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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q

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

For the quarterly period ended September 30, 2019

OR

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

For the transition period from_____ to_____

Commission File No. 000-50028

WYNN RESORTS, LIMITED

(Exact name of registrant as specified in its charter)

Nevada	**46-0484987**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

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)

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value $0.01	WYNN	Nasdaq Global Select Market

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 every Interactive Data File required to be submitted 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 such files). Yes No

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

Large accelerated filer	Accelerated filer
Non-accelerated filer	Smaller reporting company
	Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class	Outstanding at October 31, 2019
Common stock, par value $0.01	107,354,606

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Part I. FINANCIAL INFORMATION
Item 1. Financial Statements

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

	September 30, 2019	December 31, 2018
	(unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	$ 1,676,110	$ 2,215,001
Receivables, net	286,611	276,644
Inventories	80,486	66,627
Prepaid expenses and other	68,045	83,104
Total current assets	**2,111,252**	**2,641,376**
Property and equipment, net	9,621,268	9,385,920
Restricted cash	6,182	4,322
Intangible assets, net	148,972	222,506
Operating lease assets	444,157	—
Deferred income taxes, net	719,614	736,452
Other assets	225,613	225,693
Total assets	**$ 13,277,058**	**$ 13,216,269**
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts and construction payables	$ 292,140	$ 321,796
Customer deposits	956,744	955,450
Gaming taxes payable	188,496	247,341
Accrued compensation and benefits	162,752	163,966
Accrued interest	74,340	61,595
Current portion of long-term debt	116,118	11,960
Other accrued liabilities	139,794	119,955
Total current liabilities	**1,930,384**	**1,882,063**
Long-term debt	9,421,845	9,411,140
Long-term operating lease liabilities	149,970	—
Other long-term liabilities	108,980	108,277
Total liabilities	**11,611,179**	**11,401,480**
Commitments and contingencies (Note 14)		
Stockholders' equity:		
Preferred stock, par value $0.01; 40,000,000 shares authorized; zero shares issued and outstanding	—	—
Common stock, par value $0.01; 400,000,000 shares authorized; 122,826,131 and 122,115,585 shares issued; 107,362,502 and 107,232,026 shares outstanding, respectively	1,228	1,221
Treasury stock, at cost; 15,463,629 and 14,883,559 shares, respectively	(1,409,717)	(1,344,012)
Additional paid-in capital	2,507,870	2,457,079
Accumulated other comprehensive loss	(2,700)	(1,950)
Retained earnings	822,070	921,785
Total Wynn Resorts, Limited stockholders' equity	**1,918,751**	**2,034,123**
Noncontrolling interests	(252,872)	(219,334)
Total stockholders' equity	**1,665,879**	**1,814,789**
Total liabilities and stockholders' equity	**$ 13,277,058**	**$ 13,216,269**

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

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	**2018**	**2019**	**2018**
Operating revenues:				
Casino	$ 1,108,364	$ 1,222,029	$ 3,435,968	$ 3,564,195
Rooms	205,876	183,044	595,953	559,405
Food and beverage	228,508	193,874	619,749	580,963
Entertainment, retail and other	105,014	110,125	305,970	325,511
Total operating revenues	**1,647,762**	**1,709,072**	**4,957,640**	**5,030,074**
Operating expenses:				
Casino	722,692	783,171	2,197,750	2,254,766
Rooms	75,188	62,965	205,042	189,837
Food and beverage	196,661	162,311	527,502	468,265
Entertainment, retail and other	42,078	44,028	129,636	138,647
General and administrative	246,442	192,327	665,988	545,543
Litigation settlement	—	—	—	463,557
Provision for doubtful accounts	4,036	3,285	13,039	2,586
Pre-opening	1,616	13,714	99,212	35,255
Depreciation and amortization	172,998	137,458	449,824	411,685
Property charges and other	8,216	18,830	17,920	30,672
Total operating expenses	**1,469,927**	**1,418,089**	**4,305,913**	**4,540,813**
Operating income	**177,835**	**290,983**	**651,727**	**489,261**
Other income (expense):				
Interest income	6,427	6,948	19,979	21,029
Interest expense, net of amounts capitalized	(114,652)	(93,007)	(300,981)	(281,132)
Change in derivatives fair value	(2,101)	(54)	(6,914)	(54)
Change in Redemption Note fair value	—	—	—	(69,331)
(Loss) gain on extinguishment of debt	(12,196)	(198)	(12,196)	2,131
Other	(8,703)	11,216	(3,346)	1,039
Other income (expense), net	**(131,225)**	**(75,095)**	**(303,458)**	**(326,318)**
Income before income taxes	**46,610**	**215,888**	**348,269**	**162,943**
Benefit (provision) for income taxes	(19,727)	3,884	(19,421)	124,631
Net income	**26,883**	**219,772**	**328,848**	**287,574**
Less: net income attributable to noncontrolling interests	(30,379)	(63,657)	(132,921)	(180,010)
Net income (loss) attributable to Wynn Resorts, Limited	**$ (3,496)**	**$ 156,115**	**$ 195,927**	**$ 107,564**
Basic and diluted net income (loss) per common share:				
Net income (loss) attributable to Wynn Resorts, Limited:				
Basic	$ (0.03)	$ 1.44	$ 1.83	$ 1.01
Diluted	$ (0.03)	$ 1.44	$ 1.83	$ 1.01
Weighted average common shares outstanding:				
Basic	106,707	108,064	106,791	106,162
Diluted	106,707	108,533	107,024	106,721
Dividends declared per common share	$ 1.00	$ 0.75	$ 2.75	$ 2.00

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

WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(in thousands)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Net income	$ 26,883	$ 219,772	$ 328,848	$ 287,574
Other comprehensive income (loss):				
Foreign currency translation adjustments, before and after tax	(989)	(175)	(1,039)	(2,121)
Change in net unrealized (loss) gain on investment securities, before and after tax	—	(19)	—	1,292
Redemption Note credit risk adjustment, net of tax of $2,735	—	—	—	9,211
Total comprehensive income	**25,894**	**219,578**	**327,809**	**295,956**
Less: comprehensive income attributable to noncontrolling interests	(30,104)	(63,608)	(132,632)	(179,419)
Comprehensive income (loss) attributable to Wynn Resorts, Limited	**$ (4,210)**	**$ 155,970**	**$ 195,177**	**$ 116,537**

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

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

	For the Three Months Ended September 30, 2019								
	Common stock								
	Shares outstanding	Par value	Treasury stock	Additional paid-in capital	Accumulated other comprehensive loss	Retained earnings	Total Wynn Resorts, Ltd. stockholders' equity	Noncontrolling interests	Total stockholders' equity
Balances, July 1, 2019	107,610,356	$ 1,228	$ (1,379,644)	$ 2,498,316	$ (1,986)	$ 932,907	$ 2,050,821	$ (199,882)	$ 1,850,939
Net income (loss)	—	—	—	—	—	(3,496)	(3,496)	30,379	26,883
Currency translation adjustment	—	—	—	—	(714)	—	(714)	(275)	(989)
Exercise of stock options	36,000	—	—	2,151	—	—	2,151	—	2,151
Issuance of restricted stock	27,276	—	—	—	—	—	—	—	—
Cancellation of restricted stock	(27,809)	—	—	—	—	—	—	—	—
Shares repurchased by the Company and held as treasury shares	(283,321)	—	(30,073)	—	—	—	(30,073)	—	(30,073)
Cash dividends declared	—	—	—	—	—	(107,341)	(107,341)	(82,949)	(190,290)
Distribution to noncontrolling interest	—	—	—	—	—	—	—	(998)	(998)
Stock-based compensation	—	—	—	7,403	—	—	7,403	853	8,256
Balances, September 30, 2019	**107,362,502**	**$ 1,228**	**$ (1,409,717)**	**$ 2,507,870**	**$ (2,700)**	**$ 822,070**	**$ 1,918,751**	**$ (252,872)**	**$ 1,665,879**

