such determination acting on its own, the Intercreditor Agent agrees promptly to forward to the relevant Senior Secured Creditors such submittals or resubmittals for approval). Upon approval (whether by the Intercreditor Agent or the

Required Lenders, as the case may be), the Intercreditor Agent shall notify the Company and the Facility Agents accordingly, and the item(s) so submitted (or resubmitted) and notified approved shall be deemed to have been satisfied with the same effect as the conditions precedent enumerated in Clause 2.1.2(a) as of the date of such notification.

2.2 **Conditions Precedent to each Advance**

The obligation of each Lender to participate in each Advance under a Term Loan Facility and a Revolving Credit Facility is subject to:

- (a) the Company having satisfied the conditions set out in Part B of Schedule 2 (*Conditions Precedent*) in respect of such Facility in form and substance acceptable to the Intercreditor Agent; and
- (b) in respect of each Advance under a Revolving Credit Facility, the Company having procured that each of the:
 - (i) Sponsor's Subordination Deed of Release, Amendment and Acknowledgment of Security;
 - (ii) Debenture Deed of Amendment and Release;
 - (iii) Wynn International Share Charge Deed of Amendment and Acknowledgment of Security;
 - (iv) Wynn HK Share Charge Deed of Amendment and Acknowledgment of Security;
 - (v) Charge over HK Accounts Deed of Acknowledgment;
 - (vi) US Operating Account Control Agreement Confirmation Agreement;
 - (vii) Amendment to Mortgage;
 - (viii) Amendment to Land Security Assignment;
 - (ix) Amendment to Assignment of Rights;
 - (x) Amendment to Pledge over Gaming Equipment and Utensils;
 - (xi) Amendment to Pledge over Onshore Accounts;
 - (xii) Amendment to Assignment of Insurances;
 - (xiii) Amendment to Floating Charge;
 - (xiv) Amendment to Wong Share Pledge; and
 - (xv) Amendment to Company Share Pledge,

have been registered as necessary at Companies House in England and Wales, the Hong Kong Companies Registry, the Financial Supervision Commission of the Isle of Man, the Conservatória dos Registos Comercial e de Bens Móveis in Macau SAR, the Conservatória do Registo Predial in Macau SAR and the applicable Uniform Commercial Code filing office for local/county, state and federal Uniform Commercial Code filings, as applicable, based on the Senior Finance Document subject to the filing by no later than the date falling 30 days from the Second Amendment Signing Date.

2.3 **Independent rights and obligations of Lenders**

- 2.3.1 The obligations of each Senior Secured Creditor under the Senior Finance Documents are several. Failure by a Senior Secured Creditor to perform its obligations under the Senior Finance Documents does not affect the obligations of any other party under the Senior Finance Documents. No Senior Secured Creditor is responsible for the obligations of any other Senior Secured Creditor under the Senior Finance Documents.
- 2.3.2 The rights of each Senior Secured Creditor under or in connection with the Senior Finance Documents are separate and independent rights and any debt arising under the Senior Finance Documents to a Senior Secured Creditor from an Obligor shall be a separate and independent debt.
- 2.3.3 A Senior Secured Creditor may, except as otherwise stated in the Senior Finance Documents, separately enforce its rights under the Senior Finance Documents.
- 2.3.4 Notwithstanding any other provision of the Senior Finance Documents, no Lender under a Term Loan Facility shall be obliged to make or participate in an Advance on a proposed Advance Date if drawdowns under another Term Loan Facility have been withheld, suspended or cancelled in accordance with the Senior Finance Documents.

3. **DRAWDOWN OF ADVANCES**

3.1 **Drawdown conditions**

Subject to the terms of this Agreement and the Facility Agreements, the Company may request, and the relevant Lending Group shall make, Advances under a Facility if:

- 3.1.1 not later than 5:00 p.m. on the tenth Business Day before the proposed Advance Date (in the case of an Advance under the Term Loan Facilities and with any necessary amendments thereto made and received by the Intercreditor Agent and the relevant Facility Agent not later than 3:00 p.m. on the sixth Business Day before the proposed Advance Date) or the fourth day before the proposed Advance Date (in the case of an Advance under a Revolving Credit Facility), the Intercreditor Agent and the relevant Facility Agent have received a completed Advance Request; and
- 3.1.2 in the case of the Term Loan Facilities, no other Advance Request has been served by the Company in respect of any Term Loan Facility in the same month.

3.2 Completion of an Advance Request

Each Advance Request is irrevocable and shall not be regarded as having been completed unless:

- 3.2.1 it is signed by a Responsible Officer of the Company whose specimen signature has been delivered to the Intercreditor Agent and who is identified as being authorised to so sign on behalf of the Company by a resolution of its Board of Directors, a copy of which, together with a certification in relation thereto by a Responsible Officer in substantially the form set out in paragraph 3(ii) of Part C of Schedule 2 (*Conditions Precedent*), has also been delivered to the Intercreditor Agent;
- 3.2.2 the proposed Advance Date is a Business Day within the relevant Availability Period;
- 3.2.3 it specifies:
 - (a) the amount and currency of the Advances to be made;
 - (b) the Facility under which each such Advance shall be made;
 - (c) the first Interest Period for such Advances (which shall be the same for each such Advance requested under a Term Loan Facility);
 - (d) (in the case of Advances under the Term Loan Facilities) the purpose for which such Advances shall be applied (which shall be, in the case of Advances under the Hotel Facility, to pay or refinance payment of Hotel Project Costs and, in the case of Advances under the Project Facility, to pay or refinance payment of Project Costs which have, in each case, been incurred and paid or are due and payable, or which will or the Company reasonably expects might be incurred and be due and payable, prior to the date falling 30 days after the proposed Advance Date); and
 - (e) (in the case of Advances under the Revolving Credit Facility) the purpose for which such Advances shall be applied (which shall be, in the case of Advances under the Hotel Revolving Credit Facilities, to pay or refinance payment of Hotel Project Costs or otherwise for purposes unconnected with the operation of casino games of chance or other forms of gaming and, in the case of Advances under the Project Revolving Credit Facilities to pay or refinance payment of Project Costs or the Company's general corporate purposes).
- 3.2.4 the amount requested under each Facility is not more than the aggregate for the time being of each Lender's Available Commitment under such Facility and, in the case of:
 - (a) any Term Loan Facility, the amount requested is either a minimum amount of USD5,000,000 or (as the case may be) its HK dollar equivalent which is less than the aggregate for the time being of each Lender's Available Commitment under such Facility or, if less than such minimum amount, equal to this latter amount;

- (b) the Hotel Facility, the US dollar equivalent of the amount requested, when aggregated with the US dollar equivalent amounts of all other Advances under the Hotel Facility, is no greater than the US dollar equivalent amount of the aggregate of all Hotel Project Costs incurred and paid by the Company or which will or the Company reasonably expects might be incurred and be due and payable by it prior to the date falling 30 days after the proposed Advance Date;
 - (c) the Hotel Revolving Credit Facilities under the Revolving Credit Facility, the US dollar equivalent of the amount requested, when aggregated with the aggregate amount of Advances under the Hotel Facility referred to in sub-paragraph (b) above and the US dollar equivalent amounts of all other Advances under the Hotel Revolving Credit Facilities which are outstanding or due to be made on or before the proposed Advance Date (other than any due to be repaid or prepaid on or before such Advance Date) is no greater than the US dollar equivalent amount of the aggregate of all Hotel Project Costs or other amounts unconnected with the operation of casino games of chance or other forms of gaming incurred and paid or which will be incurred and paid by the Company; and
 - (d) the Revolving Credit Facilities, the aggregate amount requested is either a minimum amount of USD5,000,000 or (as the case may be) its HK dollar equivalent which is less than the aggregate for the time being of each Lender's Available Commitment under such Facility or, if less than such minimum amount, equal to this latter amount; and
- 3.2.5 it certifies, among other things and without any personal liability on the part of the officer of the Company signing such Advance Request, that:
- (a) (in the case of Advances under the Term Loan Facilities) the proceeds of any Advance under the Hotel Facility shall be applied to pay or refinance payment of Hotel Project Costs;
 - (b) (in the case of Advances under the Term Loan Facilities) the US dollar equivalent amount of any Advance under the Hotel Facility, when aggregated with the US dollar equivalent amounts of all other Advances under the Hotel Facility, is no greater than the US dollar equivalent amount of the aggregate of all Hotel Project Costs incurred and paid by the Company or which will or the Company reasonably expects might be incurred and be due and payable by it prior to the date falling 30 days after the proposed Advance Date;
 - (c) (in the case of Advances under the Hotel Revolving Credit Facilities) the US dollar equivalent of the amount requested, when aggregated with the aggregate amount of Advances under the Hotel Facility referred to in sub-paragraph (b) above and the US dollar equivalent amounts of all other

Advances under the Hotel Revolving Credit Facilities which are outstanding or due to be made on or before the proposed Advance Date (other than any due to be repaid or prepaid on or before such Advance Date) is no greater than the US dollar equivalent amount of the aggregate of all Hotel Project Costs or other amounts unconnected with the operation of casino games of chance or other forms of gaming incurred and paid or which will be incurred and paid by the Company;

- (d) no Default (or, in the case of any Rollover Advance (as defined in each Revolving Credit Facility Agreement), Event of Default) is continuing or would result from the proposed Advances; and
- (e) the representations and warranties contained in Schedule 4 (*Representations and Warranties*) which are repeated by the Company at the Advance Date are true and correct in all material respects with reference to the facts and circumstances existing on the date of the Advance Request.

4. **AVAILABILITY PERIODS**

4.1 **Hotel Facility Availability Period**

Subject to other terms of the Senior Finance Documents, the Hotel Facility shall be made available from the Effective Date until the date falling 5 Business Days from the Effective Date.

4.2 **Project Facility Availability Period**

Subject to other terms of the Senior Finance Documents, the Project Facility shall be made available from the Effective Date until the date falling 5 Business Days from the Effective Date.

4.3 **Revolving Credit Facility Availability Period**

Subject to other terms of the Senior Finance Documents, the Revolving Credit Facility shall be made available pursuant to the Revolving Credit Facility Agreement from the date of issue of the Project Certificate of Occupancy for the Original Project until the earliest of:

- (a) the Termination Date (as defined in the Revolving Credit Facility Agreement); and
- (b) the date upon which the Advances thereunder are declared to be immediately due and payable pursuant to Clause 19.2 (*Remedies following an Event of Default*).

4.4 **Additional Lender Facility Availability Period**

Subject to other terms of the Senior Finance Documents, the Additional Lender Facility shall be made available from the date of issue of the Project Certificate of Occupancy for the Original Project until the earliest of:

- (a) the Termination Date (as defined in the Additional Lender Facility Agreement); and

- (b) the date upon which the Advances thereunder are declared to be immediately due and payable pursuant to Clause 19.2 (*Remedies following an Event of Default*).

5. **PURPOSE**

5.1 **Purpose - General**

The Company shall apply the proceeds of each Advance under a Facility in accordance with the relevant Facility Agreement and this Agreement.

5.2 **No Obligation to be Concerned with Application**

None of the Senior Secured Creditors shall be obliged to concern themselves with the application of proceeds of the Facilities.

6. **PRO RATA DRAWINGS**

The Company shall ensure that:

- (a) where an Advance is requested under a Term Loan Facility, an Advance, as a proportion of the Available Commitments under such Facility, in a US dollar equivalent amount *pro rata* with that requested has also been requested to be made on the same Advance Date under each of the other Term Loan Facilities; and
- (b) where an Advance is requested under a Revolving Credit Facility, an Advance, as a proportion of the Available Commitments under such Facility, in a US dollar equivalent amount *pro rata* with that requested has also been requested to be made on the same Advance Date under each of the other Revolving Credit Facilities.

7. **[NOT USED]**

8. **REPAYMENTS, PREPAYMENTS AND CANCELLATION**

8.1 **Repayments**

The Company may repay principal amounts falling due under any Facility Agreement only in accordance with that Facility Agreement and this Agreement.

8.2 Voluntary Prepayment of the Term Loan Facilities

8.2.1 Subject to the other provisions of this Clause 8 and any applicable terms in the Facility Agreements, the Company may, on at least 30 days' prior written notice to the Intercreditor Agent (which notice shall, if not withdrawn prior thereto, become irrevocable on the tenth Business Day prior to the proposed prepayment date), make voluntary prepayments under the Term Loan Facilities on the last day of any Interest Period, *provided that* for each voluntary prepayment, the amount prepaid under the Term Loan Facilities must:

- (a) if prepaid prior to the Expansion Opening Date (other than in the case of paragraph (b)(i) below), equal the balance of the principal amount owing to all Term Loan Facility Lenders (and each of the Term Loan Facilities (and any Available Commitments thereunder) shall be automatically cancelled); or
- (b) if prepaid:
 - (i) using only the proceeds of Shareholder Loans not forming part of any other Equity required to be paid up or advanced in accordance with the terms of the Senior Finance Documents; or
 - (ii) following the Expansion Opening Date, exceed an aggregate of USD10,000,000 or its equivalent or, if less, the balance of the principal amount owing to all Term Loan Facility Lenders.

8.2.2 Amounts prepaid under sub-clause 8.2.1 above shall be applied on the Interest Payment Date on which they are made *pro rata* between the Advances outstanding under the Term Loan Facilities and applied *pro rata* against the repayment instalments of those Advances.

8.3 Mandatory Prepayment

8.3.1 The Company shall prepay Advances and/or cancel Available Commitments under the Facilities on the dates and in the amounts specified in Schedule 9 (*Mandatory Prepayment*) and this Clause 8.3.

8.3.2 Any amount prepaid under this Clause 8.3 and Schedule 9 (*Mandatory Prepayment*) shall be applied in the following order:

- (a) **first**, pro rata between the Advances outstanding under the Term Loan Facilities and then against the first year's repayment instalments thereof in order of maturity and thereafter in inverse order of maturity against the remaining repayment instalments of those Advances;
- (b) **second**, in cancellation of the Available Commitments under the Revolving Credit Facilities (and the Available Commitments of the Lenders under the Revolving Credit Facilities will be cancelled rateably); and
- (c) **thirdly**, in prepayment pro rata of Advances outstanding under the Revolving Credit Facilities (and any Available Commitments of the Lenders under the Revolving Credit Facilities associated therewith shall be automatically cancelled).

8.3.3 Each of the Facilities (and any Available Commitments thereunder) shall be automatically cancelled upon the Company being required to make prepayment pursuant to paragraph 7 of Schedule 9 (*Mandatory Prepayment*).

8.4 Cancellation

- (a) Save as provided in Clause 8.5 (*Prepayment and Cancellation of Individual Lenders*) and Clause 14 (*Illegality*), the Company may only cancel the whole or any part (being a minimum amount of USD25,000,000) of the Available Commitments under the Revolving Credit Facilities made available pursuant to the Revolving Credit Facility Agreements on not less than thirty days' prior irrevocable written notice to the Intercreditor Agent and the relevant Facility Agent, in all cases without penalty or payment of fees or charges save as provided for in Clause 8.6.2 (*Restrictions*) or the relevant Facility Agreement. Such cancellation shall apply *pro rata* across all Revolving Credit Facilities made available under the Revolving Credit Facility Agreements.
- (b) The Available Commitments of each Lender under each of the Term Loan Facilities will be automatically cancelled at the close of business in Hong Kong on the last day of the relevant Availability Period for that Term Loan Facility to the extent undrawn at that date.

8.5 Prepayment and Cancellation of Individual Lenders

If:

- (a) any sum payable to any Lender by the Company is required to be increased under Clause 11.2 (*Tax gross-up*); and/or
- (b) any Lender claims indemnification from the Company under Clause 11.3 (*Tax Indemnity*) or Clause 12 (*Increased costs*); and/or
- (c) a Market Disruption Event occurs in relation to any Advance for any Interest Period pursuant to Clause 10.2 (*Market disruption*); and/or
- (d) any Lender withholds its consent to the incurrence of any Financial Indebtedness by the Company such that the Intercreditor Agent is unable to approve the incurrence of additional Financial Indebtedness in accordance with paragraph 2.1(h) of Part B of Schedule 5 (*Covenants*) or the amendment or waiver of paragraph 2.1 of Part B of Schedule 5 (*Covenants*),

then, the Company may, subject to the other provisions hereof and, in the case of paragraph (d) above, whilst the circumstances described therein continue, and on giving at least fifteen days' prior irrevocable written notice to the Intercreditor Agent:

- (i) prepay that Lender's participation in the Advances outstanding under the relevant Facility Agreement on the Interest Payment Date which immediately ends after the Company's notice; and/or
- (ii) cancel that Lender's undrawn and uncanceled Available Commitments under the relevant Facility Agreement.

8.6 Restrictions

- 8.6.1 Any notice of cancellation or prepayment given under this Clause 8 shall be irrevocable if not withdrawn in accordance with Clause 8.2.1 (*Voluntary Prepayment of the Term Loan Facilities*) and shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of the cancellation or prepayment.
- 8.6.2 Any prepayment or cancellation pursuant to this Clause 8 shall be made together with accrued interest and fees on the amount prepaid or cancelled and without premium or penalty, save that the Company shall pay any Break Costs and any other fees specified in the relevant Facility Agreement.
- 8.6.3 The Company shall not repay or prepay all or any part of the Advances or cancel all or any part of the Available Commitments under any Facility Agreement except in accordance with that Facility Agreement and this Clause 8.
- 8.6.4 The Company may not reborrow any part of the Term Loan Facilities which is prepaid.
- 8.6.5 No amount of the Available Commitments cancelled under this Clause 8 may be subsequently reinstated.
- 8.6.6 If the Intercreditor Agent receives a notice under this Clause 8, it shall promptly forward a copy of that notice to either the Company or the affected Lender (or the Facility Agent acting for such Lender), as appropriate.
- 8.6.7 If, following any prepayment pursuant to this Clause 8, the US dollar equivalent of the aggregate of the Notional Amounts of the Hedging Agreements is more than 125% of the US dollar equivalent of the aggregate of the Advances outstanding under the Term Loan Facilities following such prepayment, the Company shall reduce each such Notional Amount *pro rata* so that their US dollar equivalent is, in aggregate, not less than 50% and not more than 125% of the US dollar equivalent of the aggregate of such Advances (and, if the Term Loan Facilities are prepaid in full, the Company shall, subject to Schedule 8 (*Hedging Arrangements*), unwind all remaining transactions under the Hedging Agreements).

8.7 Replacement of Lender

If any Lender:

- (a) claims any amounts from the Company under Clauses 11.2, 11.3 or 12 hereof;
- (b) fails to make its portion of any Advance to be made by it on the relevant Advance Date; or
- (c) withholds its consent in any of the circumstances contemplated in Clause 8.5(d),

(an “**Affected Lender**”), the Company may (after paying all amounts then due under Clauses 11.2, 11.3 and 12 hereof to the Affected Lender and, in the case of paragraph (c) above, whilst the circumstances referred to therein continue) designate a non-Affected Lender, any commercial bank or any other financial institution or bank reasonably satisfactory to the Intercreditor Agent (the “**Replacement Lender**”) to accept a transfer in accordance with Clause 21.6 of the Affected Lender’s rights, benefits and obligations hereunder, and, promptly following such designation, the Affected Lender shall be obliged to execute the Novation Certificate required for such transfer in accordance with Clause 21.6 and the non-Affected Lender may, but shall not be obliged to, execute such Novation Certificate and, if it does so, shall be obliged to accept such transfer in accordance with Clause 21.6. Any such acceptance of transfer shall be for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Affected Lender’s participation in the outstanding Advances and all accrued interest, Break Costs and other amounts payable in relation thereto under the Senior Finance Documents.

8.8 **Replacement of Non-Consenting Lender**

8.8.1 If at any time any Lender becomes a Non-Consenting Lender (as defined in Clause 8.8.3 below), then the Company may, on 15 Business Days’ prior written notice to the Intercreditor Agent and such Lender, replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause 21 (Changes to the Parties) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (a “Replacement Lender”) selected by the Company, and which is acceptable to the Intercreditor Agent (acting reasonably) which confirms its willingness to assume and does assume all the obligations of the transferring Lender (including the assumption of the transferring Lender’s participations on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender’s participation in the outstanding Advances and all accrued interest, Break Costs and other amounts payable in relation thereto under the Senior Finance Documents.

8.8.2 The replacement of a Lender pursuant to this Clause shall be subject to the following conditions:

- (a) neither the Intercreditor Agent nor the Lender shall have any obligation to the Company to find a Replacement Lender;
- (b) in the event of a replacement of a Non-Consenting Lender such replacement must take place no later than 60 days after the date the Non-Consenting Lender notifies the Company and the Intercreditor Agent of its failure or refusal to agree to any consent, waiver or amendment to the Senior Finance Documents requested by the Company; and
- (c) in no event shall the Lender replaced under this Clause 8.8.2 be required to pay or surrender to such Replacement Lender any of the fees previously received by such Lender pursuant to the Senior Finance Documents.

8.8.3 In the event that:

- (a) the Intercreditor Agent (at the request of the Company) has pursuant to Clause 33.1.2 notified the relevant Senior Secured Creditors of a Decision required in respect of a waiver or amendment of any provisions of the Senior Finance Documents;
- (b) the waiver or amendment in question requires the consent of all Lenders and, after the occurrence of a Hedging Voting Rights Event in relation to a Hedging Counterparty that is continuing, that Hedging Counterparty; and
- (c) Lenders and, after the occurrence and continuation of a Hedging Voting Right Event in relation to any Hedging Counterparty, that Hedging Counterparty, who hold, in aggregate, more than 66 2/3% of the Voting Entitlements of all such Senior Secured Creditors have voted in favour of that Decision,

then any Lender who does not and continues not to vote in favour of such Decision shall be deemed a “**Non-Consenting Lender**”.

8.9 **Anti-Terrorism and Restricted Party Events**

- (a) If any litigation, governmental, regulatory or other proceedings by OFAC, FinCEN or any equivalent United States or European Communities body (or any divisions of any of them or authority deriving power from any of them) is pending against a Lender (an “**Outgoing Lender**”) as a direct result of that Outgoing Lender’s (i) receipt of funds or other property from a Restricted Party or (ii) breach of any Anti-Terrorism Law, the Company may on 15 Business Days’ prior written notice to the Intercreditor Agent and such Outgoing Lender, replace such Outgoing Lender by requiring such Outgoing Lender to (and such Outgoing Lender shall) transfer pursuant to Clause 21.4 all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (an “**Incoming Lender**”) selected by the Company and which is acceptable to the Intercreditor Agent (acting reasonably), which confirms its willingness to assume and does assume all the obligations of the transferring Outgoing Lender (including the assumption of the transferring Outgoing Lender’s participations on the same basis as the transferring Outgoing Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Outgoing Lender’s participation in the outstanding Advances and all accrued interest and/or Break Costs and other amounts payable in relation thereto under the Senior Finance Documents.
- (b) The replacement of an Outgoing Lender pursuant to this Clause shall be subject to the following conditions:
 - (i) neither the Intercreditor Agent nor the Outgoing Lender shall have any obligation to the Company to find an Incoming Lender;
 - (ii) in the event of a replacement of an Outgoing Lender such replacement must take place no later than 60 days after the date the Outgoing Lender notifies the Company and the Intercreditor Agent of the occurrence of any event set out in paragraph (a) above; and

- (iii) in no event shall the Outgoing Lender replaced under this paragraph (b) be required to pay or surrender to such Incoming Lender any of the fees previously received by such Outgoing Lender pursuant to the Senior Finance Documents.

9. **INTEREST, INTEREST PERIODS AND DEFAULT INTEREST**

9.1 **Calculation of interest**

The Company shall pay interest under each Facility Agreement at the rate specified in that Facility Agreement.

9.2 **Payment of interest**

9.2.1 Subject to Clause 9.2.2 below, interest on each Advance shall be due on each Interest Payment Date relating to that Advance.

9.2.2 If an Interest Period for a Revolving Credit Facility Advance is 6 months or longer, interest on that Advance shall be due on the dates falling on three month intervals after the first day of that Interest Period *provided that* the last such due date shall be brought forward or postponed (as the case may be) so as to coincide with the Interest Payment Date relating to that Advance.

9.3 **Interest Periods**

The duration of each Interest Period shall be determined as follows:

9.3.1 Each Interest Period for a Term Loan Facility Advance shall start on the Advance Date for such Advance or (if already made) on the Effective Date and, thereafter, on the last day of its preceding Interest Period. A Revolving Credit Facility Advance has one Interest Period only which shall start on the Advance Date for such Advance.

9.3.2 Subject to this Clause 9, the duration of each Interest Period for each Advance under:

(a) a Term Loan Facility shall be: (A) prior to the First Repayment Date, one, two, three or six months and (B) on and from the First Repayment Date, one, two or three months; and

(b) a Revolving Credit Facility shall be one, two, three or six months,

in each case as the Company may, by not less than five (or, in the case of any Term Loan Facility Advance made on or prior to the Effective Date, two) Business Days' prior notice to the Facility Agent for such Facility, select, provided that Term Loan Facility Advances with the same Advance Date shall have the same Interest Period and, save in the case of each Initial Advance made thereunder, the first Interest Period for each Advance made under a Term Loan Facility shall end on the same day as the end of the current Interest Period of any other outstanding Advance made under the same Facility.

- 9.3.3 If the Company fails to give such notice of its selection in relation to an Interest Period, the duration of such Interest Period shall, subject to this Clause 9, be 3 months.
- 9.3.4 Any Interest Period which would otherwise extend beyond:
- (a) a Repayment Date (in the case of any Interest Period relating to an Advance under the Hotel Facility or the Project Facility); or
 - (b) the Revolving Credit Facility Termination Date (in the case of any Interest Period relating to an Advance under a Revolving Credit Facility),
- shall be of such duration that it shall end on such date.
- 9.3.5 If two or more Interest Periods relating to Advances in the same currency under the same Term Loan Facility end at the same time, then, on the last day of such Interest Periods, such Advances shall be consolidated into and treated as a single Advance.
- 9.3.6 The Company shall use reasonable efforts to at all times select the duration of Interest Periods so as to ensure that, in respect of such of the Advances outstanding under the Facilities as is from time to time equal to the Notional Amounts specified in the Hedging Agreements, the Interest Payment Dates for such Advances coincide with (and are no more frequent than) the selected dates for payment of amounts to the Company under the Hedging Agreements.
- 9.3.7 Any Interest Period which would end on a day which is not a Business Day shall be extended to the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).
- 9.3.8 Interest on an Advance shall accrue from and including the first day of an Interest Period relating to such Advance up to but excluding the last day of such Interest Period.

9.4 **Default interest**

- 9.4.1 If the Company fails to pay any amount payable by it under a Senior Finance Document on its due date, interest shall accrue on such Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to sub-clause 9.4.2 below, is 2% higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted an Advance under the relevant Facility Agreement in the currency of the overdue amount (or, where there is no such relevant Facility Agreement, an Advance in the relevant currency under the Hotel Facility Agreement) for successive Interest Periods, each of a duration selected by the relevant Facility Agent (each acting reasonably). Any interest accruing under this sub-clause 9.4.1 shall be immediately payable by the Company on demand in writing by the Intercreditor Agent or the relevant Facility Agent.

- 9.4.2 If any Unpaid Sum consists of all or part of an Advance which became due on a day which was not the last day of an Interest Period relating to that Advance:
- (a) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to that Advance; and
 - (b) the rate of interest applying to the Unpaid Sum during that first Interest Period shall be 2% per annum higher than the rate which would have applied if the overdue amount had not become due.
- 9.4.3 Default interest (if unpaid) arising on an Unpaid Sum shall be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but shall remain immediately due and payable.

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 Absence of quotations

Subject to Clause 10.2 (*Market disruption*), if LIBOR or HIBOR is to be determined by reference to the Reference Banks under any Facility Agreement but a Reference Bank does not supply a quotation on the Quotation Day under such Facility Agreement, the applicable LIBOR or HIBOR for the purpose of such Facility Agreement shall be determined on the basis of the quotations of the remaining Reference Banks under such Facility Agreement. Where LIBOR or HIBOR is to be determined by reference to the Reference Banks under any Facility Agreement and none or only one Reference Bank supplies a quotation, then LIBOR or, as the case may be, HIBOR shall be treated as incapable of being determined under such Facility Agreement.

10.2 Market disruption

10.2.1 If a Market Disruption Event occurs in relation to an Advance under a Facility for any Interest Period, the relevant Facility Agent shall promptly notify the Intercreditor Agent of the fact and that this Clause 10.2 is in operation and the Intercreditor Agent shall promptly notify the Company and the other Lenders.

10.2.2 For the purpose of this Clause 10.2, "**Market Disruption Event**" means:

- (a) in the case of a US dollar Advance:
 - (i) it is not possible, in respect of the Facility under which such Advance is made, to determine LIBOR in accordance with the provisions of the relevant Facility Agreement and Clause 10.1 (*Absence of quotations*); or
 - (ii) before the close of business in London on the Quotation Day for the relevant Interest Period, the Intercreditor Agent has been notified by a Lender or Lenders (whose participations in such Advance exceed 50 per cent of the Advance) that the cost to it/them of obtaining matching deposits in the London interbank market would be in excess of LIBOR;

(b) in the case of a HK dollar Advance:

- (i) it is not possible, in respect of the Facility under which such Advance is made, to determine HIBOR in accordance with the provisions of the relevant Facility Agreement and Clause 10.1 (*Absence of quotations*); or
- (ii) before the close of business in Hong Kong on the Quotation Day for the relevant Interest Period, the Intercreditor Agent has been notified by a Lender or Lenders (whose participations in such Advance exceed 50 per cent of the Advance) that the cost to it/them of obtaining matching deposits in the Hong Kong interbank market would be in excess of HIBOR.

10.2.3 Within five Business Days of the Intercreditor Agent notifying the Company in accordance with sub-clause 10.2.1 above, the Company and the Intercreditor Agent shall enter into good faith negotiations for a period of up to thirty days with a view to agreeing an alternative basis for determining the rate of interest applicable to the relevant Advances. Any alternative basis agreed shall be binding on all parties hereto until (subject to the terms of such agreement) the Market Disruption Event referred to in sub-clause 10.2.1 above is at an end and the Intercreditor Agent has notified the Facility Agents and the Company accordingly.

10.2.4 If no alternative basis is agreed pursuant to sub-clause 10.2.3 above by the earlier of (i) the thirty-day period provided in sub-clause 10.2.3 above and (ii) the Advance Date (where the notification under sub-clause 10.2.1 applies to any Advance which has not been made) or the last day of the Interest Period (where the notification under sub-clause 10.2.1 applies to an Advance which is outstanding), then each Lender participating in the relevant Advance shall, acting reasonably, certify an alternative basis for maintaining its participation in the relevant Advance which may include an alternative method of fixing the interest rate, alternative Interest Periods or alternative currencies but such alternative basis must reflect its cost of funding its participation in the relevant Advance from whatever sources it may in good faith select plus the applicable interest margin applicable to that Lender's participation in the relevant Advance. Each alternative basis so certified shall be binding on the Company and the certifying Lender and treated as part of this Agreement and the relevant Facility Agreement.

10.3 Break Costs

10.3.1 The Company shall, within three Business Days of demand by a Senior Secured Creditor, pay to that Senior Secured Creditor its Break Costs attributable to all or any part of an Advance or Unpaid Sum being paid by the Company on a day other than an Interest Payment Date for that Advance or Unpaid Sum.

10.3.2 Each Lender shall, as soon as reasonably practicable after a demand by the Intercreditor Agent or the Company, provide a certificate confirming the amount and providing reasonable supporting evidence of its Break Costs for any Interest Period in which they accrue.

11. TAX GROSS UP AND INDEMNITIES

11.1 Construction

Unless a contrary indication appears, in this Clause 11 a reference to “determines” or “determined” means a determination made in the absolute discretion of the Person making the determination.

11.2 Tax gross-up

11.2.1 The Company shall make all payments to be made by it under the Senior Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.

11.2.2 The Company or a Senior Secured Creditor shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Intercreditor Agent accordingly. Similarly, a Senior Secured Creditor shall notify the Intercreditor Agent on becoming so aware in respect of a payment payable to that Senior Secured Creditor. If the Intercreditor Agent receives such notification from a Senior Secured Creditor it shall promptly notify the Company.

11.2.3 If a Tax Deduction is required by law to be made by the Company, the amount of the payment due from the Company shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the amount which would have been due if no Tax Deduction had been required.

11.2.4 If the Company is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

11.2.5 After making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Company shall, if so requested in writing by the Intercreditor Agent, deliver to the Intercreditor Agent the payment evidence reasonably satisfactory to the relevant Senior Secured Creditor that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority (*provided* that the Company shall not be obliged to provide any such evidence from a Governmental Authority to the extent that it is not provided by such Governmental Authority).

11.3 Tax indemnity

11.3.1 The Company shall (within fifteen days of demand by the Intercreditor Agent) pay to a Senior Secured Creditor an amount equal to the loss, liability or cost which that Senior Secured Creditor determines has been (directly or indirectly) suffered for or on account of Tax by that Senior Secured Creditor in respect of a Senior Finance Document including Tax arising on payment of any premia or other sums payable on an Ancillary Finance Document whether or not such payment is required to be made by such Senior Secured Creditor.

11.3.2 Sub-clause 11.3.1 above shall not apply:

(a) with respect to any Tax assessed on a Senior Secured Creditor:

(i) under the law of the jurisdiction in which that Senior Secured Creditor is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Senior Secured Creditor is treated as resident for tax purposes; or

(ii) under the law of the jurisdiction in which that Senior Secured Creditor's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Senior Secured Creditor; or

(b) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 11.2 (*Tax gross-up*).

11.3.3 A Senior Secured Creditor making, or intending to make a claim under sub-clause 11.3.1 above shall promptly notify the Intercreditor Agent of the event which shall give, or has given, rise to the claim, following which the Intercreditor Agent shall promptly notify the Company.

11.3.4 A Senior Secured Creditor shall, on receiving a payment from the Company under this Clause 11.3, notify the Intercreditor Agent.

11.3.5 Each Senior Secured Creditor shall, as soon as practicable after a demand by the Intercreditor Agent, provide a certificate confirming the amount of the loss, liability or cost referred to in sub-clause 11.3.1 above and the basis thereof.

11.4 Tax Credit

If the Company makes a Tax Payment and the relevant Senior Secured Creditor determines that:

11.4.1 a Tax Credit is attributable to that Tax Payment; and

11.4.2 that Senior Secured Creditor has obtained, utilised and retained that Tax Credit, that Senior Secured Creditor shall pay an amount to the Company which that Senior Secured Creditor determines shall leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been made by the Company.

11.5 **Stamp taxes**

The Company shall pay and, within fifteen days of demand, indemnify each Senior Secured Creditor against any cost, loss or liability that a Senior Secured Creditor incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Senior Finance Document.

12. **INCREASED COSTS**

12.1 **Increased costs**

12.1.1 Subject to Clause 12.3 (*Exceptions*), the Company shall, within fifteen days of a demand by the Intercreditor Agent, pay for the account of a Lender the amount of any Increased Costs incurred by that Lender or any Affiliate of that Lender as a result of:

- (a) the introduction of or change in (or in the interpretation, administration or application of) any law or regulation after the Signing Date; or
- (b) compliance with any request or requirement relating to the maintenance of capital or any other request from or requirement of any central bank or other fiscal, monetary, regulatory or other authority.

12.1.2 In this Agreement "**Increased Costs**" means:

- (a) a reduction in the rate of return from a Facility or on a Lender's (or its Affiliate's) overall capital (including as a result of any reduction in the rate of return on capital brought about by more capital being required to be allocated by such Lender or Affiliate);
- (b) an additional or increased cost; or
- (c) a reduction of any amount due and payable under any Senior Finance Document,

which is incurred or suffered by a Lender or any of its Affiliates to the extent that it is attributable to that Lender's having entered into or maintaining its commitment or funding or performing its obligations under any Senior Finance Document.

12.2 **Increased cost claims**

12.2.1 When a Senior Secured Creditor intends to make a claim pursuant to Clause 12.1 (*Increased costs*), it shall notify the Intercreditor Agent of the event giving rise to the claim, following which the Intercreditor Agent shall promptly notify the Company.

12.2.2 Each Senior Secured Creditor shall, as soon as practicable after a demand by the Intercreditor Agent, provide a certificate confirming the amount of its Increased Costs and the basis thereof.

12.3 **Exceptions**

Clause 12.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

- 12.3.1 attributable to a Tax Deduction required by law to be made by the Company and compensated for by payment under Clause 11 (*Tax Gross Up and Indemnities*);
- 12.3.2 compensated for by Clause 11.3 (*Tax indemnity*) (or would have been compensated for under Clause 11.3 (*Tax indemnity*) but was not so compensated solely because one of the exclusions in sub-clause 11.3.2 of Clause 11.3 (*Tax indemnity*) applied); or
- 12.3.3 attributable to the wilful breach by the relevant Senior Secured Creditor or their Affiliates of any law or regulation.

13. **CURRENCY AND OTHER INDEMNITIES**

13.1 **Currency Indemnity**

If any Senior Secured Creditor receives an amount in respect of the Company's liability to that Senior Secured Creditor under any Senior Finance Document or if that liability is converted into a claim, proof, judgment or order in a currency other than the currency (the "**contractual currency**") in which the amount is expressed to be payable under that Senior Finance Document:

- 13.1.1 the Company shall indemnify that Senior Secured Creditor as an independent obligation against any costs, loss or liability arising out of or as a result of the conversion; and
- 13.1.2 if the amount received by that Senior Secured Creditor, when converted into the contractual currency at a market rate in the usual course of its business is less than the amount owed in the contractual currency and such is specified to the Company in reasonable detail, the Company shall, within 3 Business Days of its receipt of a written demand by such Senior Secured Creditor, pay to that Senior Secured Creditor an amount in the contractual currency equal to the deficit.

13.2 **Other Indemnities**

The Company shall, within fifteen days of demand, indemnify each Senior Secured Creditor against any cost, loss or liability incurred by that Senior Secured Creditor as a result of:

- 13.2.1 the occurrence of any Event of Default;
- 13.2.2 funding, or making arrangements to fund, its participation in an Advance requested by the Company in an Advance Request but not made by reason of the operation of any one or more of the provisions of the Senior Finance Documents (other than by reason of default or negligence by that Senior Secured Creditor alone);

- 13.2.3 an Advance (or part of an Advance) not being prepaid in accordance with a notice of prepayment given by the Company; and
- 13.2.4 any claim concerning either Project and its participation therein to the extent that loss or liability is suffered or incurred by that Senior Secured Creditor (other than by reason of default or negligence by a Senior Secured Creditor),
provided that, prior to the delivery of an Enforcement Notice, any such cost, loss or liability shall be reasonable.

13.3 **Indemnity to the Agents**

The Company shall, within fifteen days of demand, indemnify each of the Agents against any cost, loss or liability incurred by such Agent (acting reasonably) as a result of:

- 13.3.1 investigating any event which it reasonably believes is a Default; or
- 13.3.2 acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised,
provided that, prior to the delivery of an Enforcement Notice, any such cost, loss or liability shall be reasonable.

14. **ILLEGALITY**

If it becomes, or shall become, unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by the Senior Finance Documents to which it is a party or to fund or maintain its participation in any Advance:

- 14.1.1 that Lender shall promptly notify the Company through the Intercreditor Agent and the relevant Facility Agent upon becoming aware of that event; and
- 14.1.2 by the latest date necessary to ensure compliance with the relevant law or regulation:
 - (a) if the relevant Facility Agent so requires, the Company shall prepay that Lender's participation in all the Advances (or such lesser amount if required to comply with the relevant law or regulation) together with all other relevant amounts payable by it to that Lender under the Senior Finance Documents to which it is a party; and
 - (b) that Lender's undrawn Available Commitment (or such lesser amount if permitted by the relevant law or regulation) shall be cancelled.

15. **MITIGATION BY THE SENIOR SECURED CREDITORS**

15.1 **Mitigation**

15.1.1 Each Lender shall, in consultation with the Company, take all reasonable steps to mitigate or remove any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 10 (*Changes to the calculation of interest*), Clause 11 (*Tax Gross Up and Indemnities*), Clause 12 (*Increased Costs*) or Clause 14 (*Illegality*) including (but not limited to) transferring its rights and obligations under the Senior Finance Documents to another Affiliate or Facility Office.

15.1.2 Sub-clause 15.1.1 above does not in any way limit the obligations of any Obligor under the Senior Finance Documents.

15.2 **Indemnity by Company**

15.2.1 The Company shall indemnify each Senior Secured Creditor for all costs and expenses reasonably incurred by that Senior Secured Creditor as a result of steps taken by it under Clause 15.1 (*Mitigation*).

15.2.2 A Senior Secured Creditor is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Senior Secured Creditor (acting reasonably), to do so might be prejudicial to it.

16. **FEES, COSTS AND EXPENSES**

16.1 **Agency Fees**

The Company shall pay to each Agent for its own account a fee in amounts and on dates separately agreed between that Agent and the Company in the relevant Fee Letter.

16.2 **Transaction expenses**

The Company shall, within fifteen days of receipt of a written demand, pay the Agents the amount of all reasonable costs and expenses (including legal fees) incurred by any of them in connection with the review, negotiation, preparation, printing and execution of:

- (a) this Agreement, the other Senior Finance Documents and any other documents referred to herein or therein; and
- (b) any other Senior Finance Documents executed after the Signing Date,

in accordance with, in the case of any fees, costs and expenses of the Technical Adviser, Insurance Adviser and legal advisers appointed on or prior to the Signing Date, the appointment or engagement letters (if any) executed by the Company on or prior to the Signing Date.

16.3 **Amendment costs**

If the Company or any other Obligor requests an amendment, waiver or consent under any Senior Finance Document, the Company shall, within thirty days of demand, reimburse the Agents for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agents in responding to, evaluating, negotiating or complying with that request.

16.4 **Enforcement costs**

The Company shall, within fifteen days of written demand, pay to each Senior Secured Creditor the amount of all costs and expenses (including legal fees) incurred by that Senior Secured Creditor in connection with the enforcement of, or the preservation of, any rights under and in accordance with any Senior Finance Document *provided* that, prior to the delivery of an Enforcement Notice, such costs and expenses shall be reasonable.

17. **REPRESENTATIONS AND WARRANTIES**

17.1 **Matters represented**

The Company makes the representations and warranties set out in Schedule 4 (*Representations and Warranties*) to each Senior Secured Creditor as at each of the dates specified in Clause 17.2 (*Timing*).

17.2 **Timing**

17.2.1 Each of the representations and warranties set out in Schedule 4 (*Representations and Warranties*) of the common terms agreement set out as Schedule 2 (*Amended Common Terms Agreement*) of the Common Terms Agreement Second Amendment Agreement are deemed to be made by the Company (by reference to the facts and circumstances then existing) on the Third Amendment Signing Date.

17.2.2 Unless otherwise stated to have been made as of a specific date, each of the representations and warranties set out in Schedule 4 (*Representations and Warranties*) is made by the Company (with reference to the facts and circumstances then existing) on the Third Amendment Effective Date and (other than the representations and warranties set out in paragraphs 21.1 to 21.5 (inclusive) (*Subsidiaries and Beneficial Interest*) and 36 (*Wynn Asia 2*) of Schedule 4) is deemed to be repeated by the Company on each subsequent Advance Date (with reference to the facts and circumstances then existing), as if any reference therein to any Senior Finance Document in respect of which any amendment, acknowledgement, confirmation, consolidation, novation, restatement, replacement or supplement is expressed to be made by any of the documents referred to in Clause 1.3 (*Security Documents*) of the Common Terms Agreement Third Amendment Agreement or by the Common Terms Agreement Third Amendment Agreement included, to the extent relevant, such document and the Senior Finance Document as so amended, acknowledged, confirmed, consolidated, novated, restated, replaced or supplemented.

18. **COVENANTS**

18.1 **Content**

The Company undertakes to each of the Senior Secured Creditors that it shall comply with the covenants set out in Schedule 5 (*Covenants*).

18.2 Duration

The covenants in Schedule 5 (*Covenants*) shall remain in force from the Signing Date until the Senior Secured Indebtedness has been fully discharged.

19. EVENTS OF DEFAULT

19.1 Events of Default

Each of the events set out in Schedule 10 (*Events of Default*) is an Event of Default.

19.2 Remedies following an Event of Default

Upon the occurrence of an Event of Default and at any time thereafter whilst it is continuing or following issuance of an Enforcement Notice (as the case may be), the Intercreditor Agent shall, if so instructed by the Required Lenders, by written notice to the Company:

- 19.2.1 declare that the Available Commitments under any of the Facility Agreements be cancelled or suspended, whereupon they shall be cancelled or suspended;
- 19.2.2 declare that all or any part of the Advances, together with accrued interest, and all other amounts accrued or outstanding under the Senior Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
- 19.2.3 declare that all or part of the Advances be payable on demand, whereupon they shall immediately become payable on demand by the Intercreditor Agent;
- 19.2.4 notify the Security Agent that an Event of Default has occurred and is continuing and instruct the Security Agent to issue an Enforcement Notice;
- 19.2.5 following the issue of an Enforcement Notice, require the Security Agent to take action to enforce all or any part of the Security or all or any of the Shareholder Guarantees (subject to the expiration of any cure periods contained therein), whereupon any such action shall be taken;
- 19.2.6 following the issue of an Enforcement Notice, instruct the Security Agent to require the perfection of the Liens granted pursuant to the Land Security Assignment and the Assignment of Rights;
- 19.2.7 following the issue of an Enforcement Notice, give (or require the Security Agent to give) notices regarding the payment of insurance proceeds in accordance with the terms of the Senior Finance Documents;
- 19.2.8 following the issue of an Enforcement Notice, give (or require the Security Agent to give) notice to any Account Bank in relation to the operation of the Accounts in accordance with paragraph 3.3 (*Default*) of Schedule 6 (*Accounts*); and/or
- 19.2.9 exercise any or all other remedies available at law not inconsistent with the foregoing.

provided that the foregoing shall not in any way affect the Intercreditor Agent's or the Security Agent's right to separately enforce its rights under the Senior Finance Documents.

19.3 Remedies following a Wong Event

Without prejudice to Clause 19.2 (*Remedies following an Event of Default*) or in any way affecting the Intercreditor Agent's or the Security Agent's right to separately enforce its rights under the Senior Finance Documents, upon the occurrence of a Wong Event (as defined in the Wong Share Pledge) and at any time thereafter whilst it is continuing or following issuance of an Enforcement Notice (as the case may be), the Intercreditor Agent shall, if so instructed by the Required Lenders, require the Security Agent to take action to enforce all or any part of the Security granted pursuant to the Wong Share Pledge.

20. APPLICATION OF ENFORCEMENT PROCEEDS

After delivery of an Enforcement Notice and notwithstanding the provisions of Schedule 6 (*Accounts*), all Enforcement Proceeds shall be applied in accordance with the Deed of Appointment and Priority and Clause 33.6 (*Application of Enforcement Proceeds*).

21. CHANGES TO THE PARTIES

21.1 Binding Agreement

This Agreement shall be binding upon and enure to the benefit of each party hereto and its or any subsequent successors and transferees.

21.2 Assignment and Transfer by the Company or the GCLAs

21.2.1 The Company may not assign, transfer, novate or dispose of any of its rights or obligations under this Agreement or the other Senior Finance Documents.

21.2.2 The GCLAs may not assign or transfer its rights and/or obligations under this Agreement without the prior written consent of the Company.

21.3 Assignment and Transfer by Agents

Each Agent may assign or transfer any of its rights and obligations under any Senior Finance Document to which it is party only in accordance with its voluntary or requested resignation under and subject to the relevant Senior Finance Document and this Agreement and then only if it first procures that its assignee or transferee executes a duly completed Agent's Deed of Accession and Finance Party Accession Undertaking (also executed, in the case of the latter, by such Agent, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent) and promptly delivered by the Intercreditor Agent to the Security Agent) and enters into such other acknowledgements as may be necessary or desirable to protect the Security.

21.4 Assignment and Transfer by Lenders

21.4.1 Subject to the provisions of the Facility Agreement to which it is a party and execution and delivery by the assignee or Transferee of a Finance Party Accession Undertaking, any Lender may, at any time, assign in accordance with Clause 21.5 (*Assignments by Lenders*) all or any of its rights and benefits under the Senior Finance Documents or transfer in accordance with Clause 21.6 (*Transfers by Lenders*) all or any of its rights, benefits and obligations under the Senior Finance Documents to:

- (a) another Lender or an Affiliate of a Lender;
- (b) any commercial bank;
- (c) any other bank or financial institution or trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets; or
- (d) any other entity with the consent of the Company (such consent not to be unreasonably withheld or delayed and which consent shall not be required in respect of any assignment or transfer after the occurrence of an Event of Default which is continuing),

provided that all transactional costs (including any stamp duties, transfer taxes and any costs attributable to any transfer of Security) of such assignment or transfer shall be borne by the relevant Lender or assignee or Transferee except for:

- (i) any transfer in connection with the syndication of the Facilities, all such costs of which (including those set forth in Clause 21.7 (*Assignment and Transfer Fees*)) shall be borne by the Company; and
- (ii) any transfer contemplated by the Pre-Amendment Global Transfer Agreement or the Post-Amendment Global Transfer Agreement, all such costs of which shall be borne by the Company.

21.4.2 Any assignment or transfer of a Lender's participations in Advances outstanding or, as the case may be, Available Commitments under:

- (a) the Hotel Facility or the Project Facility shall be in a minimum amount of USD1,000,000 or its equivalent or, if less, equal to the aggregate of such Lender's participations or Available Commitments under such Facility; or
- (b) a Revolving Credit Facility shall be in a minimum amount of USD1,000,000 or its equivalent or, if less, equal to the aggregate of such Lender's participations or Available Commitments under such Facility.

21.5 Assignments by Lenders

If any Lender assigns all or any of its rights and benefits under the Senior Finance Documents in accordance with Clause 21.4 (*Assignment and Transfer by Lenders*), then, unless and until the assignee has delivered:

- (a) a notice to the Intercreditor Agent (which the Intercreditor Agent shall promptly copy to the Company and the other Senior Secured Creditors) confirming in favour of the Senior Secured Creditors that it shall be under the same obligations towards each of them as it would have been under if it had been an original party hereto as a Lender and to the relevant Facility Agreement as a Hotel Facility Lender, Project Facility Lender, Additional Lender or Revolving Credit Facility Lender (as the case may be); and
- (b) a duly completed Finance Party Accession Undertaking executed by such Lender, such assignee, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent),

(whereupon such assignee shall become a party hereto as a “Lender” or thereto as a “Hotel Facility Lender”, “Project Facility Lender”, “Additional Lender” or “Revolving Credit Facility Lender”), the Company and the Senior Secured Creditors shall not be obliged to recognise such assignee as having the rights against each of them which it would have had if it had been such a party hereto or thereto.