	For the Three Months Ended September 30, 2018								
	Common stock								
	Shares outstanding	Par value	Treasury stock	Additional paid-in capital	Accumulated other comprehensive loss	Retained earnings	Total Wynn Resorts, Ltd. stockholders' equity	Noncontrolling interests	Total stockholders' equity
Balances, July 1, 2018	108,642,371	$ 1,220	$ (1,184,967)	$ 2,435,720	$ (1,938)	$ 462,950	$ 1,712,985	$ 106,610	$ 1,819,595
Net income	—	—	—	—	—	156,115	156,115	63,657	219,772
Currency translation adjustment	—	—	—	—	(126)	—	(126)	(49)	(175)
Change in net unrealized loss on investment securities	—	—	—	—	(19)	—	(19)	—	(19)
Exercise of stock options	126,190	1	—	9,740	—	—	9,741	—	9,741
Issuance of common stock	—	—	—	27	—	—	27	—	27
Issuance of restricted stock	38,695	1	—	(1)	—	—	—	—	—
Cancellation of restricted stock	(60,714)	(1)	—	—	—	—	(1)	—	(1)
Shares repurchased by the Company and held as treasury shares	(15,460)	—	(2,306)	—	—	—	(2,306)	—	(2,306)
Cash dividends declared	—	—	—	—	—	(81,294)	(81,294)	(138,258)	(219,552)
Distribution to noncontrolling interest	—	—	—	—	—	—	—	(297,261)	(297,261)
Stock-based compensation	—	—	—	9,871	—	—	9,871	591	10,462
Balances, September 30, 2018	**108,731,082**	**$ 1,221**	**$ (1,187,273)**	**$ 2,455,357**	**$ (2,083)**	**$ 537,771**	**$ 1,804,993**	**$ (264,710)**	**$ 1,540,283**

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

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WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (continued)
(in thousands, except share data)
(unaudited)

	For the Nine Months Ended September 30, 2019								
	Common stock								
	Shares outstanding	Par value	Treasury stock	Additional paid-in capital	Accumulated other comprehensive loss	Retained earnings	Total Wynn Resorts, Ltd. stockholders' equity	Noncontrolling interests	Total stockholders' equity
Balances, January 1, 2019	107,232,026	$ 1,221	$ (1,344,012)	$ 2,457,079	$ (1,950)	$ 921,785	$ 2,034,123	$ (219,334)	$ 1,814,789
Net income	—	—	—	—	—	195,927	195,927	132,921	328,848
Currency translation adjustment	—	—	—	—	(750)	—	(750)	(289)	(1,039)
Exercise of stock options	293,690	3	—	14,693	—	—	14,696	—	14,696
Issuance of restricted stock	456,505	4	—	14,344	—	—	14,348	785	15,133
Cancellation of restricted stock	(39,649)	—	—	—	—	—	—	—	—
Shares repurchased by the Company and held as treasury shares	(580,070)	—	(65,705)	—	—	—	(65,705)	—	(65,705)
Cash dividends declared	—	—	—	—	—	(295,642)	(295,642)	(165,849)	(461,491)
Distribution to noncontrolling interest	—	—	—	—	—	—	—	(3,725)	(3,725)
Stock-based compensation	—	—	—	21,754	—	—	21,754	2,619	24,373
Balances, September 30, 2019	**107,362,502**	**$ 1,228**	**$ (1,409,717)**	**$ 2,507,870**	**$ (2,700)**	**$ 822,070**	**$ 1,918,751**	**$ (252,872)**	**$ 1,665,879**

	For the Nine Months Ended September 30, 2018								
	Common stock								
	Shares outstanding	Par value	Treasury stock	Additional paid-in capital	Accumulated other comprehensive loss	Retained earnings	Total Wynn Resorts, Ltd. stockholders' equity	Noncontrolling interests	Total stockholders' equity
Balances, January 1, 2018	103,005,866	$ 1,164	$ (1,184,468)	$ 1,497,928	$ (1,845)	$ 635,067	$ 947,846	$ 130,504	$ 1,078,350
Cumulative effect, change in accounting for credit risk, net of tax of $2,735	—	—	—	—	(9,211)	9,211	—	—	—
Net income	—	—	—	—	—	107,564	107,564	180,010	287,574
Currency translation adjustment	—	—	—	—	(1,530)	—	(1,530)	(591)	(2,121)
Change in net unrealized loss on investment securities	—	—	—	—	1,292	—	1,292	—	1,292
Redemption Note settlement	—	—	—	—	9,211	—	9,211	—	9,211
Exercise of stock options	238,780	2	—	19,805	—	—	19,807	506	20,313
Issuance of common stock	5,300,000	53	—	915,187	—	—	915,240	—	915,240
Issuance of restricted stock	280,834	3	—	1,295	—	—	1,298	501	1,799
Cancellation of restricted stock	(75,908)	(1)	—	1	—	—	—	—	—
Shares repurchased by the Company and held as treasury shares	(18,490)	—	(2,805)	—	—	—	(2,805)	—	(2,805)
Cash dividends declared	—	—	—	—	—	(214,071)	(214,071)	(276,583)	(490,654)
Distribution to noncontrolling interest	—	—	—	—	—	—	—	(301,113)	(301,113)
Stock-based compensation	—	—	—	21,141	—	—	21,141	2,056	23,197
Balances, September 30, 2018	**108,731,082**	**$ 1,221**	**$ (1,187,273)**	**$ 2,455,357**	**$ (2,083)**	**$ 537,771**	**$ 1,804,993**	**$ (264,710)**	**$ 1,540,283**

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

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

	Nine Months Ended September 30,	
	2019	**2018**
Cash flows from operating activities:		
Net income	$ 328,848	$ 287,574
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	449,824	411,685
Deferred income taxes	16,838	(123,516)
Stock-based compensation expense	30,444	28,762
Amortization of debt issuance costs	22,171	25,241
Loss on extinguishment of debt	12,196	2,364
Provision for doubtful accounts	13,039	2,586
Change in derivatives fair value	6,914	54
Change in Redemption Note fair value	—	69,331
Property charges and other	21,238	30,464
Increase (decrease) in cash from changes in:		
Receivables, net	(23,046)	(11,038)
Inventories, prepaid expenses and other	(17,380)	1,145
Customer deposits	2,355	(212,459)
Accounts payable and accrued expenses	(83,556)	(14,304)
Net cash provided by operating activities	**779,885**	**497,889**
Cash flows from investing activities:		
Capital expenditures, net of construction payables and retention	(878,335)	(1,154,255)
Purchase of intangible and other assets	(6,000)	(102,388)
Proceeds from the sale or maturity of investment securities	—	359,461
Purchase of investment securities	—	(34,098)
Proceeds from sale of assets	592	2,387
Net cash used in investing activities	**(883,743)**	**(928,893)**
Cash flows from financing activities:		
Proceeds from issuance of long-term debt	2,549,072	2,288,605
Repayments of long-term debt	(2,443,367)	(3,030,526)
Proceeds from note receivable from sale of ownership interest in subsidiary	—	75,000
Proceeds from issuance of common stock, net of issuance costs	—	915,187
Repurchase of common stock	(65,705)	(2,805)
Finance lease payment	(36)	—
Proceeds from exercise of stock options	14,696	20,313
Dividends paid	(460,139)	(350,694)
Distribution to noncontrolling interest	(3,725)	(301,113)
Payments to acquire derivatives	—	(3,900)
Payments for financing costs	(22,359)	(33,787)
Net cash used in financing activities	**(431,563)**	**(423,720)**
Effect of exchange rate on cash, cash equivalents and restricted cash	**(1,610)**	**1,090**
Cash, cash equivalents and restricted cash:		
Decrease in cash, cash equivalents and restricted cash	**(537,031)**	**(853,634)**
Balance, beginning of period	**2,219,323**	**2,806,634**
Balance, end of period	**$ 1,682,292**	**$ 1,953,000**
Supplemental cash flow disclosures:		
Cash paid for interest, net of amounts capitalized	$ 265,873	$ 276,989
Capitalized stock-based compensation	$ 228	$ 6
Liability settled with shares of common stock	$ 15,134	$ 1,800
Accounts and construction payables related to property and equipment	$ 202,375	$ 174,530
Other liabilities related to intangible assets	$ 13,463	$ —
Financing costs included in accounts payable and other liabilities	$ 2,093	$ —

Dividends payable on unvested restricted stock included in other accrued liabilities	$	6,306	$	3,164
Dividends payable to noncontrolling interests	$	—	$	138,816

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

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

Note 1 - Organization

Organization

Wynn Resorts, Limited, a Nevada corporation (together with its subsidiaries, "Wynn Resorts" or the "Company") is a designer, developer, owner and operator of destination casino resorts. In the Macau Special Administrative Region of the People's Republic of China ("Macau"), the Company owns approximately 72% of Wynn Macau, Limited ("WML"), which includes the operations of the Wynn Palace and Wynn Macau resorts. The Company refers to Wynn Palace and Wynn Macau as its Macau Operations. In Las Vegas, Nevada, the Company operates and, with the exception of certain retail space, owns 100% of Wynn Las Vegas. Additionally, the Company is a 50.1% owner and managing member of a joint venture that owns and leases certain retail space at Wynn Las Vegas (the "Retail Joint Venture"). The Company refers to Wynn Las Vegas and the Retail Joint Venture as its Las Vegas Operations. On June 23, 2019, the Company opened Encore Boston Harbor, an integrated resort in Everett, Massachusetts.