21.6 Transfers by Lenders

If any Lender wishes to transfer all or any of its rights, benefits and/or obligations under this Agreement and the corresponding rights, benefits and/or obligations under the other Senior Finance Documents as contemplated in Clause 21.4 (*Assignment and Transfer by Lenders*), then such transfer shall only be effective if the procedure set out in this Clause 21.6 is complied with. Such transfer shall be effected by the delivery to the Intercreditor Agent (which the Intercreditor Agent shall promptly copy to the Company and the other Senior Secured Creditors) of:

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

in which event, on the later of the Transfer Date specified in such Novation Certificate and the fifth Business Day after (or such earlier Business Day endorsed by the Intercreditor Agent on such Novation Certificate falling on or after) the date of delivery of such Novation Certificate and Finance Party Accession Undertaking to the Intercreditor Agent:

- 21.6.1 to the extent that in such Novation Certificate the Lender party thereto seeks to transfer by novation its rights, benefits and obligations under this Agreement and the corresponding rights, benefits and obligations under the other Senior Finance Documents, the Company and such Lender shall be released from further obligations towards one another under this Agreement and the corresponding rights, benefits and/or obligations under the other Senior Finance Documents and their respective rights against one another shall be cancelled (such rights and obligations being referred to in this Clause 21.6 as “**discharged rights and obligations**”);
- 21.6.2 each of the Company and the Transferee shall assume obligations towards one another and/or acquire rights against one another which differ from such discharged rights and obligations only insofar the Company and such Transferee have assumed and/or acquired the same in place of such other party and such Lender;
- 21.6.3 the Agents, the GCLAs, such Transferee and the other Lenders shall acquire the same rights and benefits and assume the same obligations between themselves as they would have acquired and assumed had such Transferee been an original party to this Agreement and the other relevant Senior Finance Documents as a Lender with the rights, benefits and/or obligations acquired or assumed by it as a result of such transfer and to that extent the Agents, the GCLAs and the relevant Lender shall each be released from further obligations to each other under this Agreement and the other relevant Senior Finance Documents; and
- 21.6.4 such Transferee shall become a party hereto as a “Lender” and to the relevant Facility Agreement as a “Hotel Facility Lender”, “Project Facility Lender”, “Additional Lender” or “Revolving Credit Facility Lender” (as the case may be).

21.7 **Assignment and Transfer Fees**

On the date upon which an assignment takes effect pursuant to Clause 21.5 (*Assignments by Lenders*) or a transfer takes effect pursuant to Clause 21.6 (*Transfers by Lenders*), the relevant assignee or Transferee shall pay to the Intercreditor Agent for its own account a fee of USD1,500.

21.8 **Disclosure of Information**

Any Senior Secured Creditor may disclose to any of its Affiliates and any other Person:

- 21.8.1 to (or through) whom such Senior Secured Creditor assigns or transfers (or may potentially assign or transfer) all or any of its rights, benefits and obligations in accordance with the Senior Finance Documents;

21.8.2 in the case of a Lender, with (or through) whom such Lender enters into (or may potentially enter into) any sub-participation in relation to the Senior Finance Documents or any Obligor; or

21.8.3 to whom information may be required to be disclosed by any applicable law or pursuant to any regulatory or stock exchange requirement; such information about any Obligor, the Projects and the Senior Finance Documents as such Senior Secured Creditor may consider appropriate, *provided* that the Person to whom such information is provided under sub-clause 21.8.1 or 21.8.2 first enters into a Confidentiality Undertaking (or, in the case of the Security Agent, the confidentiality undertaking referred to in clause 18.9 (*Disclosure of Information by Security Agent*) of the Deed of Appointment and Priority) and that the Company has received an original copy of such signed undertaking.

21.9 **Change of Facility Office**

Any Lender may change its Facility Office *provided* that the Company shall have no liability (or no increase in liability) under Clause 11 (*Tax gross-up and Indemnities*) or Clause 12 (*Increased costs*) which would not exist as at the date of such change but for such change, unless such change was requested by the Company pursuant to Clause 15 (*Mitigation by the Senior Secured Creditors*).

22. **HEDGING COUNTERPARTIES**

22.1 **Accession**

Each Hedging Counterparty shall execute and deliver to the Intercreditor Agent a Hedging Counterparty's Deed of Accession and shall execute and deliver to the Security Agent in accordance with the Deed of Appointment and Priority a Finance Party Accession Undertaking. A Hedging Counterparty may, at any time, assign all or any of its rights and benefits or transfer all or any of its rights, benefits and obligations under and in accordance with the Senior Finance Documents subject to delivery to the Intercreditor Agent of a duly completed:

- (a) Hedging Counterparty's Deed of Accession executed by the assignee or transferee; and
- (b) Finance Party Accession Undertaking executed by the assignee or transferee, the Hedging Counterparty, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent).

22.2 **Interest in the Security**

The obligations of the Company owed to each Hedging Counterparty shall be secured by the Security and each Hedging Counterparty shall be entitled to share in the Enforcement Proceeds in accordance with the Deed of Appointment and Priority and Clause 33.6 (*Application of Enforcement Proceeds*).

22.3 **Voting rights**

Nothing in this Clause 22 nor any other provisions of any Senior Finance Document shall be deemed to entitle any Hedging Counterparty in its capacity as such under any Hedging Agreement to exercise any voting, consent, approval or similar right under the Senior Finance Documents (other than the Hedging Agreements) including any right to participate in any Decision *provided that*:

22.3.1 each Hedging Counterparty shall have the right to participate in all Decisions after the occurrence of a Hedging Voting Right Event in relation to such Hedging Counterparty that is continuing; and

22.3.2 the consent of all Hedging Counterparties shall be required for any change to the matters referred to in paragraphs (a), (b), (f), (g), (h), (i) and (j) in the definition of "Fundamental Term" in Clause 1.1 (*Definitions*) and for any amendment to Clause 33.6 (*Application of Enforcement Proceeds*) and this Clause 22.

22.4 **Restrictions on Amendment**

Each Hedging Counterparty agrees that, except with the prior written consent of the Intercreditor Agent, no amendment may be made to a Hedging Agreement to an extent which would result in:

22.4.1 any payment under that Hedging Agreement being required to be made by the Company on any date other than the dates originally provided for in that Hedging Agreement; or

22.4.2 the Company becoming liable to make an additional payment under any Hedging Agreement which liability does not arise from the original provisions of that Hedging Agreement; or

22.4.3 the Company becoming liable to make any payment under that Hedging Agreement in any currency other than in the currency provided for under the original provisions of that Hedging Agreement.

22.5 **Restrictions on Termination**

No Hedging Counterparty may terminate a hedging facility or close out any hedging transaction under a Hedging Agreement prior to its stated maturity except in accordance with the terms of the ISDA Master Agreement and the ISDA Schedule (each as may be amended pursuant to paragraph 4 of Schedule 8 (*Hedging Arrangements*)).

22.6 **Termination at request of Intercreditor Agent**

After a notice has been given by the Intercreditor Agent pursuant to sub-clause 19.2.2 of Clause 19.2 (*Remedies following an Event of Default*), a Hedging Counterparty shall, at the written request of the Intercreditor Agent, terminate the hedging facility or close out any hedging transaction under the Hedging Agreement to which it is party in accordance with the terms of such Hedging Agreement.

23. **AGENTS AND GLOBAL COORDINATING LEAD ARRANGERS**

23.1 **Appointment and duties of the Agents**

23.1.1 Each of:

- (a) the Senior Secured Creditors appoints the Intercreditor Agent;
- (b) the Hotel Facility Lenders appoints the Hotel Facility Agent;
- (c) the Project Facility Lenders appoints the Project Facility Agent;
- (d) the Revolving Credit Facility Lenders appoints the Revolving Credit Facility Agent; and
- (e) the Additional Lenders appoints the Additional Lender Agent,

to act as its agent under and in connection with the Senior Finance Documents and irrevocably authorises it on its behalf to perform the duties and to exercise the rights, powers and discretions that are specifically delegated to it under or in connection with the Senior Finance Documents, together with any other incidental rights, powers and discretions.

23.1.2 None of the Agents may begin any legal action or proceeding in the name of a Senior Secured Creditor (other than itself) without that Senior Secured Creditor's consent.

23.1.3 Each Agent has only those duties which are expressly specified in the Senior Finance Documents, and those duties are solely of a mechanical and administrative nature.

23.2 **Relationship**

23.2.1 The relationship between each Agent and the relevant Senior Secured Creditors is that of principal and agent only. Nothing in this Agreement constitutes any Agent as trustee or fiduciary for any other Person and no Agent need hold in trust any moneys paid to it for a Person or be liable to account for interest on those moneys except to the extent expressly stated in a Senior Finance Document.

23.2.2 No Agent shall in any respect be the agent of the Company by virtue of this Agreement.

23.2.3 No Agent shall be liable to the Company for any breach by any other Senior Secured Creditor of any Senior Finance Document or be liable to any other Secured Creditor for any breach by the Company of the Senior Finance Documents.

23.3 **Role of the GCLAs**

Except as specifically provided in the Senior Finance Documents, none of the GCLAs has any obligations of any kind to any other Party under or in connection with any Senior Finance Document.

23.4 **Delegation**

Each Agent may act through its personnel and agents.

23.5 **Instructions**

23.5.1 Unless otherwise expressly provided in the Senior Finance Documents, the Intercreditor Agent shall act (and shall be fully protected if it so acts) in accordance with the instructions of the Required Lenders in connection with the exercise of any right, power or discretion under or in connection with the Senior Finance Documents.

23.5.2 Each Facility Agent shall be fully protected if it acts in accordance with the instructions of its Lending Group in connection with the exercise of any right, power or discretion under or in connection with any matter not expressly provided for in the Senior Finance Documents.

23.5.3 In the absence of such instructions each Agent may act, subject to the terms of the Senior Finance Documents, as that Agent, in its sole discretion, considers to be in the best interests of all the Senior Secured Creditors or, in the case of each Facility Agent, its Lending Group.

23.6 **Discretions**

Notwithstanding any provision of the Senior Finance Documents, each Agent may:

23.6.1 assume, unless it has, in its capacity as Agent, received written notice to the contrary from any other Party, that (a) any representation made or deemed to be made by an Obligor in connection with the Senior Finance Documents is true, (b) no Default has occurred, (c) no Obligor is in breach of or default under its obligations under the Senior Finance Documents and (d) any right, power, authority or discretion vested in the Senior Finance Documents upon the Required Lenders, a Lending Group, the Lenders or any other Person or group of Persons has not been exercised;

23.6.2 assume that (a) the Facility Office of each Lender is that notified to it by such Lender in writing and (b) the information provided by each Lender pursuant to Clause 29 (*Notices*) is true and correct in all respects until it has received from such Lender notice of a change to the Facility Office or any such information and act upon any such notice until the same is superseded by a further notice;

23.6.3 engage and pay for the advice or services of any lawyers, accountants, surveyors or other experts whose advice or services may to it seem necessary, expedient or desirable and rely upon any advice so obtained;

- 23.6.4 rely as to any matters of fact which might reasonably be expected to be within the knowledge of an Obligor upon a certificate signed by or on behalf of such Obligor;
- 23.6.5 rely upon any communication or document believed by it to be genuine;
- 23.6.6 refrain from exercising any right, power or discretion vested in it as Agent under the Senior Finance Documents unless and until instructed as described in Clause 23.5 (*Instructions*) as to whether or not such right, power or discretion is to be exercised and, if it is to be exercised, as to the manner in which it should be exercised;
- 23.6.7 refrain from acting in accordance with any instructions to begin any action or proceeding arising out of or in connection with the Senior Finance Documents until it shall have received such security as it may require (whether by way of payment in advance or otherwise) for all costs, claims, losses, expenses (including legal fees) and liabilities which it shall or may expend or incur in complying with such instructions;
- 23.6.8 refrain from acting where to do so would put it in breach of an applicable Legal Requirement;
- 23.6.9 treat each Facility Agent as the duly appointed and authorised agent of the relevant Lenders until it receives written notice to the contrary from the relevant Lenders; and
- 23.6.10 (in the case of the Intercreditor Agent) in applying any moneys received by it under any Security Document under Clause 33.6 (*Application of Enforcement Proceeds*), rely on any certificate made by the relevant Facility Agent or Hedging Counterparty as to the identity of, and the amounts owing to, any of the Senior Secured Creditors and shall be protected in so relying.

23.7 **Agents' Obligations**

23.7.1 Each Agent shall:

- (a) promptly inform each Senior Secured Creditor (in the case of the Intercreditor Agent) or the Intercreditor Agent and the Lenders in its Lending Group (in the case of each Facility Agent) of the contents of any notice or document received by it pursuant to the terms of any Senior Finance Document in its capacity as Agent from the Security Agent or an Obligor under the Senior Finance Documents; and
- (b) promptly notify each Senior Secured Creditor (in the case of the Intercreditor Agent) or the Intercreditor Agent and the Lenders in its Lending Group (in the case of each Facility Agent) of the occurrence of any Event of Default or any default by an Obligor in the due performance of or compliance with its obligations under the Senior Finance Documents of which such Agent has notice from any other party.

23.7.2 The Intercreditor Agent shall promptly inform the Security Agent of the occurrence of the Release Date.

23.8 Excluded Obligations

Notwithstanding anything to the contrary expressed or implied herein, none of the Agents nor any of the GCLAs shall:

- 23.8.1 be bound to enquire as to (a) whether or not any representation made or deemed to be made by an Obligor in connection with the Senior Finance Documents is true, (b) the occurrence or otherwise of any Default, (c) the performance by an Obligor of its obligations under the Senior Finance Documents or (d) any breach of or default by an Obligor of or under its obligations under the Senior Finance Documents;
- 23.8.2 be bound to account to any Senior Secured Creditor for any sum or the profit element of any sum received by it for its own account;
- 23.8.3 be bound to disclose to any other Person any information relating to any Obligor, any party to a Project Document or any of their respective related entities if (a) such Person, on providing such information, expressly stated to such Agent or, as the case may be, such GCLA, that such information was confidential or (b) such disclosure would or might in its opinion constitute a breach of any law or be otherwise actionable at the suit of any Person; or
- 23.8.4 be under any obligations other than those for which express provision is made herein or in any other Senior Finance Document to which such Agent or GCLA is a party.

23.9 Exclusion of Liabilities

None of the Agents and the GCLAs accepts any responsibility:

- 23.9.1 for the adequacy, accuracy and/or completeness of the Information Memorandum or any other information supplied by the Agents or the GCLAs, by an Obligor or by any other Person in connection with the Senior Finance Documents, the transactions therein contemplated or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents;
- 23.9.2 for the legality, validity, effectiveness, adequacy or enforceability of the Senior Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents; or
- 23.9.3 for the exercise of, or the failure to exercise, any judgement, discretion or power given to any of them by or in connection with the Senior Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents.

Accordingly, none of the Agents and the GCLAs shall be under any liability (whether in negligence or otherwise) in respect of such matters.

23.10 No Actions

Each of the Lenders and the Hedging Counterparties agrees that it shall not assert or seek to assert against any director, officer or employee of any of the Agents or any of the GCLAs any claim it might have against any of them.

23.11 Business with the Obligors

Each Agent and GCLA may accept deposits from, lend money to and generally engage in any kind of banking or other business with any of the Obligors or their Affiliates.

23.12 Resignation

23.12.1 An Agent may resign its appointment hereunder at any time without assigning any reason therefor by giving not less than 25 Business Days' prior notice to that effect to the Senior Secured Creditors and the Company, in which case:

- (a) the Required Lenders (in the case of the Intercreditor Agent) may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of the Required Lenders and the Company or, failing such agreement within 15 Business Days after such notice of resignation, the Required Lenders may appoint a successor Agent on the same terms and conditions as previously applied to the outgoing Agent; and
- (b) the relevant Lending Group under a Facility (in the case of a Facility Agent for that Facility) may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of such Lending Group and the Company or, failing such agreement within 15 Business Days after such notice of resignation, the Lending Group may appoint a successor Agent on the same terms and conditions as previously applied to the outgoing Agent.

23.12.2 If the Required Lenders have not, within 15 Business Days after notice of resignation, appointed a successor Intercreditor Agent which accepts the appointment, the outgoing Agent may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of the Intercreditor Agent and the Company or, failing such agreement within 25 Business Days after notice of resignation, the Intercreditor Agent may appoint a successor Agent on the same terms and conditions as previously applied to it.

23.12.3 If a Lending Group has not, within 15 Business Days after notice of resignation appointed a successor Facility Agent which accepts the appointment, the outgoing Facility Agent may appoint a successor Facility Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be

subject to the prior agreement of the outgoing Facility Agent and the Company or, failing such agreement within 25 Business Days after notice of resignation, the outgoing Facility Agent may appoint a successor Facility Agent on the same terms and conditions as previously applied to it.

- 23.12.4 If, at the time of expiry of the period specified in sub-clause 23.12.2 or, as the case may be, sub-clause 23.12.3 above, the outgoing Agent cannot find a successor owing to the unwillingness of any proposed successor to accept the terms and conditions which apply to the outgoing Agent, the Company shall offer to any proposed successor such terms and conditions as are consistent with the role to be performed, taking into account the current market for the performance of such duties and the then existing circumstances of the Projects.
- 23.12.5 If the Agent has not been paid an amount due to it under the Senior Finance Documents and gives notice thereof as its reason for resigning together with its notice pursuant to Clause 23.12.1, it shall not be obliged to appoint a successor. If, at the time of expiry of the period specified in clause 23.12.1, the Required Lenders or, as the case may be, the relevant Lending Group, cannot find a successor owing to the unwillingness of any proposed successor to accept the terms and conditions which apply to the outgoing Agent, the Company shall offer to any proposed successor such terms and conditions as are consistent with the role to be performed, taking into account the current market for the performance of such duties and the then existing circumstances of the Projects.
- 23.12.6 The resignation of an Agent and the appointment of any successor Agent shall both become effective only upon the successor Agent executing an Agent's Deed of Accession *provided* that, where the Agent has notified the reason for its resignation pursuant to Clause 23.12.5, its resignation shall become effective upon the expiry of the period notified by it pursuant to Clause 23.12.1. Upon the execution of an Agent's Deed of Accession, the successor Agent shall succeed to the position of the retiring Agent (as the case may be) under the Senior Finance Documents and the term "Agent" shall mean the successor Agent.
- 23.12.7 The Intercreditor Agent agrees that it shall, if so requested in writing by the Required Lenders, tender its resignation in accordance with this Clause 23.12.
- 23.12.8 Each Facility Agent agrees that it shall, if so requested in writing by its Lending Group, tender its resignation in accordance with this Clause 23.12.
- 23.12.9 Upon the appointment of a successor (or, as the case may be, its resignation becoming effective), the retiring Agent shall be discharged from any future (but not accrued) obligations in respect of the Senior Finance Documents but shall remain entitled to the benefit of Clause 13.2 (*Other Indemnities*) and sub-clauses 23.1, 23.2, 23.5.2, 23.5.3, 23.6.10, 23.8, 23.9, 23.10 and 23.15 of this Clause 23.

23.13 Own Responsibility

It is understood and agreed by each Senior Secured Creditor that at all times it has itself been, and shall continue to be, solely responsible for making its own independent appraisal of and investigation into all risks arising under or in connection with the Senior Finance Documents including, but not limited to:

23.13.1 the financial condition, creditworthiness, condition, affairs, status and nature of the Projects and each Obligor;

23.13.2 the legality, validity, effectiveness, adequacy and enforceability of the Senior Finance Documents and any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents;

23.13.3 whether such Senior Secured Creditor has recourse, and the nature and extent of that recourse, against an Obligor or any other Person or any of their respective assets under or in connection with the Senior Finance Documents, the transactions therein contemplated or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents; and

23.13.4 the adequacy, accuracy and/or completeness of the Information Memorandum and any other information provided by the Agents or the GCLAs, an Obligor, or by any other Person in connection with the Senior Finance Documents, the transactions contemplated therein or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents.

Accordingly, each Senior Secured Creditor acknowledges to the Agents and the GCLAs that it has not relied on and shall not hereafter rely on the Agents and the GCLAs or any of them in respect of any of these matters.

23.14 Agency Division Separate

In acting as Agent under the Senior Finance Documents, each of the Agents shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments and, notwithstanding the foregoing provisions of this Clause 23, any information received by some other division or department of such Agent may be treated as confidential and shall not be regarded as having been given to such Agent's agency division.

23.15 Indemnity to Intercreditor Agent

23.15.1 Each Senior Secured Creditor shall rateably in accordance with the proportion that the US dollar equivalent of the sum of its Available Commitments and its participations in any outstanding Advances bear to the US dollar equivalent of the aggregate of the Available Commitments and such participations of all the Senior Secured Creditors (or, if all such amounts have been reduced to zero, such proportion determined immediately prior to such reduction) for the time

being, indemnify the Intercreditor Agent, within fifteen days of demand (accompanied by reasonable written certification), against cost, loss or liability incurred by the Intercreditor Agent (other than by reason of the fraud, negligence or wilful misconduct of the Intercreditor Agent) in acting as Intercreditor Agent in accordance with the terms of the Senior Finance Documents (unless the Intercreditor Agent has been reimbursed by, or indemnified to its satisfaction by, an Obligor pursuant to a Senior Finance Document or otherwise in writing). For the purposes of this Clause 23.15.1, each Hedging Counterparty shall, in respect of each Hedging Agreement entered into by it, be deemed to have made an Advance to the Company in an amount equal to the Realised Hedge Loss (if any) under the Hedging Agreement to which such Hedging Counterparty is party.

23.15.2 Clause 23.15.1 shall not apply to the extent that the Intercreditor Agent is otherwise actually indemnified or reimbursed by any Party under any other provision of the Senior Finance Documents.

23.15.3 Provided that the Company is required to reimburse or indemnify the Intercreditor Agent for such cost, loss or liability in accordance with the terms of the Senior Finance Documents, the Company shall, within fifteen days of demand in writing by any Senior Secured Creditor, indemnify such Senior Secured Creditor in relation to any payment actually made by such Senior Secured Creditor pursuant to Clause 23.15.1 above.

24. CONDUCT OF BUSINESS BY THE SENIOR SECURED CREDITORS

No provision of the Senior Finance Documents shall:

24.1.1 interfere with the right of any Senior Secured Creditor to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

24.1.2 subject to Clause 15 (*Mitigation by Senior Secured Creditors*), oblige any Senior Secured Creditor to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

24.1.3 oblige any Senior Secured Creditor to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

25. SHARING AMONG THE SENIOR SECURED CREDITORS

25.1 Payments to Senior Secured Creditors

If a Senior Secured Creditor (a "**Recovering Senior Secured Creditor**") receives or recovers any amount from an Obligor other than in accordance with the provisions of the Senior Finance Documents (excluding any such provision which permits the setting off of obligations owed by such Obligor against obligations owed to it by such Recovering Senior Secured Creditor but allowing, for the avoidance of doubt, any such provision in any Hedging Agreement permitting netting off between transactions under such Hedging Agreement) and applies that amount to a payment due under the Senior Finance Documents then:

25.1.1 the Recovering Senior Secured Creditor shall, within 5 Business Days, notify details of the receipt or recovery, to the Intercreditor Agent;

25.1.2 the Intercreditor Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Senior Secured Creditor would have been paid had the receipt or recovery been received and distributed in accordance with this Agreement, without taking account of any Tax which would be imposed on that Agent in relation to the receipt, recovery or distribution; and

25.1.3 the Recovering Senior Secured Creditor shall, within 10 Business Days of demand by the Intercreditor Agent, pay to the Intercreditor Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Intercreditor Agent determines may be retained by the Recovering Senior Secured Creditor as its share of any payment to be made, in accordance with this Agreement.

25.2 **Redistribution of payments**

The Intercreditor Agent shall treat the Sharing Payment as if it had been paid by the Company and distribute it between the Senior Secured Creditors (other than the Recovering Senior Secured Creditor) in accordance with this Agreement.

25.3 **Recovering Senior Secured Creditor’s Rights**

25.3.1 On a distribution by the Intercreditor Agent under 25.2 (*Redistribution of payments*), the Recovering Senior Secured Creditor shall be subrogated to the rights of the Senior Secured Creditors which have shared in the redistribution.

25.3.2 If and to the extent that the Recovering Senior Secured Creditor is not able to rely on its rights under sub-clause 25.3.1 above, the Company shall be liable to the Recovering Senior Secured Creditor for a debt equal to the Sharing Payment which is immediately due and payable.

25.4 **Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Senior Secured Creditor becomes repayable and is repaid by such Recovering Senior Secured Creditor, then:

25.4.1 each Senior Secured Creditor which has received a share of such Sharing Payment pursuant to Clause 25.2 (*Redistribution of payments*) shall, upon request of the Intercreditor Agent, pay to the Intercreditor Agent for account of that Recovering Senior Secured Creditor an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Senior Secured Creditor for its proportion of any interest on the Sharing Payment which that Recovering Senior Secured Creditor is required to pay); and

25.4.2 that Recovering Senior Secured Creditor's rights of subrogation in respect of any reimbursement shall be cancelled and the Company shall be liable to the reimbursing Senior Secured Creditor for the amount so reimbursed.

25.5 **Exceptions**

This Clause 25 shall not apply to the extent that the Recovering Senior Secured Creditor would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.

25.6 **Benefit**

The provisions of this Clause 25 are for the sole benefit of the Senior Secured Creditors and may be waived or amended by the Required Lenders without the consent of the Company provided there is no increase in the liability of the Company as a result.

26. **PAYMENT MECHANICS**

26.1 **Payments under the Senior Finance Documents**

26.1.1 ***Prior to an Event of Default***

Unless and until an Event of Default has occurred and is continuing:

- (a) all payments to be made by the Company to or for the account of any Lender under the Facility Agreement to which that Lender is a party shall be made to the relevant Facility Agent under that Facility Agreement for the account of that Lender, in the manner stipulated in the relevant Facility Agreement; and
- (b) all payments to be made by a Lender under a Facility Agreement shall be made to the relevant Facility Agent, not later than the time (if any) specified in the relevant Facility Agreement, to its account at such office or bank as it may notify to that Lender from time to time for this purpose.

26.1.2 ***After the occurrence of an Event of Default***

Subject to the Deed of Appointment and Priority, after the occurrence of an Event of Default that is continuing and unless the Intercreditor Agent agrees in writing that payment should continue to be made in accordance with sub-clause 26.1.1 (*Prior to an Event of Default*):

- (a) all payments to be made by the Company to or for the account of any Senior Secured Creditor or under any Senior Finance Document shall be made to the Intercreditor Agent (other than any such payments to be made to or for the account of the Security Agent which shall continue to be made to the Security Agent);
- (b) all payments to be made by any Lender under any Senior Finance Document (whether pursuant to Clause 25 (*Sharing Among the Senior Secured Creditors*) or otherwise) shall be paid to the Intercreditor Agent; and

- (c) all payments received by the Intercreditor Agent under this sub-clause 26.1.2 shall be distributed in accordance with Clause 33.6 (*Application of Enforcement Proceeds*) to the Person(s) specified therein or, where any such Person is a Lender, to the relevant Facility Agent for the account of that Lender.

26.2 Payments by an Agent

26.2.1 Save as otherwise provided herein, each payment received by an Agent as agent for or otherwise for the benefit of another Person shall, subject to Clause 26.3 (*Distributions to an Obligor*) and Clause 26.4 (*Clawback*), be made available by that Agent to the Person entitled to receive such payment for value the same day by transfer to such account of such Person with such bank in the principal financial centre of the country of the relevant currency as such Person shall have previously notified to that Agent.

26.2.2 A payment shall be deemed to have been made by an Agent on the date on which it is required to be made under the Senior Finance Documents if such Agent has, on or before that date, taken steps to make that payment in accordance with the regulations or operating procedures of the clearing or settlement system used by such Agent in order to make the payment.

26.3 Distributions to an Obligor

Each Agent may (with the consent of the relevant Obligor or in accordance with Clause 27 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Senior Finance Documents or in or towards purchase of any amount of any currency to be so applied at a market rate of exchange in its usual course of business.

26.4 Clawback

26.4.1 Where a sum is to be paid to an Agent under the Senior Finance Documents for another Person, that Agent is not obliged to pay that sum to that Person until it has been able to establish to its satisfaction that it has actually received that sum.

26.4.2 If an Agent pays an amount to another Person and it proves to be the case that Agent had not actually received that amount, then the Person to whom that amount was paid by that Agent shall on demand refund the same to that Agent together with interest on that amount from the date of payment to the date of receipt by that Agent, calculated by that Agent to reflect its cost of funds.

26.5 No Set-off by Obligors

All payments to be made by an Obligor under the Senior Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

26.6 Business Days

26.6.1 Any payment which is due to be made under any Senior Finance Document on a day that is not a Business Day shall be made on the next Business Day in the calendar month (if there is one) or the preceding Business Day (if there is not).

26.6.2 During any extension of the due date for payment of any principal pursuant to sub-clause 26.6.1 above, interest is payable on that principal at the rate payable on the original due date.

26.7 Currency of account

26.7.1 A repayment of an Advance or Unpaid Sum or a part of an Advance or Unpaid Sum shall be made in the currency in which the Advance or Unpaid Sum is denominated on its due date.

26.7.2 Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.

26.7.3 Each payment in respect of costs, expenses or Taxes under the Senior Finance Documents shall be made in the currency in which the costs, expenses or Taxes are incurred.

26.7.4 Any other amount payable under any of the Senior Finance Documents is, except as otherwise provided elsewhere in the Senior Finance Documents, payable in US dollars.

27. SET-OFF

Without prejudice to the provisions of Schedule 6 (*Accounts*) and subject to the terms of Clause 25 (*Sharing Among the Senior Secured Creditors*) and Clause 33 (*Intercreditor Arrangements*), a Senior Secured Creditor may, upon the occurrence of an Event of Default and for so long as it is continuing, set off any matured obligations owed by the Company under the Senior Finance Documents (to the extent beneficially owned by that Senior Secured Creditor) against any obligation (which, for the purpose of this provision only, shall be treated as due and payable, save for unmatured obligations under the Hedging Agreements) owed by that Senior Secured Creditor to the Company, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Senior Secured Creditor may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

28. NON-RECOURSE LIABILITY

Notwithstanding any provision in the Senior Finance Documents to the contrary no Operative shall be personally liable for payments due hereunder or under any of the Senior Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Senior Finance Document to which such Operative is party. The sole recourse of the Senior Secured Creditors for satisfaction of any of the obligations of any of the Obligors hereunder and under the

other Senior Finance Documents shall be against the Obligors, and not against any assets or property of any Operative save to the extent such Operative is party to a Senior Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

29. **NOTICES**

29.1 **Communications in Writing**

Any notice, demand or other communication (each, for the purposes of this Clause 29, a “**communication**”) to be made under or in connection with the Senior Finance Documents shall be made in writing but, unless otherwise stated, may be made by fax or letter.

29.2 **Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with the Senior Finance Documents is:

29.2.1 in the case of the Company, each of the GCLAs, each of the Agents, each of the Lenders and each of the Hedging Counterparties party to the Common Terms Agreement Second Amendment Agreement, identified with its name on the signing pages thereto; and

29.2.2 in the case of each other Lender, each other Hedging Counterparty and each other Obligor, that notified in writing to the Intercreditor Agent prior to the date it becomes a party to the Senior Finance Documents,

or any substitute address, fax number or department or officer as the party may notify to the Intercreditor Agent (or the Intercreditor Agent may notify to the other parties, if a change is made by the Intercreditor Agent) by not less than 10 Business Days’ notice.

29.3 **Delivery**

29.3.1 Any communication or document made or delivered by one Person to another under or in connection with the Senior Finance Documents shall only be effective:

- (a) if delivered personally or by overnight courier, when left at the relevant address;
- (b) if by way of fax, when received in legible form; or
- (c) if by way of letter, when it has been left at the relevant address or 10 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address, and, if a particular department or officer is specified as part of its address details provided under Clause 29.2 (*Addresses*), if addressed to that department or officer.

29.3.2 Any communication or document to be made or delivered to an Agent shall be effective only when actually received by that Agent and then only if it is expressly marked for the attention of the department or officer specified as part of its address details provided under Clause 29.2 (*Addresses*) (or any substitute department or officer as that Agent shall specify for this purpose).

29.3.3 All notices to an Obligor shall be sent through a Facility Agent or the Intercreditor Agent (but always with a copy to the Intercreditor Agent). All notices from an Obligor under the Senior Finance Documents shall be sent to the Intercreditor Agent who shall distribute them to the Senior Secured Creditors.

29.4 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 29.2 (*Addresses*) or changing its own address or fax number, the Intercreditor Agent shall notify the other parties.

29.5 Electronic communication

29.5.1 Any communication to be made between an Agent and a Lender or between an Agent and another Agent under or in connection with the Senior Finance Documents may be made by electronic mail or other electronic means, if that Agent and the relevant Lender or Agent:

- (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (b) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- (c) notify each other of any change to their address or any other such information supplied by them.

29.5.2 Any electronic communication made between an Agent and a Lender or another Agent shall be effective only when actually received in readable form and in the case of any electronic communication made by a Lender to an Agent or by an Agent to another Agent only if it is addressed in such a manner as the relevant Agent shall specify for this purpose.

29.6 Electronic supply of materials

- (a) The Company shall (and shall ensure that each other Obligor shall), unless otherwise requested by the Intercreditor Agent, provide to the Intercreditor Agent all information, documents and other materials that such Obligor is obligated to furnish to the Intercreditor Agent pursuant to the Senior Finance Documents, including, without limitation, all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to a request for

a new, or a conversion of an existing, Advance or other extension of credit (including any election of an interest rate or Interest Period relating thereto), (ii) relates to the payment of any principal or other amount due under any Senior Finance Document prior to the scheduled date therefor, (iii) provides notice of any Default under any Senior Finance Document, (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of any Senior Finance Document and/or any Advance or other extension of credit hereunder or (v) initiates or responds to legal process (all such non-excluded information being referred to herein collectively as the “**Communications**”) by transmitting the Communications in an electronic/soft medium (provided such Communications contain any required signatures) in a format acceptable to the Intercreditor Agent to each of michael.poon@sgcib.com, kenneth.choi@sgcib.com and sunny.lui@sgcib.com (or such other e-mail address or addresses designated by the Intercreditor Agent from time to time).

- (b) Each party hereto agrees that the Intercreditor Agent may make the Communications available to the any Senior Secured Creditor by posting the Communications on IntraLinks or another relevant website, if any, to which such Senior Secured Creditor has access (whether a commercial, third-party website or whether sponsored by the Intercreditor Agent) (the “**Platform**”). Nothing in this Clause 29.6 shall prejudice the right of the Intercreditor Agent to make the Communications available to any Senior Secured Creditor in any other manner specified in this Agreement or any other Senior Finance Documents.
- (c) Each Senior Secured Creditor agrees that e-mail notice to it (at the address provided pursuant to the next sentence and deemed delivered as provided in the next paragraph) specifying that Communications have been posted to the Platform shall constitute effective delivery of such Communications to such Senior Secured Creditor for purposes of this Agreement and the other Senior Finance Documents. Each Senior Secured Creditor agrees (i) to notify the Intercreditor Agent in writing (including by electronic communication) from time to time to ensure that the Intercreditor Agent has on record an effective e-mail address for such Senior Secured Creditor to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such e-mail address.
- (d) Notwithstanding Clause 29.6(e) below, each party hereto agrees that any electronic communication referred to in this Clause 29.6 shall be deemed delivered upon the posting of a record of such communication (properly addressed to such party at the e-mail address provided to the Intercreditor Agent) as “sent” in the e-mail system of the sending party or, in the case of any such communication to the Intercreditor Agent, upon the posting of a record of such communication as “received” in the e-mail system of the Intercreditor Agent; provided that if such communication is not so received by the Intercreditor Agent during the normal business hours of the Intercreditor Agent, such communication shall be deemed delivered at the opening of business on the next Business Day for the Intercreditor Agent.

- (e) Each party hereto acknowledges that (i) the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution, (ii) the Communications and the Platform are provided “as is” and “as available”, (iii) none of the Intercreditor Agent, its affiliates nor any of their respective officers, directors, employees, agents, advisors or representatives (collectively, the “**Intercreditor Parties**”) warrants the adequacy, accuracy or completeness of the Communications or the Platform, and each Intercreditor Party expressly disclaims liability for errors or omissions in any Communications or the Platform and (iv) no representation or warranty of any kind, express, implied or statutory, including any representation or warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Intercreditor Party in connection with any Communications or the Platform.

29.7 English language

29.7.1 Any notice given under or in connection with any Senior Finance Document must be in English.

29.7.2 All other documents provided under or in connection with any Senior Finance Document must be in English or, if not in English, and if so required by the relevant Agent, accompanied by a certified English translation and, in this case, the English translation shall prevail unless the document is a constitutional, statutory or other official document.

30. CALCULATIONS AND CERTIFICATES

30.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Senior Finance Document, the entries made in the accounts maintained by a Senior Secured Creditor are *prima facie* evidence of the matters to which they relate.

30.2 Certificates and Determination

Any certification or determination by a Senior Secured Creditor of a rate or amount under any Senior Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

30.3 Day count convention

Any interest, commission or fee accruing under a Senior Finance Document shall accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days (where due in US dollars) and 365 days (where due in HK dollars).

31. PARTIAL INVALIDITY

If, at any time, any provision of the Senior Finance Documents is or becomes illegal, invalid, or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

32. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Senior Secured Creditor, any right or remedy under the Senior Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Senior Finance Documents are cumulative and not exclusive of any rights or remedies provided by law.

33. INTERCREDITOR ARRANGEMENTS

33.1 Notices of Required Decisions

33.1.1 If, at any time, a matter requiring a Decision comes to the notice of a Senior Secured Creditor, that Senior Secured Creditor shall promptly inform the Intercreditor Agent and, where relevant, its Facility Agent in writing.

33.1.2 If, at any time, a matter requiring a Decision comes to the notice of the Intercreditor Agent, the Intercreditor Agent shall promptly notify in writing each Facility Agent (and, after the occurrence of a Hedging Voting Right Event in relation to any Hedging Counterparty that is continuing, that Hedging Counterparty) of that matter specifying:

- (i) whether the matter concerns a Fundamental Term and, if not, which Senior Secured Creditors may vote in respect of the Decision and the aggregate Voting Entitlement required for the Decision to be made;
- (ii) the date and time by which the Intercreditor Agent requires receipt of all votes in respect of the Decision (the “**Decision Date**”); and
- (iii) following a Hedging Voting Right Event, the identity of the relevant Hedging Counterparty.

33.2 Notice of Votes

Each Senior Secured Creditor shall copy notice of its vote to the Intercreditor Agent, to each Facility Agent and each Hedging Counterparty notified by the Intercreditor Agent pursuant to Clause 33.1.2(iii) (*Notices of Required Decisions*).

33.3 Decisions under the Senior Finance Documents

Subject to the other provisions of this Agreement, the exercise of any right, power, discretion or determination which has been delegated to the Intercreditor Agent under the Senior Finance Documents (save for any such right, power, discretion or determination to be exercised by any such party for its own account) shall require the consent or agreement of the Required Lenders *provided* that the Intercreditor Agent may exercise any such right, power, discretion or determination (including giving instructions to the Security Agent) without requiring any Decision which the Intercreditor Agent, acting reasonably, considers is a minor, administrative or technical matter which does not adversely affect the rights of the Senior Secured Creditors under the Senior Finance Documents.

33.4 Restrictions On Remedies

Subject to this Clause 33 (*Intercreditor Arrangements*), no Senior Secured Creditor may, at any time:

- 33.4.1 set off, or purport to set off, at any time, any amount owing to it under the Senior Finance Documents against any amount payable by it to an Obligor (except that any Hedging Counterparty may net off between transactions under a single Hedging Agreement);
- 33.4.2 take any action or commence any legal proceedings of whatsoever nature against an Obligor under or in respect of a Senior Finance Document to which that Obligor is a party including taking any steps or legal proceedings for the winding-up, dissolution or administration of any of the Obligors or for the appointment of a receiver, administrator, administrative receiver, conservator, custodian, trustee or similar officer of any of the Obligors or of any or all of its assets or revenues; or
- 33.4.3 foreclose on, or enforce or seek an order of the court to enforce all or any of the Security.

33.5 Notice of Default

- 33.5.1 If any Lender has actual knowledge of a Default which has occurred, it shall so advise the Intercreditor Agent and, where relevant, its Facility Agent in writing.
- 33.5.2 If any Facility Agent has actual knowledge, or has received notice, of a Default which has occurred, it shall so advise the Intercreditor Agent and, where relevant, each Lender in its Lending Group in writing.
- 33.5.3 If the Intercreditor Agent has actual knowledge, or has received notice, of a Default which has occurred, it shall notify each Facility Agent and each Hedging Counterparty in writing and, in the case of an Event of Default, it shall issue a notice under Clause 33.1 (*Notices of Required Decisions*) in respect of that Event of Default.

33.6 Application of Enforcement Proceeds

Following the delivery of an Enforcement Notice, all Enforcement Proceeds paid to the Intercreditor Agent in accordance with the Deed of Appointment and Priority shall be applied by it (together with any other payments received by it pursuant to Clause 26.1.2 (*Payments under the Senior Finance Documents*)) in the following order:

- (i) first, in payment of all costs and expenses incurred by or on behalf of the Intercreditor Agent in connection with such enforcement or recovery and which have been certified, in writing, as having been incurred by the Intercreditor Agent;

- (ii) second, in payment *pro rata* of all costs and expenses incurred by or on behalf of the Facility Agents in connection with such enforcement or recovery and which have been certified, in writing, as having been incurred by the Facility Agent seeking recovery;
- (iii) third, in payment *pro rata* of all amounts paid by the Senior Secured Creditors under Clause 23.15 (*Indemnity to Intercreditor Agent*) of the Common Terms Agreement but which have not been reimbursed by the Company;
- (iv) fourth, in payment *pro rata* of all amounts paid by the Hotel Facility Lenders under clause 15.3 (*Indemnity to Hotel Facility Agent*) of the Hotel Facility Agreement or the Project Facility Lenders under clause 15.3 (*Indemnity to Project Facility Agent*) of the Project Facility Agreement or the Revolving Credit Facility Lenders under clause 15.3 (*Indemnity to Revolving Credit Facility Agent*) of the Revolving Credit Facility Agreement or the Additional Lenders under the equivalent provisions of the Additional Lender Facility Agreement in respect of indemnities to the Additional Lender Agent but which, in each case, have not been reimbursed by the Company;
- (v) fifth, in payment *pro rata* of all costs and expenses incurred by or on behalf of each Senior Secured Creditor in accordance with the Senior Finance Documents in connection with such enforcement and which have been certified, in writing, as having been incurred by the Senior Secured Creditor seeking recovery;
- (vi) sixth, in payment *pro rata* of all accrued and unpaid fees owing to the Agents under the Senior Finance Documents;
- (vii) seventh, in payment *pro rata* of all accrued and unpaid fees and commissions due to the Lenders under the Senior Finance Documents;
- (viii) eighth, in payment *pro rata* of all accrued but unpaid interest (including default interest) due under the Facility Agreements and all sums due under the Hedging Agreements;
- (ix) ninth, in payment *pro rata* of all principal instalments due under the Facility Agreements;
- (x) tenth, in payment *pro rata* of all other amounts owing to the Senior Secured Creditors due and payable under the Senior Finance Documents; and
- (xi) eleventh, in payment of the surplus (if any) to the Security Agent in accordance with the Deed of Appointment and Priority or to its order, *provided that*, following the giving of any notice by the Intercreditor Agent pursuant to sub-clause 19.2.2 of Clause 19.2 (*Remedies following an Event of Default*), the amounts referred to in paragraphs (viii) and (ix) above shall rank *pari passu*.

33.7 Representations and Warranties

On the Second Amendment Signing Date and on the Effective Date, each Senior Secured Creditor party hereto represents and warrants to the other Senior Secured Creditors Party hereto that:

33.7.1 it is duly organised and validly existing under the laws of the jurisdiction in which it is incorporated;

33.7.2 it has power to enter into and has duly authorised the execution, delivery and performance of this Agreement;

33.7.3 the obligations expressed to be assumed by it hereunder are legal and valid obligations binding on it and enforceable against it in accordance with the terms hereof; and

33.7.4 it is not the beneficiary of any Liens in respect of any Financial Indebtedness owed to it by the Company other than under the Senior Finance Documents.

33.8 The provisions of this Clause 33 (*Intercreditor Arrangements*) are for the sole benefit of the Senior Secured Creditors and may be waived or amended without the consent or agreement of the Company provided there is no increase in the liability of the Company as a result.

34. AMENDMENTS AND WAIVERS

34.1 Amendment and waiver of common terms

Subject to Clause 25.6 (*Benefit*) and to Clause 34.2 to Clause 34.4 below, any term of, or matter dealt with under, this Agreement and any other Senior Finance Document may be amended, waived or supplemented with the agreement of the Company and/or the other Obligor which are a party to that Senior Finance Document and/or, as the case may be, the Required Lenders.

34.2 Amendment and waiver of Facility Agreements

Subject to Clause 34.3 and Clause 34.4 below, any term of, or matter dealt with under, a Facility Agreement may be amended, waived or supplemented with the agreement of the Company and/or, as the case may be, the required Senior Secured Creditors as specified in that Facility Agreement.

34.3 Amendment and waiver of Fundamental Terms

A Fundamental Term may only be amended or waived by agreement between the Obligor which are a party to the Senior Finance Document which contains that Fundamental Term and each Lender (and, in the case of the provisions referred to in paragraphs (a), (b), (f), (g), (h), (i) and (j) of the definition of Fundamental Term, each Hedging Counterparty).

34.4 **Amendment and waiver affecting Agents**

An amendment or waiver of any term of the Senior Finance Documents which relates to the rights and/or obligations of any Agent may not be effected without the prior written consent of that Agent.

35. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

36. **LANGUAGE**

The English language shall be the only official and recognised language of this Agreement. If for any reason a translation of this Agreement is required, such translation shall in the event of any dispute be secondary to the original English version which shall take precedence.

37. **GOVERNING LAW**

This Agreement shall be governed by English law.

38. **JURISDICTION**

38.1 **Jurisdiction of English courts**

38.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) (a “**Dispute**”).

38.1.2 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they shall not argue to the contrary.

38.1.3 This Clause 38.1 is for the benefit of the Senior Secured Creditors only. As a result, no Senior Secured Creditor shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Senior Finance Documents, the Senior Secured Creditors may take concurrent proceedings in any number of jurisdictions.

38.2 **Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Company:

38.2.1 irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and

38.2.2 agrees that failure by a process agent to notify the Company of the process shall not invalidate the proceedings concerned.

39. CONFIDENTIALITY

Subject to Clause 40 (*Gaming Authorities*), each of the Senior Secured Creditors agrees to keep confidential all non-public information of a proprietary or confidential nature provided to it by any Obligor pursuant to this Agreement *provided* that nothing herein shall prevent any Senior Secured Creditor from disclosing any such information:

- (a) to any other Senior Secured Creditor, or any Affiliate thereof that is bound by confidentiality obligations;
- (b) to any other Person pursuant to Clause 21.8 (*Disclosure of Information*) or clause 18.9 (*Disclosure of Information by Security Agent*) of the Deed of Appointment and Priority;
- (c) to any of its or its Affiliates' employees, directors, agents, auditors, attorneys, accountants and other professional advisors who or that is bound by confidentiality obligations;
- (d) upon the request or demand of any Governmental Authority having jurisdiction over it;
- (e) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Legal Requirement or the rules of any stock exchange on which the shares or other securities of such Senior Secured Creditor or any Affiliate thereof are listed or by any other competent supervisory or regulatory body;
- (f) if required to do so in connection with any litigation or similar proceeding;
- (g) that has been publicly disclosed other than in breach of this Clause; or
- (h) in connection with the exercise of any remedy hereunder or under any other Senior Finance Document.

40. GAMING AUTHORITIES

Each of the Senior Secured Creditors agrees to cooperate, having regard to its internal procedures and policies, with the reasonable requests of any and all gaming authorities in connection with the administration of their regulatory jurisdiction over the Company or any Obligor, to the extent not inconsistent with any applicable legal, regulatory or contractual restrictions (including any duties of confidentiality) or the terms of the Senior Finance Documents, *provided* that the Senior Secured Creditors are indemnified for any cost, loss or liabilities incurred in connection with such cooperation.

SCHEDULE 1

THE LENDERS AND HEDGING COUNTERPARTIES

Part A

Hotel Facility Lenders

As set out in the Lender List.

Part B

Project Facility Lenders

As set out in the Lender List.

Part C

Revolving Credit Facility Lenders

As set out in the Lender List.

Part D

Hedging Counterparties

Banc of America Securities Asia Limited

Deutsche Bank AG

Société Générale

SCHEDULE 2

CONDITIONS PRECEDENT

Part A

Conditions Precedent to the CP Satisfaction Date

THE CONDITIONS PRECEDENT SET OUT IN PART A OF THIS SCHEDULE 2 (CONDITIONS PRECEDENT) HAVE BEEN RECEIVED IN FORM AND SUBSTANCE ACCEPTABLE TO THE INTERCREDITOR AGENT OR OTHERWISE WAIVED.

1. Project Documents

(a) Receipt by the Intercreditor Agent and the Technical Adviser of:

- (i) a list setting out the title, date, parties and subject matter of each Project Document entered into as of the CP Satisfaction Date with a total contract price payable by the Company (or expected aggregate amount to be paid by the Company in the case of “cost plus” contracts) or which may otherwise involve liabilities, actual or contingent, in each case in an amount of less than USD5,000,000 or its equivalent; and
- (ii) a copy of any other Project Document and each Affiliate Agreement entered into as of the CP satisfaction Date duly executed by all parties thereto,

each certified by a Responsible Officer of the Company to be true, complete and up-to-date, the Project Documents and Affiliate Agreements to be in full force and effect, the Project Documents are consistent with the Project Budget, the Project Schedule and the Plans and Specifications and, in the case of each Affiliate Agreement, the transactions contemplated therein comply with the requirements of paragraph 10 of Part B of Schedule 5 (*Covenants*).

- (b) (i) Each Major Project Document has been duly authorised, executed and delivered by the parties thereto and duly filed, recorded, stamped and registered as necessary; and
- (ii) all conditions precedent to the effectiveness thereof (other than any such conditions relating to the occurrence of the CP Satisfaction Date) have been satisfied or waived in accordance with their respective terms and each such Major Project Document is in full force and effect accordingly.
- (c) The Notice to Proceed and the Prime Contractor’s Performance Bonds (in an aggregate amount of not less than USD45,722,399) have been duly issued in accordance with the terms of the Construction Contract.

2. Senior Finance Documents

(a) Receipt by the Intercreditor Agent of an original of each of the following Senior Finance Documents duly executed by the parties thereto:

- (i) each Facility Agreement;

- (ii) the Common Terms Agreement;
 - (iii) each Security Document (in the case of any Operating Account referred to in paragraphs (b), (c) or (d) of the definition thereof or any Reinsurance, required to be entered into prior to the CP Satisfaction Date and, in the case of the Wong Consent, the Intercreditor Agent shall accept a notarised copy of such document in lieu of the original in satisfaction of the requirements in respect thereof under this paragraph 2(a)(iii));
 - (iv) any other Senior Finance Documents (other than any Ancillary Finance Document) entered into prior to the CP Satisfaction Date; and
 - (v) any other document entered into which the Intercreditor Agent and the Company agree prior to the CP Satisfaction Date to designate as a Senior Finance Document.
- (b) Each of the Ancillary Finance Documents has been duly executed by the parties thereto.
- (c) (i) Save in respect of the authorisation by the Macau SAR required to be given in accordance with the Land Concession Consent Agreement in relation to the Land Security Assignment and the notice required to be given to the Macau SAR in relation to the Assignment of Rights, each Senior Finance Document referred to in this paragraph 2 has been duly authorised, executed and delivered by such of the Obligors, the Performance Bond Provider and the other Major Project Participants as are party thereto and duly filed, notified, recorded, stamped and registered as necessary;
- (ii) all conditions precedent to the effectiveness thereof (other than any such conditions relating to the occurrence of the CP Satisfaction Date) have been satisfied or waived in accordance with their respective terms and each such Senior Finance Document (save as provided in this sub-paragraph (c)) is in full force and effect accordingly; and
- (iii) none of such of the Obligors, the Performance Bond Provider or the other Major Project Participants as is party to any such Senior Finance Document is or, but for the passage of time and/or giving of notice will be, in breach of any obligation thereunder.