On September 20, 2019, and concurrently with the Refinancing Transactions (as defined and discussed in Note 6, "Long-Term Debt"), Wynn Resorts contributed all of its equity interests in Wynn Group Asia, Inc. ("Wynn Asia") to Wynn Resorts Finance, LLC, which was formerly known as Wynn America, LLC ("WRF"), making Wynn Asia a wholly owned subsidiary of WRF. WRF is an indirect wholly owned subsidiary of Wynn Resorts. Wynn Asia is a holding company that holds Wynn Resorts' approximately 72% controlling interest in WML.

Development Projects

The Company is currently constructing an approximately 430,000 square foot meeting and convention facility at Wynn Las Vegas. The facility will feature approximately 217,000 square feet of state-of-the-art meeting and convention space available for group reservations. The Company expects to open the additional meeting and convention facility in the first quarter of 2020. The Company opened the newly reconfigured Wynn Las Vegas golf course on October 11, 2019.

Note 2 - Basis of Presentation and Significant Accounting Policies

Basis of Presentation

The accompanying condensed consolidated financial statements have been prepared by the Company pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"). Certain information and footnote disclosures normally included in financial statements prepared in accordance with U.S. generally accepted accounting principles ("GAAP") have been condensed or omitted pursuant to such rules and regulations, although the Company believes that the disclosures herein are adequate to make the information presented not misleading. In the opinion of management, the accompanying condensed consolidated financial statements reflect all adjustments, which are of a normal recurring nature, necessary to a fair presentation of the results for the interim periods presented. The results for the three and nine months ended September 30, 2019 are not necessarily indicative of results to be expected for the full fiscal year. These Condensed Consolidated Financial Statements should be read in conjunction with the consolidated financial statements and notes thereto in the Company's Annual Report on Form 10-K for the year ended December 31, 2018.

Principles of Consolidation

The accompanying condensed consolidated financial statements include the accounts of the Company, its majority-owned subsidiaries and entities the Company identifies as variable interest entities ("VIEs") of which the Company is determined to be the primary beneficiary. For information on the Company's VIEs, see Note 15 "Retail Joint Venture." All significant intercompany accounts and transactions have been eliminated.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(unaudited)

Leases

Lessee Arrangements

The Company is the lessee under non-cancelable real estate and equipment leases. Beginning on January 1, 2019 (the date of the Company's adoption of Topic 842, as defined and discussed further in "Recently Adopted Accounting Standards"), operating lease assets and liabilities are measured and recorded upon lease commencement at the present value of the future minimum lease payments. The Company combines lease and nonlease components in its determination of minimum lease payments, except for certain asset classes that have significant nonlease components. As the interest rate implicit in its leases is not readily determinable, the Company uses its incremental borrowing rate to determine the present value of lease payments. The Company does not record an asset or liability for operating leases with a term of less than one year. Variable lease costs generally arise from changes in an index, such as the consumer price index. Variable lease costs are expensed as incurred and are not included in the determination of lease assets or liabilities. Prior to the adoption of Topic 842 on January 1, 2019, the Company did not record an asset or liability for any of its operating leases.

Lessor Arrangements

The Company is the lessor under non-cancelable operating leases for retail and food and beverage outlet space at its integrated resorts, which represents approximately 101,000, 59,000, 142,000, and 36,000 square feet of space at Wynn Palace, Wynn Macau, Wynn Las Vegas, and Encore Boston Harbor, respectively. The lease arrangements generally include minimum base rent and contingent rental clauses based on a percentage of net sales. Generally, the terms of the leases range between five and 10 years. The Company records revenue on a straight-line basis over the term of the lease, and recognizes revenue for contingent rentals when the contingency has been resolved. The Company has elected to combine lease and nonlease components for the purpose of measuring lease revenue. Revenue is recorded in entertainment, retail and other revenue on the Condensed Consolidated Statements of Operations.

Gaming Taxes

The Company is subject to taxes based on gross gaming revenues in the jurisdictions in which it operates, subject to applicable jurisdictional adjustments. These gaming taxes are recorded as casino expenses in the accompanying Condensed Consolidated Statements of Operations. These taxes totaled $543.9 million and $638.4 million for the three months ended September 30, 2019 and 2018, and $1.69 billion and $1.81 billion for the nine months ended September 30, 2019 and 2018, respectively.

Pre-opening expenses

Pre-opening expenses represent personnel, advertising, and other costs incurred prior to the opening of new ventures and are expensed as incurred. During the nine months ended September 30, 2019 and 2018, the Company incurred pre-opening expenses primarily in connection with the development of Encore Boston Harbor.

Recently Adopted Accounting Standards

Leases

In February 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2016-02, Leases ("Topic 842"), which requires recognition of lease assets and liabilities on the balance sheet and disclosure of additional information about leasing activities. The Company adopted this standard using a modified retrospective transition approach with an initial application date of January 1, 2019. As a result, prior periods were not retrospectively adjusted and are not comparable to current periods. The Company elected the practical expedient permitting lessees to carry forward historical lease classifications for existing arrangements. The following is a summary of the significant impacts on the Company's balance sheet as of January 1, 2019:

- The Company recognized operating lease assets and liabilities of $154.1 million, which represented the discounted future minimum lease payments of all existing leases on the initial application date.
- The net carrying amount of a definite-lived intangible asset, which related to a leasehold interest in land and totaled $88.1 million, was reclassified to operating lease assets.
- Leasehold interests in land, net, which totaled $206.9 million, were reclassified to operating lease assets from property and equipment, net.

- Certain other initial direct cost assets, prepaid lease assets, and deferred rent accrued liabilities were reclassified to operating lease assets.

As the Company elected to carry forward historical lease classifications, an arrangement concluded to contain a capital lease under the previous standard was deemed a finance lease under Topic 842, with no resultant change in accounting other than the reclassification of associated initial direct costs from other assets to property and equipment, net. There was no impact on the Company's operating income, net income or cash flows as a result of adopting Topic 842.

Accounting Standards Issued But Not Yet Adopted

Financial Instruments - Credit Losses

The FASB issued ASU No. 2016-13, *Financial Instruments - Credit Losses (Topic 326)* in 2016. The new guidance replaces the incurred loss impairment methodology in current U.S. GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. For trade and other receivables, loans and other financial instruments, the Company will be required to use a forward-looking expected loss model rather than the incurred loss model for recognizing credit losses which reflects losses that are probable. The new guidance will be effective for the Company beginning January 1, 2020. Application of the amendments is through a cumulative-effect adjustment to retained earnings as of the effective date. The Company is currently assessing the impact that the adoption of the new guidance will have on its Consolidated Financial Statements, but does not expect that it will have a material impact.

Note 3 - Cash, Cash Equivalents and Restricted Cash

Cash, cash equivalents and restricted cash consisted of the following (in thousands):

	September 30, 2019	December 31, 2018
Cash and cash equivalents:		
Cash (1)	$ 1,191,948	$ 1,455,744
Cash equivalents (2)	484,162	759,257
Total cash and cash equivalents	**1,676,110**	**2,215,001**
Restricted cash (3)	6,182	4,322
Total cash, cash equivalents and restricted cash	**$ 1,682,292**	**$ 2,219,323**

(1) Cash consists of cash on hand and bank deposits.
(2) Cash equivalents consist of bank time deposits and money market funds.
(3) Restricted cash consists of cash collateral associated with obligations and cash held in a trust in accordance with WML's share award plan.

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Note 4 - Receivables, net

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

	September 30, 2019	December 31, 2018
Casino	$ 239,813	$ 229,594
Hotel	21,272	22,086
Other	58,407	57,658
	319,492	**309,338**
Less: allowance for doubtful accounts	(32,881)	(32,694)
	$ 286,611	**$ 276,644**

As of September 30, 2019 and December 31, 2018, approximately 80.2% and 85.0%, 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 the countries in which our customers reside could affect the collectability of such receivables.

Note 5 - Property and Equipment, net

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

	September 30, 2019	December 31, 2018
Buildings and improvements	$ 9,288,609	$ 7,707,467
Land and improvements	1,225,849	1,141,032
Furniture, fixtures and equipment	2,923,900	2,288,370
Leasehold interests in land	—	313,516
Airplanes	110,623	110,623
Construction in progress	445,098	1,912,801
	13,994,079	**13,473,809**
Less: accumulated depreciation	(4,372,811)	(4,087,889)
	$ 9,621,268	**$ 9,385,920**

As of September 30, 2019, construction in progress consisted primarily of costs capitalized, including interest, for the construction of the additional meeting and convention space at Wynn Las Vegas. As of December 31, 2018, construction in progress consisted primarily of costs capitalized, including interest, for the construction of Encore Boston Harbor. On June 23, 2019, Encore Boston Harbor opened and its associated construction in progress balance was placed into service.

The Company capitalized interest of $3.3 million for the three months ended September 30, 2019, primarily in connection with the construction of the additional meeting and convention space at Wynn Las Vegas. The Company capitalized interest of $16.2 million for the three months ended September 30, 2018, and $50.2 million and $37.7 million for the nine months ended September 30, 2019 and 2018, respectively, primarily in connection with the construction of Encore Boston Harbor.