3. **Advisers' Reports and Certificates**

Receipt by the Intercreditor Agent of the following reports and other documents and, in the case of each report, confirmed by the relevant adviser to be the final report prior to the CP Satisfaction Date:

- (a) the revised Technical Adviser's report in relation to the Projects (including confirmation that the Projects constitute Category C projects under the Equator Principles);

- (b) the revised Insurance Adviser's report in relation to the Insurances;
- (c) the revised Market Adviser's report in relation to the Projects; and
- (d) the revised Financial Model in relation to the Projects.

4. **Approved List**

Receipt by the Intercreditor Agent of a copy of the agreement between the GCLAs and the Company approving the Approved List.

5. **Due establishment, authority and certification**

- (a) In relation to the Company, receipt by the Intercreditor Agent of a certificate in substantially the form set out in Part C (*Form of Company's Due Establishment CP Satisfaction Date Certificate*) of this Schedule 2 signed by a Responsible Officer of the Company and which:
 - (i) attaches a copy of the Company's Governing Documents; and
 - (ii) attaches a board resolution approving the execution, delivery and performance of the Transaction Documents to which it is a party and the terms and conditions thereof and authorising a named person or persons to sign such Transaction Documents and any document to be delivered by the Company pursuant to any Transaction Documents.
- (b) In relation to each of the Wynn Obligors and the other Major Project Participants (other than the Macau SAR and the Persons referred to in subparagraph 5(c) below), receipt by the Intercreditor Agent of a certificate signed by a Responsible Officer of each such Person in substantially the form set out in Part D (*Form of Major Project Participant's CP Satisfaction Date Certificate*) of this Schedule 2 attaching copies of:
 - (i) its Governing Documents; and
 - (ii) a board resolution approving the execution, delivery and performance of the Transaction Documents to which it is a party and the terms and conditions thereof and authorising a named person or persons to sign such Transaction Documents and any document to be delivered by it pursuant thereto.
- (c) In relation to the issuer of the Prime Contractor's Performance Bond and Banco Nacional Ultramarino, S.A. in its capacity as the Performance Bond Provider, party to the Performance Bond Facility Agreement and Second Ranking Finance Party (as defined in the Deed of Appointment and Priority), receipt by the Intercreditor Agent of evidence (which may comprise a copy of the relevant portion of such Person's signature book or equivalent) confirming such Person's approval of the execution, delivery and performance of the Transaction Documents to which it is party and authorisation of the Person or Persons who have signed such Transaction Documents on its behalf to do so.

6. **Project Documents and Permits**

Receipt by the Intercreditor Agent of a certificate, in substantially the form set out in Part G (*Form of Company's CP Satisfaction Date Certificate*) of this Schedule 2 (the "**Company's CP Satisfaction Date Certificate**") signed by a Responsible Officer of the Company and which, amongst other things:

- (a) certifies that copies of documents delivered in satisfaction of other conditions precedent in this Part A remain, save to the extent of any subsequent amendments made in accordance with the Senior Finance Documents, true, complete and up-to-date copies in full force and effect as at the CP Satisfaction Date;
- (b) attaches copies of any such amendments referred to in sub-paragraph (a) above and certifies that such copies are true, complete and up-to-date and in full force and effect as at the CP Satisfaction Date; and
- (c) confirms that:
 - (i) all Permits described in Part A of Schedule 12 (*Permits*) shall have been issued and be in full force and effect and not subject to current legal proceedings or to any unsatisfied conditions (that are required to be satisfied by the CP Satisfaction Date) that could reasonably be expected to materially adversely modify any Permit, to revoke any Permit, to restrain or prevent the construction or operation of the Projects or otherwise impose adverse conditions on either Project or the financing contemplated under the Senior Finance Documents and all applicable appeal periods with respect thereto shall have expired;
 - (ii) with respect to any of the Permits described in Part B of Schedule 12 (*Permits*), (i) each such Permit is of a type that is routinely granted on application and compliance with the conditions for issuance and (ii) the Company is not aware of any facts or circumstances which indicate that any such Permit will not be timely obtainable without undue expense or delay by the Company or the applicable Person, respectively, prior to the time that it becomes required; and
 - (iii) all other Permits have been obtained or effected to the extent they are required as of the date of the certificate and, as far as the Company is aware, no reasonable basis exists for it to believe that the Permits which are not required at such date will not be obtained when they are required,

and, in the case of the Permits described in Part A of Schedule 12 (*Permits*), attaching a copy of each such Permit (other than the Permit referred to in paragraph 8(iv) thereof, which it is acknowledged is comprised in the consent acknowledged by the Macau SAR Government in paragraph 3 of the Gaming Concession Consent Agreement).

7. **[Not used]**

8. **Security**

Receipt by the Intercreditor Agent of evidence that:

- (a) save in respect of the authorisation by the Macau SAR required to be given in accordance with the Land Concession Consent Agreement in relation to the Land Security Assignment and the notice required to be given to the Macau SAR in relation to the Assignment of Rights, each Security Document has been duly filed, notified, recorded, stamped and registered as necessary and all other actions necessary in the reasonable opinion of the Intercreditor Agent or the Security Agent to perfect the Security have been carried out; and
- (b) the Securities Account has been established in accordance with the Wynn Resorts Support Agreement and is fully funded as provided therein.

9. **Insurance**

- (a) Receipt by the Intercreditor Agent of a certificate addressed to it from the Insurance Adviser in substantially the form set out in Part E (*Form of Insurance Adviser's CP Satisfaction Date Certificate*) of this Schedule 2 certifying that all Construction Period Insurances required by the Senior Finance Documents to be in effect at the CP Satisfaction Date are in full force and effect and all premia (if any) due and payable as at the CP Satisfaction Date have been paid and the Secured Creditors have been named as co-insureds under those insurances in accordance with Schedule 7 (*Insurance*).
- (b) Receipt by the Intercreditor Agent of certified copies of all insurance policies, updates, cover notes or insurance slips then available in respect of Insurances then required to be maintained by the Company.
- (c) Receipt by the Intercreditor Agent of a Reinsurance Broker's Letter of Undertaking from each of the brokers referred to in paragraph 2.2 of Schedule 7 (*Insurance*) through whom Reinsurances have been effected.
- (d) Receipt by the Intercreditor Agent of confirmation from the Licensor that:
 - (i) the Insurances set out in Schedule 7 (*Insurance*) satisfy the insurance requirements set out in Section 8.01 of the IP Agreement; and
 - (ii) the insurers with whom such Insurances are effected are acceptable to the Licensor.

10. **Accounts**

Each of the Accounts specified in paragraph 1.1 of Schedule 6 (*Accounts*) has been established.

11. Financials

Receipt by the Intercreditor Agent of:

- (a) pro forma statement of the Company's assets and liabilities as at a date not more than one month prior to the CP Satisfaction Date; and
- (b) the most recent quarterly and annual financial statements of the type and in respect of the Persons specified in paragraph 1 of Part A of Schedule 5 (*Covenants*), together with certificates from a Responsible Officer of each such Person certifying such financial statements and stating that no material adverse change in the assets, liabilities, operations or financial condition of each such Person has occurred since the dates of the respective financial statements, except as otherwise provided in such certificate.

12. Process agents

Where such appointment is required under any Senior Finance Document, process agent acceptance of its appointment by the Company and each of such of the other Obligors, the Performance Bond Provider and the other Major Project Participants as is party to such Senior Finance Document for the acceptance of legal proceedings.

13. Specimen signatures

Receipt by the Intercreditor Agent of specimen signatures of all Responsible Officers of the Company who shall be issuing Advance Requests.

14. Legal opinions

Receipt by the Intercreditor Agent of legal opinions from:

- (a) Mr Henrique Saldanha, Macanese legal adviser to the Senior Secured Creditors;
- (b) Mr Alexandre Correia da Silva, Macanese legal adviser to the Company;
- (c) Lovells, English legal advisers to the Company in relation to the Major Project Documents governed by English law and referred to in subparagraphs (c) and (d) of the definition thereof;
- (d) Lionel Sawyer & Collins, Nevada legal adviser to the Senior Secured Creditors;
- (e) Schreck Brignone, Nevada legal adviser to Wynn Resorts;
- (f) Mann and Partners, Isle of Man legal adviser to the Senior Secured Creditors;
- (g) Clifford Chance, Hong Kong SAR legal advisers to the Senior Secured Creditors;
- (h) Clifford Chance, English legal advisers to the Senior Secured Creditors;
- (i) Mallesons Stephen Jaques, Hong Kong SAR legal advisers to Leighton Contractors (Asia) Limited;

- (j) Mallesons Stephen Jaques, Hong Kong SAR legal advisers to China State Construction Engineering (Hong Kong) Limited;
- (k) Ms Elisa Costa, Macanese legal adviser to China Construction Engineering (Macau) Company Limited;
- (l) Mallesons Stephen Jaques, Australian legal advisers to Leighton Holdings Limited;
- (m) Mallesons Stephen Jaques, Hong Kong SAR legal advisers to China Overseas Holdings Limited;
- (n) Skadden, Arps, Slate, Meagher & Flom LLP, New York legal advisers to the Company;
- (o) Mr Leonel A. Alves, Macanese legal adviser to Banco Nacional Ultramarino, S.A.; and
- (p) Mr Leonel A. Alves, Macanese legal adviser to Companhia de Seguros de Macau, S.A.,

or, save in the case of sub-paragraphs (a), (b), (g), (h), (n), (o) and (p), such other lawyers or law firms as may be reasonably acceptable to the Intercreditor Agent.

15. Fees and expenses

Receipt by the Intercreditor Agent of evidence that:

- (a) all taxes, fees and other costs payable in connection with the execution, delivery, filing, recording, stamping and registering of the documents referred to in this Part A; and
- (b) all fees, costs and expenses due to the Secured Creditors (including all amounts payable pursuant to any Fee Letter) and their advisers under the Senior Finance Documents on or before the CP Satisfaction Date,

have been paid or shall be paid out of the proceeds of the Initial Advance (to the extent that such amounts have been duly invoiced).

16. Performance Bond

Receipt by the Intercreditor Agent of evidence that the Concession Contract Performance Bond has been issued under the Performance Bond Facility as required by Article 61 of the Concession Contract.

17. Concession Contract

(a) Receipt by the Intercreditor Agent of evidence that:

- (i) the capital requirement under Article 15 of the Concession Contract has been complied with;

- (ii) the procedural requirements under Article 16 of the Concession Contract relevant to the creation of security over shares have been complied with;
 - (iii) the Company has notified the Macau SAR regarding the Facilities and the Security granted in favour of the Secured Creditors and produced copies of the Senior Finance Documents to the Macau SAR pursuant to Articles 34(2) and (3) of the Concession Contract;
 - (iv) expenditure of the total Project Costs referred to in the Project Budget which will be included in the calculation of the investment amount of MOP 4 billion will cause the Company to satisfy the requirement under the Concession Contract of expending MOP 4 billion within seven years after the date of the Concession Contract;
 - (v) legislation has been enacted by the Macau SAR which provides for casino operators such as the Company to be the grantors of credit to casino patrons;
 - (vi) the letter agreements dated 1 May 2002 between the Company and Banco Nacional Ultramasino and the Company and the Macau SAR in relation to the termination of the Concession Contract are of no force or effect; and
 - (vii) each area in which any operation of casino games of chance or other forms of gaming will be carried out following the opening of the Original Project has been classified by the Macau SAR as a casino or gaming zone in accordance with article 9 of the Concession Contract.
- (b) Receipt by the Intercreditor Agent of copies of all documents submitted to the Macau SAR as required under Article 21 of the Concession Contract and evidence reasonably satisfactory to the Intercreditor Agent that approval of the Company's delegation of management authority (including the appointment of the executive director, the scope of power of the executive director and term of authorisation) has been granted by the Macau SAR pursuant to Article 21 of the Concession Contract.
 - (c) Receipt by the Intercreditor Agent of a letter from Macau SAR in relation to the granting of extension of time for completion of the Projects from 31 December 2006.

18. **Land and Land Concession Contract**

Receipt by the Intercreditor Agent of evidence that:

- (a) the Land Concession Contract is registered with the Macau Real Estate Agency;
- (b) the Land Concession Contract has been published in the Official Bulletin; and
- (c) the amount payable to Sociedade de Empreendimentos Nam Van S.A.R.L. for the surrendering by Sociedade de Investimento Imobiliario Hang Keng Van, S.A.R.L., Sociedade de Investimento Imobiliario Lok Keng Van, S.A.R.L. and Sociedade de Investimento Imobiliario Hei Keng Van, S.A.R.L. of their respective interests in the land registered with the Macau Real Estate Registry with registration numbers 22322, 22324 and 22325 does not exceed MOP 140,000,000.

19. **Auditors**

Receipt by the Intercreditor Agent of evidence that the Company has appointed the Auditors and the Auditors have accepted such appointment.

20. **Continued Appointment of Advisers**

The Insurance Adviser and the Technical Adviser have been appointed to act after the Signing Date in accordance with a scope of work as agreed by the Company and the Intercreditor Agent.

21. **No Material Adverse Effect**

Receipt by the Intercreditor Agent of a certificate, in substantially the form of the Company's CP Satisfaction Date Certificate, from the Company confirming that, as at the CP Satisfaction Date, no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur.

22. **Projections**

Receipt by the Intercreditor Agent of Projections for the Company for the period from 1 July 2007 to 31 December 2008 and which:

- (a) demonstrate compliance with paragraph 1 of Part B of Schedule 5 (*Covenants*);
- (b) otherwise comply with the requirements of paragraph 2(c) of Part A of Schedule 5 (*Covenants*).

23. **Litigation**

Receipt by the Intercreditor Agent of a certificate, in substantially the form of the Company's CP Satisfaction Date Certificate, from the Company confirming that no action, suit, proceeding or investigation of any kind shall have been instituted or, to the Company's knowledge, threatened, including actions or proceedings of or before any Governmental Authority, to which the Company, either Project or, to the knowledge of the Company, any other Obligor, the Performance Bond Provider or other Major Project Participant, is a party or is subject, or by which any of them or any of their properties or either Project are bound, in each case, that could reasonably be expected to have a Material Adverse Effect, nor is the Company aware of any reasonable basis for any such action, suit, proceeding or investigation and no injunction or other restraining order shall have been issued and no hearing to cause an injunction or other restraining order to be issued shall be pending or noticed with respect to any action, suit or proceeding if the same reasonably could be expected to have a Material Adverse Effect.

24. Project Budget

Receipt by the Intercreditor Agent at or prior to the Expansion Signing Date of a budget in the form of Schedule 13 (*Form of Project Budget*) which:

- (a) includes such other information and supporting data as any of the Senior Secured Creditors or the Technical Adviser may reasonably require; and
- (b) demonstrates, without taking account of any amount of Net Operating Cashflow in excess of the Base Net Operating Cashflow Amount, any amount of Contingent Equity, any amount of Contingent Subordinated Funding or any amount of the Contingent Debt Facilities, no Forecast Funding Shortfall.

25. Project Schedule

Receipt by the Intercreditor Agent at or prior to the Expansion Signing Date of a schedule for construction and completion of the Projects in the Agreed Form which demonstrates that Substantial Completion will occur and the Opening Conditions specified in paragraph (a) of the definition thereof will have been satisfied on or before the following dates in respect of the Original Project, the Expansion and each phase of the Expansion specified:

Original Project	31 December 2006
Area 4	18 August 2007
Area 5	10 November 2007
Expansion	10 January 2008

26. Schedule of Values

Receipt by the Intercreditor Agent of the "Expansion Project Schedule of Values" submitted and approved in accordance with section 5.1 of the Construction Contract and the "Original Project Schedule of Approved Values" (each as defined in the Construction Contract).

27. Representations and Warranties

Receipt by the Intercreditor Agent of a certificate, in substantially the form of the Company's CP Satisfaction Date Certificate, from the Company confirming that the representations and warranties of:

- (a) the Company, each Wynn Obligor and the Licensor set forth in Schedule 4 (*Representations and Warranties*) or in any of the other Transaction Documents is true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date); and
- (b) to the Company's knowledge, the Performance Bond Provider, any Obligor and each other Major Project Participant (in each case other than the Company, any Wynn Obligor or the Licensor) set forth in any of the Transaction Documents is

true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date), unless the failure of any such representation and warranty referred to in this sub-paragraph (b) to be true and correct could not reasonably be expected to have a Material Adverse Effect.

28. Plans and Specifications

The Company shall have delivered to the Technical Adviser or (on such terms as the Technical Adviser may reasonably require) made available to it in Hong Kong or Macau all plans, specifications, design documents, schematic drawings and related items for the design, architecture and construction of the Projects.

29. PASA and IP Agreement

- (a) The PASA and PASA Direct Agreement have been entered into with Wynn Design & Development, LLC and the Intercreditor Agent has received such legal opinions, in form and substance reasonably satisfactory to it, concerning the entry by Wynn Design & Development, LLC into the PASA and PASA Direct Agreement, the efficacy thereof and such other matters as it may reasonably require.
- (b) The IP Agreement and IP Direct Agreement have been entered into with Wynn Resorts and Wynn Resorts Holdings, LLC as Licensor and the Intercreditor Agent has received such legal opinions, in form and substance reasonably satisfactory to it, concerning the entry by Wynn Resorts and Wynn Resorts Holdings, LLC into the IP Agreement and the IP Direct Agreement, the efficacy thereof and such other matters as it may reasonably require.
- (c) The Licensor has acceded to the Sponsors' Subordination Deed in accordance with the terms thereof.

30. Shareholder Reorganisation

- (a) Receipt by the Intercreditor Agent of a Substantial Shareholder's Undertaking in form and substance satisfactory to it from each Substantial Shareholder (if any) as at the CP Satisfaction Date.
- (b) Receipt by the Intercreditor Agent of a Relevant Party's Undertaking in form and substance satisfactory to it from each Relevant Party (if any) as at the CP Satisfaction Date.
- (c) Receipt by the Intercreditor Agent of evidence that, as at the CP Satisfaction Date, all shares in Wynn Holdings not legally and beneficially owned by Wynn International as at the Signing Date are either legally and beneficially owned by Wynn International or their original owners (direct and indirect) as at the Signing Date.

Part B

(I) Conditions Precedent to each Advance under the Term Loan Facilities

1. No Default

No Default shall have occurred and be continuing.

2. Representations and Warranties

The representations and warranties contained in Schedule 4 (*Representations and Warranties*) which are repeated by the Company pursuant to Clause 17.2 (*Timing*) are true and correct in all material respects with reference to the facts and circumstances existing on the Advance Date.

3. Sufficiency of Funds; Project Schedule Prior to the Expansion Opening Date

Solely with respect to the period prior to the Expansion Opening Date, certification by a Responsible Officer of the Company that it has sufficient Funds to achieve Substantial Completion of the Expansion.

4. Advance Request and Certificate

Receipt by the Intercreditor Agent and the relevant Facility Agent of an Advance Request containing all attachments, exhibits and certificates required thereby, all appropriately completed and duly executed by a Responsible Officer of the Company, including:

- (a) solely with respect to the period prior to the Expansion Opening Date, a statement of the specific purposes to which each Advance shall be applied, including:
 - (i) whether payment (or refinancing of payment) for Hotel Project Costs or other Project Costs, for general corporate purposes, for the Diamond Expansion, whether for variations to Project Works or otherwise permitted pursuant to paragraph 15 of Part B of Schedule 5 (*Covenants*) and, where for refinancing of payment the original source of funds for such payment; and
 - (ii) a break down by Line Item of each such category of Project Costs supported:
 - (A) in the case of any payment exceeding USD1,000,000 or its equivalent, to the reasonable satisfaction of the Intercreditor Agent, by invoices, receipts and other documentary evidence attached to the Advance Request; and
 - (B) in the case of any progress payment claimed pursuant to the Construction Contract, to the reasonable satisfaction of the Intercreditor Agent, by the relevant approved "Application for Progress Payment" and "Contractor's Certificate" (each as defined in the Construction Contract) and supporting documentary evidence delivered by the Prime Contractor in accordance with article V of the Construction Contract attached to the Advance Request;

- (b) solely with respect to the period prior to the Expansion Opening Date, insofar as any previous Advance was requested for the purpose of payments which, at the time of its Advance Date, were not yet payable, a statement of such payments made since the last Advance Request supported, in the case of any payment exceeding USD1,000,000 or its equivalent, to the reasonable satisfaction of the Intercreditor Agent, by invoices, receipts and other documentary evidence attached to the Advance Request; and
- (c) solely with respect to the period prior to the Expansion Opening Date, certification that each Advance is required for the purpose specified.

5. **Adviser's Certificates**

- (a) Solely during the period prior to the Expansion Opening Date, receipt by the Intercreditor Agent by not later than 3:00 p.m. on the fifth Business Day prior to the proposed Advance Date of a certificate from the Technical Adviser in substantially the form set out in Part F (*Form of Technical Adviser's Advance Certificate*) of this Schedule 2 (the "**Technical Adviser's Advance Certificate**") certifying in connection with the Advance Request and any amendment thereto made pursuant to Clause 3.1 (*Drawdown Conditions*) that the Technical Adviser has no reason to believe that the current Project Schedule (being the Project Schedule delivered by the Company pursuant to paragraph 25 of Part A of this Schedule 2) is not accurate in all material respects;
- (b) Solely during the period prior to the Expansion Opening Date and with respect to any Advances to be utilised for the purpose of funding any Project Costs (excluding Project Costs related to the Diamond Expansion), receipt by the Intercreditor Agent by not later than 3:00 p.m. on the fifth Business Day prior to the proposed Advance Date of a certificate from the Technical Adviser in substantially the form of the Technical Adviser's Advance Certificate certifying in connection with the Advance Request and any amendment thereto made pursuant to Clause 3.1 (*Drawdown Conditions*) that, to the best of its knowledge:
 - (i) the Advances requested by the Company under the Term Loan Facilities are required prior to the date falling 30 days after the proposed Advance Date to make payments falling due or to refinance such payments previously made; and
 - (ii) certifications and statements made by the Company in the Advance Request (as referred to in Part F (*Form of Technical Adviser's Advance Certificate*) of this Schedule 2) and all attachments thereto are correct in all material respects.

6. Recent Reports, Financial Statements and Other Information

- (a) Receipt by the Intercreditor Agent of each of the reports, financial statements and other information due pursuant to paragraphs 1 and 2 of Part A of Schedule 5 (*Covenants*) on or before the date of the Advance Request.
- (b) Solely during the period prior to the Expansion Opening Date, receipt by the Intercreditor Agent of the Technical Adviser's Monthly Report due on or before the date of the Advance Request.

7. Hedging

- (a) Receipt by the Intercreditor Agent of a copy (certified as being true and correct by a Responsible Officer) of each Hedging Agreement (and each confirmation thereunder) required to be entered into in accordance with the Hedging Arrangements.
- (b) The Company shall have delivered notice in respect of each Hedging Agreement to the counter-party thereto and the Security Agent shall have received an acknowledgement from each such counter-party, each such notice and acknowledgement being in the form required by clause 4 of the Debenture.

8. Fees and Expenses

The Company shall have paid or arranged for payment out of the requested Advance of all fees, expenses and other charges then due and payable by it under the Senior Finance Documents or under any agreements between the Company and any of the Advisers (to the extent that such amounts have been duly invoiced).

9. Major Project Documents

The Company shall have delivered to the Intercreditor Agent and the Technical Adviser promptly after mutual execution and delivery thereof:

- (a) a list setting out the title, date, parties and subject matter of each Major Project Document; and
- (b) a copy of any Major Project Document (other than any Resort Management Agreement) listed pursuant to subparagraph (a) above and requested in writing by the Intercreditor Agent or the Technical Adviser.

(II) Conditions Precedent to each Advance under the Revolving Credit Facility

As set out in the Revolving Credit Facility Agreement.

(III) Conditions Precedent to each Advance under the Additional Lender Facility

As set out in the Additional Lender Facility Agreement.

Part C

Form of Company's Due Establishment CP Satisfaction Date Certificate

To: [] as Intercreditor Agent

Date: []

Dear Sirs,

1. We refer to the common terms agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors (the "**Common Terms Agreement**"). Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. This certificate is provided for the purposes of paragraph 5(a) (*Due establishment and authority*) and paragraph 13 (*Specimen signatures*) of Part A of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement.
3. We hereby certify, as at the date of this certificate, that:
 - (i) attached hereto as Annex 1 is a true and complete copy of the Governing Documents of the Company together with all amendments thereto;
 - (ii) attached hereto as Annex 2 is a true and complete copy of resolutions duly adopted by the Board of Directors of the Company at a meeting on [*date*], at which a quorum was present and acting throughout, which resolutions have duly approved the execution, delivery and performance of the Transaction Documents to which the Company is a party and the terms and conditions thereof, duly authorised [*names*] to sign such Transaction Documents and any document to be delivered by the Company pursuant to any Transaction Documents (including Advance Requests), and such resolutions have not been revoked, modified, amended or rescinded and are in full force and effect. Except as attached hereto as Annex 2, no resolutions have been adopted by the Board of Directors of the Company in relation to the execution, delivery or performance of any of the Transaction Documents to which the Company is a party; and
 - (iii) attached hereto as Annex 3 are the specimen signatures of all Responsible Officers of the Company who shall be issuing Advance Requests.

Yours faithfully,

Name:
Responsible Officer
for and on behalf of
Wynn Resorts (Macau) S.A.

Attachments:

- Annex 1 - Governing Documents of the Company
- Annex 2 - Board resolutions of the Company
- Annex 3 - Specimen signatures of Responsible Officers

Part D

Form of Major Project Participant's CP Satisfaction Date Certificate

To: [] as Intercreditor Agent

Date: []

Dear Sirs,

1. We refer to the common terms agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors (the "**Common Terms Agreement**"). Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. We hereby certify that:
 - (i) attached hereto as Annex 1 is a true and complete copy of the Governing Documents of [*Major Project Participant*] together with all amendments thereto as of the date of this certificate; and
 - (ii) attached hereto as Annex 2 is a true and complete copy of the resolutions duly adopted by our Board of Directors at a meeting on [*date*], at which a quorum was present and acting throughout, which resolutions have duly approved the execution, delivery and performance of the Transaction Documents to which we are a party and the terms and conditions thereof, duly authorised [*names*] to sign such Transaction Documents and have not been revoked, modified, amended or rescinded and are in full force and effect.

Yours faithfully,

Name:

for and on behalf of

[*Major Project Participant*]

Part E

Form of Insurance Adviser's CP Satisfaction Date Certificate

To: [] as Intercreditor Agent

Date: []

1. We refer to the common terms agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors (the "**Common Terms Agreement**"). Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. This certificate is provided for the purpose of paragraph 9(a) (*Insurance*) of Part A of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement.
3. We hereby certify that, as at the date of this certificate, all Construction Period Insurances required by the Senior Finance Documents to be in effect are in full force and effect and all premia (if any) due and payable as at such date have been paid and the Secured Creditors have been named as co-insureds under those insurances in accordance with Schedule 7 (*Insurance*) of the Common Terms Agreement.

Yours faithfully,

Name:
for and on behalf of
[*Insurance Adviser*]

Part F

Form of Technical Adviser's Advance Certificate

To: [] as Intercreditor Agent

Date: []

Dear Sirs,

1. We refer to the common terms agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors (the "**Common Terms Agreement**"). Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. This certificate is provided for the purposes of paragraph 5 (*Adviser's Certificates*) and paragraph 9 (*Major Project Documents*) of sub-section I of Part B of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement and relates to the Advance Request [and the amendment thereto, each]¹ dated on or about the date of this certificate.
3. We hereby certify, as at the date of this certificate, that:
 - (i) we have no reason to believe that the current Project Schedule is not accurate in all material respects;
 - (ii) to the best of our knowledge, the Advances requested by the Company are required prior to the date falling 30 days after the proposed Advance Date to make payments in respect of Project Costs falling due in such period or to refinance such payments previously made;
 - (iii) to the best of our knowledge, all certifications and statements made by the Company in paragraphs 4(ii), 4(iv), 4(viii), 4(ix), 5 and 6 of the Advance Request to which this certificate relates, and all attachments relevant thereto, are correct in all material respects; [and]
 - (iv) [Substantial Completion has been achieved in respect of the Original Project and the Expansion and we agree with the estimate of Final Completion Costs provided to the Intercreditor Agent.]²

Yours faithfully,

Name:
for and on behalf of
[*Technical Adviser*]

¹ Delete if no amendment made.

² In the case of Advances in respect of Final Completion Costs.

Part G

Form of Company's CP Satisfaction Date Certificate

To: [] as Intercreditor Agent

Date: []

Dear Sirs,

1. We refer to the common terms agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors (the "**Common Terms Agreement**"). Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. This certificate is provided for the purposes of paragraph 6 (*Permits*), paragraph 21 (*No Material Adverse Effect*), paragraph 23 (*Litigation*) and paragraph 27 (*Representations and Warranties*) of Part A of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement.
3. We hereby certify, as at the date of this certificate, that:
 - (i) copies of all documents referred to in Part A of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement and delivered by us to the Intercreditor Agent on or prior to the date of this certificate are and remain, save (in the case of any such documents delivered prior to the date of this certificate) to the extent of any amendments made subsequent to such delivery in accordance with the Senior Finance Documents, true, complete and up-to-date copies of such documents in full force and effect as at the date of this certificate;
 - (ii) attached hereto as Annex 1 are true, complete and up-to-date copies of the amendments referred to in sub-paragraph (i) above, each of which is and remains in full force and effect;
 - (iii) attached hereto as Annex 2 are all Permits described in Part A of Schedule 12 (*Permits*) of the Common Terms Agreement which have been issued and are in full force and effect and not subject to current legal proceedings or to any unsatisfied conditions (that are required to be satisfied by the CP Satisfaction Date) that could reasonably be expected to materially adversely modify any Permit, to revoke any Permit, to restrain or prevent the construction or operation of the Projects or otherwise impose adverse conditions on either Project or the financing contemplated under the Senior Finance Documents and all applicable appeal periods with respect thereto have expired;
 - (iv) with respect to any of the Permits described in Part B of Schedule 12 (*Permits*), (i) each such Permit is of a type that is routinely granted on application and compliance with the conditions for issuance and (ii) no facts or circumstances exist which indicate that any such Permit will not be timely obtainable without undue expense or delay by the Company or the applicable Person, respectively, prior to the time that it becomes required;

- (v) all other Permits have been obtained or effected to the extent they are required as of the date hereof and, as far as the Company is aware, no reasonable basis exists for it to believe that the Permits which are not required as of the date of this certificate will not be obtained when they are required;
- (vi) no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur;
- (vii) no action, suit, proceeding or investigation of any kind has been instituted or, to the Company's knowledge, threatened, including actions or proceedings of or before any Governmental Authority, to which the Company, either Project or, to the knowledge of the Company, any other Obligor or Major Project Participant, is a party or is subject, or by which any of them or any of their properties or either Project are bound, in each case, that could reasonably be expected to have a Material Adverse Effect, nor is the Company aware of any reasonable basis for any such action, suit, proceeding or investigation and no injunction or other restraining order has been issued and no hearing to cause an injunction or other restraining order to be issued is pending nor been notified with respect to any action, suit or proceeding to the extent the same reasonably could be expected to have a Material Adverse Effect;
- (viii) the representations and warranties of the Company, each Wynn Obligor and the Licensor set forth in Schedule 4 (*Representations and Warranties*) of the Common Terms Agreement or in any of the other Transaction Documents are true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date); and
- (ix) to the Company's knowledge, the representations and warranties of the Performance Bond Provider and each other Major Project Participant (in each case other than the Company, any Wynn Obligor or the Licensor) set forth in any of the Transaction Documents are true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date) unless the failure of any such representation and warranty to be true and correct could not reasonably be expected to have a Material Adverse Effect.

Yours faithfully,

Name:

Responsible Officer

for and on behalf of

Wynn Resorts (Macau) S.A.

Attachments:

Annex 1 - Amendments to Project Documents

Annex 2 - Permits described in Part A of Schedule 12 (*Permits*)

SCHEDULE 3

FORM OF ADVANCE REQUEST

To: [] as Intercreditor Agent
[] as Hotel Facility Agent
[] as Project Facility Agent

Date: []

Dear Sirs,

Advance Request No. []

1. We refer to the common terms agreement (the “**Common Terms Agreement**”) dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors. Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. This is an Advance Request given pursuant to Clause 3 (*Drawdown of Advances*) of the Common Terms Agreement.
3. We hereby give you notice that, upon the terms and subject to the conditions contained in the Common Terms Agreement and the Facility Agreements, we wish to borrow the following Advances under the following Facilities on [*proposed Advance Date*] (the “**Proposed Advance Date**”) to be applied towards the following purposes:
[USD/HKD] [*amount*] under [the [Tranche A/Tranche B/Tranche C/Tranche D]³ Facility of the [Hotel/Projects] Facility to be applied towards [*specify purpose and break down Project Costs according to Line Item*]
4. We confirm that:
 - (i) the above purposes and Advances comply with the permitted use of the Facilities under the Facility Agreements and Clause 5 (*Purpose*) of the Common Terms Agreement and that no part of the above Advances shall be applied otherwise than as mentioned in paragraph 3 above;
 - (ii) each Advance is required for the purpose specified, the Project Costs to be paid (or in respect of which the payment therefor is to be refinanced) from the proceeds of each Advance have been incurred and paid or are due and payable, or will or the Company reasonably expects might be incurred and be due and payable, prior to the date falling 30 days after the Proposed Advance Date;

³ Delete as appropriate.

- (iii) proceeds of the above Advances requested under the [Hotel/Project]⁴ Facility shall be applied in the amounts specified towards [Hotel Project/Project Costs];
- (iv) the amount of the above Advances requested under the Hotel Facility, when aggregated with the amounts of all other Advances under the Hotel Facility, is no greater than the aggregate amount of all Hotel Project Costs incurred and paid or which will or the Company reasonably expects might be incurred and be due and payable by the Company on or before the date falling 30 days after the Proposed Advance Date;
- (v) each condition specified in Clause 2.2 (*Conditions Precedent to each Advance*) of the Common Terms Agreement is satisfied on the date of this Advance Request;
- (vi) we hereby certify that the Company has sufficient Funds to achieve construction completion of the Projects;
- (vii) since the CP Satisfaction Date, no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur;
- (viii) [the following payments have been made in respect of Project Costs (excluding Project Costs related to the Diamond Expansion): *[break down according to Line Item and attach supporting documents]*];⁵
- (ix) since the last Advance Request, the following amounts have been paid in respect of payments for which an Advance has previously been requested but which were not yet payable at the time of its Advance Date:

<u>Advance Request No.</u>	<u>Payment Description</u>	<u>Amount</u>
----------------------------	----------------------------	---------------

- 5. We attach, as required by paragraph 4 sub-section I of Part B of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement, documents substantiating the Project Costs (excluding Project Costs related to the Diamond Expansion) and payments referred to in paragraph 3 and sub-paragraph [4(viii)⁶ /4(ix)⁷] above.
- 6. [For the period up to the Expansion Opening Date, we attach an updated Project Schedule.]⁸

⁴ Repeat as required for each Facility.
⁵ Not required for Advances subsequent to the Initial Advance under the Term Loan Facilities.
⁶ Not required for Advances subsequent to the Initial Advance under the Term Loan Facilities.
⁷ Not required for the Initial Advance under the Term Loan Facilities.
⁸ As required.

7. We attach signed but undated receipts for the Advances requested above and hereby authorise the Intercreditor Agent to date such receipts on the date such Advances are made.⁹
8. The above Advances shall have a [first] Interest Period ending on [date].
9. The [proceeds/specified amounts] of the above Advances should be credited to, respectively, the following Accounts:
[specify relevant Account and amount]
10. We further confirm, without any personal liability on the part of our Responsible Officer signing this Advance Request, that:
 - (i) no Default is continuing; and
 - (ii) the representations and warranties contained in Schedule 4 (*Representations and warranties*) of the Common Terms Agreement which are repeated by the Company pursuant to Clause 17.2 (*Timing*) of the Common Terms Agreement are true and correct in all material respects with reference to the facts and circumstances existing on the date of this Advance Request.

Yours faithfully,

Name:

¹⁰Responsible Officer

for and on behalf of

Wynn Resorts (Macau) S.A.

Attachments: [list]

⁹ Each receipt must be numbered in series, the number corresponding to the number in the heading of the relevant Advance Request.

¹⁰ Each Advance Request must be signed by a Responsible Officer of the Company whose specimen signature has been delivered to the Intercreditor Agent pursuant to Clause 3.2.1 (*Completion of an Advance Request*).

SCHEDULE 4

REPRESENTATIONS AND WARRANTIES

1. Organization

Each of the Obligors is duly organized, incorporated, validly existing and (if applicable) in good standing under the laws of the jurisdiction of its organization and has all requisite corporate or limited liability company power and authority to:

- (a) carry on its business as now conducted;
- (b) own or hold under lease and operate the Properties it purports to own or hold under lease;
- (c) carry on its business as now being conducted and as now proposed to be conducted in respect of the Projects;
- (d) incur the Financial Indebtedness contemplated hereunder; and
- (e) execute, deliver and perform under each of the Transaction Documents to which it is a party and create any Lien on its Property contemplated thereunder.

2. Authorization; No Conflict

2.1 Each of the Obligors has taken all necessary corporate or limited liability company action, as the case may be, to authorize the execution, delivery and performance of the Transaction Documents to which it is a party. Neither the execution, delivery or performance of each Transaction Document to which it is a party nor the consummation of the transactions contemplated thereby:

- (a) by each Obligor does or will contravene the formation or constitutional documents or any other material Legal Requirement then applicable to or binding on each such Obligor; or
- (b) does or will contravene or result in any breach or constitute any default under, or result in or require the creation or imposition of any Lien upon any of the Properties of any Obligor or under any security or agreement or instrument to which any Obligor is a party or by which it or any of its respective properties may be bound, except for Permitted Liens or as could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

2.2 No consent or authorization or filing with, notice to or other act by or in respect of, any Governmental Authority or any Person is required in connection with the borrowings under the Senior Finance Documents or with the execution, delivery, performance, validity or enforceability of any of the Transaction Documents, except consents, authorisations, recordings, stampings, filings, registrations and notices described in the definition of 'Required Filings' in Clause 1.1 of this Agreement or Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*) (in the case of Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*) which consents, authorisations, registrations, filings and notices have, unless otherwise indicated on such schedule, been obtained or

made and are in full force and effect) or, in the case of any Transaction Documents entered into after the date of the Initial Advance under the Term Loan Facilities, as have been obtained or made and are in full force and effect at the time this representation is deemed to be made (except consents, authorisations, recordings, stampings, filings, registrations and notices described in the definition of 'Required Filings' in Clause 1.1 of this Agreement or Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*) (in the case of Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*) which consents, authorisations, registrations, filings and notices have, unless otherwise indicated on such schedule, been obtained or made and are in full force and effect).

3. Legality, Validity and Enforceability

- 3.1 Each of the Transaction Documents to which any of the Obligor is a party is a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, subject only to bankruptcy and similar laws and principles of equity.
- 3.2 None of the Transaction Documents to which any of the Obligor is a party has been amended or modified except in accordance with this Agreement.
- 3.3 No Obligor has entered into any additional contracts in contravention of the terms of any Senior Finance Document.

4. Compliance with Law and Permits

Each Obligor is in compliance in all material respects with all material Legal Requirements (including all material Environmental Laws) and Permits and no notices of any material violation of any Permit made or issued by or with a Governmental Authority relating to any of the Projects have been issued, entered or received by any such Obligor (and which violation is continuing).

5. Permits

- 5.1 As of the Third Amendment Signing Date, there are no Permits of which the Company is aware or any material Permits, in each case, made or issued by or with a Governmental Authority that are required or will become required under existing Legal Requirements for the ownership, development, construction or financing of either Project, other than the Permits described in Schedule 12 (*Permits*).
- 5.2 All Permits have been obtained or effected to the extent they are required at the time this representation is deemed to be made and, as far as the Company is aware, no reasonable basis exists for it to believe that the Permits which are not required at such time shall not be obtained when they are required.

6. Litigation

There are no pending or, to any Obligor's knowledge, threatened actions, suits, proceedings or investigations of any kind, including actions or proceedings of or before any Governmental Authority, to which any Obligor is a party or is subject, or by which any of them or any of their Properties (including, without limitation, revenue) or either of the Projects is bound that, individually or collectively, could reasonably be expected to have a Material Adverse Effect nor is any Obligor aware of any reasonable basis for any such action, suit, proceeding or investigation.

7. **Financial Statements**

The financial statements of the Obligors, delivered to the Intercreditor Agent pursuant to Clause 2.1 (*Conditions Precedent to the CP Satisfaction Date*) on or prior to the CP Satisfaction Date, were, and, in the case of financial statements to be delivered after the CP Satisfaction Date pursuant to paragraph 1 of Part A of Schedule 5 (*Covenants*) hereto, will be prepared in conformity with applicable GAAP and fairly present in all material respects the financial position of the entities described in such financial statements as of the respective dates thereof and the results of operations and cash flows of the entities described therein for each of the periods then ended subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. No such financial statement fails to disclose any material Guarantee Obligations, contingent liabilities or liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including, without limitation, any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, required to be reflected therein.

8. **Security Interests**

8.1 As of the Third Amendment Effective Date, save in respect of any Excluded Subsidiary or Excluded Project (in respect of which it is acknowledged that no Senior Secured Creditors have any Lien) and except for the obtaining of any consents or approvals, recording, filing, registration, giving of notice or other similar action as described in the definition of 'Required Filings' in Clause 1.1 of this Agreement or Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*) (in the case of Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*) which consents, authorisations, registrations, filings and notices have, unless otherwise indicated on such schedule, been obtained or made and are in full force and effect):

- (a) the security interests granted or purported to be granted to the Senior Secured Creditors pursuant to the Security Documents in the Project Security (i) (notwithstanding, without limitation, the Substitution) constitute as to Properties included in the Project Security existing on the date on which this representation is made or deemed to be made or repeated and, with respect to subsequently acquired Properties included in the Project Security, will constitute, a perfected security interest under all applicable law and/or the UCC and (ii) have, and, with respect to such subsequently acquired Properties, will have been perfected under all applicable law and/or the UCC, and grant the Senior Secured Creditors superior priority and rights in respect of the full amount of the Obligations over the rights of any third Persons now existing or hereafter arising whether by way of mortgage, lien, security interests, encumbrance, assignment or otherwise, subject to the rights and priorities of Permitted Liens;
- (b) all such action as is necessary has been taken to establish, perfect and maintain the Senior Secured Creditors' rights in and to the Project Security, including any obtaining of consents or approvals, recording, filing, registration, giving of notice or other similar action; and

(c) each of the Security Documents is effective to create a legal, valid, binding and enforceable security interest in the Project Security described therein and proceeds and products thereof.

Each of the Obligors has properly delivered or caused to be delivered to the Security Agent all Project Security that requires perfection of the Lien and security interest described above by possession.

8.2 As of the Third Amendment Effective Date, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for either (a) the pledge or grant by the Obligors of the Liens purported to be created in favour of the Secured Creditors pursuant to any of the Security Documents, or (b) the exercise by the Security Agent, or any of the other Secured Creditors of any rights or remedies in respect of any Project Security (whether specifically granted or created pursuant to any of the Security Documents or created or provided for by applicable law), except for registrations, filings, giving of notices or recordings contemplated by paragraph 8.1 of this Schedule 4 or as described in definition of 'Required Filings' in Clause 1.1 of this Agreement or Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*).

8.3 As of the Third Amendment Effective Date, except such as may have been filed in favour of the Security Agent as contemplated by paragraph 8.1 of this Schedule 4 or as set forth in Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*), no effective UCC financing statement, fixture filing or other instrument similar in effect covering all or any part of the Project Security is on file in any filing or recording office in the United States of America or elsewhere.

9. **No Existing Defaults**

9.1 No Event of Default has occurred which is continuing.

9.2 None of the Obligors, or, to the Company's knowledge, the Performance Bond Provider or any other Major Project Participant is in default under or with respect to any of its material Contractual Obligations under any of the Transaction Documents to which it is a party, which default (in the case only of a Major Project Participant other than an Obligor) could reasonably be expected to have a Material Adverse Effect.

10. **Taxes**

10.1 Each of the Obligors 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 Obligors has paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by it, to the extent the same have become due and payable (other than (a) those taxes that it is contesting in good faith and by appropriate proceedings and (b) those taxes not yet due, *provided* that with respect to each of sub-paragraph (a) and (b) of this paragraph 10.1, it has established reserves therefor in amounts that are adequate for the payment thereof and are required by applicable GAAP).

10.2 None of the Obligor has incurred any material tax liability in connection with any of the Projects or the other transactions contemplated by the Transaction Documents which has not been disclosed in writing to the Intercreditor Agent, including as disclosed in the financial statements delivered to the Intercreditor Agent under this Agreement.

10.3 There are no Liens for Taxes on any of the Properties of any of the Obligor other than Liens permitted pursuant to paragraph 3(a) of Part B of Schedule 5 (*Covenants*) hereto.

11. Business, Debt, Etc.

The Obligor has not conducted any business other than a Permitted Business and the Substitution. The Obligor has no place of business outside the Macau SAR except (in the case of the Company) as otherwise permitted under Part B of Schedule 5 (*Covenants*) or, in the case of any other Obligor, outside its jurisdiction of incorporation. No Obligor has any outstanding Financial Indebtedness other than (in the case of the Company) Permitted Financial Indebtedness or (in the case of any other Obligor) as permitted by the Senior Finance Documents to which it is a party.

12. Environmental Laws

12.1 Each Obligor is in compliance with all applicable material Environmental Laws in all material respects and, so far as it is aware, there are no circumstances that could at any time be reasonably expected to prevent or interfere with such compliance.

12.2 No material Environmental Claim has been made which has not been fully discharged, released, satisfied or withdrawn.

12.3 So far as each Obligor is aware:

- (a) the Site does not contain any Hazardous Substances whose presence on the Site could reasonably be expected to affect the Company (or any other Obligor) or the Projects in a material and adverse manner; and
- (b) there are no antiquities or obstructions on the Site which could reasonably be considered likely to prevent or impede the carrying out of either Project in any material respect.

13. Utilities

All material utility services (including, without limitation, gas, water and electrical interconnection) necessary for the Projects are or will be available at the Site as and when required.

14. [Not used]

15. Sufficiency of Funds

As of the first day of each Fiscal Quarter of the Company and as of each Advance Date, the Company together with each other Obligor has sufficient Funds to achieve construction completion of the Projects and satisfy any other existing or future liabilities, claims or other obligations of any kind.

16. Sufficiency of Interests and Project Documents

- 16.1 The Company is the sole legal and beneficial owner of, and has good title to, or has a valid leasehold interest in, the land comprised in the Site, and each Obligor has good title to, or a valid license or leasehold interest in, all its Property, and, other than as provided by the Transaction Documents, none of its Property is subject to any claims, liabilities, obligations, charges or restrictions of any kind, nature or description (other than claims, liabilities, obligations, charges or restrictions that individually or in the aggregate could not reasonably be expected to materially interfere with the business or Property of the Company), or to any Lien except for Permitted Liens. None of the Pledged Stock is subject to any Lien except for Permitted Liens.
- 16.2 The Intercreditor Agent has received a true, complete and correct copy of each of the Major Project Documents (excluding any Resort Management Agreements) in effect or required to be in effect as of the date this representation is made or deemed to be made (including all exhibits, schedules, disclosure letters, modifications and amendments referred to therein or delivered or made pursuant thereto, if any). Each Major Project Document (excluding any Resort Management Agreements) is in full force and effect, enforceable against the Persons party thereto in accordance with its terms, subject only to bankruptcy and similar laws and principles of equity.
- 16.3 All conditions precedent to the obligations of the respective parties (other than the Company or any other Obligor) under the Major Project Documents (excluding any Resort Management Agreements) have been satisfied or waived, except for such conditions precedent which by their terms cannot be met until a later stage in the construction or operation of the Projects, and the Obligors have no reason to believe that any such condition precedent which could reasonably be expected to have a Material Adverse Effect cannot be satisfied on or prior to the appropriate stage in the development, construction or operation of the Projects.

17. Intellectual Property

Each Obligor owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. To each Obligor's knowledge, no claim has been asserted or is pending by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does any Obligor know of any valid basis for any such claim, except with respect to Intellectual Property (other than any Intellectual Property related to or otherwise associated with the Company's use of the "Wynn" name), as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect. The use by the Company of the Intellectual Property related to or otherwise associated with the Company's use of the "Wynn" name does not infringe on the rights of any Person. The use by the Company of Intellectual Property other than Intellectual Property related to or otherwise associated with the Company's use of the "Wynn" name, does not infringe on the rights of any Person, which infringement, individually or collectively, could reasonably be expected to have a Material Adverse Effect.

18. **Projections**

As of the Third Amendment Signing Date, the Projections:

- (a) are based on assumptions the Company believes to be reasonable as to all legal and factual matters material to the estimates set forth therein;
- (b) are consistent with the provisions of the Transaction Documents in all material respects (including paragraph 1 of Part B and paragraph 2(c) of Part A of Schedule 5 (*Covenants*));
- (c) set forth all material costs and expenses anticipated to be incurred; and
- (d) represent the Company's views as to costs and expenses anticipated to be incurred in the manner contemplated by the Transaction Documents.

19. **Fees and Enforcement**

Other than amounts that have been paid in full or will have been paid in full by the Third Amendment Effective Date, no fees or taxes, including stamp, transaction, registration or similar taxes, are required to be paid for the legality, validity or enforceability of any of the Transaction Documents then in effect.

20. **ERISA**

Either (a) there are no Plans or Multiemployer Plans for the Company or any member of the Controlled Group or (b) (i) the Company and each Commonly Controlled Entity have fulfilled their obligations (if any) under the minimum funding standards of ERISA and the Code for each Plan and for contributions to any Multiemployer Plan; (ii) each Plan is in compliance in all

material respects with the currently applicable provisions of ERISA and the Code; (iii) neither the Company nor any Commonly Controlled Entity has incurred any liability to the PBGC or a Plan under Title IV of ERISA (other than liability or contributions for premiums due in the ordinary course). Assuming that the credit extended hereunder does not involve the assets of any employee benefit plan subject to Title I of ERISA sponsored, monitored or contributed by for the Company or any Commonly Controlled Entity, neither the execution of the Transaction Documents nor the consummation of the transactions contemplated thereby will involve a "prohibited transaction" with respect to any Plans within the meaning of section 406 of ERISA or section 4975 of the Code which is not exempt under section 408 of ERISA or under section 4975(d) of the Code.