Beginning January 1, 2019, leasehold interests in land, net of related accumulated amortization were reclassified to operating lease assets with the adoption of Topic 842.

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Note 6 - Long-Term Debt

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

	September 30, 2019	December 31, 2018
Macau Related:		
Wynn Macau Credit Facilities:		
Senior Term Loan Facility, due 2022 (1)	$ 2,295,759	$ 2,296,999
Senior Revolving Credit Facility, due 2022 (2)	448,982	623,921
4 7/8% Senior Notes, due 2024	600,000	600,000
5 1/2% Senior Notes, due 2027	750,000	750,000
U.S. and Corporate Related:		
WRF Senior Secured Credit Facilities (3):		
WRF Term Loan, due 2024	1,000,000	—
WRF Revolver, due 2024	25,000	—
WLV 4 1/4% Senior Notes, due 2023	500,000	500,000
WLV 5 1/2% Senior Notes, due 2025	1,780,000	1,780,000
WLV 5 1/4% Senior Notes, due 2027	880,000	880,000
WRF 5 1/8% Senior Notes, due 2029	750,000	—
Retail Term Loan, due 2025 (4)	615,000	615,000
Wynn America Senior Term Loan Facility, due 2021 (5)	—	994,780
Wynn Resorts Term Loan, due 2024 (5)	—	500,000
	9,644,741	**9,540,700**
Less: Unamortized debt issuance costs and original issue discounts and premium, net	(106,778)	(117,600)
	9,537,963	**9,423,100**
Less: Current portion of long-term debt	(116,118)	(11,960)
Total long-term debt, net of current portion	**$ 9,421,845**	**$ 9,411,140**

(1) Approximately $1.31 billion and $990.8 million of the Wynn Macau Senior Term Loan Facility bears interest at a rate of LIBOR plus 1.75% per year and HIBOR plus 1.75% per year, respectively. As of September 30, 2019, the weighted average interest rate was approximately 3.73%.
(2) Approximately $256.5 million and $192.4 million of the Wynn Macau Senior Revolving Credit Facility bears interest at a rate of LIBOR plus 1.75% per year and HIBOR plus 1.75% per year, respectively. As of September 30, 2019, the weighted average interest rate was approximately 3.80%, and the available borrowing capacity was $298.3 million.
(3) The Wynn Resorts Finance Credit Facilities bear interest at a rate of LIBOR plus 1.75% per year. As of September 30, 2019, the interest rate was 3.80%. Additionally, as of September 30, 2019, the available borrowing capacity under the Revolving Credit Facility was $806.9 million, net of $18.1 million in outstanding letters of credit.
(4) The Retail Term Loan bears interest at a rate of LIBOR plus 1.70% per year. As of September 30, 2019, the interest rate was 3.80%.
(5) The Wynn America Credit Facilities, which included the Wynn America Senior Term Loan Facility, and the Wynn Resorts Term Loan were prepaid in full on September 20, 2019, in connection with the Refinancing Transactions, as defined and discussed below.

Refinancing Transactions

On September 20, 2019, WRF and its subsidiary Wynn Resorts Capital Corp. (collectively with WRF, the "WRF Issuers"), each an indirect wholly owned subsidiary of the Company, issued $750.0 million aggregate principal amount of 5 1/8% Senior Notes due 2029 (the "2029 Notes") pursuant to an indenture (the "2029 Indenture") among the WRF Issuers, the guarantors party thereto, and U.S. Bank National Association, as trustee (the "Trustee"), in a private offering. The 2029 Notes were issued at par.

Concurrently with the issuance of the 2029 Notes, WRF entered into a credit agreement (the "WRF Credit Agreement") providing for a new first lien term loan facility in an aggregate principal amount of $1.0 billion (the "WRF Term Loan") and a new first lien revolving credit facility in an aggregate principal amount of $850.0 million (the "WRF Revolver" and together with the WRF Term Loan, the "WRF Senior Secured Credit Facilities") (the WRF Senior Secured Credit Facilities and 2029 Notes are collectively referred to as the "Refinancing Transactions").

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WRF used the net proceeds from the Refinancing Transactions to refinance the existing Wynn America credit facilities and the Wynn Resorts term loan and to pay related fees and expenses totaling $18.8 million, of which $14.8 million was recorded as debt issuance costs within the Condensed Consolidated Balance Sheet. The Company recognized the Refinancing Transactions primarily as a modification of existing debt with the related unamortized debt issuance costs reallocated to the new debt instruments. For those components of debt that were deemed extinguished, the Company recognized a loss on extinguishment of debt of $12.2 million.

WRF Senior Secured Credit Facilities

Subject to certain exceptions, the WRF Senior Secured Credit Facilities bear interest at LIBOR plus1.75% per annum. The annual fee required to pay for unborrowed amounts under the WRF Revolver, if any, is 0.25% per annum, payable quarterly in arrears, calculated based on the daily average of the unborrowed amounts under such credit facilities. The Company is required to make quarterly repayments on the WRF Term Loan of $12.5 million beginning in the fourth quarter of 2019, with any remaining principal amount outstanding repayable in full on September 20, 2024.

The WRF Credit Agreement contains customary representations and warranties, events of default and negative and affirmative covenants, including, but not limited to, covenants that restrict our ability to pay dividends or distributions to any direct or indirect subsidiaries, to incur and/or repay indebtedness, to make certain restricted payments, and to enter into mergers and acquisitions, negative pledges, liens, transactions with affiliates, and sales of assets. In addition, Wynn Resorts Finance is subject to financial covenants, including maintaining a Consolidated First Lien Net Leverage Ratio, as defined in the WRF Credit Agreement. Commencing with the fourth quarter of 2019, the Consolidated Senior Secured Net Leverage Ratio is not to exceed 3.75 to 1.00.

The WRF Credit Facilities are guaranteed by each of WRF's existing and future wholly owned domestic restricted subsidiaries (the "Guarantors"), subject to certain exceptions, and are secured by a first priority lien on substantially all of WRF's and each of the guarantors' existing and future property and assets, subject to certain exceptions, including a limitation on the amount of collateral granted by Wynn Las Vegas, LLC ("WLV") and its subsidiaries so as to not violate the indenture governing WLV's outstanding senior notes.

2029 Notes

The 2029 Notes will mature on October 1, 2029 and bear interest at the rate of 5 1/8% per annum, payable in arrears semi-annually on April 1 and October 1 of each year, beginning on April 1, 2020. The WRF Issuers may redeem some or all of the 2029 Notes at any time at a redemption price equal to 100% of the aggregate principal amount of the 2029 Notes to be redeemed plus a make-whole premium, as defined in the 2029 Indenture, and accrued and unpaid interest. On or after July 1, 2029, the WRF Issuers may redeem some or all of the 2029 Notes at the redemption prices set forth in the 2029 Indenture plus accrued and unpaid interest. In the event of a change of control triggering event, the WRF Issuers will be required to offer to repurchase the 2029 Notes at 101% of the principal amount, plus accrued and unpaid interest, if any, to, but not including, the repurchase date. The 2029 Notes are also subject to disposition and redemption requirements imposed by gaming laws and regulations of applicable gaming regulatory authorities.

The 2029 Notes are the WRF Issuers' senior unsecured obligations and rank pari passu in right of payment with the WLV senior notes due 2023, 2025, and 2027, and rank equally in right of payment with Wynn Las Vegas' guarantee of the WRF Senior Secured Credit Facilities, and rank senior in right of payment to all of the Issuers' existing and future subordinated debt. The 2029 Notes are effectively subordinated in right of payment to all of the WRF Issuers' existing and future secured debt (to the extent of the value of the collateral securing such debt), and structurally subordinated to all of the liabilities of any of the WRF Issuers' subsidiaries that do not guarantee the 2029 Notes, including WML and its subsidiaries.

The 2029 Notes are jointly and severally guaranteed by each of WRF's existing domestic restricted subsidiaries that guarantee indebtedness under the Credit Agreement, including Wynn Las Vegas, LLC and each of its subsidiaries that guarantees its existing senior notes due 2023, 2025, and 2027. The guarantees are senior unsecured obligations of the Guarantors and rank senior in right of payment to all of their future subordinated debt. The guarantees rank equally in right of payment with all existing and future liabilities of the Guarantors that are not so subordinated and will be effectively subordinated in right of payment to all of such Guarantors' existing and future secured debt (to the extent of the collateral securing such debt).

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The 2029 Indenture contains covenants that limit the ability of the WRF Issuers and the guarantors to, among other things, enter into sale-leaseback transactions, create or incur liens to secure debt, and merge, consolidate or sell all or substantially all of the WRF Issuers' assets. These covenants are subject to exceptions and qualifications set forth in the 2029 Indenture.

The 2029 Indenture also contains customary events of default, including, but not limited to, failure to make required payments, failure to comply with certain covenants, certain events of bankruptcy and insolvency, and failure to pay certain judgments. An event of default under the 2029 Indenture allows either the Trustee or the holders of at least 25% in aggregate principal amount of the 2029 Notes, as applicable, issued under such 2029 Indenture to accelerate the amounts due under the 2029 Notes, or in the case of bankruptcy or insolvency, will automatically cause the acceleration of the amounts due under the 2029 Notes.

The 2029 Notes were offered pursuant to an exemption under the Securities Act of 1933, as amended (the "Securities Act"). The 2029 Notes were offered only to qualified institutional buyers in reliance on Rule 144A under the Securities Act or outside the United States to certain persons in reliance on Regulation S under the Securities Act. The 2029 Notes have not been and will not be registered under the Securities Act or under any state securities laws. Therefore, the 2029 Notes may not be offered or sold 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.

Wynn America Credit Facilities

On September 20, 2019, the Wynn America credit facilities were repaid in full in connection with the Refinancing Transactions and the Wynn America credit agreement was terminated.

Wynn Resorts Term Loan

On October 30, 2018, the Company and certain subsidiaries of the Company entered into a credit agreement (as subsequently amended, the "WRL Credit Agreement") to provide for a $500.0 million six year term loan facility (the "WRL Term Loan I"). On March 8, 2019, the Company, certain subsidiaries of the Company, and certain incremental term facility lenders entered into an incremental joinder agreement that amended the WRL Credit Agreement to, among other things, provide the Company with an additional $250.0 million term loan (the "WRL Term Loan II," and, collectively with the WRL Term Loan I, the "Wynn Resorts Term Loan"), on substantially similar terms as the WRL Term Loan I. On September 20, 2019, the Wynn Resorts Term Loan was prepaid in full in connection with the Refinancing Transactions and the WRL Credit Agreement was terminated.

Commitment Letter

On March 8, 2019, in connection with the WRL Term Loan II, the Company agreed to terminate the remaining $250.0 million of the lenders' commitments under the commitment letter. Accordingly, there are no remaining commitments under the commitment letter.

Redemption Price Promissory Note

On February 18, 2012, pursuant to its articles of incorporation, the Company redeemed and canceled all Aruze USA, Inc.'s ("Aruze")24,549,222 shares of Wynn Resorts' common stock. In connection with the redemption of the shares, the Company issued a promissory note (the "Redemption Note") with a principal amount of $1.94 billion, a maturity date of February 18, 2022 and an interest rate of2% per annum, payable annually in arrears on each anniversary of the date of the Redemption Note. The Redemption Note was recorded at fair value in accordance with applicable accounting guidance. The Company repaid the principal amount in full on March 30, 2018. On March 30, 2018, the Company also paid an additional $463.6 million in settlement of certain legal claims concerning the Redemption Note, which is recorded as a litigation settlement expense on the Condensed Consolidated Statements of Operations.

Debt Covenant Compliance

As of September 30, 2019, management believes the Company was in compliance with all debt covenants.

Fair Value of Long-Term Debt

The estimated fair value of the Company's long-term debt as of September 30, 2019 and December 31, 2018, was approximately $9.81 billion and $8.97 billion, respectively, compared to its carrying value, excluding debt issuance costs and original issue discount and premium, of $9.64 billion and $9.54 billion, respectively. The estimated fair value of the Company's long-term debt is based on recent trades, if available, and indicative pricing from market information (Level 2 inputs).

Note 7 - Stockholders' Equity

Dividends

On February 26, 2019, the Company paid a cash dividend of $0.75 and on May 30, 2019 and August 27, 2019, the Company paid cash dividends of $1.00 per share, respectively. During the three and nine months ended September 30, 2019, the Company recorded $107.3 million and $295.6 million, respectively, as a reduction of retained earnings from cash dividends declared.

On February 27, 2018, the Company paid a cash dividend of $0.50 and on May 29, 2018 and August 28, 2018, the Company paid cash dividends of $0.75 per share, respectively. During the three and nine months ended September 30, 2018, the Company recorded $81.4 million and $214.1 million, respectively, as a reduction of retained earnings from cash dividends declared.

On November 6, 2019, the Company announced a cash dividend of $1.00 per share, payable on November 22, 2019, to stockholders of record as of November 14, 2019.

Noncontrolling Interests

On September 16, 2019, WML paid a cash dividend of HK$0.45 per share for a total of $298.0 million. The Company's share of this dividend was $215.1 million with a reduction of $82.9 million to noncontrolling interest in the accompanying Condensed Consolidated Balance Sheet.

On June 19, 2019, WML paid a cash dividend of HK$0.45 per share for a total of $298.0 million. The Company's share of this dividend was $215.0 million with a reduction of $82.9 million to noncontrolling interest in the accompanying Condensed Consolidated Balance Sheet.

On August 17, 2018 WML announced a cash dividend of HK$0.75 per share for a total of $496.6 million, which was paid on October 5, 2018. The Company's share of this dividend was $358.3 million with a reduction of $138.3 million to noncontrolling interest in the accompanying Condensed Consolidated Balance Sheet.

On April 25, 2018, WML paid a cash dividend of HK$0.75 per share for a total of $497.1 million. The Company's share of this dividend was $358.8 million with a reduction of $138.3 million to noncontrolling interest in the accompanying Condensed Consolidated Balance Sheet.

During the three and nine months ended September 30, 2019, the Retail Joint Venture made aggregate distributions of $1.0 million and $3.7 million, respectively, to its non-controlling interest holder made in the normal course of business. During the three and nine months ended September 30, 2018, the Retail Joint Venture made aggregate distributions of $297.3 million, and $301.1 million, respectively, to its non-controlling interest holder in connection with the distribution of the net proceeds of the Retail Term Loan and distributions made in the normal course of business. For more information on the Retail Joint Venture, see Note 15, "Retail Joint Venture".

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Comprehensive Income (Loss) and Accumulated Other Comprehensive Loss

The following table presents the changes by component, net of tax and noncontrolling interests, in accumulated other comprehensive loss of the Company (in thousands):

	Foreign currency translation
January 1, 2019	$ (1,950)
Change in net unrealized loss	(750)
Other comprehensive loss	**(750)**
September 30, 2019	**$ (2,700)**

	Foreign currency translation	Unrealized loss on investment securities	Redemption Note	Total
January 1, 2018	$ (553)	$ (1,292)	$ —	$ (1,845)
Cumulative credit risk adjustment (1)	—	—	(9,211)	(9,211)
Change in net unrealized loss	(1,530)	(1,510)	7,690	4,650
Amounts reclassified to net income (2)	—	2,802	1,521	4,323
Other comprehensive income (loss)	**(1,530)**	**1,292**	**9,211**	**8,973**
September 30, 2018	**$ (2,083)**	**$ —**	**$ —**	**$ (2,083)**

(1) On January 1, 2018, the Company adopted Accounting Standards Update ("ASU") No. 2016-01, *Financial Instruments*. The adjustment to the beginning balance represents the cumulative effect of the change in instrument-specific credit risk on the Redemption Note.
(2) The amounts reclassified to net income include $1.8 million for other-than-temporary impairment losses and $1.0 million in realized losses, both related to investment securities, and a $1.5 million realized gain related to the repayment of the Redemption Note.

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Note 8 - Fair Value Measurements

The following tables present assets and liabilities carried at fair value (in thousands):

		Fair Value Measurements Using:		
	September 30, 2019	Quoted Market Prices in Active Markets (Level 1)	Other Observable Inputs (Level 2)	Unobservable Inputs (Level 3)
Assets:				
Cash equivalents	**$ 484,162**	—	$ 484,162	—
Restricted cash	**$ 6,182**	$ 2,041	$ 4,141	—
Liabilities:				
Interest rate collar	**$ 7,533**	—	$ 7,533	—

		Fair Value Measurements Using:		
	December 31, 2018	Quoted Market Prices in Active Markets (Level 1)	Other Observable Inputs (Level 2)	Unobservable Inputs (Level 3)
Assets:				
Cash equivalents	**$ 759,257**	—	$ 759,257	—
Restricted cash	**$ 4,322**	$ 2,015	$ 2,307	—
Liabilities:				
Interest rate collar	**$ 619**	—	$ 619	—

Note 9 - Customer Contract Liabilities

In providing goods and services to its customers, there is often a timing difference between the Company receiving cash and the Company recording revenue for providing services or holding events.