21. **Subsidiaries and Beneficial Interest**

21.1 *The Company*

- (a) As of the Third Amendment Effective Date, Mr Wong Chi Seng legally and beneficially owns 20,010 Class A Shares (as defined in the Governing Documents of the Company), representing 10% of the total issued share capital and 10% of the Voting Stock of the Company;

- (b) As of the Third Amendment Effective Date, Wynn HK, a company incorporated in the Hong Kong SAR, legally and beneficially owns 102,000 Class B Shares (as defined in the Governing Documents of the Company), representing 51% of the total issued share capital and 51% of the Voting Stock of the Company; and
- (c) As of the Third Amendment Effective Date, Wynn International, a company incorporated in the Isle of Man, legally and beneficially owns 78,000 Class C Shares (as defined in the Governing Documents of the Company), representing 39% of the total issued share capital and 39% of the Voting Stock of the Company.

21.2 *Wynn HK*

As of the Third Amendment Effective Date, Wynn Holdings, a company incorporated in the Isle of Man, legally and beneficially owns 99% and beneficially owns 1%, and Wynn International, as nominee of Wynn Holdings, legally owns 1%, of the total issued share capital of Wynn HK.

21.3 *Wynn Holdings*

As of the Third Amendment Effective Date, Wynn International legally and beneficially owns 100% of Wynn Holdings.

21.4 *Wynn International*

As of the Third Amendment Effective Date, Wynn Asia 2, a company incorporated in the Cayman Islands, legally and beneficially owns 100% of the total issued share capital of Wynn International.

21.5 *Wynn Asia 2*

As of the Third Amendment Effective Date, Wynn Asia, a company incorporated in the State of Nevada, legally and beneficially owns 100% of the total issued share capital of Wynn Asia 2.

- 21.6 Save as provided by the Security Documents or the Wong Option Agreement or as otherwise permitted by the Senior Finance Documents, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Capital Stock issued by any Obligor (other than any Capital Stock in Wynn Asia 2). No Obligor has issued, or authorized the issuance of, any Disqualified Stock.

22. **Labour Disputes and Acts of God**

- 22.1 Neither the business nor the Properties of any Obligor, nor, to the knowledge of each Obligor, any other Major Project Participant, is affected by any fire, explosion, accident, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty or other event of force majeure, that could reasonably be expected to have a Material Adverse Effect.

22.2 There are no strikes, lockouts, stoppages, slowdowns or other labour disputes against any Obligor pending or, to the knowledge of each Obligor, 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 each Obligor have not been in violation of any applicable Legal Requirement dealing with such matters that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. All payments due from each Obligor 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 such Obligor.

23. **Liens**

Except for Permitted Liens, none of the Obligors have secured or agreed to secure any Financial Indebtedness by any Lien upon any of their present or future revenues or other Properties or Capital Stock. None of the Obligors have outstanding any Lien or obligation to create Liens on or with respect to any of their Properties (including, without limitation, revenues), other than Permitted Liens and as provided in the Security Documents.

24. **Title**

Save, in the case of any such Property which, pursuant to the Security Documents, is expressed to be subject only to the floating charge granted pursuant to the Floating Charge, to the extent such floating charge has not been consolidated and the absence of such title could not reasonably be expected to have a Material Adverse Effect, each of the Obligors owns and has good, legal and beneficial title to the Property upon which it purports to grant Liens pursuant to the Security Documents, free and clear of all Liens, except Permitted Liens.

25. **Project Schedule**

Solely during the period prior to the Expansion Opening Date, the Project Schedule:

- (a) accurately specifies in summary form the work that the Company proposes to complete in each calendar quarter from the CP Satisfaction Date through Final Completion of the Projects, all of which the Company expects to be achieved;
- (b) is, to the Company's knowledge, based on assumptions the Company believes to be reasonable as to all legal and factual matters material to the estimates set forth therein;
- (c) is consistent with the provisions of the Transaction Documents in all material respects;
- (d) has been and will (in the case of any update) be prepared in good faith and with due care; and
- (e) fairly represents the Company's expectation as to the matters covered thereby as of its date or the date of its most recent update.

26. **Location of Accounts and Records**

The Company's (and each of its Subsidiaries') books of accounts and records are located at the Company's principal place of business in the Macau SAR.

27. **Solvency**

Each Obligor is, and after giving effect to:

- (a) the incurrence of all Financial Indebtedness;
 - (b) the use of the proceeds of such Financial Indebtedness (including, in the case of the Company, the use of proceeds of Advances made under the Senior Finance Documents); and
 - (c) obligations being incurred in connection with the Transaction Documents,
- will be and will continue to be Solvent.

28. **Plans and Specifications**

The Plans and Specifications:

- (a) are, to the Company's knowledge as of the Third Amendment Effective Date, based on assumptions that the Company believes to be reasonable as to all legal and factual matters material thereto;
- (b) are, and except to the extent permitted under paragraph 15 of Part B of Schedule 5 (*Covenants*) will be from time to time, consistent with the provisions of the Transaction Documents;
- (c) have been prepared in good faith with due care; and
- (d) are accurate in all material respects and fairly represent the Company's expectations as to the matters covered thereby.

29. **No subsidiaries**

Save as permitted hereunder, the Company has no subsidiaries and does not legally or beneficially own any Capital Stock in any Person.

30. **Pari Passu**

The payment obligations under the Senior Finance Documents of each of the Obligors rank at least *pari passu* with all its other present and future unsecured and unsubordinated obligations, except for obligations mandatorily preferred by law applying to companies generally.

31. **Insurance**

The Company and each other Obligor is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which it is engaged and in any event in accordance with

Schedule 7 (*Insurance*); and no Obligor has 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).

32. **Fiscal Year**

The fiscal year of each of the Obligors ends on 31 December of each calendar year.

33. **Accuracy of Information, etc.**

As of the Third Amendment Signing Date, or, in the case of the Information Memorandums, the respective dates thereof, no statement or information contained in each Information Memorandum or any other document, certificate or written statement furnished to any Secured Creditor, by or on behalf of any Obligor or the PASA Agent for use in connection with the transactions contemplated by any of the Senior Finance Documents, contained (when, in the case of any such document, certificate or written statement (other than the Information Memorandums), read as a whole with all such documents, certificates and written statements furnished on or prior to the Third Amendment Signing Date to such Senior Secured Creditor) any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements contained herein or therein not misleading. As of the Third Amendment Signing Date, or, in the case of the Information Memorandums, the dates thereof, the projections and pro forma financial information contained in the materials referenced above (including the Projections) are based upon good faith estimates and assumptions believed by management of the Obligors to be reasonable at the time made, it being recognized by the Senior Secured Creditors that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. As of the Third Amendment Signing Date, there are no facts known to any Obligor or the PASA Agent that could, individually or collectively, reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed in the Senior Finance Documents, in the Information Memorandums or in any other documents, certificates and written statements furnished to the Senior Secured Creditors for use in connection with the transactions contemplated by the Senior Finance Documents.

34. **Site and Site Easements**

34.1 The Site, the material Site Easements and the current use thereof comply in all material respects with all applicable Legal Requirements and with all Insurance Requirements.

34.2 No Taking has been commenced or, to the Company's knowledge, is contemplated with respect to all or any portion of the Site or the Site Easements or for the relocation of roadways providing access thereto except, in each case, as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect.

34.3 There are no current, pending or, to the knowledge of the Company, proposed special or other assessments for public improvements or otherwise affecting the Site or the Site Easements, nor are there any contemplated improvements thereto that may result in such special or other assessments, in any case that could reasonably be expected to result in a material liability to the Company.

34.4 There are no outstanding options to purchase or rights of first refusal or restrictions on transferability affecting the Site or the material Site Easements (other than those set forth in the Senior Finance Documents and the Land Concession Contract or arising by mandatory operation of law).

34.5 Except as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect, no Project building or structure or any appurtenance thereto or equipment thereon, or the use, operation or maintenance thereof, violates any restrictive covenant or encroaches on any easement or on any property owned by others.

35. **Affiliate Agreements**

Each Affiliate Agreement in effect as of the date this representation is made or deemed to be made has been entered into on arm's length terms and for full market value, in accordance with the Concession Contract and all other applicable Legal Requirements and otherwise in compliance with the terms hereof.

36. **Wynn Asia 2**

As of the Third Amendment Effective Date, Wynn Asia 2 has not carried on any business other than holding shares in Wynn International, entering into the Senior Finance Documents as a Wynn Obligor, entering into all agreements that are necessary or desirable for the purpose of (i) maintaining its corporate status (including without limitation agreements for the appointment of lawyers and auditors), (ii) the Substitution and (iii) complying with its obligations under the Finance Documents (as defined in the Deed of Appointment and Priority) (including without limitation the appointment of process agents).

SCHEDULE 5

COVENANTS

Part A - Affirmative Covenants

The Company shall:

1. **Financial Statements** - Furnish to the Intercreditor Agent and, in the case of the Wynn Resorts' annual report referred to in sub-paragraph (a) below, each Facility Agent:
 - (a) as soon as available, but in any event not later than the earlier of (i) 15 days after the filing with the SEC of Wynn Resorts' annual report on Form 10-K (or successor form thereto) with respect to each Fiscal Year and (ii) 90 days after the end of each Fiscal Year, a copy of:
 - (i) the audited balance sheets (on a consolidated basis) of:
 - (A) Wynn Resorts; and
 - (B) the Company,as at the end of such Fiscal Year and the related audited statements of income and of cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, by the Auditors and prepared (in the case of the Company) for the Restricted Group only and without taking account of any contribution from any amounts derived from or under (i) the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary; and
 - (ii) the unaudited balance sheet, of:
 - (A) Wynn Asia 2;
 - (B) Wynn International; and
 - (C) Wynn HK,as at the end of such Fiscal Year and the related unaudited statements of income and of cash flows for such Fiscal Year, setting forth in each case in comparable form the figures for the previous Fiscal Year; and
 - (b) as soon as available, but in any event not later than the earlier of (i) 15 days after the filing with the SEC of Wynn Resorts' quarterly report on Form 10-Q (or successor form thereto) with respect to each of the first three Fiscal Quarters of each Fiscal Year and (ii) 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, the unaudited (on a consolidated basis) balance sheets of:
 - (A) Wynn Resorts;

- (B) Wynn Asia 2;
- (C) Wynn International;
- (D) Wynn HK; and
- (E) the Company,

as at the end of such quarter and the related unaudited statements of income and of cash flows for such quarter and the portion of the Fiscal Year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year and prepared (in the case of the Company) for the Restricted Group only and without taking account of any contribution from any amounts derived from or under (i) the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary.

All such financial statements shall be fair in all material respects (in the case of financial statements delivered pursuant to sub-paragraph (b) of this paragraph 1, subject to normal year-end audit adjustments) and were prepared in accordance with applicable GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by such Auditors or Responsible Officer, as the case may be, and disclosed therein).

2. **Certificates; Other Information** - Furnish to the Intercreditor Agent:

- (a) concurrently with the delivery of any financial statements pursuant to paragraph 1 of this Part A:
 - (i) a certificate of a Responsible Officer of the relevant Obligor certifying that the statement is fair in all material respects (subject, where relevant, to normal year-end audit adjustments);
 - (ii) a certificate of a Responsible Officer of the relevant Obligor stating that, to the best of each such Responsible Officer's knowledge, the Obligor during such period has observed or performed all of its material covenants and other agreements, and satisfied every material condition contained in the Senior Finance Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no actual knowledge of any Default except as specified in such certificate or in the equivalent certificate for such period issued pursuant to this sub-paragraph (a)(ii) by a Responsible Officer of another Obligor;
 - (iii) when applicable, in the case of quarterly or annual financial statements, a Compliance Certificate containing all information and calculations necessary for determining compliance by the Obligors with the provisions of this Agreement as of the last day of the applicable Fiscal Quarter or Fiscal Year, as the case may be; and

- (iv) in the case of the Company:
- (1) a list of each of its accounts;
 - (2) upon the reasonable request of the Intercreditor Agent, a copy of the bank statements for each such account for the preceding Fiscal Quarter; and
 - (3) a certificate of a Responsible Officer of the Company setting out the amount(s) and details of any Permitted Financial Indebtedness, Subordinated Debt or Shareholder Loans (including, in each case, all terms and conditions thereof) made available to the Company during the preceding Fiscal Quarter;
- (b) for each calendar month during the period up to and including the first calendar month by which (1) Substantial Completion has been achieved and the Opening Conditions specified in paragraph (a) of the definition thereof have been satisfied in respect of the Original Project and (2) the Expansion Opening Date has occurred, deliver to the Facility Agents, the Technical Adviser and the Intercreditor Agent, within 45 days following the end of the relevant calendar month, a status report for the Original Project and the Expansion (the “**Monthly Construction Period Report**”) in form and substance substantially similar to the status reports delivered by the Company to the Intercreditor Agent prior to the Second Amendment Signing Date and thereafter, deliver to the Facility Agents and the Intercreditor Agent (acting on the instructions of the Lenders) such status reports as (and at such intervals which) the Lenders deem necessary;
- (c) 30 days prior to the beginning of each Fiscal Year thereafter, detailed projections (each, together with the projections provided pursuant to paragraph 22 of Part A of Schedule 2 (*Conditions Precedent*), the “**Projections**”) of the Company and the Restricted Group for such Fiscal Year (or portion thereof from the Original Project Opening Date through the end of such Fiscal Year), including a projected balance sheet of the Company as of the end of such Fiscal Year and the related statements of projected cash flow and profit and loss and the detailed assumptions supporting such Projections and prepared on a consolidated basis for the Restricted Group and without taking account of any contribution from any amounts derived from or under (i) the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary and, no less frequently than quarterly, significant revisions, if any, of such Projections with respect to such Fiscal Year, which Projections shall in each case be accompanied by a certificate of a Responsible Officer of the Company stating that such Projections are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect and which such Projections shall demonstrate compliance with paragraph 1 of Part B of this Schedule;

- (d) within 45 days after the end of each Fiscal Quarter after the Original Project Opening Date, a narrative discussion and analysis (the “**Quarterly Operating Period Report**”) in form and substance substantially similar to the narrative discussions and analyses delivered by the Company to the Intercreditor Agent prior to the Second Amendment Signing Date of the financial condition and results of operations of the Company and the Restricted Group 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 Original Project Opening Date has occurred, from the Original Project Opening Date) to the end of such Fiscal Quarter, as compared to the portion of the Projections covering such periods and to the comparable periods of the previous Fiscal Year;
- (e) promptly, and in any event within ten Business Days after any Major Project Document or Affiliate Agreement is terminated (save upon expiration in accordance with its terms) or amended or any new Major Project Document or Affiliate Agreement is entered into (other than, in each case, any Resort Management Agreement), or upon becoming aware of any material default by any Person or the occurrence of any event under a Major Project Document or Affiliate Agreement (other than, in each case, any Resort Management Agreement) which, with the expiry of any grace period, the giving of notice or the making of any determination provided thereunder, or any combination of the foregoing, would give rise to a right to terminate (a “**Termination Event**”), a written statement describing such event with copies of such amendments or new Major Project Document or Affiliate Agreement (including, in the case of the latter, a certificate from a Responsible Officer confirming the transactions contemplated therein comply with the requirements of paragraph 10 of Part B of Schedule 5 (*Covenants*)) and, with respect to any such terminations or material defaults, an explanation of any actions being taken by the Company with respect thereto;
- (f) promptly, and in any event within 30 days of the end of each Fiscal Year, deliver to the Intercreditor Agent a certificate certifying that the insurance requirements of Schedule 7 (*Insurance*) have been implemented and are being complied with;
- (g) within twenty days after the Company receives actual notice of a Proceeding or Proceedings instigated or threatened in writing involving an alleged liability of, or claims against or affecting, the Company, Wynn HK, Wynn International, Wynn Asia 2 or any other Obligor equal to or greater than USD5,000,000 or its equivalent, deliver a schedule describing such Proceeding or Proceedings and promptly after request by the Intercreditor Agent, such other information as may be reasonably requested by the Intercreditor Agent to enable the Intercreditor Agent and its counsel to evaluate any of such Proceedings;
- (h) a copy of each written notice which is given under or pursuant to the Concession Contract or the Land Concession Contract by the Macau SAR to the Company promptly upon receipt of such notice;

- (i) at the same time as the giving of any written notice under or pursuant to the Concession Contract or the Land Concession Contract by the Company to the Macau SAR, a copy of such notice; and
 - (j) promptly, such additional financial and other information as the Intercreditor Agent may from time to time reasonably request.
3. **Permits** - Deliver to the Intercreditor Agent and (in the case of Permits made or issued by or with a Governmental Authority) the Technical Adviser promptly, but in no event later than 20 days after the receipt thereof by the Company, copies of:
- (a) all material Permits (including those specified in Part B of Schedule 12 (*Permits*)) that are obtained or entered into by the Company or any other Obligor after the Signing Date; and
 - (b) any material amendment, supplement or other modification to any such Permit received by the Company or any other Obligor after the Signing Date.
4. **Plans and Specifications** - Provide to the Technical Adviser copies of, and maintain at the Site, a complete set of the Plans and Specifications.
5. **Technical Adviser**
- 5.1 Solely with respect to the Original Project and the Expansion, cooperate and cause the Prime Contractor and the PASA Agent to cooperate with the Technical Adviser in the performance of the Technical Adviser's duties. Without limiting the generality of the foregoing, the Company shall and shall cause the Prime Contractor to:
- (a) communicate with and promptly provide all invoices, documents, plans and other information reasonably requested by the Technical Adviser relating to the work;
 - (b) provide the Technical Adviser with access to the Site and, subject to required safety precautions and reasonable site management restrictions, the construction areas; and
 - (c) solely in the case of the PASA Agent, provide the Technical Adviser with reasonable working space and access to telephone, copying and telecopying equipment at the Site (or such other location in reasonable proximity to the Site as the Projects near completion),

and the Company shall take reasonable measures to otherwise facilitate the Technical Adviser's review of the construction of the Projects and preparation of the certificates and reports required hereunder. The Company shall also maintain in Hong Kong or Macau a complete set and, promptly upon written request, provide the Technical Adviser with reasonable access to and copies of, each first tier Subcontract entered into by the Prime Contractor (or any other Contractor who is party to a Project Document entered into with the Company that is not subject to a fixed price) with a contract price (or expected aggregate amount to be paid in the case of "cost plus" contracts) in excess of USD500,000 or its equivalent.

- 5.2 Solely with respect to the Original Project and the Expansion, in addition to any other consultation required under this Agreement, following the end of each quarter, upon the request of the Intercreditor Agent, consult with any such Person regarding any adverse event or condition identified in any report prepared by the Technical Adviser.
6. **Management Letters** - Deliver to the Intercreditor Agent a copy of any “management letter” or other similar communication received by the Company or any other Obligor from the Auditors in relation to the Company’s or any other Obligor’s financial, accounting and other systems, management or accounts.
7. **Governmental and Environmental Reports** - Deliver to the Intercreditor Agent and the Technical Adviser copies of all material reports required to be filed by the Company or any other Obligor with any Governmental Authority in connection with the construction of the Projects.
8. **Payment of Obligations** - To the extent not otherwise subject to valid subordination, standstill, intercreditor or similar arrangements, pay, discharge or otherwise satisfy (and ensure each other Obligor shall pay, discharge or otherwise satisfy) at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate (under the circumstances) proceedings and reserves in conformity with applicable GAAP with respect thereto have been provided on the books of the Company (and, where relevant, such other Obligor).
9. **Conduct of Business and Maintenance of Existence, etc.**
- (a) Preserve, renew and keep in full force and effect (and ensure each other Obligor shall preserve, renew and keep in full force and effect) its corporate or limited liability company existence and remain a Subsidiary of Wynn Resorts;
 - (b) take all reasonable action to maintain all rights, privileges, franchises, Permits and licenses necessary (and ensure each other Obligor shall take all reasonable action to maintain all rights, privileges, franchises, Permits and licenses necessary) in the normal conduct of its business, except to the extent that failure to do so could not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect; and
 - (c) engage only in the businesses which are Permitted Businesses.
10. **Maintenance of Property; Leases; Insurance**
- 10.1 Keep (and ensure each other Obligor shall keep) all material Property and systems useful and necessary in its business in good working order and condition, ordinary wear and tear excepted.
- 10.2 Maintain (and ensure each other Obligor shall maintain) all material rights of way, easements, grants, privileges, licenses, certificates, and Permits necessary for the intended use of the Site and the Site Easements, except any such item the loss of which, individually or in the aggregate, could not reasonably be expected to materially and adversely affect or interfere with the Permitted Businesses or Property of the Company (or, as the case may be, any other Obligor).

- 10.3 Comply (and ensure each other Obligor shall comply) with the terms of each lease or other grant of rights in respect of land, including easement grants, so as to not permit any material uncured default on its part to exist thereunder, except, in each case, where non-compliance therewith could not reasonably be expected to materially and adversely affect or interfere with the Permitted Businesses or Property of the Company (or, as the case may be, any other Obligor).
- 10.4 At all times maintain in full force and effect:
- (a) the insurance policies listed in Schedule 7 (*Insurance*); and
 - (b) such other insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business, and
- otherwise comply with Schedule 7 (*Insurance*).
- 10.5 Ensure that each other Obligor maintains insurances on and in relation to its business and assets and against those risks and to an extent (i) as is usual for companies carrying on the same or substantially similar business (ii) which is, where relevant, at least comparable to that required to be maintained by the Company and (iii) in respect of such insurances, is maintained on substantially the same terms and conditions (including in respect of any reinsurance or any assignment or grant of other Liens in favour of the Security Agent over or in respect thereof) as those set out in Schedule 7 (*Insurance*).
- 10.6 Preserve and protect (and ensure each other Obligor preserves and protects) the Liens created pursuant to the Security Documents and, if any Lien (other than Permitted Liens) is asserted against any of the Project Security, promptly give (and ensure each other Obligor promptly gives) the Intercreditor Agent a detailed written notice of such Lien and pay the underlying claim in full or take such other action so as to cause it to be released or bonded over in a manner reasonably satisfactory to the Intercreditor Agent.
11. **Inspection of Property; Books and Records; Discussions**
- (a) Keep (and ensure each other Obligor shall keep) proper books of records and account in which full, true and correct entries in conformity with applicable GAAP and all Legal Requirements.
 - (b) Subject to any Macau Gaming Laws restricting such actions and, where no Event of Default has occurred which is continuing, prior reasonable request and notice, procure (and ensure each other Obligor procures) that each of the Agents or their respective nominees and the Technical Adviser (each a “**Relevant Person**”) be allowed reasonable rights of inspection and access during normal business hours to the Site Facilities, the Projects, the Auditors and other Company and Obligor officers, the Company’s and each other Obligor’s accounting books and records and any other documents relating to the Projects as they may reasonably require, and so as not unreasonably to interfere with the

operations of the Company or any Major Project Participant and to take copies of any documents inspected. Any information and documents made available for inspection by a Relevant Person pursuant to this paragraph shall be made available subject to customary confidentiality undertakings being executed by such Relevant Person.

- (c) For all expenditures with respect to which Advances under the Term Loan Facilities are made, the Company shall retain, until at least three years after delivery of the last report specified in paragraph 2(b) of this Part A for the Fiscal Year in which the last Advance was made under the Term Loan Facilities, all records and other documents evidencing such expenditures as are required hereunder to be attached to an Advance Request made in respect of any Term Loan Facility.

12. **Notices** - Promptly give notice to the Intercreditor Agent of:

- (a) the occurrence of any Default;
- (b) unless already notified pursuant to paragraph 2(e) of this Part A, any notice of termination (other than expiration in accordance with the terms thereof), default or any Termination Event under any Major Project Document;
- (c) (i) any fact, circumstance, condition or occurrence at, on, or arising from, any of the Site or the Site Easements that results in non-compliance with any Environmental Law that has resulted or could reasonably be expected to result in a Material Adverse Effect, and (ii) any Environmental Claim pending or, to the Company's or any other Obligor's knowledge, threatened against the Company or any other Obligor or, to the Company's or any other Obligor's knowledge, pending or threatened against any Contractor or any Subcontractor arising in connection with its occupying or conducting operations on or in respect of the Projects, the Site or the Site Easements which could reasonably be expected to have a Material Adverse Effect;
- (d) any change in the Responsible Officers of the Company or any other Obligor, and such notice shall include a certified specimen signature of any new officer so appointed and, if requested by any Facility Agent or the Intercreditor Agent, evidence of the authority of such new Responsible Officer;
- (e) any proposed material change in (i) the nature or scope of either Project or (ii) the business or operations of the Company or any other Obligor;
- (f) any notice of any material schedule delay delivered under the Construction Contract and all remedial plans by the Prime Contractor and updates thereof;
- (g) any "Substantial Completion" certificates or notices thereof delivered under any Major Project Documents (including any Certificate of Substantial Completion or any notices of Substantial Completion);
- (h) any (i) default or event of default (or alleged default) under any Contractual Obligation of the Company or any other Obligor or (ii) litigation, investigation or proceeding which may exist at any time between the Company or any other Obligor and any Governmental Authority, that in either case, could reasonably be expected to have a Material Adverse Effect;

- (i) upon any officer of the Company or any other Obligor obtaining knowledge thereof, the instigation or written threat of any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration against or affecting the Company or any other Obligor, or any Property of the Company or any other Obligor (collectively, “**Proceedings**”) not previously disclosed in writing by the Company to the Lenders that, in any case (i) is reasonably likely to give rise to a Material Adverse Effect or (ii) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions under the Transaction Documents, or any material development in any such Proceeding, in each case together with such other information as the Intercreditor Agent may reasonably require;
- (j) the following events, as soon as possible and in any event within 30 days after the Company or any other Obligor knows or has reason to know thereof: (i) the occurrence of any Reportable Event with respect to any Plan, a material failure to make any required contribution to a Plan, the creation of any Lien in favour of the PBGC or a Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC, the Company, any other Obligor or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the termination, Reorganization or Insolvency of, any Plan;
- (k) solely during the period prior to the Expansion Opening Date, any event, occurrence or circumstance which reasonably could be expected to render the Company incapable of or prevent the Company from meeting any material obligation of the Company under the Construction Contract or the other Major Project Documents as and when required thereunder; and
- (l) any development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this paragraph shall be accompanied by a statement of a Responsible Officer of the Company setting forth details of the occurrence referred to therein and stating what action the Company and/or the relevant Obligor proposes to take with respect thereto.

13. **Environmental Laws; Permits**

- 13.1 Inform the Intercreditor Agent promptly on becoming aware of any, or any anticipated, release, emission, discharge or disposal of any matter that might reasonably be expected to form the basis for any Environmental Claim.

- 13.2 Comply (and ensure each other Obligor complies) with all applicable Environmental Laws and Environmental Licences (save for any failure to comply that could not reasonably be expected to have a Material Adverse Effect).
- 13.3 Provide copies of any notices from any Governmental Agency of non-compliance with any material Environmental Law or Environmental Licence and any notices of any Environmental Claims to the Intercreditor Agent.
- 13.4 Deliver to the Intercreditor Agent:
- (a) any notice that any Governmental Authority may condition approval of, or any application for, any Permit held by the Company or any other Obligor on terms and conditions that are materially burdensome to the Company or any other Obligor, or to the operation of any of its businesses or any Property owned, leased or otherwise operated by the Company or any other Obligor in each case in a manner not previously contemplated; and
 - (b) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Intercreditor Agent in relation to any matters disclosed pursuant to this paragraph 13.
14. **Hedging**
- Comply with the Hedging Arrangements and not enter (and ensure no other Obligor enters into) into any other Swap Agreement or derivative transaction unless:
- (a) the Company is in compliance with the Hedging Arrangements; and
 - (b) unless such arrangement is with a Lender which has executed a duly completed Hedging Counterparty's Deed of Accession and Finance Party Accession Undertaking (also executed, in the case of the latter, by the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent) and promptly delivered by the Intercreditor Agent to the Security Agent) and is on the same terms as those comprised in the Hedging Arrangements, the counter-party thereto has no Lien or any right to share in any Lien over any Property of the Company.
15. **Additional Collateral, Discharge of Liens, etc.**
- 15.1 With respect to any Property acquired by the Company or any other Obligor after the Signing Date as to which the Senior Secured Creditors do not have a perfected security interest, subject to compliance with applicable Macau Gaming Laws and restrictions on the grant of Liens permitted pursuant to paragraph 3 of Part B of this Schedule, promptly:
- (a) execute and deliver (and ensure each other Obligor executes and delivers) to the Intercreditor Agent such amendments to the Security Documents or execute and deliver such other documents as the Intercreditor Agent, acting reasonably, deems necessary or advisable to grant to the Senior Secured Creditors a security interest in such Property; and

- (b) take all actions necessary or advisable to grant to the Senior Secured Creditors a perfected first priority security interest in such Property (subject to Permitted Liens).

In addition to the foregoing, in the event any such Property acquired after the Signing Date consists of land or other Property with respect to which a recording or registration in the real property or other records of an appropriate jurisdiction is required or advisable in order to perfect a security interest therein, promptly (and, in any event, within 30 days following the date of such acquisition):

- (i) execute and deliver (and ensure each other Obligor executes and delivers) a mortgage, substantially in the form of the Mortgage (with such modifications, if any, as are necessary to comply with Legal Requirements that the Security Agent may reasonably request), such mortgage to be recorded in the real property records of the appropriate jurisdiction, or execute and deliver to the Security Agent for recording a supplement to the Mortgage, in either case pursuant to which the Company or other Obligor grants to the Senior Secured Creditors a Lien on such Property subject only to Permitted Liens; and
- (ii) execute and/or deliver (and ensure each other Obligor executes and/or delivers) such other documents or provide such other information in furtherance thereof as the Security Agent may reasonably request, including delivering documents and taking such other actions which would have been required pursuant to Clause 2 (*Conditions Precedent*) if such Property were part of the Project Security at the CP Satisfaction Date.

15.2 Notwithstanding anything to the contrary in this paragraph 15, sub-paragraph 15.1 shall not apply to:

- (i) any Property created or acquired after the Signing Date, as applicable, as to which the Intercreditor Agent has reasonably determined that the collateral value thereof is insufficient to justify the difficulty, time and/or expense of obtaining or maintaining a perfected security interest therein;
- (ii) any Subconcession proceeds or any Property purchased with Subconcession proceeds (which is neither comprised in any Project nor necessary or desirable to ensure the full benefit of any Project to the Company);
- (iii) any works of art, antiquities, precious stones, precious metals or other similar assets (which are not of a type that will become affixed to the Site or the other Site Facilities such that the removal thereof could reasonably be expected to materially interfere with the ongoing ordinary course of operations of either Project);
- (iv) any Property comprised in or derived from Resort Management Agreements (which is neither comprised in any Project nor necessary or desirable to ensure the full benefit of any Project to the Company); or

(v) stock or other ownership interests in Excluded Subsidiaries and Excluded Projects.

16. **Use of Proceeds and Revenues**

16.1 Use the proceeds of each of the Facilities only for the purposes specified or allowed in this Agreement and the Facility Agreement relating to such Facility.

16.2 Ensure that all of its funds and those of any other Obligor and all other amounts received by it or any other Obligor (other than any Subconcession proceeds or amounts received by the Company in respect of any Excluded Subsidiaries or Excluded Projects or its entry into, or performance of its obligations under, any Resort Management Agreement) are deposited into any Account or combination of Accounts and otherwise in accordance with the provisions of this Agreement and that it and each other Obligor otherwise complies with Schedule 6 (*Accounts*).

17. **Compliance with Laws, Project Documents, etc.; Permits**

17.1 Comply (and ensure each other Obligor complies) in all material respects with all material Legal Requirements and its Governing Documents.

17.2 Comply (and ensure each other Obligor complies), duly and promptly, in all material respects with its material obligations and enforce all of its material rights under all Project Documents, except:

- (a) in the case of Project Documents (other than the Major Project Documents) where the failure to comply could not reasonably be expected to have a Material Adverse Effect; and
- (b) in the case of any Resort Management Agreement, where the failure to comply could not reasonably be expected to threaten the Concession Contract or the Land Concession Contract.

17.3 From time to time obtain, maintain, retain, observe, keep in full force and effect and comply (and ensure each other Obligor from time to time obtains, maintains, retains, observes, keeps in full force and effect and complies) in all material respects with the terms, conditions and provisions of all Permits made or issued by or with a Governmental Authority as shall now or hereafter be necessary under applicable laws.

17.4 Comply (and ensure each of its Affiliates and, where relevant, each Major Project Participant complies) with all Legal Requirements related to the Land Concession Contract and the Concession Contract.

18. **Pari Passu Ranking** - Procure that the obligations of the Company and each other Obligor under the Senior Finance Documents do and shall rank at least *pari passu* with all its other present and future unsecured and unsubordinated obligations, except for obligations mandatorily preferred by law applying to companies generally.

19. **Further Assurances** - From time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take all such actions, as any of the Intercreditor Agent or the Security Agent may reasonably request,

for the purposes of implementing or effectuating the provisions of the Senior Finance Documents, or of more fully perfecting or renewing the rights of the Senior Secured Creditors with respect to the Project Security (or with respect to any additions thereto or replacements or proceeds or products thereof or with respect to any other Property acquired after the date of the Senior Finance Documents by the Company or any other Obligor which may be deemed to be part of the Project Security) pursuant to the Senior Finance Documents. Upon the exercise by the Intercreditor Agent, the Security Agent or any other Senior Secured Creditor of any power, right, privilege or remedy pursuant to any of the Senior Finance Documents which requires any consent, approval, notification, registration or authorisation of any Governmental Authority, the Company shall execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the Intercreditor Agent, the Security Agent or such Senior Secured Creditor may reasonably be required to obtain from the Company or any other Obligor for such governmental consent, approval, notification, registration or authorisation.

20. **Diligent Construction of the Project** - The Company shall take or cause to be taken all action, make or cause to be made all contracts and do or cause to be done all things necessary to construct the Projects diligently and in accordance with the relevant construction contracts, and the Plans and Specifications, the Project Schedule and the other Transaction Documents.
21. **Retainage Amounts** - Withhold or cause to be withheld from each Contractor party to a Major Project Document such retainage from any payment to be made to such Contractor as is permitted by such Major Project Document.
22. **Preserving Project Security** - Undertake and cause the other Obligors to undertake, all actions which are necessary or appropriate in the reasonable judgment of the Intercreditor Agent to:
 - (a) maintain the Senior Secured Creditors' respective security interests under the Security Documents in the Project Security in full force and effect at all times (including the priority thereof); and
 - (b) preserve and protect the Project Security and protect and enforce the Company's or, as the case may be, other Obligor's rights and title and the respective rights of the Senior Secured Creditor to the Project Security,

including the making or delivery of all filings and registrations, the payments of fees and other charges, the issuance of supplemental documentation, the discharge of all claims or other liens other than Permitted Liens adversely affecting the respective rights of the Senior Secured Creditors to and under the Project Security and the publication or other delivery of notice to third parties.

23. [Not used]
24. **Termination of Concession Contract** - Notify the Intercreditor Agent promptly upon receiving:
- (a) notice of any consultations with the Macau SAR as contemplated by paragraph B1(c) of the Gaming Concession Consent Agreement in relation to any termination of the Concession Contract;
 - (b) notice of any consultations with the Macau SAR as contemplated by paragraph C1 of the Land Concession Consent Agreement in relation to any termination or rescission of the Land Concession Contract;
 - (c) notice of any negotiations with the Macau SAR pursuant to article 83 of the Concession Contract;
 - (d) any notice from the Macau SAR pursuant to clause 3 of article 80 of the Concession Contract; or
 - (e) any notice from the Macau SAR pursuant to clause 4 of article 80 of the Concession Contract,
- and keep the Intercreditor Agent fully apprised thereof.
25. **Capital Expenditures**
- In respect of any:
- (a) contract to be entered into in respect of Capital Expenditure by any Obligor with a total contract price payable (or expected aggregate amount to be paid in the case of “cost plus” contracts) or which may otherwise involve liabilities, actual or contingent, in each case in an amount in excess of USD25,000,000 or its equivalent; or
 - (b) series of contracts (whether related or not) entered into, or to be entered into, in respect of Capital Expenditure by any Obligor in any Fiscal Year which when taken together have a total contract price payable (or expected aggregate amount to be paid in the case of “cost plus” contracts) or which may otherwise involve liabilities, actual or contingent, in an aggregate amount in excess of USD25,000,000 or its equivalent,
- deliver to the Intercreditor Agent:
- (1) a certificate of a Responsible Officer of the Company certifying that it has sufficient Funds to achieve construction completion of the Projects and to pay the total contract price payable and satisfy any other existing or future liabilities, claims or other obligations of any kind under or in respect of the relevant contract to be entered into or otherwise; and

- (2) such other substantiating information and evidence in respect of the relevant contract or contracts that the Intercreditor Agent (acting on the instructions of any Lender) may reasonably require.

26. **Sufficiency of Funds**

Ensure that it together with each other Obligor has, at all times, sufficient Funds to achieve construction completion of the Projects and satisfy any other existing or future liabilities, claims or other obligations of any kind.

27. **Additional Obligors**

27.1 Procure that each of its and each other Obligor's, direct or indirect, Subsidiaries (other than any Excluded Subsidiary) becomes an Obligor within 15 days of the formation, creation or acquisition of such Subsidiary. That Subsidiary shall become an additional Obligor if:

- (a) the Required Lenders approve the addition of that Subsidiary;
- (b) the Company confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Obligor;
- (c) the Company is in compliance with the provisions of paragraph 27.3 below; and
- (d) the Intercreditor Agent has received (in form and substance satisfactory to the Intercreditor Agent) all of the documents and other evidence required by it in relation to the relevant Subsidiary including (without limitation):
 - (i) accession by the relevant Subsidiary to the Sponsors' Subordination Deed and the Wynn Pledgors' Guarantee; and
 - (ii) any other documentation and evidence required by the Intercreditor Agent to ensure that the relevant Subsidiary makes such representations and warranties and is subject to such obligations under the terms of the Senior Finance Documents and grants such Liens in respect of its Property,

in each case, on such terms and by such instrument or combination of instruments, as the Intercreditor Agent deems necessary or desirable.

27.2 The Intercreditor Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence referred to in paragraph 27.1(d) above.

27.3 By not less than 10 Business Days' prior written notice to the Intercreditor Agent, notify the Intercreditor Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an additional Obligor pursuant to paragraph 27.1.

27.4 Following the giving of any notice pursuant to paragraph 27.2 above, if the accession of such additional Obligor obliges the Intercreditor Agent or any Lender to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, promptly upon the request of the Intercreditor Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Intercreditor Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Intercreditor Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an additional Obligor.

Part B - Negative Covenants

The Company shall not directly or indirectly:

1. Financial Condition Covenants

- (a) *Leverage Ratio* - Permit the Leverage Ratio as at the last day of any period of four full consecutive Fiscal Quarters ending on any Quarterly Date set forth below to exceed the ratio set forth below opposite such Quarterly Date:

<u>Quarterly Date</u>	<u>Leverage Ratio</u>
First Quarterly Date	3.75:1
Second Quarterly Date	4.00:1
Third and Fourth Quarterly Dates	4.25:1
Fifth Quarterly Date	4.50:1
Sixth Quarterly Date	4.75:1
Seventh, Eighth, Ninth, Tenth and Eleventh Quarterly Dates	5.00:1
Twelfth Quarterly Date	4.75:1
Thirteenth Quarterly Date	4.50:1
Fourteenth and Fifteenth Quarterly Dates	4.00:1
Sixteenth and Seventeenth Quarterly Dates	3.75:1
Eighteenth Quarterly Date and each Quarterly Date thereafter	3.50:1

provided that, for purposes of calculating EBITDA pursuant to this paragraph 1(a) for any period which is less than four full Fiscal Quarters, EBITDA shall be calculated on an annualised basis.

- (b) *Interest Coverage Ratio* - Permit the Interest Coverage Ratio for each period of four full consecutive Fiscal Quarters ending on each Quarterly Date to be less than 2.0:1 at any time.

2. Limitation on Financial Indebtedness

2.1 Create, incur, assume or suffer to exist (or permit any other Obligor to create, incur, assume or suffer to exist) any Financial Indebtedness, except:

- (a) Financial Indebtedness of the Company created under any Senior Finance Document, the Performance Bond Facility, any Shareholder Loan, any Subordinated Debt or any Guarantee Obligations represented by the guarantee required to be issued pursuant to clause 7 of the Land Concession Contract;
- (b) Financial Indebtedness of the Company (including Capital Lease Obligations) secured by Liens permitted by paragraph 3 (l) of this Part B provided that any recourse in respect of such Financial Indebtedness is limited solely to the Property secured by such Liens;
- (c) Financial Indebtedness of the Company in an aggregate principal amount not to exceed USD10,000,000 or its equivalent at any time;

- (d) Financial Indebtedness of the Company incurred for the purpose of repaying the balance of the principal amount owing to all Lenders *provided* the Intercreditor Agent is satisfied that upon the incurrence of such Financial Indebtedness or immediately thereafter the Release Date (without reference to paragraph (b) of the definition of Release Date) will occur;
- (e) Financial Indebtedness of the Company created, incurred, assumed or suffered to exist during the period on and following the Expansion Opening Date *provided* that the Leverage Ratio as at the most recent Quarterly Date, if determined on a *pro forma* basis after giving effect to the creation, assumption or sufferance to exist of such Financial Indebtedness (when taken together with all such other Financial Indebtedness of the Company permitted pursuant to this paragraph 2.1(e)), would not exceed the ratio set forth opposite that Quarterly Date in paragraph 1(a);
- (f) Financial Indebtedness of the Company:
 - (i) in an aggregate principal amount not to exceed USD50,000,000 or its equivalent;
 - (ii) on terms no more favourable to any creditor than those to which the Revolving Credit Facility made available pursuant to the Revolving Credit Facility Agreement are subject (*provided that* such Financial Indebtedness will be tranching as agreed between the Company and all the creditors (A) between US dollars and Hong Kong dollars and (B) further tranching (if required) to address any requirements of any creditor for its participations thereunder to be applied solely to finance costs or other amounts unconnected with the operation of casino games of chance or other forms of gaming); and
 - (iii) *provided (x)* each creditor has executed and delivered to the Intercreditor Agent a duly completed Additional Lender's Accession Deed and Finance Party Accession Undertaking (also executed, in the case of the latter, by the Intercreditor Agent and all parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent) and promptly delivered by the Intercreditor Agent to the Security Agent), whereupon, provided the other conditions of this paragraph 2.1(f) have also been satisfied, such creditor shall become a party hereto as an Additional Lender and that creditor and each of the other parties hereto shall assume obligations towards, and acquire rights against, one another accordingly or (y) the Financial Indebtedness is otherwise on terms satisfactory to the Intercreditor Agent concerning the relationship between each creditor and the Senior Secured Creditors, including the exercise of rights against the Company and any other Obligor and the sharing and enforcement of the Security and any other liens over Property of the Company or any other Obligor;

- (g) Financial Indebtedness of a wholly owned Subsidiary of the Company which has become an Obligor pursuant to paragraph 27 of Part A of Schedule 5 (an "Obligor Subsidiary") to any other Obligor Subsidiary or to the Company; and
 - (h) other Financial Indebtedness approved in writing by the Intercreditor Agent,
- (together, "**Permitted Financial Indebtedness**").

3. **Limitation on Liens**

Create, incur, assume or suffer to exist (or permit any other Obligor to create, incur, assume or suffer to exist) any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

- (a) Liens for taxes not yet due or which are being contested in good faith by appropriate proceedings, *provided* that adequate reserves with respect thereto are maintained on the books of the Company and the relevant Obligor in conformity with applicable GAAP;
- (b) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business for amounts which are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceeding (such contest proceedings conclusively operating to stay the sale of any portion of the Project Security on account of such Lien);
- (c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation *provided* that if such pledges are being contested, appropriate reserves (determined in accordance with the applicable GAAP) are maintained on the books of the Company and the relevant Obligor;
- (d) deposits by or on behalf of the Company (or the Obligor) to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, appeal bonds and other obligations of a like nature incurred in the ordinary course of business;
- (e) easements, rights-of-way, restrictions, encroachments and other similar encumbrances and other minor defects and irregularities in title, in each case incurred in the ordinary course of business that, in the aggregate, do not materially detract from the value of the Property subject thereto or materially interfere with the ordinary conduct of the business of the Company (or the Obligor);
- (f) Liens created pursuant to paragraph 15.2 of Part A of this Schedule 5;
- (g) Liens created pursuant to the Security Documents;
- (h) licenses of patents, trademarks and other intellectual property rights granted by the Company (or the Obligor) in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of the Company (or the Obligor);

- (i) any attachment or judgment Lien not constituting an Event of Default;
- (j) Liens in favour of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (k) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any Site and Site Easements;
- (l) Liens securing Financial Indebtedness of the Company incurred pursuant to paragraph 2.1(b) of this Part B to finance the acquisition of fixed or capital assets *provided* that:
 - (i) such Liens shall be created substantially simultaneously with the acquisition of such fixed or capital assets (or the refinancing of such Financial Indebtedness as otherwise permitted hereunder);
 - (ii) such Liens do not at any time encumber any Property other than the Property (and proceeds of the sale or other disposition thereof) financed by such Financial Indebtedness; and
 - (iii) the Property financed by such Financial Indebtedness is not of a type that will become affixed to the Site or the other Site Facilities such that the removal thereof could reasonably be expected to materially interfere with the ongoing ordinary course of operations of either Project;
- (m) Liens on cash deposited with, or held for the account of, the Company securing reimbursement obligations owing by the Company and permitted to be incurred by it pursuant to paragraph 2.1(c) above under performance bonds, guaranties, commercial or standby letters of credit, bankers' acceptances or similar instruments or the guarantee required to be issued pursuant to clause 7 of the Land Concession Contract, granted in favour of the issuers of such performance bonds, guaranties, commercial letters of credit or bankers' acceptances, so long as (i) any cash used as security for such reimbursement obligations is invested (if at all) in Permitted Investments only (to the extent the Company has the right to direct the investment thereof) and is segregated from the Company's general cash accounts so that such Liens attach only to such cash and Permitted Investments and (ii) the amount of cash and/or Permitted Investments secured by such Liens does not exceed 110% of the amount of the Financial Indebtedness secured thereby (ignoring any interest earned or paid on such cash and any dividends or distributions declared or paid in respect of such Permitted Investments);
- (n) without prejudice to Schedule 6 (*Accounts*), Liens arising by reason of any netting or set-off arrangements entered into by the Company in the normal course of its banking arrangements and the standard account operating procedures of the bank for the purpose of netting debit and credit balances;

- (o) Liens arising under title transfer or retention of title arrangements entered into by the Company in the normal course of its trading activities on the counterparty's standard or usual terms *provided* that such arrangements shall be limited to Property of an aggregate value not exceeding USD1,000,000 or its equivalent; and
- (p) other Liens approved in writing by the Intercreditor Agent.

4. **Limitation on Fundamental Changes**

Enter (and ensure no other Obligor shall enter) into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its Property or business, except that the Company may dispose of any of its Property in accordance with paragraph 5 of this Part B.

5. **Limitation on Disposition of Property**

Dispose (and ensure no other Obligor shall dispose) of any of its Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or issue or sell any Capital Stock to any Person, except:

- (a) the Disposition for fair market value on arm's length commercial terms in the ordinary course of business of any Property or obsolete or worn out Property or Property no longer used or useful in the business of the Company or the Obligor *provided* that such Disposition could not reasonably be expected to materially adversely affect either Project or any of the Project Security and either:
 - (i) the Net Cash Proceeds from the disposal of all such Property (excluding shares in any Obligor) do not exceed in aggregate an amount equal to USD50,000,000 or its equivalent in any Fiscal Year when taken together with any other Net Cash Proceeds received by the Company or any other Obligor in respect of any Asset Sale in that Fiscal Year; or
 - (ii) where such Net Cash Proceeds referred to in sub-paragraph (i) above exceed in aggregate an amount equal to USD50,000,000 or its equivalent in any Fiscal Year (when taken together with any other Net Cash Proceeds received by the Company or any other Obligor in respect of any Asset Sale in that Fiscal Year), such Net Cash Proceeds are reinvested within 12 months of receipt in assets used by the Company or any other Obligor in the conduct of its Permitted Business (and pending such reinvestment are deposited and retained in an Account) and, if such Net Cash Proceeds are not so reinvested within 12 months of receipt, are applied in mandatory prepayment of the Advances pursuant to paragraph 2 of Schedule 9 (*Mandatory Prepayment*);
- (b) the Disposition of cash (in each case in transactions otherwise permitted under this Agreement), Investments permitted pursuant to paragraph 8 of this Part B, inventory (in the ordinary course of business), receivables (in connection with the collection thereof and otherwise as customary in business activities of the type conducted by the Company) and cash or non-cash prizes and other complimentary items for customers customary in business activities of the type conducted by the Company;

- (c) the sale or issuance of the Company's or any other Obligor's Capital Stock (other than Disqualified Stock) to its direct Shareholders *provided* that such Capital Stock is fully paid upon such issuance (or, as the case may be, sale) and is subject to the Liens created under the Company Share Pledge or such other Liens created under the Senior Finance Documents with regard to such other Obligor's Capital Stock;
- (d) the Company may enter into any leases or licences with respect to any space on or within the Site Facilities where the entry into of such leases or licences is permitted by the terms of the Senior Finance Documents;
- (e) any Property purchased using the Company's Subconcession proceeds (which is neither comprised in any Project nor necessary or desirable to ensure the full benefit of any Project to the Company);
- (f) any Property associated with an Excluded Subsidiary or Excluded Projects (which is neither comprised in any Project nor necessary or desirable to ensure the full benefit of any Project to the Company);
- (g) any Property associated with Resort Management Agreements (which is neither comprised in any Project nor necessary or desirable to ensure the full benefit of any Project to the Company);
- (h) the incurrence of Liens permitted under paragraph 3 of this Part B;
- (i) any Event of Eminent Domain *provided* that the requirements of Schedule 9 (*Mandatory Prepayment*) are complied with in connection therewith;
- (j) subject to compliance with paragraph 17 of this Part B, the Company may enter into Subconcessions; or
- (k) any Disposition not falling within any of the preceding sub-paragraphs of this paragraph 5 made with the prior written consent of the Intercreditor Agent (such consent not to be unreasonably withheld).