The Company's primary liabilities associated with customer contracts are as follows (in thousands):

	September 30, 2019	December 31, 2018	Increase/ (Decrease)	September 30, 2018	December 31, 2017	Increase/ (Decrease)
Casino outstanding chips and front money deposits (1)	$ 907,598	$ 905,561	$ 2,037	$ 785,988	$ 991,957	$ (205,969)
Advance room deposits and ticket sales (2)	43,086	42,197	889	42,036	48,065	(6,029)
Other gaming-related liabilities (3)	9,297	12,694	(3,397)	13,644	12,765	879
Loyalty program and related liabilities (4)	22,918	18,148	4,770	18,756	18,421	335
	$ 982,899	**$ 978,600**	**$ 4,299**	**$ 860,424**	**$ 1,071,208**	**$ (210,784)**

(1) Casino outstanding chips represent amounts owed to gaming promoters and customers for chips in their possession, and casino front money deposits represent funds deposited by customers before gaming play occurs. These amounts are included in customer deposits on the Condensed Consolidated Balance Sheets and may be recognized as revenue or redeemed for cash in the future.

(2) Advance room deposits and ticket sales represent cash received in advance for goods or services to be provided in the future. These amounts are included in customer deposits on the Condensed Consolidated Balance Sheets and will be recognized as revenue when the goods or services are provided or the events are held. Decreases in this balance generally represent the recognition of revenue and increases in the balance represent additional deposits made by customers. The deposits are expected to primarily be recognized as revenue within one year.

(3) Other gaming-related liabilities generally represent unpaid wagers primarily in the form of unredeemed slot, race and sportsbook tickets or wagers for future sporting events. The amounts are included in other accrued liabilities on the Condensed Consolidated Balance Sheets.

(4) Loyalty program and related liabilities represent the deferral of revenue until the loyalty points or other complimentaries are redeemed. The amounts are included in other accrued liabilities on the Condensed Consolidated Balance Sheets and are expected to be recognized as revenue within one year of being earned by customers.

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Note 10 - Stock-Based Compensation

The total compensation cost for stock-based compensation plans was recorded as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Casino	$ 1,880	$ 1,305	$ 6,254	$ 4,432
Rooms	296	108	737	314
Food and beverage	372	258	1,181	868
Entertainment, retail and other	9	34	115	111
General and administrative	7,719	9,914	21,487	22,540
Pre-opening	—	213	670	497
Total stock-based compensation expense	**10,276**	**11,832**	**30,444**	**28,762**
Total stock-based compensation capitalized	81	—	228	6
Total stock-based compensation costs	**$ 10,357**	**$ 11,832**	**$ 30,672**	**$ 28,768**

Certain members of the Company's executive management team receive a portion of their annual incentive bonus in shares of the Company's stock. The number of shares is determined based on the closing stock price on the date the annual incentive bonus is settled. As the number of shares is variable, the Company records a liability for the fixed monetary amount over the service period. The Company recorded stock-based compensation expense associated with these awards of $2.1 million and $1.3 million for the three months ended September 30, 2019 and 2018, respectively, and $6.3 million and $5.5 million for the nine months ended September 30, 2019 and 2018, respectively.

Note 11 - Income Taxes

The Company recorded an income tax expense of $19.7 million and an income tax benefit of $3.9 million for the three months ended September 30, 2019 and 2018, respectively. The Company recorded an income tax expense of $19.4 million and an income tax benefit of $124.6 million for the nine months ended September 30, 2019 and 2018, respectively. The 2019 income tax expense primarily related to the increase in the valuation allowance for U.S foreign tax credits and the 2018 income tax benefit primarily related to the settlement of the Redemption Note.

The Company records valuation allowances on certain of its U.S. and foreign deferred tax assets. In assessing the need for a valuation allowance, the Company considers whether it is more likely than not that the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income. In the assessment of the valuation allowance, appropriate consideration is given to all positive and negative evidence including recent operating profitability, forecast of future earnings and the duration of statutory carryforward periods.

Wynn Macau SA received a five year exemption from Macau's 12% Complementary Tax on casino gaming profits through December 31, 2020. Accordingly, for the three months ended September 30, 2019 and 2018, the Company was exempt from the payment of such taxes totaling $13.4 million and $26.8 million, respectively. For the nine months ended September 30, 2019 and 2018, the Company was exempt from the payment of such taxes totaling $56.0 million and $73.7 million, 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.

Note 12 - Earnings Per Share

Basic earnings per share ("EPS") is computed by dividing net income (loss) attributable to Wynn Resorts by the weighted average number of common shares outstanding during the period. Diluted EPS is computed by dividing net income attributable to Wynn Resorts by the weighted average number of common shares outstanding during the period increased to include the number of additional shares of common stock that would have been outstanding if the potential dilutive securities had been issued. Potentially dilutive securities include outstanding stock options and unvested restricted stock.

The weighted average number of common and common equivalent shares used in the calculation of basic and diluted EPS consisted of the following (in thousands, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Numerator:				
Net income (loss) attributable to Wynn Resorts, Limited	**$ (3,496)**	**$ 156,115**	**$ 195,927**	**$ 107,564**
Denominator:				
Weighted average common shares outstanding	106,707	108,064	106,791	106,162
Potential dilutive effect of stock options and restricted stock	—	469	233	559
Weighted average common and common equivalent shares outstanding	**106,707**	**108,533**	**107,024**	**106,721**
Net income (loss) attributable to Wynn Resorts, Limited per common share, basic	$ (0.03)	$ 1.44	$ 1.83	$ 1.01

Net income (loss) attributable to Wynn Resorts, Limited per common share, diluted	$ (0.03)	$ 1.44	$ 1.83	$ 1.01
Anti-dilutive stock options and restricted stock excluded from the calculation of diluted net income per share	850	234	379	109

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(unaudited)

Note 13 - Leases

Lessee Arrangements

The following table summarizes the balance sheet classification of the Company's lease assets and liabilities (in thousands):

	Balance Sheet Classification		September 30, 2019
Assets			
Operating leases	Operating lease assets	$	444,157
Finance leases	Property and equipment, net	$	26,411
Current liabilities			
Operating leases	Other accrued liabilities	$	15,802
Finance leases	Other accrued liabilities	$	162
Non-current liabilities			
Operating leases	Long-term operating lease liabilities	$	149,970
Finance leases	Other long-term liabilities	$	17,789

The following tables disclose the components of the Company's lease cost, supplemental cash flow disclosures, and other information regarding the Company's lease arrangements (dollars in thousands):

	Three Months Ended September 30, 2019	Nine Months Ended September 30, 2019
Lease cost:		
Operating lease cost	$ 8,367	$ 24,691
Short-term lease cost	6,836	17,576
Amortization of leasehold interests in land	3,416	9,956
Variable lease cost	1,209	3,685
Finance lease interest cost	273	785
Total lease cost	**$ 20,101**	**$ 56,693**

	Nine Months Ended September 30, 2019
Supplemental cash flow disclosures:	
Operating lease liabilities arising from obtaining operating lease assets	$ 29,261
Finance lease liabilities arising from obtaining finance lease assets	$ 1,413
Cash paid for amounts included in the measurement of lease liabilities:	
Cash used in operating activities - Operating leases	$ 23,073
Cash used in financing activities - Finance leases	$ 36

	September 30, 2019
Other information:	
Weighted-average remaining lease term - Operating leases	37.8 years
Weighted-average remaining lease term - Finance leases	42.9 years
Weighted-average discount rate - Operating leases	6.5%
Weighted-average discount rate - Finance leases	6.2%

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(unaudited)

The following table presents an analysis of lease liability maturities (in thousands):

Years Ending December 31,	Operating Leases	Finance Leases
2019 (excluding the nine months ended September 30, 2019)	$ 7,988	$ 300
2020	26,424	1,203
2021	21,872	1,203
2022	18,106	1,203
2023	17,149	1,203
Thereafter	481,084	67,490
Total undiscounted cash flows	**$ 572,623**	**$ 72,602**
Present value		
Short-term lease liabilities	$ 15,802	$ 162
Long-term lease liabilities	149,970	17,789
Total lease liabilities	**$ 165,772**	**$ 17,951**
Interest on lease liabilities	**$ 406,851**	**$ 54,651**

Ground Leases

Undeveloped Land - Las Vegas

The Company leases approximately 16 acres of undeveloped land on Las Vegas Boulevard directly across from Wynn Las Vegas in Las Vegas, Nevada, which expires in 2097. The ground lease payments, which increase at a fixed rate over the term of the lease, are $3.8 million per year until 2023 and total payments of $367.8 million thereafter. As of September 30, 2019, the liability associated with this lease was $62.5 million.

At September 30, 2019, operating lease assets included approximately $87.2 million related to an amount allocated to the leasehold interest in land upon the acquisition of a group of assets in 2018. The Company expects that the amortization of this amount will be $1.1 million each year from 2020 through 2096 and $0.7 million in 2097.