6. Limitation on Restricted Payments

- 6.1 (a) Declare or pay any dividend on, or make any payment on account of, or set apart assets for a sinking or other analogous fund (and ensure each other Obligor which is a Subsidiary of the Company shall not declare or pay any dividend on, or make any payment on account of, or set apart assets for a sinking or other analogous fund) for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of the Company (including any Equity) or such other Obligor, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of the Company or such other Obligor;

- (b) enter (and ensure each other Obligor which is a Subsidiary of the Company shall not enter) into any derivatives or other transaction with any financial institution, commodities or stock exchange or clearinghouse (a “**Derivatives Counterparty**”) obligating the Company or such other Obligor to make payments to such Derivatives Counterparty as a result of any change in market value of any such Capital Stock;
- (c) make any repayment of, or pay any interest on or other amount in respect of (and ensure each other Obligor shall not make any repayment of, or pay any interest on or other amount in respect of) the Performance Bond Facility or any other Subordinated Debt (including any Equity);
- (d) make any payment of IP Fees;
- (e) make any payment of Corporate Administrative Fees; or
- (f) take any action or make any payment permitted pursuant to, or in connection with any transaction permitted pursuant to, paragraph 10 of this Part B,

(collectively, “**Restricted Payments**”) except (i) to the extent constituting payment of any Restricted Payment by any wholly owned Subsidiary of the Company (other than any Excluded Subsidiary), which has become an Obligor pursuant to paragraph 27 of Part A of Schedule 5, to the Company or (ii) the Company may:

- (i) pay dividends, distributions or other payments if (A) permitted under paragraphs 6.2 or 17(d) of this Part B or (B) made using any amounts derived from or under (i) any Resort Management Agreement or (ii) any Excluded Project or Excluded Subsidiary;
- (ii) make payments permitted in accordance with the Deed of Appointment and Priority;
- (iii) pay Approved IP Fees and Approved Corporate Administrative Fees *provided* that, in each case, no Event of Default has occurred and is continuing or would result from such payment; and
- (iv) pay to any of its Affiliates the direct cost incurred by that Affiliate (excluding any administration charges, handling fees, mark-ups or any other fees, costs, charges or impositions of a similar nature levied, imposed or charged by that Affiliate) for the acquisition of any assets, or the procurement or any services, to be used by the Company in its Permitted Business.

6.2 At any time after the first Quarterly Date, the Company may declare and/or pay at the times set out in paragraph 6.3 of this Part B by way of dividend or other distribution or make other Restricted Payments, subject to compliance with applicable Legal Requirements and *provided* that all of the following conditions have been satisfied:

- (i) no Event of Default has occurred and is continuing or might reasonably be expected to occur as a result of the declaration and/or payment of such dividend or other distribution or Restricted Payment; and

- (ii) had such declaration, payment, distribution or other Restricted Payment been made immediately prior to the most recent Quarterly Date, the Company would, as at that Quarterly Date, still have been in compliance with paragraph 1 of Part B of this Schedule 5.
- 6.3 Any payment or making of dividends or other distribution or Restricted Payment under paragraph 6.2 of this Part B may be made once in each Fiscal Quarter (or such other date or with such other frequency as may be agreed by the Intercreditor Agent) *provided that* where such payment or making of dividends or other distributions or Restricted Payments is proposed to be made in the Fiscal Quarter immediately following the end of the previous Fiscal Year, that payment or making of dividends or other distributions or Restricted Payments shall be made after the date of prepayment of Advances under the Facilities in respect of Excess Cash Flow pursuant to paragraph 4 of Schedule 9 (*Mandatory Prepayment*).
- 6.4 The financial ratios set out in paragraph 6.2 of this Part B shall be tested by reference to the financial statements of the Company delivered pursuant to paragraph 1(a) of Part A of this Schedule 5 and/or each Compliance Certificate delivered pursuant to paragraph 2(a) of Part A of this Schedule 5.

7. [Not used]

8. **Limitation on Investments**

Make (and ensure that no other Obligor shall make) any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting an ongoing business from, or make any other investment in, any other Person (all of the foregoing, "**Investments**"), except:

- (a) Investments by the Company in any of its wholly owned Subsidiaries (other than any Excluded Subsidiary) which has become an Obligor pursuant to paragraph 27 of Part A of Schedule 5;
- (b) extensions of trade credit in the ordinary course of business (including, without limitation, advances to patrons of the Project casino and gaming operations consistent with ordinary course gaming operations) *provided* that such extensions are in compliance with all Legal Requirements;
- (c) Permitted Investments;
- (d) Investments made using any amounts derived from or under (i) the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary;

- (e) Investments in any Excluded Subsidiary or Excluded Project or any third party whose primary business is the development, construction, ownership and operation of hotel resorts and casinos, using the proceeds of any Advance under the Revolving Credit Facility made available pursuant to the Revolving Credit Facility Agreement;
- (f) loans and advances to employees of the Company in the ordinary course of business (including, without limitation, for travel, entertainment and relocation expenses) in an aggregate amount not to exceed USD5,000,000 or its equivalent at any one time outstanding;
- (g) Investments consisting of securities received in settlement of debt created in the ordinary course of business and owing to the Company or in satisfaction of judgments; and
- (h) in addition to Investments otherwise expressly permitted by this paragraph 8, so long as no Default shall have occurred and be continuing or would result therefrom and no Material Adverse Effect shall have occurred and be continuing or would result therefrom, Investments by the Company in an aggregate amount (valued at cost) not to exceed USD10,000,000 or its equivalent at any one time outstanding.

9. **Limitation on Optional Payments and Modifications of Governing Documents**

- (a) Make or offer to make (and ensure no other Obligor makes or offers to make) any optional or voluntary payment, prepayment, repurchase or redemption of, or otherwise voluntarily or optionally defease, any Financial Indebtedness, or segregate funds for any such payment, prepayment, repurchase, redemption or defeasance, or enter into any derivative or other transaction with any Derivatives Counterparty obligating the Company to make payments to such Derivatives Counterparty as a result of any change in market value of such Financial Indebtedness, other than the prepayment of (i) Financial Indebtedness incurred under the Senior Finance Documents in accordance with the terms of the Senior Finance Documents or (ii) Permitted Financial Indebtedness (excluding any Subordinated Debt); or
- (b) amend or modify, or permit the amendment or modification of (and ensure no other Obligor amends, modifies or permits the amendment or modification of) its Governing Documents in any manner adverse to any of the Secured Creditors (other than where such amendment or modification could not reasonably be expected to have a Material Adverse Effect).

10. **Limitation on Transactions with Affiliates**

Enter (and ensure that no other Obligor shall enter) into any single transaction, or series of transactions, whether related or not (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, the entry into of any contract or the amendment, novation, supplementation, extension or restatement of any existing contract) with any Affiliate of the Company unless:

- (a) (i) all amounts payable by any Obligor thereunder or in respect thereof have been subordinated in accordance with the Sponsors' Subordination Deed and that Obligor and the relevant Affiliate counterparty to such transaction have acceded to the Sponsors' Subordination Deed (in each case, on such terms and by such instrument or combination of instruments, as the Intercreditor Agent deems necessary or desirable) and such Obligor and the relevant Affiliate counterparty have delivered to the Intercreditor Agent a legal opinion, in form and substance satisfactory to the Intercreditor Agent, issued by legal counsel acceptable to the Intercreditor Agent (acting reasonably) or (in respect of a Macau SAR or Nevada incorporated Obligor or Affiliate counterparty) issued by (if that General Counsel is admitted, in accordance with all applicable Legal Requirements, to practise law in Macau SAR or Nevada, as the case may be) the General Counsel of Wynn Resorts (for such Nevada Obligor or Affiliate counterparty) or the General Counsel of the Company (for such Macau SAR Obligor or Affiliate counterparty), in each case in respect of such Person's obligations under the Sponsors' Subordination Deed;

- (ii) the relevant transaction is a genuine commercial transaction on terms that are not less favourable to the Company than those that might be obtained at the time in a comparable arm's length transaction with Persons who are not Affiliates of the Company; and
- (iii) in respect of:
 - (1) any transaction which has (or as a result of any amendment, novation, supplementation, extension or restatement of any existing contract would have) a total amount or contract price payable (or expected aggregate amount to be paid in the case of "cost plus" contracts) or which otherwise involves liabilities, actual or contingent, in an aggregate amount in excess of USD25,000,000 or its equivalent in any Fiscal Year; or
 - (2) any series of transactions (whether related or not) which when taken together have (or as a result of any amendment, novation, supplementation, extension or restatement of any existing contract would have) a total amount or contract price payable (or expected aggregate amount to be paid in the case of "cost plus" contracts) or which otherwise involves liabilities, actual or contingent, in an aggregate amount in excess of USD25,000,000 or its equivalent in any Fiscal Year,

deliver to the Intercreditor Agent:

- (a) a certificate of a Responsible Officer of the Company certifying that it has sufficient Funds to achieve construction completion of the Projects and to pay the total transaction price payable and satisfy any other existing or future liabilities, claims or other obligations of any kind under or in respect of the relevant transaction or transactions to be entered into or otherwise; and
 - (b) such other substantiating information and evidence in respect of the relevant transaction or transactions that the Intercreditor Agent (acting on the instructions of any Lender) may reasonably require; or
- (b) the relevant transaction is between the Company and its wholly owned Subsidiary (other than any Excluded Subsidiary) which has become an Obligor pursuant to paragraph 27 of Part A of Schedule 5.

11. **Limitation on Sales and Leasebacks**

Save as permitted pursuant to paragraph 5 of this Part B, enter (and ensure that no other Obligor shall enter) into any arrangement with any Person providing for the leasing by the Company or such other Obligor as lessee of Property which has been or is to be sold or transferred by the Company or such other Obligor to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such Property or rental obligations of the Company or such other Obligor.

12. **Limitation on Changes in Fiscal Periods**

Permit the Fiscal Year of the Company or any other Obligor to end on a day other than December 31 or change the Company's or any other Obligor's method of determining Fiscal Quarters.

13. **Limitation on Negative Pledge Clauses**

Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability (and ensure that no other Obligor enters into or suffers to exist or become effective any agreement that prohibits or limits the ability) of the Company or any other Obligor to create, incur, assume or suffer to exist any Lien upon any of its Property or revenues, whether now owned or hereafter acquired, to secure the Obligations other than:

- (a) the Senior Finance Documents;
- (b) the Concession Contract;
- (c) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby and proceeds thereof); and
- (d) as required by applicable Legal Requirements.

14. **Limitation on Lines of Business**

14.1 Enter (and ensure that no other Obligor enters) into any business activities, whether directly or indirectly, other than Permitted Businesses.

14.2 Establish (and ensure that no other Obligor establishes) any representative office other than (in the case of the Company) marketing offices or other place of business in a jurisdiction outside the Macau SAR or its place of incorporation unless (in the case of the Company) such office or place of business has been notified to the Intercreditor Agent, the requirements of paragraph 15 of Part A of this Schedule 5 have been satisfied in respect of any Property of the Company which may at any time be located in such jurisdiction within 30 days of such establishment and the Company has taken all such steps as may be required in such jurisdiction to perfect, maintain and protect the Security.

15. **Restrictions on Changes**

15.1 Concession Contract and Land Concession Contract

Notwithstanding any other provision of this paragraph 15, agree to any amendment to or termination of, or assign, transfer, cancel or waive any of its rights under the Concession Contract or the Land Concession Contract without obtaining the prior written consent of the Intercreditor Agent (other than any mechanical or administrative amendments of which reasonable prior notice has been given and which could not reasonably be expected to be prejudicial to the Finance Parties required by any Macau Governmental Authority).

15.2 **Permits and Other Contracts**

15.2.1 Directly or indirectly enter into, amend, modify, terminate, supplement or waive a right or permit or consent to the amendment, modification, termination (except expiration in accordance with its terms), supplement or waiver of any of the provisions of, or give any consent or exercise any other discretion under (and ensure that no other Obligor directly or indirectly enters into, amends, modifies, terminates, supplements or waives a right or permits or consents to the amendment, modification, termination (except expiration in accordance with its terms), supplement or waiver of any of the provisions of, or gives any consent or exercises any other discretion under):

- (a) any Permit, the effect of which could reasonably be expected to have a Material Adverse Effect;
- (b) the Prime Contractor's Completion Guarantee or the Prime Contractor's Performance Bond; or
- (c) any Project Document, Major Project Document or other contract unless in the case of the Company or any of the Company's wholly owned Subsidiaries which are members of the Restricted Group (1) it could not reasonably be expected to have a Material Adverse Effect and (2) in respect of any: (A) contract to be entered into with, or any existing

contract which as a result of amendment, novation, supplementation, extension or restatement has, a total contract price payable (or expected aggregate amount to be paid in the case of “cost plus” contracts) or which has or may otherwise involve liabilities, actual or contingent, in each case in an amount in excess of USD25,000,000 or its equivalent in any Fiscal Year or (B) series of contracts (whether related or not) to be entered into, or any series of contracts (whether related or not) which has been entered into which as a result of amendment, novation, supplementation, extension or restatement would have, when taken together a total contract price payable (or expected aggregate amount to be paid in the case of “cost plus” contracts) or which has or may otherwise involve liabilities, actual or contingent, in each case in an amount in excess of USD25,000,000 or its equivalent in any Fiscal Year, the Company delivers to the Intercreditor Agent: (X) a certificate of a Responsible Officer of the Company certifying that it has sufficient Funds to achieve construction completion of the Projects and to pay the total contract price payable and satisfy any other existing or future claims, liabilities or other obligations of any kind under or in respect of the relevant contract to be entered into or otherwise and (Y) such other substantiating information and evidence in respect of the relevant contract that the Intercreditor Agent (acting on the instructions of any Lender) may reasonably require,

without in each case obtaining the Intercreditor Agent’s prior written consent (which consent shall not be unreasonably withheld). Notwithstanding any of the foregoing, the Company may only take or, as the case may be, permit or consent to the taking of, any such action under or in respect of, or otherwise agree to any variation to the Project Works or the Plans and Specifications or any other variation to the Construction Contract without the prior written consent of the Intercreditor Agent where:

- (1) the actions or variations do not involve any extension of the Guaranteed Dates of Substantial Completion for the Original Project (beyond that effective prior to the variations); and
- (2) no Material Adverse Effect could reasonably be expected to result therefrom,

and the Intercreditor Agent has received a certificate from the Company signed by a Responsible Officer certifying that the conditions set out in subparagraphs (1) and (2) above have been satisfied.

15.2.2 Accept, agree or determine the achievement of or waive any requirement in respect of (or be deemed to have done any of the foregoing) or issue, accept, or be deemed to have confirmed any certificate or notice of “Original Project Substantial Completion” in respect of all or any part of the Original Project under article 12 of the Construction Contract without the written approval of the Intercreditor Agent (such approval not to be unreasonably withheld or, without prejudice to any other provision of this Agreement, delayed).

- 15.2.3 Reduce the level of Retainage Amounts withheld pursuant to section 5.6 of the Construction Contract or paragraph 21 of Part A of this Schedule 5 except in accordance with the Construction Contract.
- 15.2.4 Fail to withhold a sum equal to 100% of the costs reasonably estimated by the Company (and confirmed by the Technical Adviser) as necessary to complete “Original Project Punch List Items” or, as the case may be, “Expansion Project Punch List Items” (as defined in the Construction Contract) as Retainage Amounts pursuant to section 5.7 of the Construction Contract unless such retention is not permitted under applicable laws.
- 15.2.5 Accept any non-conforming “Work” (as defined in the Construction Contract) of a material nature unless the Company shall have complied with the requirements of paragraph 15.2.1 of this Part B.
- 15.2.6 Accept or agree to any increase in the “Original Project Contractor’s Fee” or the “Expansion Project Contractor’s Fee” (as defined in the Construction Contract) for any reason, except to the extent required pursuant to section 18.5 of the Construction Contract following compliance with paragraph 15.2.1 of this Part B or such increase is paid from the proceeds of additional Equity (other than any Equity required to be paid or advanced in accordance with the terms hereof).

16. **Limitation on Formation and Acquisition of Subsidiaries**

Without the prior written consent of the Intercreditor Agent (such consent not to be unreasonably withheld), form, create or acquire (and ensure that no other Obligor forms, creates or acquires) any direct or indirect Subsidiary other than any Obligor or (in the case of the Company and the Company’s Subsidiaries) any Excluded Subsidiary.

17. **Limitation on Subconcessions**

Grant or enter into any Subconcession unless:

- (a) no breach of the Concession Contract shall exist and be continuing at the time such Subconcession is granted or entered into or would occur after or as a result of granting or entering into such Subconcession;
- (b) no Event of Default shall exist and be continuing at the time such Subconcession is granted or entered into or would occur after or as a result of granting or entering into such Subconcession (or immediately after any renewal or extension thereof at the option of the Company);
- (c) such Subconcession and any business or other activities carried out pursuant thereto shall be self-contained and shall not adversely affect the operation of the Projects (excluding the ability of the Company to grant further Subconcessions), no breach or termination thereof shall result in a breach or an entitlement to terminate the Concession Contract, the Company shall have no responsibility nor any liability, actual or contingent, for the performance by the subconcessionaire of its obligations under or in respect of the Subconcession

and, subject to receipt by the Intercreditor Agent of evidence reasonably satisfactory to it, neither the Subconcession nor any business or other activities carried out pursuant thereto could otherwise reasonably be expected to materially interfere with, impair or detract from the operation of the Projects or otherwise have a Material Adverse Effect; and

- (d) if any cash or cash proceeds are paid or received in respect of the grant or entry into such Subconcession, it shall first be deposited into an Account and, after deduction and payment therefrom of all Taxes, costs and expenses incurred in connection with such payment, receipt, grant or entry, may thereafter be used, applied, dividended or otherwise distributed by the Company and applied in its discretion (including, subject to compliance with applicable Legal Requirements, to make Restricted Payments) *provided* that no Default has occurred and is continuing. Notwithstanding any provisions contained in the Senior Finance Documents to the contrary, upon receipt of any funds distributed by the Company in accordance with this paragraph 17 by any Wynn Obligor, such Wynn Obligor shall also be entitled to use, apply, dividend or otherwise distribute such funds in its discretion (subject to compliance with applicable Legal Requirements).

18. **Limitation on Sale or Discount of Receivables**

Except as permitted pursuant to paragraph 5(b) of this Part B, directly or indirectly, sell with recourse, or discount or otherwise sell for less than the face value thereof (and ensure that no other Obligor, directly or indirectly, sells with recourse, or discounts or otherwise sells for less than the face value thereof) any of its notes or accounts receivable other than an assignment for purposes of collection in the ordinary course of business.

19. **Compliance**

Use or permit the use of the Projects in any manner that could result in such use becoming a non-conforming use under any applicable land use law, rule or regulation.

20. [Not used]

21. **Amendment to Transaction Documents**

Enter (and ensure that no other Obligor enters) into any agreement (other than the Senior Finance Documents) restricting its ability to amend any of the Transaction Documents.

22. **No Other Powers of Attorney**

Execute or deliver (and ensure that no other Obligor executes or delivers) any agreement creating any powers of attorney (other than powers of attorney for signatories of documents permitted or contemplated by the Transaction Documents), or similar documents, instruments or agreements, except to the extent such documents, instruments or agreements comprise part of the Security Documents or are required to be executed or delivered in the Company's or such other Obligor's ordinary course of business.

23. [Not used]

24. [Not used]

25. **Casino and Gaming Zone Areas**

Designate any area (other than the horizontal property identified as comprising the casino in the Plans and Specifications as at the Signing Date) as a casino or gaming zone unless such designation would not cause the aggregate area which is classified as casino or gaming zones by the Macau SAR to exceed 40,000m² in respect of the Original Project and the Expansion and the Intercreditor Agent has received evidence that, in the event of the reversion of such area to the Macau SAR upon termination of the Concession Contract, such reversion would not materially affect the ongoing operation of the Hotel Project.

26. **Junkets**

Enter into or permit to subsist any arrangement with any gaming junket-tour promoters, directors or cooperators unless such Persons and any such arrangement are in compliance with the requirements of the Concession Contract and all other applicable Legal Requirements and the Company shall monitor the activities of such Persons in regard to such arrangements and shall take all necessary or appropriate reasonable measures to ensure such compliance.

SCHEDULE 6

ACCOUNTS

1. Accounts

1.1 Accounts

The members of the Restricted Group shall maintain in accordance with the requirements of this Schedule 6 and the Senior Finance Documents, operating, disbursement and other accounts (which as of the Second Amendment Signing Date comprise of the following bank accounts maintained by the Company:

- (a) an account denominated in US dollars opened in Macau and designated "Hotel Facility USD Disbursement Account";
- (b) an account denominated in HK dollars opened in Macau and designated "Hotel Facility HKD Disbursement Account";
- (c) an account denominated in US dollars opened in Macau and designated "Project Facility USD Disbursement Account";
- (d) an account denominated in HK dollars opened in Macau and designated "Project Facility HKD Disbursement Account";
- (e) an account denominated in US dollars opened in Nevada and designated "USD Operating Account";
- (f) an account denominated in US dollars opened in Macau and designated "USD Operating Account";
- (g) an account denominated in HK dollars opened in Macau and designated "HKD Operating Account";
- (h) an account denominated in Patacas opened in Macau and designated "MOP Operating Account";
- (i) an account denominated in US dollars opened in Macau and designated "USD Debt Service Account";
- (j) an account denominated in HK dollars opened in Macau and designated "HKD Debt Service Account";
- (k) an account denominated in US dollars opened in Macau and designated "USD Debt Service Reserve Account";
- (l) an account denominated in HK dollars opened in Macau and designated "HKD Debt Service Reserve Account";
- (m) an account denominated in Patacas opened in Macau and designated "Special Gaming Tax Account";

- (n) an account denominated in Patacas opened in Macau (being the account referred to in paragraph B6 of the Gaming Concession Consent Agreement) and an account denominated in US dollars opened in Macau, together designated “Compensation Proceeds Account”;
- (o) an account opened in Macau and designated “Upfront Premium Account”; and
- (p) an account denominated in HK dollars and an account denominated in Patacas each opened in Macau and designated “Construction Disbursement Account”),

in each case, subject to Security under the relevant Senior Finance Documents and each, for the purposes of the Senior Finance Documents, also an Account.

Any member of the Restricted Group may open one or more additional operating, disbursement or other accounts *provided* that such accounts satisfy the requirements of the definition of “Account” in Clause 1.1.

1.2 Maintenance of Accounts

The Accounts shall, save as otherwise provided by the Charges over Accounts, the Account Bank Notices and Acknowledgements or herein, be maintained by the relevant member of the Restricted Group with the relevant Account Bank in accordance with the Account Bank’s usual practice and may from time to time be sub-divided into such sub-accounts as that member of the Restricted Group may reasonably request.

1.3 Restrictions

Each member of the Restricted Group shall maintain each of its Accounts (and shall procure that each other Account is maintained) as a separate account with the relevant Account Bank and:

- (a) none of the restrictions contained in this Schedule on the withdrawal of funds from Accounts shall affect the obligations of any Obligor to make any payments of any nature required to be made to the Senior Secured Creditors on the due date for payment thereof in accordance with any of the Senior Finance Documents; and
- (b) no withdrawal shall be made from any Account if it would cause such account to become overdrawn.

1.4 Credits to Accounts

Save as otherwise provided in any of the Security Documents after enforcement thereof, each member of the Restricted Group shall credit, and shall procure that there is credited, to the Accounts all such amounts as are provided for in this Agreement and ensure that such other credits are made thereto as are required to be made pursuant to any other provision of any other Senior Finance Document.

1.5 Interest

Each amount from time to time standing to the credit of each Account (for the avoidance of doubt excluding amounts for the time being applied in acquiring Permitted Investments) shall bear interest at such rate as may from time to time be agreed between the relevant member of the Restricted Group and the relevant Account Bank, and the relevant member of the Restricted Group shall ensure that such interest is credited to such account at such time or times as may be agreed from time to time between that member of the Restricted Group and the Account Bank or, failing agreement, in arrears on 31 December.

1.6 Payments

Save as otherwise provided in this Agreement or pursuant to the Charges over Accounts, the Account Bank Notices and Acknowledgements or any other relevant Security Document, no party shall be entitled to require any Account Bank to make any payment out of the amount standing to the credit of any Account maintained with it.

1.7 Other Accounts

No member of the Restricted Group will open or maintain any accounts other than:

- (a) the Accounts; and
- (b) any account opened by the Company for the deposit of any amounts derived from or under (i) subject to paragraph 17 of Part B of Schedule 5, the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary,

except with the prior approval of the Intercreditor Agent.

2. **Permitted Investments**

2.1 Power of Investment

The Company may require, subject as provided in this Agreement, that such part of the amounts outstanding to the credit of any Account as it considers prudent shall be invested from time to time in Permitted Investments in accordance with this paragraph 2.

2.2 Procedure for Investment

2.2.1 Unless held for the account of the Company or other member of the Restricted Group and secured by first ranking fixed charge in favour of the Security Agent pursuant to a Charge over Accounts, the Company shall ensure that all Permitted Investments are made in the name of the Company and secured by a first ranking fixed lien in favour of the Security Agent in such form and on such terms as the Intercreditor Agent may reasonably require.

2.2.2 The Company will at all times seek to match the maturities of the Permitted Investments made out of moneys standing to the credit of an Account having regard to the availability of Permitted Investments which are readily marketable, and shall liquidate (or procure that there are liquidated) Permitted Investments to the extent necessary for the purposes of payment of any amount due under the Senior Finance Documents.

2.2.3 The Company shall ensure that all documents of title or other documentary evidence of ownership with respect to Permitted Investments made out of any Account are held in the possession of the Security Agent and, if any such document or other evidence comes into the possession or control of the Company or any other Obligor, it shall procure that the same is delivered immediately to the Security Agent.

2.3 Realisation

2.3.1 The Company shall ensure that, whenever any Investment Proceeds or Investment Income is received in respect of a Permitted Investment made from amounts standing to the credit of an Account the Investment Proceeds and the Investment Income are:

- (a) reinvested in further Permitted Investments; or
- (b) paid into the relevant Account from which the Permitted Investment derives

2.3.2 The Company shall give (and shall ensure that each other Obligor gives) directions to the relevant Account Bank under paragraph 2.3.1 of this Schedule 6 and otherwise exercise its rights hereunder in such manner as will ensure compliance with the applicable provisions of the Senior Finance Documents with respect to Accounts, Permitted Investments, Investment Proceeds and Investment Income.

2.4 Non-qualifying criteria

If any Permitted Investment ceases to be a Permitted Investment, the Company will upon becoming aware thereof procure that the relevant investment is replaced by a Permitted Investment or by cash.

2.5 Accounts include Permitted Investments

2.5.1 Subject to sub-paragraph 2.5.2 of this Schedule 6, any reference herein to the balance standing to the credit of one of the Accounts will be deemed to include a reference to the Permitted Investments in which all or part of such balance is for the time being invested. In the event of any dispute as to the value of the credit of an Account pursuant to this paragraph 2.5, that value shall be determined in good faith by the Intercreditor Agent. If the Company so requests, the Intercreditor Agent will give the Company details of the basis and method of that determination.

2.5.2 If the amount standing to the credit of any Account (excluding for this purpose any amount deemed to be included pursuant to sub-paragraph 2.5.1 of this Schedule 6) is insufficient to make a payment under the Senior Finance

Documents when due out of such Account, the Security Agent is authorised, in its discretion and without any liability for loss or damage thereby incurred by the Company or any other Obligor, to require the relevant Account Bank or, as the case may be, the Company to sell or otherwise realise, or to enter into any exchange transaction with respect to, (or, as the case may be, to require the Company to ensure any other Obligor so sells or otherwise releases or enters into any exchange transaction) any Permitted Investment concerned with that Account to the extent that the same is, in the opinion of the Intercreditor Agent, necessary for the payment of any amount due under the Senior Finance Documents which could not otherwise be paid out of the cash balance standing to the credit of the relevant Account.

2.6 Information

Commencing with the quarter in which a Permitted Investment is first made on behalf of the Company or any other Obligor, the Company shall, together with any other statement to be provided under this Schedule, ensure the delivery to the Security Agent of a schedule of the investments made, realised or liquidated during the quarter in respect of each Account, in such detail as the Intercreditor Agent may reasonably require.

2.7 No Responsibility

No Senior Secured Party will be responsible for any loss, cost or expense suffered by any Obligor in respect of any of its actions or those of any Account Bank in relation to the acquisition, disposal, deposit or delivery of Permitted Investments pursuant to this Agreement save for any such loss, cost or expense directly caused by its gross negligence or wilful misconduct. The Account Banks shall be acting solely for and on behalf of the Company (or the relevant other Obligor) in acquiring, holding or disposing of any Permitted Investment.

3. **General Account Provisions**

3.1 Transfers/Withdrawals

Save as otherwise agreed in writing with the Intercreditor Agent, the Company shall ensure that where this Schedule expressly provides for the making of payments to, or withdrawals or transfers from any Account, no other payments to, or, as the case may be, other withdrawals or transfers from, such Account shall be made except as expressly permitted under this Schedule or under the Security Documents.

3.2 Application of Amounts

The Company shall ensure that all amounts withdrawn or transferred from any Account for application in or towards making a specific payment or meeting a specific liability shall be applied in or towards making that payment or meeting that liability, and for no other purpose.

3.3 Default

3.3.1 Notwithstanding any other provisions of this Schedule, at any time following an Enforcement Notice, the Intercreditor Agent may request the Security Agent to give notice to any Account Bank and the relevant member of the Restricted Group in whose name the Account has been opened instructing the Account Bank not to act on the instructions or requests of that member of the Restricted Group in relation to any sums at any such time standing to the credit of any of the Accounts and the Company and that member of the Restricted Group shall procure that the Account Bank shall, in accordance with the Charges over Accounts and the Account Bank Notices and Acknowledgements, not so act and the Company or, as the case may be, any other member of the Restricted Group shall not be entitled (and the Company shall ensure such other member of the Restricted Group is not entitled) to give or make any further such instructions or requests.

3.3.2 Notwithstanding the other provisions of this Agreement, at any time following an Enforcement Notice, the Intercreditor Agent may request the Security Agent to:

- (i) give written notice to any Account Bank (with a copy to the relevant member of the Restricted Group in whose name the Account has been opened) that the Security Agent shall be the sole signatory in relation to the Accounts;
- (ii) apply the credit balances in the Accounts in or towards repayment of the Facilities and such other liabilities of the Obligors as the Intercreditor Agent may elect; and
- (iii) generally use amounts standing to the credit of the Accounts at its discretion in order to discharge the Obligors' obligations under the Transaction Documents,
and, pursuant to the Charges over Accounts and the Account Bank Notices and Acknowledgements, the Company and the relevant member of the Restricted Group in whose name the Account has been opened shall procure that the Account Bank so acts and makes such payments accordingly.

3.4 Review of Accounts

The Company and each other member of the Restricted Group irrevocably grants (solely for the purposes of its role as agent of the Senior Secured Creditors hereunder) (and the Company shall ensure each such other member of the Restricted Group shall so grant) the Security Agent or any of its appointed representatives access to review the books and records of the Accounts (and shall irrevocably authorise (and the Company shall ensure each other member of the Restricted Group authorises) each Account Bank to disclose the same to the Security Agent and its appointed representatives) and irrevocably waives (and the Company shall ensure each other member of the Restricted Group so waives) any right of confidentiality which may exist in respect of such books and records solely

to the extent necessary to allow disclosure of such books and records to any Senior Secured Creditor and its advisers *provided* that, to the extent any such right of confidentiality does exist and the information comprised in such books and records is not otherwise in the public domain or required to be notified by the Company or any other member of the Restricted Group or the Account Bank to any of the Senior Secured Creditors and subject to any requirement to disclose any such information pursuant to any Legal Requirement or any other regulatory or stock exchange requirement, any Senior Secured Creditor or adviser to whom such disclosure is made shall undertake to the Company to keep the information comprised therein confidential.

3.5 Statements

The Company and each other member of the Restricted Group shall arrange (and the Company shall ensure each such member of the Restricted Group so arranges) for each Account Bank to provide to the Security Agent, at the latter's request:

- (a) a list of all Accounts maintained with it;
- (b) upon the reasonable request of the Security Agent, in respect of each calendar month, a statement of the balance of and each payment into and from each of the Accounts and the global amount of interest earned on each such Account during the preceding three month period or, if less, since the opening of the relevant Account; and
- (c) such other information concerning the Accounts as the Security Agent may require.

3.6 Waiver of Rights

3.6.1 Waiver of rights by the Company

Save as provided in this Agreement, the Company and each other member of the Restricted Group agrees not to (and the Company shall ensure each other member of Restricted Group does not) exercise any right which it (or such other member of the Restricted Group) may have under any applicable law to direct the transfer of any amount standing to the credit of an Account to the Company or any other member of the Restricted Group or its order or to direct the transfer of any Permitted Investment to the Company or any other member of the Restricted Group or to its order.

3.6.2 Waiver of rights by Account Banks

The Company and each other member of the Restricted Group shall procure (and the Company shall ensure each such other member of the Restricted Group procures) that each Account Bank acknowledges and agrees that each Account and Permitted Investment is the subject of a Lien in favour of the Senior Secured Creditors collectively and acknowledges and agrees that (save, in the case of the Performance Bond Provider, as permitted pursuant to (i) section 2.6 of the Performance Bond Facility Agreement prior to the issuance of an Enforcement Notice) it is not entitled to, and shall undertake not to, claim or exercise any lien, right of set-off, combination of accounts or other right, remedy or security with respect to:

- (a) moneys standing to the credit of such Account or in the course of being credited to it or any earnings; or

(b) any Permitted Investment.

3.7 Closing of Accounts

The Company and each other member of the Restricted Group may close any Account and instruct each Account Bank to transfer any credit balances on any Account maintained with it *provided that* all balances standing to the credit of any such Account are transferred before the closure of such Account to another account or combination of accounts *provided that* each such account satisfies the requirements of the definition of "Account" in Clause 1.1.

SCHEDULE 7

INSURANCE

References in this Schedule 7 to Clauses and Appendices refer to the Clauses and Appendices of this Schedule 7, unless the context otherwise requires.

1. INSURANCES TO BE EFFECTED

1.1 Direct Insurances

The Company shall effect:

- 1.1.1 the Construction Period **Insurances** as set out in Appendix 1 (*Construction Period Insurances*) on or before the issuance of the full Notice to Proceed (as defined in the Construction Contract) and shall maintain such Direct Insurances (including such additional Direct Insurances as may be required pursuant to paragraphs 1.2 and 4 of Appendix 1 (*Construction Period Insurances*)) from the issuance of such notice until the Diamond Opening Date has been achieved (or such later date as may be specified in Appendix 1 (*Construction Period Insurances*));
- 1.1.2 the Operation Period Insurances as set out in Appendix 2 (*Operation Period Insurances*) and the Company shall maintain such Direct Insurances until the Release Date; and
- 1.1.3 all other Direct Insurances that may be required to be effected by the Company from time to time by any applicable law or under any contract to which it is a party and shall maintain such Direct Insurances until the Release Date,

in each case, in a form reasonably satisfactory to the Intercreditor Agent (after consultation with the Insurance Adviser).

1.2 Reinsurance

The Company shall, if required under Clause 2.1.1 (*Policies*), procure that facultative reinsurance of each Direct Insurance is purchased and maintained in full force and effect throughout the period that such Direct Insurance is required by this Schedule 7 to be maintained.

1.3 Additional Insurances

1.3.1 The Intercreditor Agent may at any time, having consulted with the Insurance Adviser and acting reasonably and taking into account the availability in the international market place of the following relevant item on reasonable commercial terms, require the Company to:

- (a) procure the amendment of any or all Insurances to cover increased risks and/or liabilities; and/or

(b) effect additional Insurances to cover risks and/or liabilities other than those specified in the scope of the Construction Period Insurances, the Operation Period Insurances and the other Direct Insurances as would from time to time be insured in accordance with standard industry practice by a luxury resort and casino owner and operator in Macau carrying on the Permitted Businesses which does not self-insure (except in respect of deductibles required by insurers generally) and which is financed on a limited recourse basis,

in such amounts and, in the case of additional Insurances, with such deductibles, in each case as the Intercreditor Agent may reasonably require, taking into account, among other things, the basis on which the Projects are financed and the interests of the Senior Secured Creditors under the Senior Finance Documents.

1.3.2 In the event that the Company fails to effect any Insurance required to be effected pursuant to Clause 1.3.1 above, the Intercreditor Agent may effect such Insurance and the Company shall indemnify the Intercreditor Agent for the direct costs and expenses incurred by it as a result of effecting such Insurance.

1.3.3 The Company may effect additional Insurances other than those required by Clause 1.1 (*Direct Insurances*), Clause 1.2 (*Reinsurance*) or the other sub-clauses of this Clause 1.3 *provided* that such Insurances do not prejudice the interests of the Company or the Senior Secured Creditors under or in respect of any Insurance effected pursuant to such clauses.

2. **INSURANCE UNDERTAKINGS**

2.1 **Policies**

The Company shall procure that:

2.1.1 each of the Direct Insurances is **placed** and maintained with one or more insurers authorised to operate in the Macau SAR. The coverage provided by such Direct Insurance shall be provided by insurers rated at least A- by Standard & Poor's Corporation or at least A by AM Best. Where this is not complied with the Company shall procure that the Direct Insurance is reinsured (minimum 95% of 100%) by insurers rated at least A- by Standard & Poor's Corporation or at least A by AM Best for their long term unsecured and unsubordinated debt or, in each case, in respect of:

(a) the Professional Indemnity Insurance referred to in paragraph 3 of Appendix 1 (*Construction Period Insurances*), rated at least BBB+ by Standard & Poor's Corporation or B by AM Best; and

(b) the Workers Compensation Insurance referred to in paragraph 4 of Appendix 1 (*Construction Period Insurances*), rated at least BBB by Standard & Poor's Corporation or B- by AM Best);

2.1.2 each of the Insurances is in a form and on terms acceptable to the Intercreditor Agent (including, without limitation, the level or period of any deductibles) consistent with the obligations of the Company under this Schedule 7;

- 2.1.3 each Construction Period Insurance and each Operation Period Insurance has endorsements in substantially the form set out in Part A of Appendix 3 (*Form of Endorsements for Direct Insurances*) (or, in the case of the Professional Indemnity Insurance referred to in paragraph 3 of Appendix 1 (*Construction Period Insurances*), the form set out in Part B of Appendix 3 (*Form of Endorsements for Direct Insurances*)) or in such other forms as the Intercreditor Agent (after consultation with the Insurance Adviser) reasonably approves in writing; and
- 2.1.4 each Reinsurance of each Construction Period Insurance and Operation Period Insurance has endorsements in substantially the form set out in Appendix 4 (*Form of Endorsements for Reinsurances*) or in such other forms as the Intercreditor Agent (after consultation with the Insurance Adviser) reasonably approves in writing.

2.2 **General Undertakings**

The Company shall:

- 2.2.1 pay or procure the payment of all premiums payable under each of the Insurances promptly as required under the Insurances and if requested by the Intercreditor Agent, promptly produce to the Intercreditor Agent copies of receipts or other evidence of payment satisfactory to the Intercreditor Agent;
- 2.2.2 indemnify the Intercreditor Agent and any Senior Secured Creditor against any premium or premiums paid by that Senior Secured Creditor for any of the Insurances;
- 2.2.3 promptly on receipt by the Company, deliver an original cover note and an original policy for each of the Insurances to the Intercreditor Agent;
- 2.2.4 at least fifteen days prior to the earlier of the Substantial Completion or physical acceptance, use or occupancy by the Company of any part of the Projects or the expiry of the Construction Period Insurances, provide evidence reasonably satisfactory to the Intercreditor Agent (after consultation with the Insurance Adviser) that the Operation Period Insurances shall be in effect on and from the expiry of the Construction Period Insurances;
- 2.2.5 at least ten days prior to the expiry of any Insurance (and provided such Insurance is being renewed), provide to the Intercreditor Agent a certificate from the Company's insurance brokers (or, if the Company has no broker, Insurers) confirming the renewal of the policy relating to such Insurance, the renewal period, the amounts insured and any changes in terms or conditions;
- 2.2.6 take all action within its power to procure that nothing is at any time done or suffered to be done whereby any Insurance may be rendered void or voidable or may be suspended, impaired or defeated or any claim becomes uncollectable in full or in part, including, without limitation:
 - (a) complying with all of the requirements imposed on it under the Insurances;

- (b) taking all action within its power to procure that at all times all parties to the Insurances (other than the Company and the Senior Secured Creditors) comply with all of the requirements under the Insurances; and
 - (c) taking all action necessary to maintain the Insurances as valid and up-to-date insurances;
- 2.2.7 not make any misrepresentation of any material facts or fail to disclose any material facts in respect of the Insurances which may have an adverse impact on the Insurances;
 - 2.2.8 comply with each Direct Insurer's, and, where reinsurance is placed by the Company's insurance brokers, Reinsurer's risk management requirements set out in the policy documents for each Insurance;
 - 2.2.9 promptly make and diligently pursue claims under the Insurances;
 - 2.2.10 notify the Intercreditor Agent promptly upon becoming aware of any claim made under any of the Insurances where the actual or estimated totality of the amount of that claim exceeds USD500,000 (or its equivalent in other currencies) and of any occurrence which the Company considers could reasonably be expected to entitle it to submit a claim under any of the Insurances where the actual or estimated totality of the amount of that claim exceeds USD500,000 or its equivalent in other currencies;
 - 2.2.11 in the event of any claim made under any of the Insurances where the actual or estimated totality of the amount of that claim exceeds USD500,000 (or its equivalent in other currencies) (not taking into account any relevant deductible for this purpose), provide a report to the Intercreditor Agent (and, if possible, procure a report from the Company's insurance broker to the Intercreditor Agent) which shall include a description of the loss;
 - 2.2.12 notify the Intercreditor Agent immediately upon receipt of any proceeds in relation to any claims in excess of USD500,000 under the Direct Insurances;
 - 2.2.13 ensure so far as reasonably possible that no Insurance can be terminated by the Direct Insurer, and, where reinsurance is placed by the Company's insurance brokers, Reinsurer for any reason (including failure to pay the premium or any other amount) unless the Intercreditor Agent and the Company receive at least thirty days' written notice (or such lesser period, if any, as may be specified from time to time by Direct Insurers, and, where reinsurance is placed by the Company's insurance brokers, Reinsurers in the case of war risks and kindred perils);
 - 2.2.14 without prejudice to sub-clause 2.2.13 above, notify the Intercreditor Agent if any Direct Insurer, and, where reinsurance is placed by the Company's insurance brokers, Reinsurer cancels or gives notice of cancellation of any of the Insurances promptly on receipt of such notice;

- 2.2.15 notify the Intercreditor Agent of any act or omission or of any event which would reasonably be foreseen as invalidating or rendering unenforceable in whole or in part any of the Insurances;
- 2.2.16 notify the Intercreditor Agent promptly on becoming aware of any written proposal to make any material variation to any terms of any of the Insurances by any party to it;
- 2.2.17 not rescind, terminate or cancel any of the Insurances (unless replaced by a policy with the same coverage and otherwise meeting the requirements of this Schedule 7) nor agree to any variation to any of the material terms of the Insurances unless it obtains the prior written agreement of the Intercreditor Agent, which permission shall not be unreasonably withheld;
- 2.2.18 give the Intercreditor Agent and the Insurance Adviser such information about the Insurances (or as to any matter relevant to the Insurances) as the Intercreditor Agent reasonably requests from time to time; and
- 2.2.19 procure the delivery to the Intercreditor Agent by each of the insurance brokers (acceptable to the Intercreditor Agent (after consultation with the Insurance Adviser)) through whom (if any) at any time any of the (i) Direct Insurances are effected of an Insurance Broker's Letter of Undertaking and (ii) Reinsurances are effected of a Reinsurance Broker's Letter of Undertaking.

2.3 **Assignment of Insurances**

- 2.3.1 The Company shall, in accordance with the Assignment of Insurances, grant assignments in favour of the Security Agent on behalf of the Secured Parties over all of its rights, title and interest in the Direct Insurances (other than any public liability, third party liability, workers compensation or legal liability insurance or any other insurances the proceeds of which are payable to employees of the Company) held by it from time to time.
- 2.3.2 The Company shall give notice to each of the Direct Insurers (other than with respect to any public liability, third party liability, workers compensation, legal liability or any other insurances the proceeds of which are payable to employees of the Company) who are Macau Direct Insurers (as defined in the Assignment of Insurances) in the form of the Form of Notice of Assignment of Onshore Insurance Policy set out in the schedule to the Assignment of Insurances and shall procure an acknowledgement from each such Direct Insurer in the form of the Form of Acknowledgement from Macau Direct Insurer set out in the schedule to the Assignment of Insurances or such other form reasonably acceptable to the Security Agent.

2.4 **Assignment of Reinsurances**

- 2.4.1 The Company shall procure that each of the Direct Insurers grants an assignment in favour of the Security Agent on behalf of the Secured Parties, over all of its rights, title and interest in any Reinsurance held from time to time under Clause 1.2 (*Reinsurance*) and/or the Reinsurance proceeds (other than relating to any public liability, third party liability or legal liability insurance or any other insurances the proceeds of which are payable to employees of the Company). Each assignment shall at all times be in the form of the Assignment of Reinsurances dated on or about the date of this Agreement unless otherwise agreed by the Security Agent (acting on the instructions of the Intercreditor Agent).
- 2.4.2 The Company shall procure that each such Direct Insurer gives notice to each Reinsurer with whom it has effected such Reinsurance in the form set out in Part 1 of Schedule 2 to the Assignment of Reinsurances and shall procure an acknowledgement from each such Reinsurer in the form set out in Part 2 of Schedule 2 to the Assignment of Reinsurances or such other form reasonably acceptable to the Security Agent.

3. **FAILURE TO COMPLY WITH PROVISIONS OF INSURANCES**

3.1 **Notice of Non-Compliance**

The Company shall notify the Intercreditor Agent as promptly as practicable if the Company has at any time failed to comply with this Schedule 7, explaining in reasonable detail the failure, whether the Company reasonably believes it can be remedied and, if so, how and by when.

3.2 **Annual Compliance Certificate**

The Company shall, at the same time as delivery of its annual audited accounts pursuant to paragraph 1 of Part A of Schedule 5 (*Covenants*) to the Common Terms Agreement but, in any event, not less frequently than once every 12 months after the Signing Date, deliver to the Intercreditor Agent a certificate confirming its compliance with this Schedule 7 or, if there is any non-compliance with this Schedule 7, explaining, in reasonable detail, the non-compliance, whether the Company reasonably believes it can be remedied and, if so, how and by when.

3.3 **Action by Intercreditor Agent**

If at any time and for any reason any Insurance required hereunder is not in full force and effect or if the Company fails to comply with any other provision of this Schedule 7, then, without prejudice to the rights of any of the Senior Secured Creditors under any Senior Finance Document, the Intercreditor Agent may (after consultation with the Insurance Adviser) thereupon on behalf of itself and the other Senior Secured Creditors, or at any time while the same is continuing, procure on behalf of itself and the other Senior Secured Creditors that Insurance at the Company's expense is maintained such that full compliance with this Schedule 7 is restored. If that Insurance cannot be procured by the Intercreditor Agent, the Company shall (without prejudice to any other obligations of the Company under this Schedule 7 or any of the Senior Finance Documents) take or procure the taking of all reasonable steps to eliminate or minimise uninsured hazards as required by the Intercreditor Agent in writing (after consultation with the Insurance Adviser).

3.4 **Continuing Obligations**

Any notification by the Company of its failure to comply with this Schedule 7 shall not prejudice the rights of the Senior Secured Creditors under the Senior Finance Documents.

4. **MARKET AVAILABILITY**

Notwithstanding the foregoing provisions of this Schedule 7, the Company shall not be in breach of its obligations under this Schedule 7 if any Operation Period Insurances (other than insurances which the Company is required to maintain under applicable Legal Requirements) required to be entered into or maintained by the Company in the terms required under this Schedule 7 are not available to the Company or, as the case may be, the Prime Contractor in the international insurance market place on reasonable commercial terms. Without prejudice to any other terms that may be commercially reasonable, for the purposes of this paragraph 4, such commercial terms shall be reasonable if the premium payable in respect of the sum required to be insured under such Operation Period Insurance pursuant to Appendix 2 to this Schedule 7 (or, where no such sum is referred to, the limit of indemnity or limit of liability specified therein) is not more than 125% of the amount derived by multiplying the rate set out opposite such Insurance in Appendix 7 (*Operation Period Insurance Costs*) by such sum or in respect of all Operation Period Insurances (including such Operation Period Insurance) is not more than 125% of the total of such amounts derived for each Operation Period Insurance.

5. **INSURANCE PROCEEDS**

5.1 **Conduct of Claims - Company**

Subject to Clause 5.3 (*Conduct of Claims - Default*) below, the Company has the sole conduct of all claims under the Insurances arising from any one loss (for which purpose, two or more claims made in respect of the same, or reasonably related, circumstances are taken to relate to one loss) where the actual or estimated totality of that loss is less than or equal to USD5,000,000 (or its equivalent in other currencies). For any loss where the actual or estimated totality of claims arising is more than USD5,000,000 (or its equivalent in other currencies), the Company shall not negotiate, compromise or settle any claim without the prior consent of the Intercreditor Agent (after consultation with the Insurance Adviser) (not to be unreasonably withheld).

5.2 **Application of Proceeds**

The Company shall ensure that:

- 5.2.1 subject to sub-clause 5.2.4 below and prior to the delivery of an Enforcement Notice, all proceeds of any claim under any Insurance relating to physical damage or loss:
- (a) to the extent not required for the purpose of mandatory prepayment pursuant to Schedule 9 (*Mandatory Prepayment*), shall be applied towards the repair or restoration of the damaged Project Facilities in accordance with Schedule 6 (*Accounts*); or

(b) to the extent required for the purpose of mandatory prepayment pursuant to Schedule 9 (*Mandatory Prepayment*), shall be applied towards mandatory prepayment in accordance with Clause 8.3 (*Mandatory Prepayment*);

5.2.2 subject to sub-clause 5.2.4 below and prior to the delivery of an Enforcement Notice, all proceeds of any claim under any Insurance relating to loss of revenue or business interruption shall be applied in accordance with Schedule 9 (*Mandatory Prepayment*);

5.2.3 subject to sub-clause 5.2.4 below and following the delivery of an Enforcement Notice, all proceeds of any claim under any Insurance shall be applied as directed by the Security Agent; and

5.2.4 all proceeds of any public liability, third party liability, workers compensation or legal liability insurance, or directors and officers insurance or any other insurances the proceeds of which are payable to employees of the Company, shall be applied to its intended purpose.

5.3 **Conduct of Claims - Default**

Notwithstanding any other provisions of this Clause 5, if an Enforcement Notice has been delivered, then the Security Agent in consultation with the Insurance Adviser shall have sole conduct of all claims under the Insurances.

5.4 **Insolvency of Direct Insurers**

For the purpose of conduct of claims and application of proceeds under any Reinsurance taken out by a Direct Insurer, references to delivery of an Enforcement Notice in this Clause 5 shall include delivery of the notice referred to in Clause 2.2.1 (*Enforcement of Assignment*) of the Assignment of Reinsurances to such Direct Insurer following an "Insolvency Event" (as defined in the Assignment of Reinsurances).

APPENDIX 1

INSURANCES

CONSTRUCTION PERIOD INSURANCES

1. Construction All Risks Insurance

1.1 Insured

The Company and the following Co-Insureds:

- (1) the Prime Contractor and/or all other Contractors and Subcontractors of any tier and/or suppliers and/or others engaged to provide goods and services in connection with the Projects;
 - (2) in respect of activities on or about the Site only, architects, surveyors, engineers and other professional consultants (including the Advisers); and
 - (3) the Secured Parties,
- each for their respective rights and interests.

1.2 Insured Property

The permanent and temporary works, equipment, services, materials, plant (other than constructional plant, tools and equipment belonging to or the responsibility of the Contractors or Subcontractors of any tier), machinery, stocks, spares, temporary buildings (if any) and all other property used or for use in connection with the Projects which the Company owns or for which it is responsible (excluding such other property comprising operation period furniture, fittings and equipment in respect of which separate Insurances, on substantially the same terms as the Construction All Risks Insurance required hereunder and/or otherwise reasonably acceptable to the Intercreditor Agent (after consultation with the Insurance Adviser), have been placed prior to the Company acquiring ownership thereof or being responsible therefor).

1.3 Coverage

All risks of physical loss or damage which are normally insurable.

1.4 Sum Insured

An amount equivalent to the full reinstatement or replacement value of the Insured Property plus Removal of Debris plus Professional Fees.

1.5 Territorial Limits

Anywhere within Macau SAR.

1.6 Period of Insurance

For the full period up to the Diamond Opening Date plus the first 12 months of the Defects Liability Period.

1.7 **Permitted Exclusions**

To include:

- War, Civil War etc.
- Nuclear Risks
- Wear and Tear
- Unexplained shortage
- Consequential financial losses
- Terrorism
- DE3 type defective design, workmanship and materials exclusion
- Mold

1.8 **Required Extensions and Conditions**

- Professional Fees Clause
- Debris Removal Clause
- 72 Hour Clause
- Free Issue Materials Clause
- Automatic Increase Clause (110 per cent.)
- Extra Charges (20 per cent.)
- Strikes, Riot and Civil Commotion
- Local/Public Authorities and Clause
- Munitions of War Clause
- Extended Maintenance
- Automatic Reinstatement of Sum Insured
- Plans and Documents
- Inland Transit/Offsite Storage and Offsite Fabrication
- Advance Payments Clause
- Marine 50/50 Clause
- General Waiver of Subrogation

- Multiple Insureds Clause (LEG form) Senior Secured Creditors Special Conditions (Loss Payee and Notices)
- Primary Insurance Clause
- Assignment of Insurance

1.9 **Maximum Deductible**

Not to exceed:

- USD250,000 each and every loss in respect of damage due to Acts of God/Theft/Fire/Maintenance Period/Consequences of Defective Design, Material and Workmanship (DE3)
- 20% of the loss amount each and every loss subject to a minimum deductible of USD100,000 in respect of Water Damage
- USD250,000 each and every loss in respect of Defective Design, Material and Workmanship (DE5)
- 50% of the loss amount each and every loss subject to a minimum of USD35,000 in respect of Scaffolding
- USD35,000 each and every loss for Others

2. **Third Party Liability Insurance**

2.1 **Insured**

The Company and the following Co-insureds:

- (1) the Prime Contractor and/or all other Contractors and Subcontractors of any tier and/or suppliers and/or others engaged to provide goods and services in connection with the Projects;
- (2) in respect of activities on or about the Site only, architects, surveyors, engineers and other professional consultants (including the Advisers); and
- (3) the Secured Parties,

each for their respective rights and interests.

2.2 **Interest**

To indemnify the Insured in respect of all sums that it may become legally liable to pay consequent upon death, personal injury and disease to persons, loss or damage to property, obstruction, loss of amenities, stoppage of traffic happening or arising out of or in connection with the Projects.

2.3 Limit of Indemnity

Not less than USD50,000,000 in respect of any one occurrence, the number of occurrences being unlimited.

2.4 Territorial Limits/Jurisdiction

Worldwide.

2.5 Period of Insurance

As per the Construction All Risks Insurance.

2.6 Permitted Exclusions

To include:

- Liability for death, illness, disease or bodily injury sustained by employees of the Insured
- Liability for loss or damage to property which is reasonably foreseeable as being inevitable having regard for the nature of work undertaken
- Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles
- Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured
- Liability in respect of loss or damage to property in the care, custody and control of the Insured or to the permanent or temporary works
- Liability arising from the ownership, possession or use of any aircraft or waterborne vessel
- Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence
- War, civil war etc.
- Nuclear risks
- Terrorism

2.7 Required Extensions and Conditions

- Cross Liability Clause
- Contractual Liability
- Underground Services
- Vibration Removal or Weakening of Support

- Munitions of War Clause
- General Waiver of Subrogation
- Costs and Expenses in addition to the Limit of Indemnity (other than North America)
- Worldwide jurisdiction
- Multiple Insureds Clause (LEG form) Senior Secured Creditors Special Conditions (Loss Payee and Notices)
- Primary Insurance Clause

2.8 **Maximum Excess**

Not to exceed:

- 20% of the loss amount each and every loss subject to a maximum of USD200,000 and minimum of USD10,000 in respect of claims on Vibration, Removal and Weakening of Support
- 10% of the loss amount each and every loss subject to a maximum of USD100,000 and minimum of USD10,000 in respect of Underground Services/Water Damage
- 40% of the loss amount each and every loss subject to a maximum of USD100,000 and minimum of USD10,000 in respect of Oil Filled Cables and Fibre Optic Cables
- US\$200,000 each and every occurrence in respect of damage to property owned by or in the care custody and control of the Company
- USD25,000 each and every occurrence in respect of Third Party Property Damage and Interference with right of way/property/enjoyment of use by obstruction, trespass, loss of amenities or nuisance

3. **Professional Indemnity Insurance (Prime Contractor)**

3.1 **Insured**

The Prime Contractor.

3.2 **Interest**

To indemnify the Insured in respect of their legal liability for claims made against them during the period of insurance for any negligent act, error or omission in the conduct and execution of their professional activities and duties.

3.3 **Limit of Indemnity**

USD20,000,000 in respect of any one claim and in the aggregate during the period of insurance.

3.4 **Territorial Limits**

Macau SAR.

3.5 **Period of Insurance**

To be effected and maintained on an annually renewable basis for the period commencing no later than the date of this Agreement until 6 years from the later of the Expansion Opening Date and the Diamond Opening Date.

3.6 **Excess**

Not to exceed USD2,500,000 in respect of each occurrence or such higher amount as may be agreed by the Intercreditor Agent.

4. **Compulsory Insurance**

Insurances required to comply with all statutory requirements including Workers Compensation and Motor Liability Insurances. The Compulsory Insurance effected by the Company shall contain an indemnity clause in favour of the Senior Secured Creditors.

OPERATION PERIOD INSURANCES

1. **Property All Risks Insurance**

1.1 **Insured**

The Company and the following Co-insureds:

(1) The Secured Parties,

each for their respective rights and interests.

1.2 **Insured Property**

Property and interests of every description used for or in connection with the ownership and/or maintenance and operation of the facilities unless more specifically insured under the Construction All Risks Insurance (Item 1 of Appendix 1) – this shall include mechanical and electrical equipment if applicable.

1.3 **Coverage**

All risks of physical loss or damage which are normally insurable.

1.4 **Sum Insured**

A first loss limit of US\$850,000,000 any one occurrence or any other first loss limit to be agreed by the Intercreditor Agent after review of the estimated maximum loss calculation

1.5 **Territorial Limits**

Anywhere in the Macau SAR.

1.6 **Period of Insurance**

From the earlier of the Substantial Completion or physical acceptance, use or occupancy by the Company of any part of the Projects or termination of the Construction All Risks Insurance until the Release Date (or such longer period of insurance as may be agreed by the Intercreditor Agent and the Company).

1.7 **Permitted Exclusions**

To include:

- War, civil war etc.
- Nuclear Risks
- Wear, tear and general deterioration
- Unexplained shortages

- Terrorism
- Consequential financial losses
- Any part of the Insured Property which is in itself defective in design, workmanship and materials but this exclusion shall not apply to other parts of the Insured Property damaged in consequence of such a defect.

1.8 **Required Extensions and Conditions**

- 72 hour clause
- Temporary removal
- Munitions of War Clause
- Strikes, Riot and Civil Commotion
- Minimisation of Loss
- Advance Payment Clause
- Temporary Repairs
- Automatic Reinstatement of Sum Insured
- Including pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded
- Contract works including works and temporary works erected or in the course of erection including materials and other things for incorporation in the Project Works up to a sum of USD1,000,000
- Capital Additions
- Debris Removal
- Professional Fees
- Local/Public Authorities Clause
- Mechanical or electrical breakdown of the Insured Property
- Replacement of computer records
- General Waiver of Subrogation (to include Expansion construction participants)
- Multiple Insureds Clause (LEG form) Senior Secured Creditors Special Conditions (Loss Payee and Notices)
- Primary Insurance Clause
- Assignment of Insurance

1.9 Maximum Deductible

Not to exceed USD500,000 in respect of each occurrence or such lesser amount as may be agreed between the Company and the Intercreditor Agent if available on commercially reasonable terms.

2. Business Interruption Insurance

2.1 Insured

The Company and the following Co-insureds:

(1) the Secured Parties,

each for their respective rights and interests.

2.2 Interest

To indemnify the Insured for fixed costs following loss or damage which is indemnifiable or would be indemnifiable but for the application of the excess under the Property All Risks Insurance.

2.3 Sum Insured

A sum sufficient to cover the sums the subject of the Indemnity for the Indemnity Period.

2.4 Indemnity Period

The period commencing from the date of the loss or damage and ending when the results of the insured business cease to be affected in consequence of the loss or damage. Not exceeding the Indemnity Period Limit.

The Indemnity Period Limit shall not be less than 12 months.

2.5 Territorial Limits

As for the Property All Risks Insurance.

2.6 Period of Insurance

As for the Property All Risks Insurance.

2.7 Permitted Exclusions

As for the Property All Risks Insurance.

2.8 Required Extensions

- Suppliers Extension
- Prevention of Access
- Public Utilities
- Payments on Account

- Automatic Reinstatement of Sum Insured
- Professional Accountants Clause
- General Waiver of Subrogation (including the Trusts and to include Expansion construction participants)
- Multiple Insureds Clause (LEG form) Senior Secured Creditors Special Conditions (loss payee and notices)
- Primary Insurance Clause
- Assignment of Insurance
- Interruption or interference arising out of an event insured under the Defects Liability Period covers for the Original Project and the Expansion under the Construction All Risks Insurance

2.9 Maximum Excess

Not to exceed 30 days in the aggregate for each and every loss.

3. Third Party and Products Liability Insurance

3.1 Insured

The Company and the following Co-insureds:

(1) The Secured Parties,

each for their respective rights and interests.

3.2 Interest

To indemnify the Insured in respect of all sums that it may become legally liable to pay consequent upon death, personal injury and disease to persons, loss or damage to property, obstruction, loss of amenities, stoppage of traffic happening or arising from or in connection with the operation and maintenance of the Projects and the services to be provided thereby.

3.3 Limit of Indemnity

Not less than USD50,000,000 in respect of any one occurrence, the number of occurrences being unlimited but in the aggregate in respect of sudden and accidental pollution and products liability.

3.4 Territorial Limits/Jurisdiction

Worldwide excluding USA and Canada in respect of Territorial Limit

Worldwide in respect of Jurisdiction

3.5 **Period of Insurance**

As for Wynn Resorts Umbrella and Excess Liability Insurances until the Release Date (or such longer period of insurance as may be agreed by the Intercreditor Agent and the Company)

3.6 **Permitted Exclusions**

To include:

- Liability for death, illness, disease or bodily injury sustained by employees of the Insured
- Liability for loss or damage to property which is reasonably foreseeable as being inevitable having regard for the nature of work undertaken
- Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles
- Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured
- Liability in respect of loss or damage to property in the care, custody and control of the Insured but this exclusion not to apply to employees' or visitors' property including vehicles and their contents
- Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons
- Liability arising from the ownership, possession or use of any aircraft or waterborne vessel
- Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence
- War, civil war etc.
- Nuclear risks

3.7 **Required Extension and Conditions**

- Cross Liability Clause
- Contractual Liability
- Costs and Expenses in addition to the Limit of Indemnity (other than North America)
- Advertising Liability (relating to physical damage from billboards, signs, etc.)
- General Waiver of Subrogation
- Multiple Insureds Clause (LEG form) Senior Secured Creditors Special Conditions (loss payee and notices)
- Primary Insurance Clause

- Assignment of Insurance

3.8 Maximum Excess

Not to exceed USD100,000 each occurrence or such higher amount as may be agreed by the Intercreditor Agent.

4. Terrorism Insurance (Including Business Interruption)

4.1 Insured

To follow the terms and conditions of the Property All Risks Insurance (1) and Business Interruption Insurance (2), with the following exceptions:

Maximum Deductible - Not to exceed USD1,000,000 (or such lesser amount as may be agreed between the Company and the Intercreditor Agent if available at commercially reasonable terms) each and every loss for Property Damage and 60 days for Business Interruption.

Maximum Sum Insured - USD400,000,000.

5. Fidelity Guarantee/Crime Insurance

5.1 Insured

The Company and the Secured Parties
each for their respective rights and interests.

5.2 Coverage

Direct pecuniary loss of money, negotiable instruments or goods caused by acts of fraud or dishonesty by any employee or any other person.

5.3 Limits of Liability

Not less than USD25,000,000 in respect of any one occurrence or such higher amount as may be required to fully cover the amount of money on site at any one time.

5.4 Territorial Limits

Worldwide

5.5 Period of Insurance

From the earlier of the Substantial Completion or physical acceptance, use or occupancy by the Company of any part of the Projects or termination of the Construction All Risks Insurance until the Release Date (or such longer period of insurance as may be agreed by the Intercreditor Agent and the Company).

5.6 Maximum Deductible

Not to exceed USD150,000 in respect of each occurrence or such higher amounts as may be agreed by the Intercreditor Agent.

6. **Money Insurance**

6.1 **Insured**

The Company and the Secured Parties
each for their respective rights and interests.

6.2 **Coverage**

Loss, destruction or damage of money in transit, money at the business premises of the Insured during office hours and money in locked safe/drawer in the business premises of the Insured after office hours.

6.3 **Limits of Liability**

Not less than USD30,000,000 in respect of any one occurrence or such higher amount as may be required to fully cover the amount of money on site at any one time.

6.4 **Territorial Limits**

Worldwide

6.5 **Period of Insurance**

From the earlier of the Substantial Completion or physical acceptance, use or occupancy by the Company of any part of the Projects or termination of the Construction All Risks Insurance until the Release Date (or such longer period of insurance as may be agreed by the Intercreditor Agent and the Company).

6.6 **Maximum Deductible**

Not to exceed USD50,000 in respect of each occurrence or such higher amounts as may be agreed by the Intercreditor Agent.

APPENDIX 3

FORM OF ENDORSEMENTS FOR DIRECT INSURANCES

PART A

INSURED PARTIES [] (the “**Insureds**”)
[POLICY/COVER NOTE] REFERENCE NUMBER: [] (together with these endorsements, the “**Policy**”)
EFFECTIVE DATE: []

It is understood and agreed between the Insurer and the Insureds that, notwithstanding any other provision of this Policy, the following endorsement shall apply:

Section I: Definitions

1. In this endorsement:

“**Common Terms Agreement**” means the agreement dated 14 September 2004 between, amongst others, the Company, the Intercreditor Agent and the Security Agent as amended, consolidated, supplemented, novated or replaced from time to time;

“**Company**” means Wynn Resorts (Macau) S.A.;

“**Intercreditor Agent**” means Société Générale Asia Limited in its capacity as Intercreditor Agent for the Senior Secured Creditors and includes its successors in that capacity;

“**Insured**” means those parties so described in the Policy Schedule;

“**Insurers**” means the insurer or insurers underwriting this insurance policy;

“**Projects**” has the meaning given to it in the Common Terms Agreement;

“**Secured Parties**” has the meaning referred to in the Common Terms Agreement;

“**Security Agent**” means Société Générale, Hong Kong Branch in its capacity as agent and security trustee for the Secured Parties and includes its successors in that capacity;

“**Senior Secured Creditors**” has the meaning given in the Common Terms Agreement.

Section II: Policy formation / basis

2. Separate Policy

All the provisions of this Policy (except for those relating to limits of liability) shall operate as if there were a separate policy covering each Insured. Accordingly, the liability of the Insurers under this Policy to any one of the Insured shall not be conditional upon the due observance and fulfilment of any other Insured of the terms of this Policy and of any duties imposed upon it relating thereto and shall not be affected by any failure in such observance or fulfilment of any such other Insured.

3. Interest of the Secured Parties

The Insurers acknowledge that the Secured Parties and (in respect of third party liabilities) their respective officers, directors, employees, secondees and assigns are each additional co-insureds under this Policy and that the premium specified in this Policy provides consideration for their being co-insured parties.

4. Liability for premium

Neither the Intercreditor Agent, the Security Agent nor the Secured Parties shall be liable for the payment of any premium under this Policy although they may choose to pay the premium. This shall not relieve the Company from its obligations to pay any premium under this Policy.

5. Disclosure

5.1 The Insurers acknowledge to the Secured Parties alone that (i) they have received adequate information in order to evaluate the risk of insuring the Company in respect of the risks hereby insured on the assumption that such information is not materially misleading, (ii) there is no information which has been relied on or is required by the Insurers in respect of their decision to co-insure the Secured Parties or their directors, officers, employees or agents, and (iii) in agreeing to enter into this Policy, they have not relied upon or taken into account any information supplied to them by any Secured Party. The acknowledgements provided by the Insurers in this clause 5.1 shall have no effect on any rights that the Insurers might have had under or in relation to the Policy against any party (including the Company) other than the Secured Parties in the absence of such acknowledgements.

5.2 Non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.

Section III: Rights to avoid / cancel or change Policy terms

6. Non-vitiating

6.1 Paragraph (i) It is noted and agreed that if the insured described in the schedule comprises more than one insured party each operating as a separate and distinct entity then (save as provided in this multiple insured's clause) cover hereunder shall apply in the same manner and to the same extent as if the individual policies had been issued to each such insured party provided that the total liability of the insurers to all of the insured parties collectively shall not exceed the sums insured and limits of indemnity including and inner limits set by memorandum or endorsement stated in the policy.

6.2 Paragraph (ii) It is understood and agreed that any payment or payments by Insurers to any one or more such insured parties shall reduce to the extent of that payment insurers liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.

- 6.3 Paragraph (iii) It is further understood that the insured parties will at all times preserve the various contractual rights and agreements entered into by the insured parties and the contractual remedies of such parties in the event of loss or damage.
- 6.4 Paragraph (iv) It is further understood and agreed that insurers shall be entitled to avoid liability to or (as maybe appropriate) claim damages from any of the insured parties in circumstances of fraud, material misrepresentation, material non-disclosure or breach of any warranty or condition of this policy each referred to in this clause as a vitiating act.
- 6.5 Paragraph (v) It is however agreed that (save as provided in this multiple insured's clause) a vitiating act committed by one insured party shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a vitiating act.
- 6.6 Paragraph (vi) Insurers hereby agree to waive all rights of subrogation which they may have or acquire against any insured party except where the rights of subrogation or recourse are acquired in consequence of or otherwise following a vitiating act in which circumstances insurers may enforce such rights notwithstanding the continuing or former status of the vitiating party as insured.

7. Cancellation

7.1 The Insurers agree that they shall not seek to cancel or suspend this insurance except: (i) for non payment of premium; or (ii) where an insured party consistently fails to comply with Insurers' requirements relating to survey or loss control action points.

7.2 The Insurers shall promptly notify the Intercreditor Agent in writing:

- (a) in the event of any suspension, cancellation or termination of this Policy by the Insurers or the Insured; and
- (b) of any act or omission or any event of which any Insurer has knowledge and which might invalidate or render unenforceable, in whole or in part, the Policy.

The cover provided by this Policy shall continue in force and unaltered for at least 30 days after written notice of such suspension, cancellation, termination or non-renewal is given to the Intercreditor Agent. Nothing in this clause shall give the Insurers any right to suspend, cancel or terminate this Policy which the Insurers do not otherwise have under this Policy.

7.3 The Insurers shall promptly notify the Intercreditor Agent in writing of any default in the payment of premium and shall give the Intercreditor Agent at least 30 days notice in writing before voiding this Policy for non-payment of premium, in order to give an opportunity for that premium to be paid within the notice period.

8. Changes in cover

The Insurers shall give the Intercreditor Agent at least 30 days notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect and shall promptly notify the Intercreditor Agent of any fact, change of circumstance or occurrence of which any Insurer is aware which is material to the risks insured against

under the Policy or which would result in any reduction in limits or alteration in coverage or increase in deductions or exclusions. Nothing in this clause shall give the Insurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

9. Amendments to Endorsement

During the term of this Policy, the provisions of this endorsement may only be amended by written agreement between the Company, the Insurers and the Intercreditor Agent, such amendment to be endorsed on the Policy.

Section IV: Claims

10. Notice of claims

Notice of claim by the Secured Parties or any other party entitled to indemnity under the Policy shall, in the absence of manifest error, be accepted by Insurers as a valid notification of claim on behalf of all other Insureds subject to the full terms of the Policy.

11. Claim Payments / Loss Payee

Payments made in accordance with this clause 11 shall, to the extent of the payment, discharge the Insurers' liability to pay Company or any other Insured.

11.1 In respect of the insurance under this Policy of material damage risks only

All claim payments or return premium shall be paid into such account as the Security Agent as loss payee may specify in writing.

11.2 In respect of the insurance under this Policy of public liability risks only

All claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to such account as the Security Agent directs in writing.

Any return premiums shall be paid to such account as the Security Agent directs in writing.

11.3 In respect of the insurance under this Policy of loss of revenue risks only

All claim payments or return premiums shall be paid to such account as the Security Agent directs in writing.

11.4 Set-off

The Insurers may, at their discretion, deduct overdue unpaid premium from claims settlements but shall not set off or deduct premium that is not overdue or any other amounts payable by Company under or in relation to the Policy.

12. Waiver of subrogation

The Insurers waive all rights of subrogation howsoever arising which they may have or acquire against any Insured described within the appropriate Schedules arising out of any Occurrence in respect of which any claim is admitted and is insured hereunder for the benefit of such Insured except against any:

- (i) such Insured (or officer, director, employee, agent or assign) who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition; or
- (ii) consultant or equivalent professional party to the extent that their professional errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iii) supplier or manufacturer to the extent that their errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iv) such Insured to the extent that they are entitled to recover in respect of a loss under cover falling within sub-clause 13(a)–(e) below (or would be so insured if cover in the terms set out in this Policy had not been taken out);

13. Primary insurance

The Insurers agree that this insurance provides the primary cover for risks insured under this Policy. In the event that any risk insured under this Policy is also insured under any other policy of insurance effected by any Insured, the Insurers agree to indemnify the Insured as if such other policy of insurance did not exist except in respect of:

- (a) excess layers of third party cover effected specifically for the Projects;
- (b) any public liability claim against the Insured which exceeds the applicable limit of indemnity under this Policy, in which case the liability of the Insurers for additional legal costs and expenses shall be limited to the proportion that the applicable limit of indemnity bears to the total claim against the Insured;
- (c) any claim under this Policy to which a Marine 50/50 Clause applies;
- (d) any claim made under a Contingent Motor Liability extension to this Policy; or
- (e) any claim relating to a loss which is insured against (or would be insured but for a double insurance provision or similar or the application of a deductible) under:
 - (i) any other policy specifically effected for the construction or operational phase(s) of the Projects; or
 - (ii) a latent or inherent defects policy or engineering or mechanical breakdown policy specifically effected for the Projects; or a related business interruption insurance policy.

Section V: Miscellaneous

14. Notice of Security Interest
- 14.1 The Insurers acknowledge that by an assignment contained in the Assignment of Insurances between the Company and the Security Agent dated [] (as amended, consolidated, supplemented, novated or replaced from time to time) (the “**Assignment**”), the Company assigned by way of security to the Secured Parties all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Insured is or may at a future time become entitled. The Insurers confirm that they have not been notified of any other assignment of or security interest in the Company’s interest in this insurance.
- 14.2 At the reasonable request of the Intercreditor Agent and at its expense and subject to any legal, contractual or regulatory restrictions, the Insurers shall make those documents contained within their placing and claims files to which the Company would be entitled to have access available to the Intercreditor Agent or the Insurance Adviser and provide copies of such documents to them.
15. Notice
- 15.1 All notices or other communications under or in connection with the Policy will be given by fax and post. Any such notice given by Insurers will be deemed to be given on the earlier of:
- (i) if by fax, when transmitted but only if the sender’s fax machine confirms successful transmission; and
 - (ii) if by post, within 2 business days of release from the relevant Insurer’s office.
- 15.2 The address and fax number of the Intercreditor Agent and the Security Agent for all notices under or in connection with the Policy are those notified from time to time by the Intercreditor Agent or the Security Agent for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Intercreditor Agent and the Security Agent are as follows:
- Intercreditor Agent: Société Générale Asia Limited
Address: Level 38, 3 Pacific Place, 1 Queen’s Road East, Hong Kong
Tel: +852 2166 5665/+852 2166 5667
Fax: +852 2804 6215
Attention: Michael Poon/Raymond Fung
Risk & Agency

Security Agent: Société Générale, Hong Kong Branch
Address: Level 38, 3 Pacific Place, 1 Queen's Road East, Hong Kong
Tel: +852 2166 5665/+852 2166 5667
Fax: +852 2804 6215
Attention: Michael Poon/Kenneth Choi
Risk & Agency

16. Governing law & Jurisdiction

The Policy shall be governed and interpreted in accordance with English law.
This endorsement overrides any conflicting provision in this Policy.

PART B

At the request of the Insured, it is noted that the Company will give written notice to Société Générale Asia Limited (herein referred to as "the Lender") at its last known address notified to the Company in writing in the following events:

- (a) issuance and/or receipt of cancellation notice pursuant to the cancellation clause of the policy;
- (b) event(s) leading to suspension or termination of this insurance other than natural expiry of this insurance;
- (c) default in payment of premium by the insured; and
- (d) request for reduction in the Limit of Indemnity and/or increase in Excess by the Insured or the Company.

Subject to other terms and conditions of this insurance, the Company agrees not to cancel, suspend or terminate this insurance (other than natural expiry); to reduce the Limit of Indemnity and/or increase the Excess before the expiry of the 30th day from the issuance of such notice to the Lender.

APPENDIX 4

FORM OF ENDORSEMENTS FOR REINSURANCES

REINSURANCE [CONTRACT/COVER NOTE] REFERENCE
NUMBER:

[] (together with these endorsements, the “**Reinsurance
Contract**”)

EFFECTIVE DATE:

[]

It is understood and agreed between the Reinsurer, the Insurers and the Insureds that, notwithstanding any other provision of this Policy, the following endorsement shall apply:

Section I: Definitions

1. In this endorsement:

“**Common Terms Agreement**” means the agreement dated 14 September 2004 between, amongst others, the Company, the Intercreditor Agent and the Security Agent as amended, consolidated, supplemented, novated or replaced from time to time;

“**Company**” means Wynn Resorts (Macau) S.A.;

“**Intercreditor Agent**” means Société Générale Asia Limited in its capacity as Intercreditor Agent for the Senior Secured Creditors and includes its successors in that capacity;

“**Insured**” means those parties so described in the Original Policy;

“**Original Policy**” means the direct insurance policy reinsured by this reinsurance contract;

“**Projects**” has the meaning given to it in the Common Terms Agreement;

“**Reinsured**” means the Insurer or Insurers of the Original Policy;

“**Reinsurers**” means the insurer or insurers underwriting this insurance policy;

“**Secured Parties**” has the meaning referred to in the Common Terms Agreement;

“**Security Agent**” means Société Générale, Hong Kong Branch in its capacity as agent and security trustee for the Secured Parties and includes its successors in that capacity;

“**Senior Secured Creditors**” has the meaning given in the Common Terms Agreement.

Section II: Policy formation / basis

2. Separate Policy

All the provisions of this Policy (except for those relating to limits of liability) shall operate as if there were a separate Original Policy covering each Insured. Accordingly, the liability of the Reinsurers under this Policy to any one of the Re-insured shall not be conditional upon the due observance and fulfilment of any other Insured of the terms of the Original Policy and of any duties imposed upon it relating thereto and shall not be affected by any failure in such observance or fulfilment of any such other Insured.

3. Interest of the Secured Parties

The Reinsurers acknowledge that the Secured Parties and (in respect of third party liabilities) their respective officers, directors, employees, secondees and assigns are each additional co-insureds under the Original Policy and that the premium specified in this Policy provides consideration for their being co-insured parties.

4. Liability for premium

Neither the Intercreditor Agent, the Security Agent nor the Secured Parties shall be liable for the payment of any premium under this Policy although they may choose to pay the premium. This shall not relieve the Reinsured from its obligations to pay any premium under this Policy.

5. Disclosure

5.1 The Reinsurers acknowledge to the Secured Parties alone that (i) they have received adequate information in order to evaluate the risk of insuring the Reinsured in respect of the risks hereby insured on the assumption that such information is not materially misleading, (ii) there is no information which has been relied on or is required by the Reinsurers in respect of their decision to insure the Secured Parties or their directors, officers, employees or agents, and (iii) in agreeing to enter into this Policy, they have not relied upon or taken into account any information supplied to them by any Secured Party. The acknowledgements provided by the Reinsurers in this clause 5.2 shall have no effect on any rights that the Reinsurers might have had under or in relation to the Policy against any party (including the Company) other than the Secured Parties and the Intercreditor Agent in the absence of such acknowledgements.

5.2 The Reinsurers acknowledge that under the Original Policy non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.

Section III: Rights to avoid / cancel or change Policy terms

6. Non-vitiation

6.1 Paragraph (i) It is noted and agreed that if the insured described in the schedule comprises more than one insured party each operating as a separate and distinct entity then (save as provided in this multiple insured's clause) cover hereunder shall apply in the same manner and to the same extent as if the individual policies had been issued to each such insured party provided that the total liability of the insurers to all of the insured parties collectively shall not exceed the sums insured and limits of indemnity including and inner limits set by memorandum or endorsement stated in the policy.

- 6.2 Paragraph (ii) It is understood and agreed that any payment or payments by Insurers to any one or more such insured parties shall reduce to the extent of that payment insurers liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.
- 6.3 Paragraph (iii) It is further understood that the insured parties will at all times preserve the various contractual rights and agreements entered into by the insured parties and the contractual remedies of such parties in the event of loss or damage.
- 6.4 Paragraph (iv) It is further understood and agreed that insurers shall be entitled to avoid liability to or (as maybe appropriate) claim damages from any of the insured parties in circumstances of fraud, material misrepresentation, material non-disclosure or breach of any warranty or condition of this policy each referred to in this clause as a vitiating act.
- 6.5 Paragraph (v) It is however agreed that (save as provided in this multiple insured's clause) a vitiating act committed by one insured party shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a vitiating act.
- 6.6 Paragraph (vi) Insurers hereby agree to waive all rights of subrogation which they may have or acquire against any insured party except where the rights of subrogation or recourse are acquired in consequence of or otherwise following a vitiating act in which circumstances insurers may enforce such rights notwithstanding the continuing or former status of the vitiating party as insured.

7. Cancellation

- 7.1 The Reinsurers agree that they shall not seek to cancel or suspend the this insurance except: (i) for non payment of premium; or (ii) where an Insured consistently fails to comply with Reinsurers' requirements relating to survey or loss control action points.
- 7.2 The Reinsurers shall promptly notify the Intercreditor Agent in writing in the event of any suspension, cancellation, termination of this Policy by the Reinsurers or by the Reinsured or Insured. The cover provided by this Policy shall continue in force and unaltered for at least 30 days after written notice of such suspension, cancellation, termination or non-renewal is given to the Intercreditor Agent. Nothing in this clause shall give the Reinsurers any right to suspend, cancel or terminate this Policy which the Reinsurers do not otherwise have under this Policy.
- 7.3 The Reinsurers shall promptly notify the Intercreditor Agent in writing of any default in the payment of premium and shall give the Intercreditor Agent at least 30 days notice in writing before voiding this Policy for non-payment of premium, in order to give an opportunity for that premium to be paid within the notice period.

8. Changes in cover

The Reinsurers shall give the Intercreditor Agent at least 30 days notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect. Nothing in this clause shall give the Reinsurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

9. Amendments to Endorsement

During the term of this Policy, the provisions of this endorsement may only be amended by written agreement between the Company, the Reinsurers and the Intercreditor Agent, such amendment to be endorsed on the Policy.

Section IV: Claims

10. Notice of claims

Notice of claim by the Secured Parties or any other party entitled to indemnity under the Original Policy shall, in the absence of manifest error, be accepted by Reinsurers as a valid notification of claim on behalf of all other Reinsureds and Insureds subject to the full terms of the Policy.

11. Claim Payments / Loss Payee

Payments made in accordance with this Clause 11 shall, to the extent of the payment, discharge the Reinsurers' liability to pay the Reinsured or any other Insured.

11.1 In respect of the insurance under this Policy of material damage risks only

All claim payments or return premium shall be paid to such account as the Security Agent as loss payee may specify in writing.

11.2 In respect of the insurance under this Policy of public liability risks only

All claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Reinsured or Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to such account as the Security Agent directs in writing.

Any return premiums shall be paid to such account as the Security Agent directs in writing.

11.3 In respect of the insurance under this Policy of loss of revenue risks only

All claim payments or return premiums shall be paid to such account as the Security Agent directs in writing.

11.4 Set-off

The Reinsurers may, at their discretion, deduct overdue unpaid premium from claims settlements but shall not set off or deduct premium that is not overdue or any other amounts payable by the Reinsured under or in relation to the Policy.

12. Waiver of subrogation

The Reinsurers waive all rights of subrogation howsoever arising which they may have or acquire against any Reinsured or Insured described within the appropriate Schedules arising out of any Occurrence in respect of which any claim is admitted and is insured hereunder for the benefit of such Reinsured or Insured except against any:

- (i) such Reinsured or Insured (or officer, director, employee, agent or assign) who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition; or
- (ii) consultant or equivalent professional party to the extent that their professional errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iii) supplier or manufacturer to the extent that their errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iv) such Insured to the extent that they are entitled to recover in respect of a loss under cover falling within sub-clause 13(a)–(e) below (or would be so insured if cover in the terms set out in this Policy had not been taken out);

13. Primary insurance

The Reinsurers agree that the Original Policy provides the primary cover for risks insured under the Original Policy. In the event that any risk insured under the Original Policy is also insured under any other policy of insurance effected by any Reinsured or Insured, the Reinsurers agree to indemnify the Reinsured or Insured as if such other policy of insurance did not exist except in respect of:

- (a) excess layers of third party cover effected specifically for the Projects;
- (b) any public liability claim against the Insured which exceeds the applicable limit of indemnity under this Policy, in which case the liability of the Reinsurers for additional legal costs and expenses shall be limited to the proportion that the applicable limit of indemnity bears to the total claim against the Reinsured or Insured;
- (c) any claim under this Policy to which a Marine 50/50 Clause applies;
- (d) any claim made under a Contingent Motor Liability extension to this Policy; or
- (e) any claim relating to a loss which is insured against (or would be insured but for a double insurance provision or similar or the application of a deductible) under:
 - (i) any other policy specifically effected for the construction or operational phase(s) of the Projects; or
 - (ii) a latent or inherent defects policy or engineering or mechanical breakdown policy specifically effected for the Projects; or a related business interruption insurance policy.

Section V: Miscellaneous

14. Notice of Security Interest

The Reinsurers acknowledge that by an assignment contained in the Assignment of Reinsurances dated [] between the Reinsured and the Security Agent (as amended, consolidated, supplemented, novated or replaced from time to time) (the “**Assignment**”), Reinsured assigned by way of security to the Secured Parties all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Reinsured or Insured is or may at a future time become entitled. The Reinsurers confirm that they have not been notified of any other assignment of or security interest in the Reinsured’s interest in this insurance.

15. Insurer access to Due Diligence Reports

The Senior Secured Creditors shall have no duty of disclosure to the Reinsurers in relation to any Reinsurance. Nevertheless, on the written reasonable request of the Reinsurers, the Senior Secured Creditors shall, subject to the Company obtaining any other consents required for such access (which consents the Company agrees it shall use its reasonable endeavours to obtain), provide the Reinsurers with reasonable access to any relevant due diligence report(s) commissioned by the Senior Secured Creditors relating to the Projects. The Company consents to such access and the Reinsurers shall keep such report(s) confidential and shall accept such information without rights of recourse against any of the Senior Secured Creditors, the Company or the party/parties that prepared the said reports.

16. Notice

16.1 All notices or other communications under or in connection with the Policy will be given via the reinsurance broker by fax and post. Any such notice given will be deemed to be given on the earlier of:

- (a) if by fax, when transmitted but only if the sender’s fax machine confirms successful transmission; and
- (b) if by post, within 2 business days of release from the relevant Insurer’s office.

16.2 The address and fax number of the Intercreditor Agent and the Security Agent for all notices under or in connection with the Policy are those notified from time to time by the Intercreditor Agent or the Security Agent for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Intercreditor Agent and the Security Agent are as follows:

Intercreditor Agent: Société Générale Asia Limited

Address: Level 38, 3 Pacific Place, 1 Queen’s Road East, Hong Kong

Tel: +852 2166 5665/+852 2166 5667

Fax: +852 2804 6215

Attention: Michael Poon/Raymond Fung
Risk & Agency

Security Agent: Société Générale, Hong Kong Branch

Address: Level 38, 3 Pacific Place, 1 Queen's Road East, Hong Kong

Tel: +852 2166 5665/+852 2166 5667

Fax: +852 2804 6215

Attention: Michael Poon /Kenneth Choi
Risk & Agency

17. Governing law & Jurisdiction

The Policy shall be governed and interpreted in accordance with English law.

This endorsement overrides any conflicting provision in this Policy.

FORM OF INSURANCE BROKER'S LETTER OF UNDERTAKING

To: [] as Intercreditor Agent

[Date]

Dear Sirs,

1. We refer to Schedule 7 (*Insurance*) (the "**Insurance Schedule**") to the Common Terms Agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. (the "**Company**") and the financial institutions referred to therein as Senior Secured Creditors, as amended, consolidated, supplemented, novated or replaced from time to time. Terms used herein shall bear the same meaning as in the Insurance Schedule. Any reference herein to a document being in substantially a specified form shall be construed as meaning such document being in the same form as the specified form save for the insertion of information left in blank or typographical errors.
2. We, in our capacity as insurance brokers to the Company, confirm that each Direct Insurance as required pursuant to Clause 1.1 of the Insurance Schedule is in full force and effect as of the date of this letter on and in respect of the risks set out in the Direct Insurances evidenced in the policy cover notes attached hereto as Annex A and that all premiums which are required to have been paid at the date hereof in respect of such Direct Insurances have been paid in full.
3. We confirm that each Direct Insurance referred to in paragraph 2 above contains endorsements in substantially the form set out in Appendix 3 (*Form of Endorsements for Direct Insurances*) to the Insurance Schedule.
4. Pursuant to instructions received from the Company, we hereby undertake in respect of the Direct Insurances referred to in the attached cover notes:
 - (a) in the case of any such Direct Insurance, as and when the same is renewed, extended or replaced, and subject to market conditions current at the time of application for such renewal, extension or replacement, to use our best efforts to ensure that it complies with the requirements of the Insurance Schedule or such other requirements as you may approve in writing and that it contains endorsements in substantially the form set out in Appendix 3 (*Form of Endorsements for Direct Insurances*) to the Insurance Schedule or in such other form as you may approve in writing;
 - (b) to pay to the accounts specified in the relevant loss payable clauses in the relevant policy documents without any set-off or deduction of any kind for any reason any and all proceeds from or other payments made pursuant to the Direct Insurances (including refunds of premiums) received by us from the insurers except as might otherwise be permitted in the relevant policy endorsement provisions or required by law or court order or as you may otherwise agree in writing;

- (c) to advise you:
 - (i) as soon as practical upon our becoming aware of any actual or proposed:
 - (A) cancellation or suspension of cover under any Direct Insurance;
 - (B) reduction in limits or coverage or any increase in deductibles; and
 - (C) termination prior to the original expiry date of any Direct Insurance;
 - (ii) as soon as practical of any default in the payment of any premium for any of the Direct Insurances;
 - (iii) at least 45 days prior to the expiry of any Direct Insurance if we have not received instructions to negotiate the renewal thereof from the Company and/or any jointly insured parties or the agents of any such party and at least 5 Business Days prior to the expiry thereof if such Direct Insurance has not been renewed;
 - (iv) if we receive instructions to negotiate the renewal of any Direct Insurance, the details of such instructions and, upon the renewal of such Direct Insurance, the terms of such renewal; and
 - (v) of any act or omission of any event of which we have knowledge and which might invalidate or render unenforceable in whole or in part any of the Direct Insurances promptly upon our becoming aware of the same;
 - (d) to disclose to you any fact, change of circumstance or occurrence material to the risks insured against under the Direct Insurances or which would result in any reduction in limits or alteration in coverage or increase in deductions or exclusions promptly upon our becoming aware of the same;
 - (e) to notify you promptly following our becoming aware that we shall cease to act as insurance broker to the Company; and
 - (f) on your reasonable request and at your expense and subject to any legal, contractual or regulatory restrictions, to make those documents contained within our placing and claims files to which the Company would be entitled to have access available to you or your Insurance Adviser at reasonable times and places, and to provide you with copies of any such documents.
5. The above undertakings are given subject to our continuing appointment as insurance brokers to the Company and in relation to the Direct Insurances and the handling of claims in relation to them.

6. The contents of this letter may not be disclosed to any other party other than to any person:
- (a) to (or through) whom a Secured Party assigns or transfers (or may potentially assign or transfer) all or any of its rights, benefits and/or obligations under the Senior Finance Documents;
 - (b) to (or through) whom a Secured Party enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, any of the Senior Finance Documents or any Obligor; or
 - (c) to whom all or any contents of this letter may be required to be disclosed by any applicable law or pursuant to any regulatory or stock exchange requirement
- (a “**Third Party**”) and, in the event that it is disclosed to a Third Party, any and all liability howsoever arising to such Third Party is hereby expressly excluded. No person except the Senior Secured Parties has any rights arising out of this letter under the Contracts (Rights of Third Parties) Act 1999.
7. Our aggregate liability to you for any and all matters arising from this letter and the contents thereof shall in any and all events be limited to the sum of USD1,000,000 and confined to direct losses in contract. Any and all other liability including but not limited to liability in tort and liability for consequential losses is hereby expressly excluded. Notwithstanding the foregoing, nothing in this letter shall serve to limit our liability for death or personal injury caused by our negligence.
8. This letter shall be governed and construed in accordance with the laws of England and any disputes arising in connection with this letter shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The arbitration shall take place in Hong Kong and shall be conducted in English. The arbitration award shall be binding upon both parties.

Yours faithfully,

[name of insurance broker]

FORM OF REINSURANCE BROKER'S LETTER OF UNDERTAKING

To: [] as Intercreditor Agent
[] as Security Agent

[Date]

Dear Sirs,

1. We refer to Schedule 7 (*Insurance*) (the “**Insurance Schedule**”) to the Common Terms Agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. (the “**Company**”) and the financial institutions referred to therein as Senior Secured Creditors, as amended, consolidated, supplemented, novated or replaced from time to time. Terms used herein shall bear the same meaning as in the Insurance Schedule. Any reference herein to a document being in substantially a specified form shall be construed as meaning such document being in the same form as the specified form save for the insertion of information left in blank or typographical errors.
2. We, in our capacity as reinsurance brokers to [] (the “**Direct Insurer**”), confirm that facultative reinsurance of each Direct Insurance (other than those indicated by you) as required pursuant to Clause 1.2 of the Insurance Schedule are in full force and effect as of the date of this letter on and in respect of the risks set out in the Reinsurances evidenced in the policy cover notes attached hereto as Annex A and that all premiums which are required to have been paid at the date hereof in respect of such Reinsurances have been paid in full and such Reinsurances are placed with reinsurers and underwriters whose identities we have disclosed to you and whom we in good faith believe to be reputable and financially sound.
3. We confirm that each Reinsurance referred to in paragraph 2 above contains endorsements in substantially the form set out in Appendix 4 (*Form of Endorsements for Reinsurances*) to the Insurance Schedule.
4. Pursuant to instructions received from the Direct Insurer, we hereby undertake in respect of the Reinsurances referred to in the attached cover notes:
 - (a) in the case of any such Reinsurance, as and when the same is renewed, extended or replaced, and subject to market conditions current at the time of application for such renewal, extension or replacement, to use our best efforts to ensure that it complies with the requirements of the Insurance Schedule or such other requirements as you may approve in writing and that it contains endorsements in substantially the form set out in Appendix 4 (*Form of Endorsements for Reinsurances*) to the Insurance Schedule or in such other form as you may approve in writing;
 - (b) to pay to the accounts specified in the relevant loss payable clauses in the relevant policy documents without any set-off or deduction of any kind for any reason any and all proceeds from or other payments made pursuant to the

Reinsurances (including refunds of premiums) received by us from the reinsurers except as might otherwise be permitted in the relevant policy endorsement provisions or required by law or court order or as you may otherwise agree in writing;

- (c) to advise you:
 - (i) as soon as practical upon our becoming aware of any actual or proposed:
 - (A) cancellation or suspension of cover under any Reinsurance;
 - (B) reduction in limits or coverage or any increase in deductibles; and
 - (C) termination prior to the original expiry date of any Reinsurance;
 - (ii) as soon as practical of any default in the payment of any premium for any of the Reinsurances;
 - (iii) at least 45 days prior to the expiry of any Reinsurance if we have not received instructions to negotiate the renewal thereof from the Direct Insurer and/or any jointly insured parties or the agents of any such party and at least 5 Business Days prior to the expiry thereof if such Reinsurance has not been renewed;
 - (iv) if we receive instructions to negotiate the renewal of any Reinsurance, the details of such instructions and, upon the renewal of such Reinsurance, the terms of such renewal; and
 - (v) of any act or omission or any event of which we have knowledge and which might invalidate or render unenforceable in whole or in part any of the Reinsurances promptly upon our becoming aware of the same;
- (d) to disclose to you any fact, change of circumstance or occurrence material to the risks insured against under the Reinsurances or which would result in any reduction in limits or alteration in coverage or increase in deductions or exclusions promptly upon our becoming aware of the same;
- (e) to notify you promptly following our becoming aware that we shall cease to act as reinsurance broker to the Direct Insurer; and
- (f) on your reasonable request and at your expense and subject to any legal, contractual or regulatory restrictions, to make those documents contained within our placing and claims files to which the Direct Insurer would be entitled to have access available to you or your Insurance Adviser at reasonable times and places, and to provide you with copies of any such documents.

5. The above undertakings are given subject to our continuing appointment as reinsurance brokers to the Direct Insurer and in relation to the Reinsurances and the handling of claims in relation to them.
6. The contents of this letter may not be disclosed to any other party other than to any person:
 - (a) to (or through) whom a Secured Party assigns or transfers (or may potentially assign or transfer) all or any of its rights, benefits and/or obligations under the Senior Finance Documents;
 - (b) to (or through) whom a Secured Party enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, the Senior Finance Documents or any Obligor; or
 - (c) to whom all or any contents of this letter may be required to be disclosed by any applicable law or pursuant to any regulatory or stock exchange requirement

(a “**Third Party**”) and, in the event that it is disclosed to a Third Party, any and all liability howsoever arising to such Third Party is hereby expressly excluded. No person except the Senior Secured Parties has any rights arising out of this letter under the Contracts (Rights of Third Parties) Act 1999.
7. Our aggregate liability to you for any and all matters arising from this letter and the contents thereof shall in any and all events be limited to the sum of USD1,000,000 and confined to direct losses in contract. Any and all other liability including but not limited to liability in tort and liability for consequential losses is hereby expressly excluded. Notwithstanding the foregoing, nothing in this letter shall serve to limit our liability for death or personal injury caused by our negligence.
8. This letter shall be governed and construed in accordance with the laws of England and any disputes arising in connection with this letter shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The arbitration shall take place in Hong Kong and shall be conducted in English. The arbitration award shall be binding upon both parties.

Yours faithfully,

[name of reinsurance broker]

SCHEDULE 8

HEDGING ARRANGEMENTS

1. The Company shall, prior to the making of any Advance under a Term Loan Facility, enter into agreements to the extent necessary to ensure that at least 50% of the aggregate amount drawn under the Term Loan Facilities (including the amount of such Advance) is subject, through interest rate swaps, caps, collars or other products agreed with the Intercreditor Agent, to either a fixed interest rate or interest rate protection for such period as reflects the repayment schedule for such Facility and with a final maturity date of not less than three years from the date upon which such Hedging Arrangement was first entered into in respect of such amount.
2. The purchase price of any such products may be paid for:
 - (a) by one or other of the other Obligor for the benefit of the Company (*provided* that such payment shall either constitute Equity (other than any Equity required to be paid up or advanced in accordance with the terms of the Senior Finance Documents) or otherwise create no recourse to the Company); or
 - (b) out of the amount provided in the “Interest” Line Item (*provided* that the sum of the purchase prices, interest and any other amounts payable by the Company in respect of all such products does not exceed such amount).
3. Only a Lender or an Affiliate of a Lender may act as a Hedging Counterparty in respect of the Hedging Arrangements required by paragraph 1 above.
4. The Hedging Agreements are to be on the terms of the 1992 standard International Swap & Dealers Association, Inc. Master Agreement (the “**ISDA Master Agreement**”) and the ISDA Schedule, together with such amendments as are acceptable to the Intercreditor Agent. All Hedging Agreements for swap transactions will provide for full two way payments (with the Company being a Fixed Rate Payer (as defined in the 2000 ISDA Definitions as published by the International Swaps and Derivatives Association, Inc. (the “**2000 Definitions**”)) and the Hedging Counterparty being a Floating Rate Payer (as defined in the 2000 Definitions)) and the payment measure and payment method for such swap transactions in the event of early termination, whether upon a “Termination Event” or an “Event of Default”, shall be “Second Method” and “Market Quotation” respectively. Terms in quotations in this paragraph 4 shall have the meaning ascribed in the ISDA Master Agreement.
5. The Hedging Counterparties shall have equal security over the assets of the Company with the Senior Secured Creditors in accordance with the terms of this Agreement and the Deed of Appointment and Priority.
6. Any payments due from the Company under the Hedging Agreements (except for the purchase price or other amounts in respect of any interest rate caps, collars or other products paid by another Obligor) prior to the Expansion Opening Date, including any Realised Hedge Loss plus any accrued default interest in accordance with paragraph 10 below, shall be a permitted Project Cost.

In this paragraph and paragraphs 7 and 10 below, “**Realised Hedge Loss**” means, in relation to a Hedging Counterparty at any time, the amount (if any) payable (but unpaid) by the Company to such Hedging Counterparty under the Hedging Agreement to which such Hedging Counterparty is a party (but excluding any default interest) upon an early termination of any transaction or transactions thereunder which has been terminated in accordance with paragraph 9 below. The amount is to be calculated on a net basis across the transactions under such Hedging Agreement in accordance with the terms of the applicable Hedging Agreement.