Macau Land Concessions

Wynn Palace and Wynn Macau were built on land that is leased under Macau land concession contracts each with terms of 25 years from May 2012 and August 2004, respectively, which may be renewed with government approval for successive 10-year periods in accordance with Macau legislation. The land concession payments are expected to be $1.6 million per year through 2023 and total payments of $17.0 million thereafter through 2037. At September 30, 2019, the total liability associated with these leases was $15.7 million.

At September 30, 2019, operating lease assets included $194.2 million of leasehold interests in land related to the Wynn Palace and Wynn Macau land concessions. The Company expects that the amortization associated with these leasehold interests will be approximately $12.5 million per year from 2020 through 2028 and approximately $9.1 million per year thereafter through 2037.

Lessor Arrangements

The following table presents the minimum and contingent operating lease income for the periods presented (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Minimum rental income	$ 33,643	$ 29,901	$ 100,022	$ 92,204
Contingent rental income	13,589	11,177	40,505	39,795
Total rental income	**$ 47,232**	**$ 41,078**	**$ 140,527**	**$ 131,999**

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(unaudited)

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

Years Ending December 31,	Operating Leases
2019 (excluding the nine months ended September 30, 2019)	$ 34,889
2020	144,887
2021	87,673
2022	69,826
2023	53,091
Thereafter	162,779
Total future minimum rentals	**$ 553,145**

Note 14 - Commitments and Contingencies

Litigation

In addition to the actions noted below, the Company and its affiliates are involved in litigation arising in the normal course of business. In the opinion of management, such litigation is not expected to have a material effect on the Company's financial condition, results of operations and cash flows.

Massachusetts Gaming License Related Actions

On September 17, 2014, the Massachusetts Gaming Commission ("MGC") designated Wynn MA, LLC ("Wynn MA") the award winner of the Greater Boston (Region A) gaming license (the "Boston area license"). On November 7, 2014, the gaming license became effective.

Massachusetts Gaming Commission Investigation and Adjudicatory Hearing

On January 31, 2018, the Investigations & Enforcement Bureau ("IEB") of the MGC announced it had commenced an investigation into the Company's ongoing suitability as a gaming licensee in that jurisdiction related to the alleged inappropriate workplace conduct by the Company’s former CEO Stephen A. Wynn. The Company fully cooperated with the IEB's investigation. After a three-day adjudicatory hearing before the MGC, the MGC concluded that the Company and Wynn MA are suitable to maintain a Massachusetts gaming license, subject to a fine of $35.0 million, which the Company paid during the three months ended June 30, 2019, and the Company's fulfillment of other conditions set forth in the MGC decision.

Revere Action

On October 16, 2014, the City of Revere, the host community to the unsuccessful bidder for the Boston area license, the International Brotherhood of Electrical Workers, Local 103 ("IBEW"), and several individuals, filed a complaint against the MGC and its gaming commissioners in Suffolk Superior Court in Boston, Massachusetts (the "Revere Action"). Mohegan Sun ("Mohegan") the other applicant for the Boston area license, joined the lawsuit and challenged the MGC's award of the Boston area license. On December 3, 2015, the court granted the MGC's motion to dismiss the claims asserted in the Revere Action and the court dismissed all claims except Mohegan's claim alleging procedural error by the MGC in granting the license to Wynn MA. The plaintiffs appealed. After multiple appeals and cross appeals, only two claims remained: (1) individual plaintiffs' claim for violation of the open meeting laws; and (2) Mohegan's claim for procedural error. On July 12, 2019, the Suffolk Superior Court granted the MGC's motion for summary judgment and dismissed the open meeting law claim, leaving only Mohegan's procedural claim.

On August 2, 2019, Mohegan filed a motion to file a second amended complaint, to add new claims related to the MGC's allegedly inadequate 2013 investigation, using information, documents and testimony from the Massachusetts Gaming Commission Investigation and Adjudicatory Hearing. On October 15, 2019, the court granted Mohegan's motion to amend and allowed it to file a second amended intervenor's complaint.

Wynn MA was not named in the Revere Action. The MGC retained private legal representation at its own nontaxpayer-funded expense.

Suffolk Action

On September 17, 2018, Sterling Suffolk Racecourse, LLC, owner of the property proposed for location of a casino by an unsuccessful bidder for the Boston area license filed a complaint in the United States District Court, District of Massachusetts, against the Company, Wynn MA, certain current and former officers of the Company, FBT Everett Realty, LLC, former owner of the land on which Encore Boston Harbor is located ("FBT"), and Paul Lohnes, a member of FBT. The complaint alleges, among other things, the defendants violated the RICO Act, conspired to circumvent the application process for the Boston area license and violated Massachusetts law with respect to unfair methods of competition. The plaintiff seeks $1.0 billion in compensatory damages and treble damages. All defendants filed motions to dismiss the complaint. On May 7, 2019, the court held a hearing on the motions to dismiss and stayed all discovery pending a decision on the motions.

The Company will vigorously defend against the claims asserted. This action is in preliminary stages and management has determined that based on proceedings to date, it is currently unable to determine the probability of the outcome of this action or the range of reasonably possible loss, if any.

Nevada Gaming Control Board Investigation

On January 25, 2019, the Nevada Gaming Control Board filed a complaint against the Company and its indirect subsidiary, Wynn Las Vegas, LLC ("NGCB Respondents"), related to the alleged inappropriate personal conduct by Stephen A. Wynn in the workplace. Simultaneously, the NGCB Respondents entered into a Stipulation for Settlement of the complaint, under which, among other things, the NGCB Respondents agreed to pay a fine in an amount to be determined by the Nevada Gaming Commission, and the Nevada Gaming Control Board agreed not to seek to revoke or limit the NGCB Respondents' licenses, findings of suitability or any other gaming approvals. On February 26, 2019, the Nevada Gaming Commission approved the Stipulation for Settlement and fined the Company $20.0 million, which was paid during the three months ended March 31, 2019.

Derivative Litigation

A number of stockholder derivative actions have been filed in state and federal court located in Clark County, Nevada against certain current and former members of the Company's Board of Directors and, in some cases, the Company's current and former officers. Each of the complaints alleges, among other things, breach of fiduciary duties in failing to detect, prevent and remedy alleged inappropriate personal conduct by Stephen A. Wynn in the workplace. On September 19, 2018, the Board established a Special Litigation Committee (the "SLC") to investigate the allegations in the State Derivative Case (as defined below).

The actions filed in the Eighth Judicial District Court of Clark County, Nevada have been consolidated as *In re Wynn Resorts, Ltd. Derivative Litigation* ("State Derivative Case"). On October 26, 2018, the SLC filed a motion to intervene and stay the State Derivative Case pending completion of its investigation, which the court granted (the "SLC Stay"). A status hearing considering a number of matters related to the State Derivative Case is scheduled for November 13, 2019.

In 2018, several actions filed in the United States District Court, District of Nevada were consolidated as*In re Wynn Resorts, Ltd. Derivative Litigation* ("Federal Derivative Case"), which also claim corporate waste and violation of Section 14(a) of the Exchange Act. In June 2018, the Company filed a motion to dismiss and a motion to stay pending resolution of the Securities Action (described below). On March 29, 2019, the Court granted the Company's request for a stay.

On March 25, 2019, a separate stockholder derivative action was filed in the United States District Court, District of Nevada alleging identical causes of action as the Federal Derivative Case with the additional allegation that the Board of Directors improperly refused the stockholder's demand to commence litigation against the officers and directors of the Company. On June 10, 2019, the Company filed a motion to dismiss, or alternatively to consolidate this action into the Federal Derivative Case, which is stayed. The motion is currently pending before the court.

On June 3, 2019, a separate stockholder derivative action was filed in the Eighth Judicial District Court of Clark County, Nevada alleging substantially similar causes of action as the State Derivative Case with the additional allegation that various of the Company's attorneys committed professional malpractice, and certain current and former executives also breached fiduciary duties and aided and abetted the breach of fiduciary duties, in connection with the alleged inappropriate personal conduct by Stephen A. Wynn in the workplace. On July 26, 2019, the plaintiff voluntarily dismissed Matt Maddox, Stephen A. Wynn, Kimmarie Sinatra, John J. Hagenbuch, Ray R. Irani, Jay L. Johnson, Robert J. Miller, Patricia Mulroy, Clark T. Randt, Jr., Alvin V. Shoemaker, J. Edward Virtue, D. Boone Wayson, and one of the Company's law firms from the action. On September 19, 2019, the court entered an order consolidating this action into the State Derivative Case, the effect of which the Company is seeking clarification.

Each of the actions seeks to recover for the Company unspecified damages, including restitution and disgorgement of profits, and also seeks to recover attorneys' fees, costs and related expenses for the plaintiff.

Individual Stockholder Actions

A number of stockholders have filed individual actions in the Eighth Judicial District Court of Clark County, Nevada against certain current and former members of the Company's Board of Directors and certain of the Company's current and former officers ("Individual Stockholder Actions"). Each of the complaints alleges that defendants, among other things, breached their fiduciary duties in failing to detect, prevent and remedy alleged inappropriate personal conduct by Stephen A. Wynn in the workplace causing injury to each of the individual stockholders.