7. Payments due from the Company under the Hedging Agreements following the Expansion Opening Date, including any Realised Hedge Loss plus any accrued default interest in accordance with paragraph 10 below, shall (save for any such amounts paid by another Obligor) be a Financing Cost.
8. Except with the prior consent of the Intercreditor Agent, no amendments may be made to a Hedging Agreement to an extent that might reasonably be expected to result in:
 - (a) any payment under the Hedging Agreement being required to be made by the Company on any date other than the dates originally provided for in the Hedging Agreement;
 - (b) the Company becoming liable to make an additional payment under any Hedging Agreement which liability does not arise from the original provisions of the Hedging Agreement; or
 - (c) the Company becoming liable to make any payment under the Hedging Agreement in any currency other than in the currency provided for under the original provisions of the Hedging Agreement.
9.
 - (a) The Company may terminate a transaction under a Hedging Agreement prior to its stated maturity only in circumstances provided for in such Hedging Agreement and with the approval of the Intercreditor Agent *provided* that the approval of the Intercreditor Agent shall not be required in the case of any termination by reason of illegality when the requirements of paragraph 1 above are met following such termination.
 - (b) A Hedging Counterparty may terminate a transaction under a Hedging Agreement prior to its stated maturity only in circumstances provided for in such Hedging Agreement.
 - (c) Unless a Hedging Counterparty has already exercised such rights in accordance with sub-paragraph (b) above, the Intercreditor Agent may require a Hedging Counterparty to terminate transactions under a Hedging Agreement where a declaration has been made by the Intercreditor Agent pursuant to Clause 19.2.2 (*Remedies following an Event of Default*).
 - (d) If a voluntary or mandatory prepayment is to be made in accordance with Clause 8 (*Repayments, Prepayments and Cancellation*) and following such prepayment the aggregate amount of the “**Notional Amounts**” (as defined in the 2000 Definitions) of all Hedging Agreements at such time would be greater

than 125% of the principal amounts outstanding under the Term Loan Facilities, the Company shall unwind, in order of maturity immediately following such prepayment (unless otherwise agreed by the Intercreditor Agent), sufficient transactions under the Hedging Agreements (and pay associated breakage costs) on the first Payment Date (as defined in the 2000 Definitions) (or, where such prepayment falls within 5 Business Days (as defined in the relevant Hedging Agreement) prior to such first Payment Date, the second Payment Date) in respect of such transaction immediately succeeding such prepayment such that the Intercreditor Agent is satisfied that, following such terminations, the aggregate Notional Amounts of all transactions under all Hedging Agreements is not less than 50% and not more than 125% of the principal amounts outstanding under the Facilities.

10. In the event that a Hedging Agreement is terminated and the Company fails to pay any Realised Hedge Loss, such Realised Hedge Loss shall comprise an Unpaid Sum and interest shall accrue in respect thereof accordingly.

APPENDIX 1

FORM OF HEDGING COUNTERPARTY'S DEED OF ACCESSION

THIS DEED dated [] is supplemental to (i) a common terms agreement (the "**Common Terms Agreement**") dated 14 September 2004 between Wynn Resorts (Macau) S.A. as Company and the Senior Secured Creditors (as defined therein) and (ii) each of the Security Documents as defined in the Common Terms Agreement to which the Senior Secured Creditors are expressed to be party (the "**Security Documents**").

Words and expressions defined in the Common Terms Agreement have the same meaning when used in this Deed and the principles of construction and rules of interpretation set out therein shall also apply.

[*name of new Hedging Counterparty*] (the "**New Hedging Counterparty**") of [*address*] hereby agrees with each other person who is or who becomes a party to the Common Terms Agreement that with effect on and from the date of this Deed it shall be bound by the Common Terms Agreement and be entitled to exercise rights and be subject to obligations thereunder as a Hedging Counterparty.

The New Hedging Counterparty hereto agrees with each other person who is or who becomes a party to the Security Documents that with effect on and from the date of this Deed it shall be bound by each of the Security Documents and be entitled to exercise rights and be subject to obligations thereunder as a Senior Secured Creditor.

The initial telephone number, fax number, address and person designated by the New Hedging Counterparty for the purposes of Clause 29 (*Notices*) of the Common Terms Agreement are:

[]

This Deed is governed by and shall be construed in accordance with English law.

Executed as a deed by)

[*insert name of New Hedging*])

Counterparty and execution)

clause appropriate thereto)

and to manner of execution])

SCHEDULE 9

MANDATORY PREPAYMENT

1. To the extent that any Equity Issuance Proceeds are received by (or paid to the order of) the Company or any other Obligor, the Company shall ensure that an amount equal to the amount of such Equity Issuance Proceeds (excluding any such Equity Issuance Proceeds derived from any Equity to the extent such Equity is required or permitted under this Agreement to fund any Project Costs) shall be applied on the next Interest Payment Date after such receipt (or payment) towards prepayment and cancellation of the Facilities in accordance with Clause 8.3 and, pending such application, shall be deposited and retained in an Account.
2. With respect to the Net Cash Proceeds from any Asset Sale (where such Net Cash Proceeds exceed in aggregate an amount equal to USD50,000,000 or its equivalent in any Fiscal Year when taken together with any other Net Cash Proceeds received by the Company or any other Obligor in respect of any Asset Sale in that Fiscal Year) made by the Company or any other Obligor as to which the Company or any other Obligor has not re-invested such Net Cash Proceeds within 12 months of receipt in assets used by the Company or any other Obligor in the conduct of its Permitted Business, such Net Cash Proceeds shall be applied on the next Interest Payment Date after the date falling 12 months from the date of receipt towards prepayment and cancellation of the Facilities in accordance with Clause 8.3 and, pending such application, shall be deposited and retained in an Account.
3. On the next Interest Payment Date following the date on which the Company or any other Obligor receives any Termination Proceeds or Eminent Domain Proceeds, the Company shall ensure that such proceeds are applied towards prepayment and cancellation of the Facilities in accordance with Clause 8.3 and, pending such application, shall be deposited and retained in an Account.
4. If, for any Fiscal Year commencing with the Fiscal Year in which the Original Project Opening Date occurs, there shall be Excess Cash Flow, the Company shall apply the ECF Percentage of such Excess Cash Flow towards prepayment and cancellation of the Facilities in accordance with Clause 8.3. Each such prepayment shall be made on the next Interest Payment Date following the earlier of:
 - (a) the date on which the financial statements of the Company referred to in paragraph 1 of Part A of Schedule 5 (*Covenants*), for the Fiscal Year with respect to which such prepayment is made, are required to be delivered to the Lenders; and
 - (b) the date such financial statements are actually delivered,and, pending such application, shall be deposited and retained in an Account.
5. An amount equal to any Insurance Proceeds (other than those received by the Company or any other Obligor for any single loss or series of related losses not in excess of USD20,000,000 or its equivalent) shall be applied to the prepayment and cancellation of the Facilities in accordance with Clause 8.3 on the next Interest Payment Date falling not

less than 30 days after the Company's or Obligor's receipt of such Insurance Proceeds, unless each of the following conditions are satisfied or waived by the Intercreditor Agent within such 30 day period, in which event such amounts shall be applied to the repair or restoration of the Projects:

- (a) the damage or destruction does not constitute the destruction of all or substantially all of the Projects;
- (b) a Default has not occurred and is continuing (other than a Default resulting solely from such damage or destruction) and after giving effect to any proposed repair and restoration, no Default will result from such damage or destruction or proposed repair and restoration;
- (c) the Company certifies, and the Intercreditor Agent determines in its reasonable judgment, that repair or restoration of the Projects to a condition substantially similar to their condition immediately prior to the event or events to which the relevant Insurance Proceeds relate, is technically and economically feasible within a 9 month period (where the damage or destruction occurs prior to the Diamond Completion Date) or a 12 month period (where it occurs thereafter) and that a sufficient amount of funds is or will be available to the Company to make such repairs and restorations;
- (d) the Company delivers to the Intercreditor Agent a plan (the "**Repair Plan**") describing in reasonable detail the nature of the repairs or restoration to be effected and the anticipated costs and schedule associated therewith, in form and substance reasonably satisfactory to the Intercreditor Agent;
- (e) the Company certifies, and the Intercreditor Agent determines in its reasonable judgment, that (A) the Company has sufficient Funds to achieve construction completion of the Projects and satisfy any existing or future liabilities, claims or other obligations of any kind and (B) a sufficient amount of funds is or will be available to the Company to make all payments on Financial Indebtedness which will become due during and following the repair period and, in any event, to maintain compliance with the covenants set forth in paragraph 1 of Part B of Schedule 5 (*Covenants*) during such repair period;
- (f) no Permit is necessary to proceed with the repair and restoration of the Projects and no material amendment to the Project Documents, or, except with the consent of the Senior Secured Creditors, any of the Senior Finance Documents, and no other instrument is necessary for the purpose of effecting the repairs or restoration of the Projects or subjecting the repairs or restoration to the Liens of the applicable Security Documents and maintaining the priority of such Liens or, if any of the above is necessary, the Company will be able to obtain the same as and when required; and
- (g) the Intercreditor Agent shall receive such certificates, opinions or other matters as it may reasonably request as necessary or appropriate in connection with such repairs or restoration of the Projects or to preserve or protect the Senior Secured Creditors' interests hereunder and in the applicable Project Security,

and, pending such application, such amount shall be deposited and retained in an Account.

After Insurance Proceeds have been applied to the repair or restoration of the Projects as provided in this Agreement, any excess Insurance Proceeds shall be applied on the next Interest Payment Date thereafter to the prepayment and cancellation of the Facilities in accordance with Clause 8.3.

6. [Not used.]
7. If all or substantially all of either Project is lost, damaged or destroyed or declared by any relevant Insurer to be a constructive total loss, the Company shall prepay and cancel the Facilities in accordance with Clause 8.3 and prepay all other amounts outstanding under the Senior Finance Documents within 90 days or, if earlier, upon receipt of Insurance Proceeds in respect of such loss, damage, destruction or declaration.
8. On the next Interest Payment Date following the date on which the Company or any other Obligor receives any Claim Proceeds, the Company shall apply an amount equal to such proceeds towards prepayment and cancellation of the Facilities in accordance with Clause 8.3 and, pending such application, shall deposit and retain such proceeds in an Account.

SCHEDULE 10

EVENTS OF DEFAULT

- (a) (i) The Company shall have failed to pay any principal of any Advance when due in accordance with the terms of the relevant Facility Agreement; or
- (ii) the Company shall have failed to pay any interest on any Advance within 5 days after any such interest becomes due in accordance with the terms of the relevant Senior Finance Document; or
- (iii) any other Obligor shall have failed to pay any other amount payable under any Senior Finance Document within 10 days after any such other amount becomes due in accordance with the terms of the relevant Senior Finance Document or in the event that any such other amount becomes due without a notice being given to the relevant Obligor, 10 days after notice to the relevant Obligor of the non-payment of such amount.
- (b) Any representation or warranty made or deemed made by any Obligor in any Senior Finance Document to which it is a party or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with any Senior Finance Document shall prove to have been incorrect in any material respect (or, in the case of the representations and warranties set out in paragraphs 21.1, 21.2 and 21.3 of Schedule 4 (*Representations and Warranties*), in any respect) on or as of the date made or deemed made and, in the case of an Obligor (other than the Company or a Wynn Obligor), such event, in the reasonable opinion of the Intercreditor Agent, could reasonably be expected to give rise to a Material Adverse Effect.
- (c) The Company shall default in the observance or performance of:
- (i) paragraph 12(a) of Part A of Schedule 5 (*Covenants*) and, other than in respect of a Default arising by reason of paragraphs (v), (w), (x), (y), (z) or (aa) of Schedule 10 (*Events of Default*), such default shall continue unremedied for a period of 30 days;
- (ii) paragraph 12(b) of Part A of Schedule 5 (*Covenants*) in so far as it relates to the Concession Contract or the Land Concession Contract;
- (iii) paragraph 24 of Part A of Schedule 5 (*Covenants*); or
- (iv) paragraph 1 of Part B of Schedule 5 (*Covenants*) and such default shall continue unremedied for a period of 5 days.
- (d) Any Obligor or the Performance Bond Provider shall default in the observance or performance of any other covenant or agreement contained in any Senior Finance Document to which it is a party (other than as provided in paragraphs (a) through (c) of this Schedule), and such default shall continue unremedied for a period of 30 days or, *provided* the relevant Obligor or the Performance Bond Provider is diligently pursuing action to remedy the default and it is of a nature that it is capable of being remedied, 60 days after the earlier of:
- (i) the Company or such Obligor becoming aware of such default; and

- (ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such default.
- (e) Save where paragraph (a) of this Schedule applies, the Company or any other Obligor shall:
- (i) default in making any payment of any principal of any Financial Indebtedness (including, without limitation, any Guarantee Obligation, but excluding the Advances) on the scheduled due date with respect thereto;
 - (ii) default in making any payment of any interest on any such Financial Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Financial Indebtedness was created; or
 - (iii) default in the observance or performance of any other agreement or condition relating to any such Financial Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition (or any declaration by the holder of such Financial Indebtedness by reason thereof) is to cause immediately such Financial Indebtedness to become due prior to its stated maturity or (in the case of any such Financial Indebtedness constituting a Guarantee Obligation) to become payable,
- provided* that a default event or condition described in sub-paragraphs (i), (ii) or (iii) of this paragraph (e) shall not at any time constitute a Default or Event of Default unless, at such time, the aggregate amount of the default in the principal payment in the case of sub-paragraph (i), the default in the interest payment in the case of sub-paragraph (ii) and the amount accelerated in the case of sub-paragraph (iii) of this paragraph (e) exceeds USD10,000,000 or its equivalent in the case of the Company and the other Obligors taken as a whole.
- (f) (i) Any Obligor or the Performance Bond Provider shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, administration, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or any Obligor or the Performance Bond Provider shall make a general assignment for the benefit of its creditors;
- (ii) there shall be commenced against any Obligor or the Performance Bond Provider any case, proceeding or other action of a nature referred to in sub-paragraph (i) above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of 60 days;

- (iii) there shall be commenced against or any Obligor or the Performance Bond Provider any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof;
- (iv) any Obligor or the Performance Bond Provider shall consent to, approve, or acquiesce in, any of the acts set forth in sub-paragraphs (i), (ii) or (iii) above; or
- (v) any Obligor or the Performance Bond Provider shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due,

provided that no Event of Default shall be deemed to have occurred under this paragraph (f) as a result of any such action, event of condition by, against or concerning the Performance Bond Provider if:

- (vi) immediately upon (and, in any event, no more than three Business Days after) becoming aware or receiving notice thereof, the Company gives notice to the Intercreditor Agent of its intention to replace the Performance Bond Provider; and
- (vii) within 60 days (or such shorter period as the Intercreditor Agent may determine is required pursuant to the Concession Contract) after such action, event or condition has occurred:
 - (A) the Performance Bond Provider has been replaced by a Person (the “**Replacement Performance Bond Provider**”) acceptable to the Intercreditor Agent;
 - (B) the Replacement Performance Bond Provider has provided a replacement Concession Contract Performance Bond and acceded to the terms of the Deed of Appointment and Priority, in each case on terms acceptable to the Intercreditor Agent; and
 - (C) the Intercreditor Agent is satisfied that no breach of the Concession Contract or any applicable Legal Requirement has occurred or will result from such replacement, and that the replacement complies, and has been authorised by the Macau SAR in accordance with, the Concession Contract and all other applicable Legal Requirements.

- (g) (i) Any Person shall engage in any “prohibited transaction” (as defined in section 406 of ERISA or section 4975 of the Code) involving any Plan;
- (ii) any “accumulated funding deficiency” (as defined in section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favour of the PBGC or a Plan shall arise on the assets of any Obligor or any Commonly Controlled Entity;

- (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Intercreditor Agent, likely to result in the termination of such Plan for purposes of Title IV of ERISA;
- (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA other than in a standard termination under section 4041(b) of ERISA;
- (v) any Obligor or any Commonly Controlled Entity shall, or in the reasonable opinion of the Intercreditor Agent is likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan; or
- (vi) any Obligor, or any of their Subsidiaries or any Commonly Controlled Entity shall be required to make during any Fiscal Year payments pursuant to any employee welfare benefit plan (as defined in section 3(1) of ERISA) that provides benefits to retired employees (or their dependents), other than as required by sections 601 and following of ERISA, section 4980B of the Code, or the corresponding provisions of applicable state law,

and in each case in sub-paragraphs (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect.

- (h) One or more judgments or decrees shall be entered against the Company or any other Obligor involving for the Company and the other Obligors taken as a whole a liability (not paid or covered by insurance as to which the relevant insurance company has acknowledged coverage) of USD10,000,000 or its equivalent or more, and all such judgments or decrees, in either case, shall not have been vacated, discharged, stayed or bonded pending appeal within 30 days from the entry thereof.
- (i) Any of the Senior Finance Documents shall cease, for any reason (other than pursuant to the terms thereof), to be in full force and effect, or any Obligor shall in writing to any Senior Secured Creditor in the event that any Senior Secured Creditor is seeking to exercise its rights or in any Proceedings so assert, or any Lien created or acknowledged by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created or acknowledged thereby.
- (j) The Company or any other Obligor shall breach or default under in any material respect any material term, condition, provision, covenant, representation or warranty contained in any Major Project Document (other than any Resort Management Agreement where any such breach or default thereof could not reasonably be expected to prejudice the Concession Contract, the Land Concession Contract or any rights, benefits or interests arising thereunder) and such breach or default shall continue unremedied for 30 or, save

in the case of any payment default, provided the Company or such Obligor is diligently pursuing action to remedy the default and it is of a nature that is capable of being remedied, 60 days after the earlier of:

- (i) the Company or such Obligor becoming aware of such breach or default; and
- (ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such breach or default.

(k) Any party (other than the Company) shall breach or default under any term, condition, provision, covenant, representation or warranty contained in any Major Project Document (other than any Resort Management Agreement where any breach or default thereof could not reasonably be expected to prejudice the Concession Contract, the Land Concession Contract or any rights, benefits or interests arising thereunder) and such breach or default shall continue unremedied for 90 days after the earlier of:

- (i) the Company or any other Obligor becoming aware of such breach or default; and
- (ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such breach or default,

and, in the reasonable opinion of the Intercreditor Agent, such breach or default could reasonably be expected to have a Material Adverse Effect.

(l) Any of the Transaction Documents shall terminate or be terminated or cancelled, become invalid or illegal or otherwise cease to be in full force and effect prior to its stated expiration date *provided* that the occurrence of any of the foregoing events with respect to any Major Project Document (other than the Concession Contract, the Land Concession Contract, the Construction Contract or the IP Agreement) shall constitute an Event of Default under this paragraph (l) only if the same could reasonably, in the reasonable opinion of the Intercreditor Agent, be expected to result in a Material Adverse Effect and the same shall continue unremedied for 90 days after the earlier of:

- (i) the Company or any other Obligor becoming aware of such occurrence; and
- (ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such occurrence,

provided that in the case of any such Major Project Document (other than the Concession Contract, the Land Concession Contract, the Construction Contract or the IP Agreement), if the occurrence is not the result of the breach or default by an Obligor in any material respect of any material term, condition, provision, covenant, representation or warranty, then no Event of Default shall be deemed to have occurred as a result thereof under this paragraph (l) if the Company provides written notice to the Intercreditor Agent immediately upon (but in no event more than 3 Business Days after) the Company or such other Obligor becoming aware of such occurrence that it intends to replace such Project Document and:

- (A) the Company obtains a replacement obligor or obligors for the affected party;

- (B) the Company or such other Obligor enters into a replacement Major Project Document on terms no less beneficial to the Company or such other Obligor and the Senior Secured Creditors in any material respect than the Major Project Document being replaced within 60 days of such occurrence, *provided* that the replacement Major Project Document may require the Company or such other Obligor to pay amounts under the replacement Major Project Document in excess of those that would have been payable under the replaced Major Project Document; and
 - (C) in the reasonable opinion of the Intercreditor Agent, such occurrence, after considering any replacement obligor and replacement Major Project Document and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect.
- (m) A Change of Control shall occur.
 - (n) Any Subordinated Debt or the Performance Bond Facility Agreement shall cease, for any reason, to be validly subordinated to the Obligations of the Obligors as provided in the Senior Finance Documents and the documentation, instruments or other agreements related to the Subordinated Debt, as the case may be.
 - (o) The Company or any other Obligor shall fail to observe, satisfy or perform, or there shall be a violation or breach of, any of the terms, provisions, agreements, covenants or conditions attaching to or under the issuance to such Person of any Permit or any such Permit or any provision thereof shall be suspended, revoked, cancelled, terminated or materially and adversely modified or fail to be in full force and effect or any Governmental Authority shall challenge or seek to revoke any such Permit if such failure to perform, violation, breach, suspension, revocation, cancellation, termination or modification could reasonably be expected to have a Material Adverse Effect.
 - (p) [Not used]
 - (q) [Not used]
 - (r) The Company shall abandon either of the Projects (other than the Diamond Expansion) or otherwise cease to pursue them.
 - (s) Any call or drawing made by the Macau SAR under the Concession Contract Performance Bond unless the Concession Contract Performance Bond is fully reinstated within 30 days thereof in accordance with the Concession Contract, no other Event of Default has occurred or will result from such reinstatement.
 - (t) The Company or any other Obligor shall fail to at all times maintain in full force and effect the insurance policies required by Schedule 7 (*Insurance*) and paragraph 10.4 of Part A of Schedule 5.

- (u) Any Governmental Authority takes any action or there is a change in (or in the interpretation, administration or application of) or the introduction of any Legal Requirement:
 - (i) which deprives the Company or any other Obligor of the use of all or any material part of its Property (including nationalisation, expropriation, modification, suspension or extinguishment of any material rights benefiting or the imposition of any restrictions materially and adversely affecting the Existing Project or the Expansion by such Governmental Authority);
 - (ii) which prevents the Company or any other Obligor from conducting its business or operations, or a material part thereof, in a similar manner as contemplated at the Signing Date; or
 - (iii) which, in the reasonable opinion of the Intercreditor Agent, otherwise could reasonably be expected to have a Material Adverse Effect,and, in each case, such action, change or introduction or the effects thereof, are not removed or stayed within 30 days of the occurrence of such action, change or introduction.
- (v) Any temporary administrative intervention is made by the Macau SAR pursuant to article 79 of the Concession Contract.
- (w) The Macau SAR takes any formal measure seeking the unilateral dissolution of the Concession Contract pursuant to article 80 thereof or the Macau SAR gives notice pursuant to article 80(3) of the Concession Contract and the Company fails to comply with the terms thereof within the grace period specified therein.
- (x) The Intercreditor Agent considers the subject matter of any negotiations required to be notified to it pursuant to paragraph 24(c) of Part A of Schedule 5 (*Covenants*) is such as could reasonably give rise to an entitlement of the Macau SAR to unilaterally dissolve the Concession Contract pursuant to article 80 thereof.
- (y) Any consultations are commenced as contemplated by paragraph B1(c) of the Gaming Concession Consent Agreement and (save for the purpose of giving notice to the Macau SAR that the Security Agent intends to take action to enforce all or any of the pledges constituted by the Company Share Pledge, the Wynn International Share Charge and/or the Wynn HK Share Charge which may be given by the Security Agent immediately upon such consultations being commenced) the Intercreditor Agent considers the subject matter of such consultations is reasonably likely to give rise to (a) the taking of any action to terminate the Concession Contract or (b) an agreement to terminate the Concession Contract.
- (z) The Land Concession Contract is terminated or rescinded or the Macau SAR takes any formal measure seeking any termination of the Land Concession Contract pursuant to Clause 15 thereof or any rescission pursuant to Clause 16 thereof.
- (aa) The Macau SAR gives any notice pursuant to paragraph C7 of the Land Concession Consent Agreement.
- (bb) A Material Adverse Effect has occurred which is continuing.

SCHEDULE 11

TRANSFERS AND ACCESSION

Part A

Form of Agent's Deed of Accession

THIS DEED dated [] is supplemental to each of the Senior Finance Documents as defined in a common terms agreement (the "**Common Terms Agreement**") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the Senior Secured Creditors (as defined therein) to which [*name of existing Agent*] is expressed to be a party (the "**Senior Finance Documents**").

Words and expressions defined in the Common Terms Agreement have the same meaning when used in this Deed and the principles of construction and rules of interpretation set out therein shall also apply.

[*name of new Agent*] (the "**New Agent**") of [*address*] hereby agrees with each other person who is or who becomes a party to the Senior Finance Documents that with effect on and from the date of this Deed it shall be bound by the Senior Finance Documents and be entitled to exercise rights and be subject to obligations thereunder as [*specify Agent*].

The Facility Office of the New Agent is located at [].

The initial telephone number, fax number, address and person designated by the New Agent for the purposes of Clause 29 (*Notices*) of the Common Terms Agreement are:

[]

This Deed is governed by and shall be construed in accordance with English law.

Executed as a deed by)
[*insert name of new Agent and*)
execution clause appropriate)
thereto and to manner of)
execution])

Part B

Form of Novation Certificate

To: [] as Intercreditor Agent

NOVATION CERTIFICATE

relating to [description of the relevant Facility Agreement] (the “**Facility Agreement**”) dated 14 September 2004 between Wynn Resorts (Macau) S.A. (the “**Company**”) and [list other parties] and the common terms agreement (the “**Common Terms Agreement**”) dated 14 September 2004 between the Company and the Senior Secured Creditors (as defined therein).

1. Terms defined in the Common Terms Agreement shall, subject to any contrary indication, have the same meanings herein and the principles of construction and rules of interpretation set out therein shall also apply. The terms Lender, Transferee, Proposed Transfer Date, Lender’s Participation and Amount Transferred are defined in the schedule hereto.
2. The Lender confirms that the Lender’s Participation is an accurate summary of its participation in the Facility Agreement and requests the Transferee to accept and procure the transfer by novation to the Transferee of a percentage of the Lender’s Participation (equal to the percentage that the Amount Transferred is of the aggregate of the component amounts (as set out in the schedule hereto) of the Lender’s Participation the “**Transferred Percentage**”) by counter-signing and delivering this Novation Certificate to the Intercreditor Agent at its address for the service of notices specified in the Common Terms Agreement, in accordance with Clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement. The Lender assigns, subject to the aforementioned acceptance by the Transferee, a proportion of the rights and benefits held by the Lender (in its capacity as such) under or in connection with the Senior Finance Documents which proportion shall be equal to the Transferred Percentage.
3. The Transferee hereby requests the Intercreditor Agent to accept this Novation Certificate as being delivered to the Intercreditor Agent pursuant to and for the purposes of Clause 21.6 (*Transfer by Lenders*) of the Common Terms Agreement so as to take effect in accordance with the terms thereof on the Proposed Transfer Date or on such later date as may be determined in accordance with the terms thereof.
4. The Transferee confirms that it has received a copy of each of the Senior Finance Documents together with such other information as it has required in connection with this transaction and that it has not relied and shall not hereafter rely on the Lender to check or enquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of any such information and further agrees that it has not relied and shall not rely on the Lender to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of the Obligors or the Projects.
5. The Transferee hereby undertakes with the Lender and each of the other parties to the Facility Agreement that it shall perform in accordance with their terms all those obligations which by the terms of the Facility Agreement shall be assumed by it after delivery of this Novation Certificate to the Intercreditor Agent and satisfaction of the conditions (if any) subject to which this Novation Certificate is expressed to take effect.

6. The Transferee also agrees that, with effect from the Proposed Transfer Date or such later date as may be determined in accordance with Clause 21.6 (*Transfer by Lenders*) of the Common Terms Agreement, it shall be bound by the terms of:
 - (a) the Common Terms Agreement as if it had been a party to such agreement in the capacity of a [*specify Lender*]; and
 - (b) each of the Security Documents to which the Lenders are party as if it had been a party to those documents in the capacity of a Lender thereunder.
7. The Lender makes no representation or warranty and assumes no responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of the Senior Finance Documents or any document relating thereto and assumes no responsibility for the financial condition of the Obligors or for the performance and observance by the Obligors of any of their obligations under the Senior Finance Documents or any document relating thereto and any and all such conditions and warranties, whether express or implied by law or otherwise, are hereby excluded.
8. The Lender hereby gives notice that nothing herein or in the Senior Finance Documents (or any document relating thereto) shall oblige the Lender to (a) accept a re-transfer from the Transferee of the whole or any part of its rights, benefits and/or obligations under the Senior Finance Documents transferred pursuant hereto or (b) support any losses directly or indirectly sustained or incurred by the Transferee for any reason whatsoever including the non-performance by any of the Obligors or any other party to the Senior Finance Documents (or any document relating thereto) of its obligations under any such document. The Transferee hereby acknowledges the absence of any such obligation as is referred to in (a) or (b).
9. This Novation Certificate and the rights, benefits and obligations of the parties hereunder shall be governed by and construed in accordance with English law.

THE SCHEDULE

1. Lender:
2. Transferee:
3. Proposed Transfer Date:
4. Lender's Participation:

Lender's undrawn Available Commitment*	Lender's Portion of each Advance
--	----------------------------------

5. Amount Transferred:

[Lender]

[Transferee]

By: _____
Date: _____

By: _____
Date: _____

[]

as Intercreditor Agent

By: _____
Date: _____

Administrative Details of Transferee

Address:

Contact Name:

Account for Payments:

Standing Payment Instruction:

Fax:

Telex:

Telephone:

* Details of the Lender's undrawn Available Commitment should not be completed after the last day of the Availability Period.

Part C

Form of Confidentiality Undertaking

To: *[Insert name of potential Transferee/participant]*

[Date]

Dear Sirs,

We understand that you are considering [acquiring an interest (the "**Acquisition**") in/accepting an appointment as facility agent under *[description of the relevant Facility Agreement]* (the "**Facility Agreement**")/accepting an appointment as intercreditor agent under the Senior

Finance Documents (the “**Appointment**”) in relation to the design, development, construction, ownership, operation and maintenance of the Wynn Macau hotel, retail and destination gaming resort project (the “**Project**”). In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

1. *Confidentiality Undertaking* You undertake (a) to keep the Confidential Information confidential and not to disclose it to anyone except as provided for by paragraph 2 below and to ensure that the Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information, (b) to use the Confidential Information only for the Permitted Purpose, (c) to use all reasonable endeavours to ensure that any person to whom you pass any Confidential Information (unless disclosed under paragraph 2(c) below) acknowledges and complies with the provisions of this letter as if that person were also a party to it, and (d) not to make enquiries of any of the Obligor or any of their officers, directors, employees or professional advisers relating directly or indirectly to the [Acquisition/Appointment].
2. *Permitted Disclosure* We agree that you may disclose Confidential Information:
 - (a) to members of the [Purchaser/Appointee] Group and their officers, directors, employees and professional advisers to the extent necessary for the Permitted Purpose and to any auditors of members of the [Purchaser/Appointee] Group;
 - (b) [subject to the requirements of the Senior Finance Documents, to any person to (or through) whom you assign or transfer (or may potentially assign or transfer) all or any of the rights, benefits and obligations which you may acquire under the Facility Agreement or with (or through) whom you enter into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, the Senior Finance Documents or any of the Obligor so long as that person has delivered a letter to you in equivalent form to this letter;] and
 - (c) (i) where requested or required by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body, (ii) where required by the rules of any stock exchange on which the shares or other securities of any member of the [Purchaser/Appointee] Group are listed or (iii) where required by the laws or regulations of any country with jurisdiction over the affairs of any member of the [Purchaser/Appointee] Group.
3. *Notification of Required or Unauthorised Disclosure* You agree (to the extent permitted by law) to inform us of the full circumstances of any disclosure under paragraph 2[(c)/(b)¹¹] or upon becoming aware that Confidential Information has been disclosed in breach of this letter.
4. *Return of Copies* If we so request in writing, you shall return all Confidential Information supplied to you by us and destroy or permanently erase all copies of Confidential Information made by you and use all reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or

¹¹ If paragraph 2(b) deleted.

permanently erases such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under paragraph 2[(c)/(b)¹²] above.

5. *Continuing Obligations* The obligations in this letter are continuing and, in particular, shall survive the termination of any discussions or negotiations between you and us. Notwithstanding the previous sentence, the obligations in this letter shall cease (a) if you become a party to [or otherwise acquire (by assignment or sub-participation) an interest, direct or indirect, in] the [Facility Agreement/Senior Finance Documents] or (b) twelve months after you have returned all Confidential Information supplied to you by us and destroyed or permanently erased all copies of Confidential Information made by you (other than any such Confidential Information or copies which have been disclosed under paragraph 2 above (other than sub-paragraph 2(a)) or which, pursuant to paragraph 4 above, are not required to be returned or destroyed).
6. *No Representation; Consequences of Breach, etc* You acknowledge and agree that:
 - (a) neither we nor any Obligor nor any of our or their respective officers, employees or advisers (each a “**Relevant Person**”) (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or be otherwise liable to you or any other person in respect to the Confidential Information or any such information; and
 - (b) we or any Obligor may be irreparably harmed by the breach of the terms hereof and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.
7. *No Waiver; Amendments, etc* This letter sets out the full extent of your obligations of confidentiality owed to us in relation to the information the subject of this letter. No failure or delay in exercising any right, power or privilege hereunder will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privileges hereunder. The terms of this letter and your obligations hereunder may only be amended or modified by written agreement between us.
8. *Inside Information* You acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation relating to insider dealing and you undertake not to use any Confidential Information for any unlawful purpose.

¹² If paragraph 2(b) deleted.

9. *Nature of Undertakings* The undertakings given by you under this letter are given to us and (without implying any fiduciary obligations on our part) are also given for the benefit of each Obligor.
10. *Third party rights*
- (a) Subject to this paragraph 10 and to paragraphs 6 and 9, a person who is not a party to this letter has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this letter.
 - (b) The Relevant Persons may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Act.
 - (c) The parties to this letter do not require the consent of the Relevant Persons to rescind or vary this letter at any time.
11. *Governing Law and Jurisdiction* This letter (including the agreement constituted by your acknowledgement of its terms) shall be governed by and construed in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the English courts.
12. *Definitions* In this letter (including the acknowledgement set out below) terms defined in or by reference to the Facility Agreement shall, unless the context otherwise requires, have the same meaning, the principles of construction and rules of interpretation referred to therein shall also apply and:
- “**Confidential Information**” means any information relating to the Project, any Obligor, the Transaction Documents, any agreement relating to the [Facility Agreement/Senior Finance Documents] and/or the [Acquisition/Appointment] provided to you by us or any of our affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that (a) is or becomes public knowledge other than as a direct or indirect result of any breach of this letter or (b) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you thereafter, other than from a source which is connected with the Obligors and which, in either case, as far as you are aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality.
- “**Obligors**” means Wynn Resorts (Macau) S.A. and certain other persons, as defined in the Senior Finance Documents, who have a direct or indirect interest in its share capital.
- “**Permitted Purpose**” means considering and evaluating whether to [enter into/accept] the [Acquisition/Appointment].
- “**Project Documents**” means the documents entered into by Wynn Resorts (Macau) S.A. and its contractors or subcontractors in connection with the Project.

“**[Purchaser/Appointee] Group**” means you, each of your holding companies and subsidiaries and each subsidiary of each of your holding companies (as each such term is defined in the Companies Act 1985).

“**Senior Finance Documents**” means the Facility Agreement, the Common Terms Agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. and certain financial institutions and other Senior Finance Documents as defined in such Common Terms Agreement.

“**Transaction Documents**” means the Senior Finance Documents and the Project Documents.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

For and on behalf of

[Insert name of Lender/Agent]

To: [Lender/Agent]
The Obligors

We acknowledge and agree to the above:

For and on behalf of

[Potential Transferee/participant/appointee]

Date:

SCHEDULE 12

PERMITS

THE PERMITS DESCRIBED IN PART A AND PART B OF THIS SCHEDULE 12 (*PERMITS*) HAVE BEEN ISSUED AND ARE IN FULL FORCE AND EFFECT.

Part A

Permits required on or before the CP Satisfaction Date

1. Construction licence.
2. Enactment of legislation by the Macau SAR providing for casino operators to be grantors of credit to patrons.
3. Macau SAR approval of the location of the horizontal property comprised in the Casino Project.
4. Publication of the Land Concession Contract in the Official Bulletin.
5. Provisional registration of the rights of the Company to the land which is the subject of the Land Concession Contract (for the purposes of this Schedule, the "**Land**").
6. Macau SAR confirmation that the scope of insurances set out in Schedule 7 satisfy the requirements of Article 40 of the Concession Contract.
7. Agreement by the Gambling Inspection and Coordination Bureau and the Financial Bureau of the Macau SAR as to the identity of the Auditor in accordance with Article 57 of the Concession Contract.
8. Macau SAR authorisation: (i) pursuant to article 16(1) of the Concession Contract to pledge the Company's shares; (ii) pursuant to article 16(5) of the Concession Contract to charge the shares of the Company's shareholders; (iii) pursuant to article 21(3) of the Concession Contract to execute a power of attorney in relation to the Land; (iv) pursuant to article 42(1) of the Concession Contract to mortgage the portion of the Land, including any constructions thereon, referred to therein; and (v) pursuant to article 42(1) of the Concession Contract to pledge the gaming equipment and utensils of the Company.
9. To the extent applicable, disclosure to Macau SAR of any serious alteration to the economic or financial conditions of the Company, the Company's shareholders or certain of the Company's Affiliates pursuant to article 23 of the Concession Contract.

Part B

Permits required after the CP Satisfaction Date

1. Project Certificates of Occupancy.
2. Definitive registration of the rights of the Company to the land which is the subject of the Land Concession Contract and definitive registration of the horizontal property comprised in the Projects.
3. Permits required under Article 84 of the Concession Contract.
4. Amended construction licence for the Projects (including the Expansion).
5. Written confirmation from Macau SAR Department of Public Works that, upon approval of the amended construction licence for the Projects (including the Expansion), the Land Concession Contract will be amended as soon as practicable to the extent required to reflect the Projects as actually built pursuant to the original construction licence and the amended construction licence.

SCHEDULE 13

[NOT USED]

SCHEDULE 14

FORM OF ADDITIONAL LENDER'S ACCESSION DEED

THIS DEED dated [] is supplemental to a common terms agreement (the "Common Terms Agreement") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the Senior Secured Creditors (as defined therein).

Words and expressions defined in the Common Terms Agreement have the same meaning when used in this Deed and the principles of construction and rules of interpretation set out therein shall also apply.

[*name of Additional Lender*] (the "New Additional Lender") of [*address*] hereby agrees with each other person who is or who becomes a party to the Common Terms Agreement that with effect on and from the date of this Deed it shall be bound by the Common Terms Agreement and be entitled to exercise rights and be subject to obligations thereunder as an Additional Lender.

The initial telephone number, fax number, address and person designated by the New Additional Lender for the purposes of Clause 29 (*Notices*) of the Common Terms Agreement are:

[]

This Deed is governed by and shall be construed in accordance with English law.

Executed as a deed by)

[*insert name of Additional*)

Lender and execution clause)

appropriate thereto and to)

manner of execution])

SCHEDULE 15

FORM OF COMPLIANCE CERTIFICATE

To: [] as Intercreditor Agent

Date: []

Dear Sirs,

We refer to an agreement (the "Common Terms Agreement") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions named therein as Senior Secured Creditors. Terms defined in the Common Terms Agreement shall bear the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.

We confirm on [insert date of relevant financial statements] the following:

	<u>Actual</u>	<u>Required</u>
1. Leverage Ratio	[]	[]
2. Interest Coverage Ratio	[]	[]
	Actual	
3. Excess Cash Flow		

We attach the information and calculations necessary for determining the above ratios and amounts.

We hereby confirm that no Default has occurred and is continuing.

OR

We hereby give you notice of the occurrence of the following Default which is continuing:

[].

We set out below the steps being taken to remedy such Default:

[].

Yours faithfully,

Name:
Responsible Officer
for and on behalf of
Wynn Resorts (Macau) S.A.

SCHEDULE 16

[NOT USED]

SCHEDULE 17

[NOT USED]

SCHEDULE 18

MONTHLY CONSTRUCTION PERIOD REPORT

List of Minimum Information to be Included

A. Summary

B. Project Schedule

1. Describe (in respect of both work under the Construction Contract and Company scope including FF&E and pre-opening activities):
 - 1.1 Overall progress of work broken down by major area
 - 1.2 Major activities that have taken place in the period since the last report
 - 1.3 Major activities scheduled to take place in the period until the next report
 - 1.4 The Company's estimate of:
 - (a) The date of Substantial Completion for the Original Project and the Expansion
 - (b) The Opening Date (and satisfaction of the Opening Conditions specified in paragraph (a) of the definition thereof) for the Original Project and the Expansion Opening Date
 - (c) The date of Expansion Completion
2. With reference to the attached Project Schedule:
 - 2.1 Highlight changes in the Project Schedule from the last report
 - 2.2 Highlight major milestones achieved in the period since the last report
 - 2.3 Describe remedial activities being taken to accelerate the works (if any)

C. Manpower

1. Indicate current staffing level vs. projected for the Company, the PASA Agent and the Construction Contractor
2. Indicate any fatalities or injuries associated with the Projects incurred by the Company, the PASA Agent, the Prime Contractor, any Subcontractor or any other person in the period since the previous report with detail as to the nature of injuries incurred and cumulative figures since the [Date of Commencement] under and as defined in the Construction Contract
3. Highlight any major executive positions filled or vacated in the period since the last report

D. Other

1. List material Permits issued or made by or with a Governmental Authority obtained by the Company in the period since the last report
2. List any requests for change orders or variations under the Construction Contract received, requested, agreed or approved in the period since the last report
3. Hedging Arrangements entered into in the period since the last report

E. Lease and Subconcession Agreements

1. List total space leased vs. vacant for each of the following categories:
 - 1.1 Restaurants
 - 1.2 Retail
 - 1.3 Other facilities
2. List tenants secured and target date of opening for each space indicated as leased
3. Describe any agreements, whether in-principle or otherwise, entered into by the Company in the period since the last report in respect of subconcessions under the Concession Contract

F. Operating Results of Projects

Following the Opening Date of the Original Project until the Expansion Opening Date, provide the operating results of the Company in the preceding month, including:

- (a) Operating revenues, broken down by major source category
- (b) Operating costs, broken down by major line item
- (c) Working capital and other adjustments for non-cash items
- (d) Other cash payments or reserves made from operating cashflow
- (e) Net cashflow from operations and the sum transferred to the Construction Disbursement Accounts

G. Schedules

Photographs

H. Attachments

1. Project Schedule
2. Actual vs. projected expenditure "S" curve
3. Monthly Construction Progress Report

SCHEDULE 19

FORMS OF OPENING CONDITIONS CERTIFICATES

Part A

Form of Company's Opening Conditions Certificate

To: [] as Intercreditor Agent

Date: []

Dear Sirs,

1. We refer to the common terms agreement (the "**Common Terms Agreement**") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors. Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. This certificate is provided for the purposes of the definition of "Opening Conditions" in Clause 1.1 (*Definitions*) of the Common Terms Agreement in respect of the Original Project.
3. We hereby certify, as at the date of this certificate, that:
 - (i) furnishings, fixtures and equipment necessary to use and occupy the various portions of the Original Project for their intended uses have been installed and are operational;
 - (ii) all the Project Certificates of Occupancy have been issued, each area in which any operation of casino games of chance or other forms of gaming will be carried out has been classified as a casino or gaming zone in accordance with Article 9 of the Concession Contract and (other than any Permit issued or made by or with a Governmental Authority the failure of which to obtain or make could not reasonably be expected to affect the operations of the Projects in any material respect) each other Permit issued or made by or with a Governmental Authority required under applicable Legal Requirements to be obtained or made prior to the Opening Date has been obtained or made;
 - (iii) the Original Project (other than the premises to be occupied by individual retail and restaurant tenants in the Projects) is fully open for business to the general public and at least, in the case of the Original Project, 80% of each of the projected 380 slot machines and 200 gaming tables are in operation, 80% of restaurant outlets are open for business and at least 80% of the floor space comprised in the Original Project and designated in the Plans and Specifications for retail tenants has been occupied (save for facilities which by their nature are not open to the general public in the ordinary course of business but are operating);

-
- (iv) the remaining work on the Projects will not materially affect the operation of the Original Project;
 - (v) the failure to complete the remaining work will not materially affect the operation of the Original Project; and
 - (vi) the Company has available a fully trained staff to operate the Original Project including the hotel and casino.

Yours faithfully,

Name:

Responsible Officer

for and on behalf of

Wynn Resorts (Macau) S.A.

Part B

Form of Technical Adviser's Opening Conditions Certificate

To: [] as Intercreditor Agent

Date: []

Dear Sirs,

1. We refer to the common terms agreement (the "Common Terms Agreement") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors. Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. This certificate is provided for the purposes of the definition of "Opening Conditions" in Clause 1.1 (*Definitions*) of the Common Terms Agreement in respect of the Original Project.
3. We hereby certify, as at the date of this certificate, that:
 - (i) furnishings, fixtures and equipment necessary to use and occupy the various portions of the Original Project for their intended uses have been installed and are operational;
 - (ii) all the Project Certificates of Occupancy have been issued and (other than any Permit made or issued by or with a Governmental Authority the failure of which to make or obtain could not reasonably be expected to affect the operations of the Projects in any material respect) each other Permit made or issued by or with a Governmental Authority required under applicable Legal Requirements to be made or obtained prior to the Opening Date have been obtained;
 - (iii) the Original Project (other than the premises to be occupied by individual retail and restaurant tenants in the Projects) is fully open for business to the general public and at least, in the case of the Original Project, 80% of each of the projected 380 slot machines and 200 gaming tables are in operation, 80% of restaurant outlets are open for business and at least 80% of the floor space comprised in the Original Project and designated in the Plans and Specifications for retail tenants has been occupied (save for facilities which by their nature are not open to the general public in the ordinary course of business but are operating);
 - (iv) the remaining work on the Projects will not materially affect the operation of the Original Project; and
 - (v) the failure to complete the remaining work will not materially affect the operation of the Original Project.

Yours faithfully,

Name:

For and on behalf of

[*Technical Adviser*]

AIRCRAFT TIME SHARING AGREEMENT

THIS AIRCRAFT TIME SHARING AGREEMENT (the "**Agreement**") is made and entered into as of this 25th day of November, 2002, by and between Las Vegas Jet, LLC, a Nevada limited liability company ("**Provider**"), and Stephen A. Wynn, an individual ("**Lessee**").

In consideration of the mutual promises, agreements, covenants, warranties, representations and provisions contained herein, the parties agree as follows:

1. Time Sharing of the Aircraft. Subject to the terms and conditions of this Agreement, Provider shall provide Lessee with transportation services on a non-exclusive basis using Provider's aircraft identified as a Bombardier Inc. model BD-700-1A10, serial number 9065, registration number N711SW (the "**Aircraft**"). This Agreement is intended to be a time sharing agreement within the meaning of 14 C.F.R. Section 91.501(c)(1).

2. Term. The term of this Agreement (the "**Term**") shall commence on the date hereof (the "**Commencement Date**") and end on the earlier October 30, 2009 or on thirty (30) days' notice of termination by either party to the other (the "**Expiration Date**").

3. Delivery to Lessee. Upon the request of Lessee, subject to the availability of the Aircraft as determined by Provider, Provider shall make the Aircraft available to Lessee at such location as Lessee may reasonably request. Lessee acknowledges that Provider currently bases the Aircraft at McCarran International Airport, Las Vegas, Nevada (the "**Base**").

4. Rent.

(a) Lessee shall pay to Provider, for Lessee's use of the Aircraft during the Term the following amounts (referred to collectively as "**Rent**") within 30 days of receipt of an invoice from Provider or its representative with respect to such use:

- (i) twice the cost of the fuel, oil and other additives consumed;
- (ii) all fees, including fees for landing, parking, hangar, tie-down, handling, customs, use of airways and permission for overflight;
- (iii) all expenses for catering and in-flight entertainment materials;
- (iv) all expenses for flight planning and weather contract services;
- (v) all travel expenses for pilots, flight attendants and other flight support personnel, including food, lodging and ground transportation; and
- (vi) all communications charges, including in-flight telephone.

(b) Lessee shall be responsible for arranging and paying for all passenger ground transportation and accommodation in connection with Lessee's use of the Aircraft.

(c) For the sake of clarification, flights to ferry the Aircraft to the delivery location specified by Lessee pursuant to section 3, and flights to return the Aircraft to the Base or such other location as the parties agree pursuant to section 5, shall be deemed to be use of the Aircraft by Lessee.

5. Return to Base. On the earlier of the Expiration Date or the termination of this Agreement pursuant to section 16(a)(i) and, unless Provider agrees to the contrary, upon the conclusion of each flight of the Aircraft by Lessee under this Agreement, the Aircraft shall be returned to the Base or such other location as Provider and Lessee may agree.

6. Use of Aircraft.

(a) Lessee shall use the Aircraft only for the transportation of its employees and guests and shall not obtain compensation for such transportation from any person.

(b) Lessee shall not make the Aircraft available to a political candidate in connection with a political campaign by such candidate.

(c) Lessee shall not violate, and shall not permit any of its employees, agents or guests to violate, any applicable law, regulation or rule of the United States, and state, territory of local authority, or any foreign government or subdivision thereof, and shall not bring or cause to be brought or carried on board the Aircraft, or permit any employee, agent or guest to bring or cause to be brought or carried on board the Aircraft, any contraband or unlawful articles or substances, or anything that is contraband or is an unlawful article of substance in any jurisdiction into or over which the Aircraft is to operate on behalf of Lessee.

(d) Lessee shall, and shall cause its employees, agents and guests to, comply with all lawful instructions and procedures of Provider and its agents and employees regarding the Aircraft, its operation or flight safety.

(e) Lessee acknowledges that its discretion in determining the origin and destination of flights under this Agreement shall be subject to the following: (i) such origin and destination, and the routes to reach such origin and destination, are not within or over (A) an area of hostilities, (B) an area excluded from coverage under the insurance policies maintained by Provider with respect to the Aircraft or (C) a country or jurisdiction for which exports or transactions are subject to specific restrictions under any United States export or other law or United Nations Security Council Directive, including without limitation, the Trading With the Enemy Act, 50 U.S.C. App. Section 1 et seq., the International Emergency Economic Powers Act, 50 U.S.C. App. Sections 1700 et seq. and the Export Administration Act, 50 U.S.C. App. Sections 2401 et seq.; (ii) the flights proposed by Lessee shall not cause (A) the Aircraft or any part thereof (1) to be used predominately outside of the United States within the meaning of the Section 168(g)(1)(A) of the Internal Revenue Code of 1986, as amended (the "Code"), and (2) to fail to be operated to and from the United States within the

meaning of Section 168(g)(4)(A) of the Code; and (B) any item of income, gain, deduction, loss or credit with respect to the transactions contemplated by this Agreement to be treated as derived from, or allocable to, sources without the United States within the meaning of Section 862 of the Code; (iii) the proposed flights do not require the flight crew to exceed any flight or duty time limitations that Provider imposes upon its flight crews; and (iv) in the judgment of Provider, the safety of flight is not jeopardized.

(f) Lessee further acknowledges that, if, in the view of Provider (including, its pilot-in-command), flight safety may be jeopardized, Provider may terminate a flight or refuse to commence it without liability for loss, injury or damage occasioned by such termination or refusal. Lessee acknowledges that Provider shall not be liable for any loss, damage, cost or expense arising from any delay, cancellation or failure to furnish any transportation pursuant to this Agreement when caused by government regulation, law or authority, mechanical difficulty or breakdown, war, civil commotion, strikes or other labor disputes, weather conditions, acts of God, public enemies or any other cause beyond Provider's control.

(g) The parties hereby acknowledge and agree that:

(i) this Agreement is subject and subordinate to: (1) that lease Agreement between Provider and World Travel, LLC, dated January 29, 2002 (the "**Master Lease**"); (2) that certain Aircraft Security Agreement (the "**Aircraft Security Agreement**") made as of October 30, 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 dated as of May 10, 2002 with and World Travel, LLC, a Nevada limited liability company as Trustor, and World Travel, LLC in favor of Wynn Las Vegas, LLC, a Nevada limited liability company (the "**Company**"); and (3) the rights of the company (or its assignee) under the Aircraft Security Agreement, including, without limitation, the right of the Company to inspect and take the possession of the Aircraft from time to time;

(ii) after an Aircraft Event of Default (as defined in that certain Loan Agreement (the "**Loan Agreement**"), dated as of October 30, 2002, among the Company, Wells Fargo Bank Nevada, National Association, not in its individual capacity, except as expressly stated therein, but solely as collateral agent (the "**Collateral Agent**"), and the persons named on Schedule IA thereto (the "**Lenders**") the Aircraft shall be surrendered by Provider at the election of the Company (or its assignee);

(iii) the parties hereby waive any right that they 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 the Aircraft Security Agreement;

(iv) the parties hereby waive, as against the Company, all rights to any set-off, defense, counterclaim, or cross-claim that they may hold against the Company; and

upon any Aircraft Event of Default (as defined in the Loan Agreement), neither party shall have any further rights in and to the Aircraft.

(h) The parties agree that the aggregate consideration paid for transportation services provided under the agreement will not at any time exceed \$5 million.

7. Pilots. For all flights of the Aircraft by Lessee pursuant to this Agreement, Provider shall cause the Aircraft to be operated by pilots who are duly qualified under the Federal Aviation Regulations, including without limitation, with respect to currency and type-rating, and who meet all other requirements established and specified by the insurance policies required hereunder.

8. Operation and Maintenance Responsibilities of Provider. Provider shall be in operational control of the Aircraft at all times during the Term. Provider shall be solely responsible for the operation and maintenance of the Aircraft.

9. Liens. Lessee shall not directly or indirectly create or incur any liens on or with respect to (i) the Aircraft or any part thereof, (ii) Owner's title thereto, (iii) any interest of Provider therein, (and Lessee will promptly, at its own expense, take such action as may be necessary to discharge any such lien), except (a) the respective rights of Provider and Lessee as herein provided and (b) liens created by or caused to be created by Owner or Provider.

10. Taxes.

(a) Except for any taxes on, or measured by, the net income of Provider imposed by the United States government or any state or local government or taxing authority in the United States, which shall be the sole responsibility of Provider, Lessee shall pay to and indemnify Provider and its employees and agents (collectively, the "**Indemnitees**") for, and hold each Indemnitee harmless from and against, on an after-tax basis, all other income, personal property, ad valorem, franchise, gross receipts, rental, sales, use, excise, value-added, leasing, leasing use, stamp, landing, airport use, or other taxes, levies, imposts, duties, charges, fees or withholdings of any nature, together with any penalties, fines, or interest thereon ("**Taxes**") arising out of the transactions between Provider and Lessee contemplated by this Agreement or Lessee's use of the Aircraft and imposed against any Indemnitee, Lessee, or the Aircraft, or any part thereof, by any federal or foreign government, any state, municipal or local subdivision, any agency or instrumentality thereof, or other taxing authority upon or with respect to the Aircraft, or any part thereof, or upon the ownership, delivery, leasing, possession, use, operation, return, transfer or release thereof, or upon the rentals, receipts or earnings arising therefrom. Lessee shall have the right to contest any Taxes attributable to Lessee; provided that (a) Lessee shall have given to Provider written notice of any such Taxes, which notice shall state that such Taxes are being contested by Lessee in good faith with due diligence and by appropriate proceedings and that Lessee has agreed to indemnify each Indemnitee against any cost, expense, liability or loss (including, without limitation, reasonable attorneys' fees) arising from or in connection with such contest; (b) in Provider's sole judgment, Provider has received adequate assurances of payment of such contested Taxes; and (c) counsel for Provider shall have determined that the nonpayment of any such Taxes or the contest of any such payment in such proceedings does not, in the sole opinion of such counsel, adversely affect the title, property or rights of Provider. In case any report or return is required to be made with respect to any Taxes attributable to Lessee, Lessee will either (after notice to

Provider) make such report or return in such manner as will show the ownership of the Aircraft in Provider and send a copy of such report or return to Provider, or will notify Provider of such requirement and make such report or return in such manner as shall be satisfactory to Provider. Provider agrees to cooperate fully with Lessee in the preparation of any such report or return.

(b) Without limiting the generality of the foregoing, Lessee shall pay to Provider any federal excise taxes applicable to Lessee's use, or Lessee's payment for Lessee's use, of the Aircraft.

11. Insurance. Provider shall maintain in effect at its own expense throughout the Term, insurance policies containing such provisions and providing such coverages as Provider deems appropriate.

12. Loss or Damage

(a) Lessee shall indemnify, defend and hold harmless Provider and its officers, directors, agents and employees from and against any and all liabilities, claims (including, without limitation, claims involving or alleging Provider's negligence and claims involving strict or absolute liability in tort), demands, suits, causes of action, losses, penalties, fines, expenses (including, without limitation, attorneys' fees) or damages (collectively, "**Claims**"), whether or not Provider may also be indemnified as to any such Claim by any other person, to the extent relating to or arising out of such Lessee's breach of this Agreement or any damage (other than ordinary wear and tear) to the Aircraft caused by Lessee, its employees or guests.

(b) In the event of loss, theft, confiscation, damage to or destruction of the Aircraft, or any engine or part thereof, from any cause whatsoever (a "**Casualty Occurrence**") occurring at any time when Lessee is using the Aircraft under this Agreement, Lessee shall furnish such information and execute such documents as may be necessary or required by Provider or applicable law. Lessee shall cooperate fully in any investigation of any claim or loss processed by Provider under the Aircraft insurance policy/policies and in seeking to compel the relevant insurance company or companies to pay any such claims.

(c) In the event of total loss or destruction of all or substantially all of the Aircraft, or damage to the Aircraft that causes it to be irreparable in the opinion of Provider or any insurance carrier providing hull coverage with respect to the Aircraft, or in the event of confiscation or seizure of the Aircraft, this Agreement shall automatically terminate; provided, however, that such termination of this Agreement shall not terminate the obligation of Lessee to cooperate with Provider in seeking to compel the relevant insurance company or companies to pay claims arising from such loss, destruction, damage, confiscation or seizure; provided, further, that the termination of this Agreement shall not affect the obligation of Lessee to pay Provider all accrued and unpaid Rent and all other accrued and unpaid amounts due hereunder.

(d) For the sake of clarification, the Aircraft shall be deemed not available to Lessee after any Casualty Occurrence until such time thereafter as Provider has returned the Aircraft to service. Provider shall have no obligation to return the Aircraft to service after any Casualty Occurrence.

13. Representations, Warranties and Agreements of Lessee. Lessee represents, warrants and agrees as follows:

(a) *Authorization.* Lessee has all necessary powers to enter into the transactions contemplated in this Agreement and has taken all actions required to authorize and approve this Agreement.

(b) *Identification.* Lessee shall keep a legible copy of this Agreement in the Aircraft at all times when Lessee is using the Aircraft.

(c) *As-Is Condition:* **Lessee acknowledge that Provider has not made any warranty or representation, either express or implied, as to the design, compliance with specifications, operation, or condition of, or as to the quality of the material, aircraft, or workmanship in, the Aircraft or any component thereof, and Provider makes no warranty of merchantability or fitness of the Aircraft or any component thereof for any particular purpose or as to title to the Aircraft or component thereof, or any other representation or warranty, express or implied, with respect to the Aircraft or component thereof.**

14. Representations, Warranties and Agreements of Provider. Provider represents, warrants and agrees as follows:

(a) *Authorization.* Provider has all necessary powers to enter into the transaction contemplated in this Agreement and has taken all action necessary to authorize and approve this Agreement.

(b) *FAA Registration.* The Aircraft's registration with the FAA names Owner as the owner of the Aircraft.

15. Event of Default. The following shall constitute an Event of Default:

(a) Lessee shall not have made payment of any amount due under section 4 within ten (10) days after the same shall become due; or

(b) Lessee shall have failed to perform or observe (or cause to be performed or observed) any other covenant or agreement required to be performed under this Agreement, and such failure shall continue for twenty (20) days after written notice thereof from Provider to Lessee; or

(c) Lessee (i) becomes insolvent, (ii) fails to pay its debts when due, (iii) makes any assignment for the benefit of creditors, (iv) seeks relief under any bankruptcy law or similar law for the protection of debtors, (v) suffers a petition of bankruptcy filed against it that is not dismissed within thirty (30) days, or (vi) suffers a receiver or trustee to be appointed for itself or any of its assets, and such is not removed within thirty (30) days.

16. Provider's Remedies

(a) Upon the occurrence of any Event of Default, Provider may, at its option, exercise any or all remedies available at law or in equity, including, without limitation, any or all of the following remedies, as Provider in its sole discretion shall elect:

(i) By notice in writing, terminate this Agreement, whereupon all rights of Lessee to the use of the Aircraft or any part thereof shall absolutely cease and terminate, but Lessee shall remain liable as provided in this Agreement and Provider, at its option, may enter upon the premises where the Aircraft is located and take immediate possession of and remove the same by summary proceedings or otherwise. Lessee specifically authorizes Provider's entry upon any premises where the Aircraft may be located for the purpose of, and waives any cause of action it may have arising from, a peaceful retaking of the Aircraft. Lessee shall forthwith pay to Provider an amount equal to the total accrued and unpaid Rent and all other accrued and unpaid amounts due hereunder, plus any and all losses and damages incurred or sustained by Provider by reason of any default by Lessee under this Agreement.

(b) Lessee shall be liable for all costs, charges and expenses, including reasonable attorneys' fees and disbursements, incurred by Provider by reason of the occurrence of any Event of Default or the exercise of Provider's remedies with respect thereto.

17. General Provisions

(a) *Headings*. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the construction or interpretation of this Agreement.

(b) *Partial Invalidity*. If any provision of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be illegal, invalid, unenforceable or void, then such provision shall be enforced to the extent that it is not illegal, invalid, unenforceable or void, and the remainder of this Agreement, as well as such provision as applied to other persons, shall remain in full force and effect.

(c) *Waiver*. With regard to any power, remedy or right provided in this Agreement or otherwise available to any party, (i) no waiver or extension of time shall be effective unless expressly contained in a writing signed by the waiving party, (ii) no alteration, modification or impairment shall be implied by reason of any previous waiver, extension of time, delay or omission in exercise or other indulgence, and (iii) waiver by any party of the time for performance of any act or condition hereunder does not constitute waiver of the act or condition itself.

(d) *Notices*. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed duly given upon actual receipt, if delivered personally or by telecopy; or three (3) days following deposit in the United States mail, if deposited with postage pre-paid, return receipt requested, and addressed to such address as may be specified in writing by the relevant party from time to time, and which shall initially be as follows:

To Lessee at: Mr. Stephen A. Wynn
 Wynn Resorts, Limited
 3145 Las Vegas Boulevard South
 Las Vegas, Nevada 89109

To Provider at: Las Vegas Jet, LLC
Attention: Legal Department
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109

No objection may be made to the manner of delivery of any notice or other communication in writing actually received by a party.

(e) *Nevada Law*. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada, regardless of the choice of law provisions of Nevada or any other jurisdiction.

(f) *Entire Agreement*. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement and supersedes any prior or contemporaneous agreements, representations and understandings, whether written or oral, of or between the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants, promises or undertakings, other than those expressly set forth or referred to herein.

(g) *Amendment*. This Agreement may be amended only by a written agreement signed by all of the parties.

(h) *Binding Effect; Assignment*. This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective successors and assigns; provided, however, that Lessee may not assign any of its rights under this Agreement, and any such purported assignment shall be null, void and of no effect.

(i) *Attorneys' Fees*. Should any action (including any proceedings in a bankruptcy court) be commenced between any of the parties to this Agreement or their representatives concerning any provision of this Agreement or the rights of any person or entity thereunder, solely as between the parties or their successors, the party or parties prevailing in such action as determined by the court shall be entitled to recover from the other party all of its costs and expenses incurred in connection with such action (including, without limitation, fees, disbursements and expenses of attorneys and costs of investigation).

(j) *Remedies Not Exclusive*. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given

hereunder or now or hereafter existing at law or in equity by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other remedies.

(k) *No Third Party Rights*. Except as provided under Section 6(g), nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to this Agreement and their respective successors and assigns, *provided, however*, that Provider has consented and agreed that the Lease Agreement between Provider and World Travel, LLC, dated January 29, 2002, is subject to and subordinate to the Aircraft Security Agreement and that Provider's rights hereunder pursuant to the Aircraft Security Agreement to the Company and the rights of the Company have been assigned to the Collateral Agent on behalf of the Lenders and Lessee consents to such grant.

(l) *Counterparts*. This Agreement may be executed in one or more counterparts, each of which independently shall be deemed to be an original, and all of which together shall constitute one instrument.

(m) *Expenses*. Each party shall bear all of its own expenses in connection with the negotiation, execution and delivery of this Agreement.

(n) *Broker/Finder Fees*. Each party represents that it has dealt with no broker or finder in connection with the transaction contemplated by this Agreement and that no broker or other person is entitled to any commission or finder's fee in connection therewith. Provider and Lessee each agree to indemnify and hold harmless one another against any loss, liability, damage, cost, claim or expense incurred by reason of any brokerage commission or finder's fee alleged to be payable because of any act, omission or statement of the indemnifying party.

(o) *Relationship of the Parties*. Nothing contained in this Agreement shall in any way create any association, partnership, joint venture, or principal-and-agent relationship between the parties hereto or be construed to evidence the intention of the parties to constitute such.

(p) *Limitation of Damages*. Lessee waives any and all claims, rights and remedies against Provider, whether express or implied, or arising by operation of law or in equity, for any punitive, exemplary, indirect, incidental or consequential damages whatsoever.

(q) *Survival*. All representations, warranties, covenants and agreements, set forth in sections 4, 5, 6(a), 6(f), 9, 10, 12, 13, 14, 16, and 17 of this Agreement shall survive the expiration or termination of this Agreement.

18. Truth-In-Leasing

(a) THE PARTIES HAVE REVIEWED THE AIRCRAFT'S MAINTENANCE RECORDS AND OPERATING LOGS AND HAVE FOUND THAT, DURING THE PRECEDING TWELVE MONTHS, THE AIRCRAFT HAS BEEN

MAINTAINED AND INSPECTED UNDER PART 91 OF THE FEDERAL AVIATION REGULATIONS (“**FAR**”). LESSEE ACKNOWLEDGES THAT THE AIRCRAFT WILL BE MAINTAINED AND INSPECTED UNDER FAR PART 91 FOR OPERATIONS TO BE CONDUCTED UNDER THIS AGREEMENT.

(b) LESSEE ACKNOWLEDGES THAT PROVIDER IS RESPONSIBLE FOR OPERATIONAL CONTROL OF THE AIRCRAFT FOR FLIGHTS UNDER THIS AGREEMENT. PROVIDER AND LESSEE EACH CERTIFIES THAT IT UNDERSTANDS ITS RESPONSIBILITIES FOR COMPLIANCE WITH APPLICABLE FEDERAL AVIATION REGULATIONS.

(c) LESSEE UNDERSTANDS THAT AN EXPLANATION OF FACTORS BEARING ON OPERATIONAL CONTROL AND THE PERTINENT FEDERAL AVIATION REGULATIONS CAN BE OBTAINED FROM THE NEAREST FAA FLIGHT STANDARDS DISTRICT OFFICE.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed as of the day and year first written above.

By: /s/ Marc Schorr

/s/ Stephen A. Wynn

Title: Chief Operating Officer

AMENDMENT NO. 1
TO
AIRCRAFT TIME SHARING AGREEMENT

THIS AMENDMENT NO 1 TO AIRCRAFT TIME SHARING AGREEMENT (the “**Amendment No. 1**”) is made and entered into as of the 1st day of January, 2004, by and between Las Vegas Jet, LLC (“**Provider**”), and Stephen A. Wynn, an individual (“**Lessee**”) and amend that certain Aircraft Time Sharing Agreement dated as of November 25, 2002 between Provider and Lessee.

In consideration of the mutual promises, agreements, covenants, warranties, representations and provisions contained herein, the parties agree as follows:

1. Defined Terms

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

2. Terms Remain the Same

Except as specifically set forth herein, the terms and conditions set forth in the Agreement shall remain in full force and effect.

3. Amendments

a. Definition of the “Aircraft.” The term “Aircraft” as defined in Section 1 of the Agreement is hereby amended to mean that certain aircraft identified as a Bombardier Inc. model BD-700-1A10, serial number 9065, registration number N711SW owned by Provider, and replacements thereof and any other aircraft purchased, lease or otherwise acquired by Provider during the Term of the Agreement.

b. Rent. Section 4 of the Agreement entitled “Rent” shall be amended in its entirety to the following:

“4. Rent

(a) Lessee shall pay to Provider, for Lessee and Lessee’s Guests (if applicable) use of the Aircraft during the Term an amount (the “Rent”) equal to the amount calculated using statutory method of Standard Industry Fare Level (Section 26 CFR 1.61-21), as may be amended from time to time. For purposes hereof, “Lessee’s Guest” shall mean any person who travels on the Aircraft at the invitation of a Lessee. Rent shall be allocated to reimburse Provider for the following expenses incurred in connection with Lessee’s use of the Aircraft (Rent is allocated to pay in full each of the expense items in the order listed below until the Rent payment is fully allocated, in the event the amount of Rent exceeds the amount of expenses listed below, such additional Rent shall be allocated pro rata among items (ii) through (vi)):

(i) twice the cost of the fuel, oil and other additives consumed;

- (ii) all fees, including fees for landing, parking, hangar, tie-down, handling, customs, use of airways and permission for overflight;
- (iii) all expenses for catering and in-flight entertainment materials;
- (iv) all expenses for flight planning and weather contract services;
- (v) all travel expenses for pilots, flight attendants and other flight support personnel, including food, lodging and ground transportation; and
- (vi) all communications charges, including in-flight telephone.

(b) Lessee shall be responsible for arranging and paying for all passenger ground transportation and accommodation in connection with Lessee's use of the Aircraft.

(c) In instances where Lessee or Lessee's guest are not on the Aircraft, there shall be no charge for flights to ferry the Aircraft to the delivery location specified by Lessee and flights to return the Aircraft to the Base or such other location as the parties agree."

4. **Entire Agreement.** This Amendment and the Agreement constitute the entire agreement between the parties pertaining to the subject matter contained in the Agreement as amended by this Amendment.

5. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Nevada, regardless of the choice of law provisions of Nevada or any other jurisdiction.

6. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which independently shall be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have each caused this Amendment to be duly executed as of the day and year first written above.

Las Vegas Jet, LLC
a Nevada limited liability Company

Stephen A. Wynn

By: /s/ Marc Schorr

/s/ Stephen A. Wynn

Title: Chief Operating Officer

**AMENDMENT NO. 2
TO
AIRCRAFT TIME SHARING AGREEMENT**

THIS AMENDMENT NO. 2 TO AIRCRAFT TIME SHARING AGREEMENT (the “**Amendment**”) is made and entered into as of the 31st day of October, 2009, by and between Las Vegas Jet, LLC, a Nevada limited liability company (“**Provider**”), and Stephen A. Wynn, an individual (“**Lessee**”) and amends that certain Aircraft Time Sharing Agreement, dated as of November 25, 2002, as amended by that certain Amendment No. 1 to Aircraft Time Sharing Agreement, dated January 1, 2004, by and between Provider and Lessee (collectively, the “**Agreement**”).

In consideration of the mutual promises, agreements, covenants, warranties, representations and provisions contained herein, the parties agree as follows:

1. Defined Terms.

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

2. Terms Remain the Same.

Except as specifically set forth herein, the terms and conditions set forth in the Agreement shall remain in full force and effect.

3. Amendments.

a. Definition of the “Aircraft.” The term “Aircraft” as defined in Section 1 of the Agreement is hereby amended to mean any aircraft purchased, leased or otherwise acquired by Provider during the Term of the Agreement.

b. Definition of “Expiration Date.” The Term “Expiration Date” as defined in Section 2 of the Agreement is hereby amended to mean the earliest of (i) October 30, 2014, (ii) termination of lessee’s employment with Wynn Resorts, Limited or (iii) thirty (30) days notice of termination by either party to the other.

c. Section 4 of the Agreement is amended to add Section 4(d) which shall read as follows: “(d) Lessee and Provider agree Lessee shall not be obligated to deliver to Provider the Rent due hereunder; rather Rent shall be included as taxable compensation to Lessee.”

4. Entire Agreement. This Amendment and the Agreement constitute the entire agreement between the parties pertaining to the subject matter contained in the Agreement as amended by this Amendment.

5. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Nevada, regardless of the choice of law provisions of Nevada or any other jurisdiction.

6. Counterparts. This Amendment may be executed in one or more counterparts, each of which independently shall be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have each caused this Amendment to be duly executed as of the day and year first written above.

LAS VEGAS JET, LLC

STEPHEN A. WYNN

By: /s/ Marc D. Schorr

/s/ Stephen A. Wynn

Name: Marc D. Schorr

Title: Chief Operating Officer

AIRCRAFT TIME SHARING AGREEMENT

THIS AIRCRAFT TIME SHARING AGREEMENT (the "**Agreement**") is made and entered into as of this 26th day of November, 2002, by and between Las Vegas Jet, LLC, a Nevada limited liability company ("**Provider**"), and Marc Schorr, an individual ("**Lessee**").

In consideration of the mutual promises, agreements, covenants, warranties, representations and provisions contained herein, the parties agree as follows:

1. **Time Sharing of the Aircraft.** Subject to the terms and conditions of this Agreement, Provider shall provide Lessee with transportation services on a non-exclusive basis using Provider's aircraft identified as a Bombardier Inc. model BD-700-1A10, serial number 9065, registration number N711SW (the "**Aircraft**"). This Agreement is intended to be a time sharing agreement within the meaning of 14 C.F.R. Section 91.501(c)(1).

2. **Term.** The term of this Agreement (the "**Term**") shall commence on the date hereof (the "**Commencement Date**") and end on the earlier October 30, 2009 or on thirty (30) days' notice of termination by either party to the other (the "**Expiration Date**").

3. **Delivery to Lessee.** Upon the request of Lessee, subject to the availability of the Aircraft as determined by Provider, Provider shall make the Aircraft available to Lessee at such location as Lessee may reasonably request. Lessee acknowledges that Provider currently bases the Aircraft at McCarran International Airport, Las Vegas, Nevada (the "**Base**").

4. **Rent.**

(a) Lessee shall pay to Provider, for Lessee's use of the Aircraft during the Term the following amounts (referred to collectively as "**Rent**") within 30 days of receipt of an invoice from Provider or its representative with respect to such use:

- (i) twice the cost of the fuel, oil and other additives consumed;
- (ii) all fees, including fees for landing, parking, hangar, tie-down, handling, customs, use of airways and permission for overflight;
- (iii) all expenses for catering and in-flight entertainment materials;
- (iv) all expenses for flight planning and weather contract services;
- (v) all travel expenses for pilots, flight attendants and other flight support personnel, including food, lodging and ground transportation; and
- (vi) all communications charges, including in-flight telephone.

(b) Lessee shall be responsible for arranging and paying for all passenger ground transportation and accommodation in connection with Lessee's use of the Aircraft.

(c) For the sake of clarification, flights to ferry the Aircraft to the delivery location specified by Lessee pursuant to section 3, and flights to return the Aircraft to the Base or such other location as the parties agree pursuant to section 5, shall be deemed to be use of the Aircraft by Lessee.

5. Return to Base. On the earlier of the Expiration Date or the termination of this Agreement pursuant to section 16(a)(i) and, unless Provider agrees to the contrary, upon the conclusion of each flight of the Aircraft by Lessee under this Agreement, the Aircraft shall be returned to the Base or such other location as Provider and Lessee may agree.

6. Use of Aircraft.

(a) Lessee shall use the Aircraft only for the transportation of its employees and guests and shall not obtain compensation for such transportation from any person.

(b) Lessee shall not make the Aircraft available to a political candidate in connection with a political campaign by such candidate.

(c) Lessee shall not violate, and shall not permit any of its employees, agents or guests to violate, any applicable law, regulation or rule of the United States, and state, territory of local authority, or any foreign government or subdivision thereof, and shall not bring or cause to be brought or carried on board the Aircraft, or permit any employee, agent or guest to bring or cause to be brought or carried on board the Aircraft, any contraband or unlawful articles or substances, or anything that is contraband or is an unlawful article of substance in any jurisdiction into or over which the Aircraft is to operate on behalf of Lessee.

(d) Lessee shall, and shall cause its employees, agents and guests to, comply with all lawful instructions and procedures of Provider and its agents and employees regarding the Aircraft, its operation or flight safety.

(e) Lessee acknowledges that its discretion in determining the origin and destination of flights under this Agreement shall be subject to the following: (i) such origin and destination, and the routes to reach such origin and destination, are not within or over (A) an area of hostilities, (B) an area excluded from coverage under the insurance policies maintained by Provider with respect to the Aircraft or (C) a country or jurisdiction for which exports or transactions are subject to specific restrictions under any United States export or other law or United Nations Security Council Directive, including without limitation, the Trading With the Enemy Act, 50 U.S.C. App. Section 1 et seq., the International Emergency Economic Powers Act, 50 U.S.C. App. Sections 1700 et seq. and the Export Administration Act, 50 U.S.C. App. Sections 2401 et seq.; (ii) the flights proposed by Lessee shall not cause (A) the Aircraft or any part thereof (1) to be used predominately outside of the United States within the meaning of the Section 168(g)(1)(A) of the Internal Revenue Code of 1986, as amended (the "Code"), and (2) to fail to be operated to and from the United States within the meaning of Section 168(g)(4)(A) of the Code; and (B) any item of income, gain, deduction, loss or credit with respect to the transactions contemplated by this Agreement to be treated as derived from, or allocable to, sources without the United States within the meaning of

Section 862 of the Code; (iii) the proposed flights do not require the flight crew to exceed any flight or duty time limitations that Provider imposes upon its flight crews; and (iv) in the judgment of Provider, the safety of flight is not jeopardized.

(f) Lessee further acknowledges that, if, in the view of Provider (including, its pilot-in-command), flight safety may be jeopardized, Provider may terminate a flight or refuse to commence it without liability for loss, injury or damage occasioned by such termination or refusal. Lessee acknowledges that Provider shall not be liable for any loss, damage, cost or expense arising from any delay, cancellation or failure to furnish any transportation pursuant to this Agreement when caused by government regulation, law or authority, mechanical difficulty or breakdown, war, civil commotion, strikes or other labor disputes, weather conditions, acts of God, public enemies or any other cause beyond Provider's control.

(g) The parties hereby acknowledge and agree that:

(i) this Agreement is subject and subordinate to: (1) that lease Agreement between Provider and World Travel, LLC, dated January 29, 2002 (the "**Master Lease**"); (2) that certain Aircraft Security Agreement (the "**Aircraft Security Agreement**") made as of October 30, 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 dated as of May 10, 2002 with and World Travel, LLC, a Nevada limited liability company as Trustor, and World Travel, LLC in favor of Wynn Las Vegas, LLC, a Nevada limited liability company (the "**Company**"); and (3) the rights of the company (or its assignee) under the Aircraft Security Agreement, including, without limitation, the right of the Company to inspect and take the possession of the Aircraft from time to time;

(ii) after an Aircraft Event of Default (as defined in that certain Loan Agreement (the "Loan Agreement"), dated as of October 30, 2002, among the Company, Wells Fargo Bank Nevada, National Association, not in its individual capacity, except as expressly stated therein, but solely as collateral agent (the "Collateral Agent"), and the persons named on Schedule IA thereto (the "Lenders") the Aircraft shall be surrendered by Provider at the election of the Company (or its assignee);

(iii) the parties hereby waive any right that they 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 the Aircraft Security Agreement;

(iv) the parties hereby waive, as against the Company, all rights to any set-off, defense, counterclaim, or cross-claim that they may hold against the Company; and

upon any Aircraft Event of Default (as defined in the Loan Agreement), neither party shall have any further rights in and to the Aircraft.

(h) The parties agree that the aggregate consideration paid for transportation services provided under the agreement will not at any time exceed \$5 million.

7. Pilots. For all flights of the Aircraft by Lessee pursuant to this Agreement, Provider shall cause the Aircraft to be operated by pilots who are duly qualified under the Federal Aviation Regulations, including without limitation, with respect to currency and type-rating, and who meet all other requirements established and specified by the insurance policies required hereunder.

8. Operation and Maintenance Responsibilities of Provider. Provider shall be in operational control of the Aircraft at all times during the Term. Provider shall be solely responsible for the operation and maintenance of the Aircraft.

9. Liens. Lessee shall not directly or indirectly create or incur any liens on or with respect to (i) the Aircraft or any part thereof, (ii) Owner's title thereto, (iii) any interest of Provider therein, (and Lessee will promptly, at its own expense, take such action as may be necessary to discharge any such lien), except (a) the respective rights of Provider and Lessee as herein provided and (b) liens created by or caused to be created by Owner or Provider.

10. Taxes.

(a) Except for any taxes on, or measured by, the net income of Provider imposed by the United States government or any state or local government or taxing authority in the United States, which shall be the sole responsibility of Provider, Lessee shall pay to and indemnify Provider and its employees and agents (collectively, the "**Indemnitees**") for, and hold each Indemnitee harmless from and against, on an after-tax basis, all other income, personal property, ad valorem, franchise, gross receipts, rental, sales, use, excise, value-added, leasing, leasing use, stamp, landing, airport use, or other taxes, levies, imposts, duties, charges, fees or withholdings of any nature, together with any penalties, fines, or interest thereon ("**Taxes**") arising out of the transactions between Provider and Lessee contemplated by this Agreement or Lessee's use of the Aircraft and imposed against any Indemnitee, Lessee, or the Aircraft, or any part thereof, by any federal or foreign government, any state, municipal or local subdivision, any agency or instrumentality thereof, or other taxing authority upon or with respect to the Aircraft, or any part thereof, or upon the ownership, delivery, leasing, possession, use, operation, return, transfer or release thereof, or upon the rentals, receipts or earnings arising therefrom. Lessee shall have the right to contest any Taxes attributable to Lessee; provided that (a) Lessee shall have given to Provider written notice of any such Taxes, which notice shall state that such Taxes are being contested by Lessee in good faith with due diligence and by appropriate proceedings and that Lessee has agreed to indemnify each Indemnitee against any cost, expense, liability or loss (including, without limitation, reasonable attorneys' fees) arising from or in connection with such contest; (b) in Provider's sole judgment, Provider has received adequate assurances of payment of such contested Taxes; and (c) counsel for Provider shall have determined that the nonpayment of any such Taxes or the contest of any such payment in such proceedings does not, in the sole opinion of such counsel, adversely affect the title, property or rights of Provider. In case any report or return is required to be made with respect to any Taxes attributable to Lessee, Lessee will either (after notice to Provider) make such report or return in such manner as will show the ownership of the Aircraft in Provider and send a copy of such report or return to Provider, or will notify Provider of such requirement and make such report or return in such manner as shall be satisfactory to Provider. Provider agrees to cooperate fully with Lessee in the preparation of any such report or return.

(b) Without limiting the generality of the foregoing, Lessee shall pay to Provider any federal excise taxes applicable to Lessee's use, or Lessee's payment for Lessee's use, of the Aircraft.

11. Insurance. Provider shall maintain in effect at its own expense throughout the Term, insurance policies containing such provisions and providing such coverages as Provider deems appropriate.

12. Loss or Damage

(a) Lessee shall indemnify, defend and hold harmless Provider and its officers, directors, agents and employees from and against any and all liabilities, claims (including, without limitation, claims involving or alleging Provider's negligence and claims involving strict or absolute liability in tort), demands, suits, causes of action, losses, penalties, fines, expenses (including, without limitation, attorneys' fees) or damages (collectively, "**Claims**"), whether or not Provider may also be indemnified as to any such Claim by any other person, to the extent relating to or arising out of such Lessee's breach of this Agreement or any damage (other than ordinary wear and tear) to the Aircraft caused by Lessee, its employees or guests.

(b) In the event of loss, theft, confiscation, damage to or destruction of the Aircraft, or any engine or part thereof, from any cause whatsoever (a "**Casualty Occurrence**") occurring at any time when Lessee is using the Aircraft under this Agreement, Lessee shall furnish such information and execute such documents as may be necessary or required by Provider or applicable law. Lessee shall cooperate fully in any investigation of any claim or loss processed by Provider under the Aircraft insurance policy/policies and in seeking to compel the relevant insurance company or companies to pay any such claims.

(c) In the event of total loss or destruction of all or substantially all of the Aircraft, or damage to the Aircraft that causes it to be irreparable in the opinion of Provider or any insurance carrier providing hull coverage with respect to the Aircraft, or in the event of confiscation or seizure of the Aircraft, this Agreement shall automatically terminate; provided, however, that such termination of this Agreement shall not terminate the obligation of Lessee to cooperate with Provider in seeking to compel the relevant insurance company or companies to pay claims arising from such loss, destruction, damage, confiscation or seizure; provided, further, that the termination of this Agreement shall not affect the obligation of Lessee to pay Provider all accrued and unpaid Rent and all other accrued and unpaid amounts due hereunder.

(d) For the sake of clarification, the Aircraft shall be deemed not available to Lessee after any Casualty Occurrence until such time thereafter as Provider has returned the Aircraft to service. Provider shall have no obligation to return the Aircraft to service after any Casualty Occurrence.

13. Representations, Warranties and Agreements of Lessee. Lessee represents, warrants and agrees as follows:

(a) *Authorization.* Lessee has all necessary powers to enter into the transactions contemplated in this Agreement and has taken all actions required to authorize and approve this Agreement.

(b) *Identification.* Lessee shall keep a legible copy of this Agreement in the Aircraft at all times when Lessee is using the Aircraft.

(c) *As-Is Condition:* **Lessee acknowledge that Provider has not made any warranty or representation, either express or implied, as to the design, compliance with specifications, operation, or condition of, or as to the quality of the material, aircraft, or workmanship in, the Aircraft or any component thereof, and Provider makes no warranty of merchantability or fitness of the Aircraft or any component thereof for any particular purpose or as to title to the Aircraft or component thereof, or any other representation or warranty, express or implied, with respect to the Aircraft or component thereof.**

14. Representations, Warranties and Agreements of Provider. Provider represents, warrants and agrees as follows:

(a) *Authorization.* Provider has all necessary powers to enter into the transaction contemplated in this Agreement and has taken all action necessary to authorize and approve this Agreement.

(b) *FAA Registration.* The Aircraft's registration with the FAA names Owner as the owner of the Aircraft.

15. Event of Default. The following shall constitute an Event of Default:

(a) Lessee shall not have made payment of any amount due under section 4 within ten (10) days after the same shall become due; or

(b) Lessee shall have failed to perform or observe (or cause to be performed or observed) any other covenant or agreement required to be performed under this Agreement, and such failure shall continue for twenty (20) days after written notice thereof from Provider to Lessee; or

(c) Lessee (i) becomes insolvent, (ii) fails to pay its debts when due, (iii) makes any assignment for the benefit of creditors, (iv) seeks relief under any bankruptcy law or similar law for the protection of debtors, (v) suffers a petition of bankruptcy filed against it that is not dismissed within thirty (30) days, or (vi) suffers a receiver or trustee to be appointed for itself or any of its assets, and such is not removed within thirty (30) days.

16. Provider's Remedies

(a) Upon the occurrence of any Event of Default, Provider may, at its option, exercise any or all remedies available at law or in equity, including, without limitation, any or all of the following remedies, as Provider in its sole discretion shall elect:

(i) By notice in writing, terminate this Agreement, whereupon all rights of Lessee to the use of the Aircraft or any part thereof shall absolutely cease and terminate, but Lessee shall remain liable as provided in this Agreement and Provider, at its option, may enter upon the premises where the Aircraft is located and take immediate possession of and remove the same by summary proceedings or otherwise. Lessee specifically authorizes Provider's entry upon any premises where the Aircraft may be located for the purpose of, and waives any cause of action it may have arising from, a peaceful retaking of the Aircraft. Lessee shall forthwith pay to Provider an amount equal to the total accrued and unpaid Rent and all other accrued and unpaid amounts due hereunder, plus any and all losses and damages incurred or sustained by Provider by reason of any default by Lessee under this Agreement.

(b) Lessee shall be liable for all costs, charges and expenses, including reasonable attorneys' fees and disbursements, incurred by Provider by reason of the occurrence of any Event of Default or the exercise of Provider's remedies with respect thereto.

17. General Provisions

(a) *Headings*. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the construction or interpretation of this Agreement.

(b) *Partial Invalidity*. If any provision of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be illegal, invalid, unenforceable or void, then such provision shall be enforced to the extent that it is not illegal, invalid, unenforceable or void, and the remainder of this Agreement, as well as such provision as applied to other persons, shall remain in full force and effect.

(c) *Waiver*. With regard to any power, remedy or right provided in this Agreement or otherwise available to any party, (i) no waiver or extension of time shall be effective unless expressly contained in a writing signed by the waiving party, (ii) no alteration, modification or impairment shall be implied by reason of any previous waiver, extension of time, delay or omission in exercise or other indulgence, and (iii) waiver by any party of the time for performance of any act or condition hereunder does not constitute waiver of the act or condition itself.

(d) *Notices*. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed duly given upon actual receipt, if delivered personally or by telecopy; or three (3) days following deposit in the United States mail, if deposited with postage pre-paid, return receipt requested, and addressed to such address as may be specified in writing by the relevant party from time to time, and which shall initially be as follows:

To Lessee at: Mr. Marc Schorr
 Wynn Resorts, Limited
 3145 Las Vegas Boulevard South
 Las Vegas, Nevada 89109

To Provider at: Las Vegas Jet, LLC
Attention: Legal Department
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109

No objection may be made to the manner of delivery of any notice or other communication in writing actually received by a party.

(e) *Nevada Law*. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada, regardless of the choice of law provisions of Nevada or any other jurisdiction.

(f) *Entire Agreement*. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement and supersedes any prior or contemporaneous agreements, representations and understandings, whether written or oral, of or between the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants, promises or undertakings, other than those expressly set forth or referred to herein.

(g) *Amendment*. This Agreement may be amended only by a written agreement signed by all of the parties.

(h) *Binding Effect; Assignment*. This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective successors and assigns; provided, however, that Lessee may not assign any of its rights under this Agreement, and any such purported assignment shall be null, void and of no effect.

(i) *Attorneys' Fees*. Should any action (including any proceedings in a bankruptcy court) be commenced between any of the parties to this Agreement or their representatives concerning any provision of this Agreement or the rights of any person or entity thereunder, solely as between the parties or their successors, the party or parties prevailing in such action as determined by the court shall be entitled to recover from the other party all of its costs and expenses incurred in connection with such action (including, without limitation, fees, disbursements and expenses of attorneys and costs of investigation).

(j) *Remedies Not Exclusive*. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given

hereunder or now or hereafter existing at law or in equity by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other remedies.

(k) *No Third Party Rights.* Except as provided under Section 6(g), nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to this Agreement and their respective successors and assigns, *provided, however,* that Provider has consented and agreed that the Lease Agreement between Provider and World Travel, LLC, dated January 29, 2002, is subject to and subordinate to the Aircraft Security Agreement and that Provider's rights hereunder pursuant to the Aircraft Security Agreement to the Company and the rights of the Company have been assigned to the Collateral Agent on behalf of the Lenders and Lessee consents to such grant.

(l) *Counterparts.* This Agreement may be executed in one or more counterparts, each of which independently shall be deemed to be an original, and all of which together shall constitute one instrument.

(m) *Expenses.* Each party shall bear all of its own expenses in connection with the negotiation, execution and delivery of this Agreement.

(n) *Broker/Finder Fees.* Each party represents that it has dealt with no broker or finder in connection with the transaction contemplated by this Agreement and that no broker or other person is entitled to any commission or finder's fee in connection therewith. Provider and Lessee each agree to indemnify and hold harmless one another against any loss, liability, damage, cost, claim or expense incurred by reason of any brokerage commission or finder's fee alleged to be payable because of any act, omission or statement of the indemnifying party.

(o) *Relationship of the Parties.* Nothing contained in this Agreement shall in any way create any association, partnership, joint venture, or principal-and-agent relationship between the parties hereto or be construed to evidence the intention of the parties to constitute such.

(p) *Limitation of Damages.* Lessee waives any and all claims, rights and remedies against Provider, whether express or implied, or arising by operation of law or in equity, for any punitive, exemplary, indirect, incidental or consequential damages whatsoever.

(q) *Survival.* All representations, warranties, covenants and agreements, set forth in sections 4, 5, 6(a), 6(f), 9, 10, 12, 13, 14, 16, and 17 of this Agreement shall survive the expiration or termination of this Agreement.

18. Truth-In-Leasing

(a) THE PARTIES HAVE REVIEWED THE AIRCRAFT'S MAINTENANCE RECORDS AND OPERATING LOGS AND HAVE FOUND THAT, DURING THE PRECEDING TWELVE MONTHS, THE AIRCRAFT HAS BEEN

MAINTAINED AND INSPECTED UNDER PART 91 OF THE FEDERAL AVIATION REGULATIONS (“**FAR**”). LESSEE ACKNOWLEDGES THAT THE AIRCRAFT WILL BE MAINTAINED AND INSPECTED UNDER FAR PART 91 FOR OPERATIONS TO BE CONDUCTED UNDER THIS AGREEMENT.

(b) LESSEE ACKNOWLEDGES THAT PROVIDER IS RESPONSIBLE FOR OPERATIONAL CONTROL OF THE AIRCRAFT FOR FLIGHTS UNDER THIS AGREEMENT. PROVIDER AND LESSEE EACH CERTIFIES THAT IT UNDERSTANDS ITS RESPONSIBILITIES FOR COMPLIANCE WITH APPLICABLE FEDERAL AVIATION REGULATIONS.

(c) LESSEE UNDERSTANDS THAT AN EXPLANATION OF FACTORS BEARING ON OPERATIONAL CONTROL AND THE PERTINENT FEDERAL AVIATION REGULATIONS CAN BE OBTAINED FROM THE NEAREST FAA FLIGHT STANDARDS DISTRICT OFFICE.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed as of the day and year first written above.

By: /s/ John Strzemp

/s/ Marc Schorr

Title: Executive Vice President & CFO

AMENDMENT NO. 1
TO
AIRCRAFT TIME SHARING AGREEMENT

THIS AMENDMENT NO 1 TO AIRCRAFT TIME SHARING AGREEMENT (the “**Amendment No. 1**”) is made and entered into as of the 1st day of January, 2004, by and between Las Vegas Jet, LLC, a Nevada limited liability company (“**Provider**”), and Marc Schorr, an individual (“**Lessee**”) and amend that certain Aircraft Time Sharing Agreement dated as of November 25, 2002 between Provider and Lessee.

In consideration of the mutual promises, agreements, covenants, warranties, representations and provisions contained herein, the parties agree as follows:

1. Defined Terms

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

2. Terms Remain the Same

Except as specifically set forth herein, the terms and conditions set forth in the Agreement shall remain in full force and effect.

3. Amendments

a. Definition of the “Aircraft.” The term “Aircraft” as defined in Section 1 of the Agreement is hereby amended to mean that certain aircraft identified as a Bombardier Inc. model BD-700-1A10, serial number 9065, registration number N711SW owned by Provider, and replacements thereof and any other aircraft purchased, lease or otherwise acquired by Provider during the Term of the Agreement.

b. Rent. Section 4 of the Agreement entitled “Rent” shall be amended in its entirety to the following:

“4. Rent

(a) Lessee shall pay to Provider, for Lessee and Lessee’s Guests (if applicable) use of the Aircraft during the Term an amount (the “Rent”) equal to the amount calculated using statutory method of Standard Industry Fare Level (Section 26 CFR 1.61-21), as may be amended from time to time. For purposes hereof, “Lessee’s Guest” shall mean any person who travels on the Aircraft at the invitation of a Lessee. Rent shall be collected from Lessee not later than 30 days from the date of receipt of an invoice from Provider or its representative. Rent shall be allocated to reimburse Provider for the following expenses incurred in connection with Lessee’s use of the Aircraft (Rent is allocated to pay in full each of the expense items in the order listed below until the Rent payment is fully allocated, in the event the amount of Rent exceeds the amount of expenses listed below, such additional Rent shall be allocated pro rata among items (ii) through (vi)):

(i) twice the cost of the fuel, oil and other additives consumed;

- (ii) all fees, including fees for landing, parking, hangar, tie-down, handling, customs, use of airways and permission for overflight;
- (iii) all expenses for catering and in-flight entertainment materials;
- (iv) all expenses for flight planning and weather contract services;
- (v) all travel expenses for pilots, flight attendants and other flight support personnel, including food, lodging and ground transportation; and
- (vi) all communications charges, including in-flight telephone.

(b) Lessee shall be responsible for arranging and paying for all passenger ground transportation and accommodation in connection with Lessee's use of the Aircraft.

(c) In instances where Lessee or Lessee's guest are not on the Aircraft, there shall be no charge for flights to ferry the Aircraft to the delivery location specified by Lessee and flights to return the Aircraft to the Base or such other location as the parties agree."

4. **Entire Agreement.** This Amendment and the Agreement constitute the entire agreement between the parties pertaining to the subject matter contained in the Agreement as amended by this Amendment.

5. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of Nevada, regardless of the choice of law provisions of Nevada or any other jurisdiction.

6. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which independently shall be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have each caused this Amendment to be duly executed as of the day and year first written above.

Las Vegas Jet, LLC
a Nevada limited liability Company

Marc Schorr

By: /s/ Stephen A. Wynn

/s/ Marc Schorr

Title: CEO & President

**AMENDMENT NO. 2
TO
AIRCRAFT TIME SHARING AGREEMENT**

THIS AMENDMENT NO. 2 TO AIRCRAFT TIME SHARING AGREEMENT (the “**Amendment**”) is made and entered into as of the 31st day of October, 2009, by and between Las Vegas Jet, LLC, a Nevada limited liability company (“**Provider**”), and Marc Schorr, an individual (“**Lessee**”) and amends that certain Aircraft Time Sharing Agreement, dated as of November 26, 2002, as amended by that certain Amendment No. 1 to Aircraft Time Sharing Agreement, dated January 1, 2004, by and between Provider and Lessee (collectively, the “**Agreement**”).

In consideration of the mutual promises, agreements, covenants, warranties, representations and provisions contained herein, the parties agree as follows:

1. Defined Terms.

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

2. Terms Remain the Same.

Except as specifically set forth herein, the terms and conditions set forth in the Agreement shall remain in full force and effect.

3. Amendments.

a. Definition of the “Aircraft.” The term “Aircraft” as defined in Section 1 of the Agreement is hereby amended to mean any aircraft purchased, leased or otherwise acquired by Provider during the Term of the Agreement.

b. Definition of “Expiration Date.” The Term “Expiration Date” as defined in Section 2 of the Agreement is hereby amended to mean the earliest of (i) October 30, 2014, (ii) termination of lessee’s employment with Wynn Resorts, Limited or (iii) thirty (30) days notice of termination by either party to the other.

c. Section 4 of the Agreement is amended to add Section 4(d) which shall read as follows: “(d) Lessee and Provider agree Lessee shall not be obligated to deliver to Provider the Rent due hereunder; rather Rent shall be included as taxable compensation to Lessee.”

4. Entire Agreement. This Amendment and the Agreement constitute the entire agreement between the parties pertaining to the subject matter contained in the Agreement as amended by this Amendment.

5. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Nevada, regardless of the choice of law provisions of Nevada or any other jurisdiction.

6. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which independently shall be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have each caused this Amendment to be duly executed as of the day and year first written above.

LAS VEGAS JET, LLC

MARC SCHORR

By: /s/ Stephen A. Wynn

/s/ Marc Schorr

Name: Stephen A. Wynn

Title: Chief Executive Officer & President

SUBSIDIARIES OF WYNN RESORTS, LIMITED

Rambas Marketing Co., LLC

Wynn International Marketing, LLC (an Isle of Man limited liability company)

Toasty, LLC (a Delaware limited liability company)

B/W Clothiers, LLC (a 50% owned joint venture)

Valvino Lamore, LLC

Wynn Gallery, LLC

World Travel G-IV, LLC

Chamber Associates, LLC

WLV Entertainment, LLC

Wynn Aircraft, LLC.

Development Associates, LLC

Worldwide Wynn, LLC

Wynn Design & Development, LLC

Wynn Resorts Hotel Marketing & Sales (Asia), LLC

Wynn Group Asia, Inc.

WM Cayman Holdings Limited I (a Cayman Islands company)

Wynn Macau, Limited (a Cayman Islands company)

WM Cayman Holdings Limited II (a Cayman Islands company)

Wynn Resorts, International, Ltd. (an Isle of Man company)

Wynn Resorts (Macau) Holdings, Ltd. (an Isle of Man company)

Wynn Resorts (Macau), Ltd. (a Hong Kong Limited company)

Wynn Resorts (Macau), S.A. (a Macau SA company)

Palo Real Estate Company Ltd. (a Macau SA company)

Wynn Macau Development Company, LLC

Wynn Cotai Holding Company, Ltd. (an Isle of Man corporation)

Cotai Partner, Ltd. (an Isle of Man company)

Cotai Land Development Company (a Macau SA company)

Wynn IOM Holdco I, Ltd. (an Isle of Man company)

Wynn IOM Holdco II, Ltd. (as Isle of Man company)

Wynn Manpower, Limited (a Macau limited company)

SH Hotelaria Limitada (a Macau limited company)

Wynn Resorts Funding, LLC

Wynn Resorts Holdings, LLC

Wynn Las Vegas, LLC

Las Vegas Jet, LLC

World Travel, LLC

Wynn Completion Guarantor, LLC

Wynn Golf, LLC

Wynn Las Vegas Capital Corp.

Wynn Show Performers, LLC

Wynn Sunrise, LLC

Kevyn, LLC

PW automotive, LLC (a Delaware Limited Liability Company and 50% owned joint venture)

All subsidiaries are formed in the State of Nevada and wholly-owned unless otherwise specifically identified.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement No. 333-100891 on Form S-8, Registration Statement No. 333-114022 on Form S-3 and Registration Statement No. 333-146360 on Form S-3 of our reports dated February 26, 2010 with respect to the consolidated financial statements and schedules of Wynn Resorts, Limited and the effectiveness of internal control over financial reporting of Wynn Resorts, Limited, included in this Annual Report on Form 10-K for the year ended December 31, 2009.

/s/ Ernst & Young LLP
Las Vegas, Nevada
February 26, 2010

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

I, Stephen A. Wynn, certify that:

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

Date: February 26, 2010

/s/ Stephen A. Wynn

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

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

I, Matt Maddox, certify that:

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

Date: February 26, 2010

/s/ Matt Maddox

Matt Maddox
Chief Financial Officer and Treasurer
(Principal Financial Officer)

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

In connection with the Annual Report on Form 10-K of Wynn Resorts, Limited (the "Company") for the year ended December 31, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Stephen A. Wynn, as Chief Executive Officer of the Company, and Matt Maddox, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

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

/s/ Stephen A. Wynn

Name: Stephen A. Wynn
Title: Chairman and Chief Executive Officer
(Principal Executive Officer)
Date: February 26, 2010

/s/ Matt Maddox

Name: Matt Maddox
Title: Chief Financial Officer and Treasurer
(Principal Financial Officer)
Date: February 26, 2010

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