On January 29, 2019, the defendants filed motions to dismiss each of the Individual Stockholder Actions. The court held a hearing on defendants' motions to dismiss on September 18, 2019, and took the matter under advisement.

Securities Action

On February 20, 2018, a putative securities class action was filed against the Company and certain current and former officers of the Company in the United States District Court, Southern District of New York (which was subsequently transferred to the United States District Court, District of Nevada) by John V. Ferris and Joann M. Ferris on behalf of all persons who purchased the Company's common stock between February 28, 2014 and January 25, 2018. The complaint alleges, among other things, certain violations of federal securities laws and seeks to recover unspecified damages as well as attorneys' fees, costs and related expenses for the plaintiffs. The defendants have filed motions to dismiss, which are currently pending before the court.

The defendants in these actions will vigorously defend against the claims pleaded against them. These actions are in preliminary stages and management has determined that based on proceedings to date, it is currently unable to determine the probability of the outcome of these actions or the range of reasonably possible loss, if any.

Aruze and Affiliates Litigation

On February 18, 2012, the Board of Directors of Wynn Resorts determined that Universal Entertainment Corp., Aruze (together with Universal Entertainment Corp, the "Universal Parties") and Kazuo Okada, and the related parties (collectively, the "Okada Parties") were "unsuitable persons" under the Company's articles and redeemed and canceled Aruze's 24,549,222 shares of Wynn Resorts' common stock, and, pursuant to its articles of incorporation, Wynn Resorts issued the Redemption Note to Aruze in redemption of the shares. The next day, Wynn Resorts filed an action alleging breaches of fiduciary duty and related claims (the "Redemption Action"). The Okada Parties denied the claims and asserted counterclaims.

On March 8, 2018, the Company entered into a settlement agreement (the "Settlement Agreement") by and between the Company and its individual directors and officers (the "Wynn Parties"), and the Universal Parties. The Settlement Agreement resolved all legal proceedings pending between the settling parties in the Redemption Action. The Universal Parties further released any claims against the Wynn Parties and their affiliates in any other jurisdiction, including a proceeding pending in Macau against Wynn Resorts (Macau) S.A. ("Wynn Macau SA") and certain related individuals ("Macau Litigation"). Subsequently the Company voluntarily dismissed its claim for breach of fiduciary duty against Kazuo Okada.

In 2015, the Okada Parties filed a complaint in the Court of First Instance of Macau ("Macau Court") against Wynn Macau SA and certain individuals who are or were directors of Wynn Macau SA or WML (collectively, the "Wynn Macau Parties"). On July 11, 2017, the Macau Court dismissed all of the Okada Parties' claims as unfounded, fined the Okada Parties, and ordered the Okada Parties to pay for court costs and the Wynn Macau Parties' attorney's fees. On or about October 16, 2017, the Okada Parties formally appealed in Macau. On February 21, 2019, the Macau Appellate Panel dismissed the appeal. Mr. Okada, who was at that time the only remaining claimant after the Universal Parties' withdrawal pursuant to the Settlement Agreement, failed to appeal within the prescribed time, resulting in the final resolution of the lawsuit in favor of the Wynn Macau Parties.

Derivative Litigation Related to Redemption Action

Two state derivative actions were commenced against the Company and all members of its Board of Directors in the Eighth Judicial District Court of Clark County, Nevada by the IBEW Local 98 Pension Fund and Danny Hinson (collectively, the "Derivative Plaintiffs") regarding the Redemption Action. On March 15, 2019, the parties filed a stipulation and order to dismiss

the action, with prejudice, which the court entered on March 18, 2019. Neither the Company nor any of the individual defendants made any form of payment in exchange for the dismissal of the action.

Note 15 - Retail Joint Venture

As of September 30, 2019 and December 31, 2018, the Retail Joint Venture had total assets of $95.3 million and $85.0 million, respectively, and total liabilities of $629.3 million and $619.6 million, respectively. As of September 30, 2019 and December 31, 2018, the Retail Joint Venture's liabilities included long-term debt of $611.6 million and $611.1 million, respectively, net of debt issuance costs, related to the outstanding borrowings under the Retail Term Loan.

Note 16 - Segment Information

The Company reviews the results of operations for each of its operating segments, and identifies reportable segments based upon factors such as geography, regulatory environment, and the Company's organizational and management reporting structure. Wynn Macau and Encore, an expansion at Wynn Macau, are managed as a single integrated resort and have been aggregated as one reportable segment ("Wynn Macau"). Wynn Palace is presented as a separate reportable segment and is combined with Wynn Macau for geographical presentation. Wynn Las Vegas, Encore, an expansion at Wynn Las Vegas, and the Retail Joint Venture are managed as a single integrated resort and have been aggregated as one reportable segment ("Las Vegas Operations"). On June 23, 2019, the Company opened Encore Boston Harbor, an integrated resort in Everett, Massachusetts. Encore Boston Harbor is presented as one reportable segment.

The Company also reviews construction and development activities for each of its projects under development, in addition to its reportable segments. Other Macau primarily represents the assets for the Company's Macau holding company.

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The following tables present the Company's segment information (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	**2018**	**2019**	**2018**
Operating revenues				
Macau Operations:				
Wynn Palace				
Casino	$ 497,657	$ 625,586	$ 1,649,377	$ 1,719,072
Rooms	44,884	44,296	131,382	125,461
Food and beverage	30,256	27,619	87,691	80,519
Entertainment, retail and other (1)	25,374	33,071	85,259	91,952
	598,171	**730,572**	**1,953,709**	**2,017,004**
Wynn Macau				
Casino	408,820	503,557	1,340,266	1,515,859
Rooms	26,740	28,091	82,071	83,575
Food and beverage	19,584	17,693	60,688	55,193
Entertainment, retail and other (1)	19,137	30,279	61,621	86,518
	474,281	**579,620**	**1,544,646**	**1,741,145**
Total Macau Operations	**1,072,452**	**1,310,192**	**3,498,355**	**3,758,149**
Las Vegas Operations:				
Casino	87,002	92,886	318,439	329,264
Rooms	116,072	110,657	362,715	350,369
Food and beverage	149,708	148,562	438,525	445,251
Entertainment, retail and other (1)	46,724	46,775	145,002	147,041
Total Las Vegas Operations	**399,506**	**398,880**	**1,264,681**	**1,271,925**
Encore Boston Harbor:				
Casino	114,885	—	127,886	—
Rooms	18,180	—	19,785	—
Food and beverage	28,960	—	32,845	—
Entertainment, retail and other (1)	13,779	—	14,088	—
Total Encore Boston Harbor	**175,804**	**—**	**194,604**	**—**
Total operating revenues	**$ 1,647,762**	**$ 1,709,072**	**$ 4,957,640**	**$ 5,030,074**

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
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	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Adjusted Property EBITDA (2)				
Macau Operations:				
Wynn Palace	$ 162,167	$ 226,141	$ 551,918	$ 617,317
Wynn Macau	138,989	182,928	478,751	565,677
Total Macau Operations	**301,156**	**409,069**	**1,030,669**	**1,182,994**
Las Vegas Operations	88,046	95,298	333,747	362,051
Encore Boston Harbor	7,744	—	7,890	—
Total	**396,946**	**504,367**	**1,372,306**	**1,545,045**
Other operating expenses				
Litigation settlement	—	—	—	463,557
Pre-opening	1,616	13,714	99,212	35,255
Depreciation and amortization	172,998	137,458	449,824	411,685
Property charges and other	8,216	18,830	17,920	30,672
Corporate expenses and other	26,005	31,763	123,849	86,350
Stock-based compensation (3)	10,276	11,619	29,774	28,265
Total other operating expenses	**219,111**	**213,384**	**720,579**	**1,055,784**
Operating income	**177,835**	**290,983**	**651,727**	**489,261**
Other non-operating income and expenses				
Interest income	6,427	6,948	19,979	21,029
Interest expense, net of amounts capitalized	(114,652)	(93,007)	(300,981)	(281,132)
Change in derivatives fair value	(2,101)	(54)	(6,914)	(54)
Change in Redemption Note fair value	—	—	—	(69,331)
(Loss) gain on extinguishment of debt	(12,196)	(198)	(12,196)	2,131
Other	(8,703)	11,216	(3,346)	1,039
Total other non-operating income and expenses	**(131,225)**	**(75,095)**	**(303,458)**	**(326,318)**
Income before income taxes	**46,610**	**215,888**	**348,269**	**162,943**
Benefit (provision) for income taxes	(19,727)	3,884	(19,421)	124,631
Net income	**26,883**	**219,772**	**328,848**	**287,574**
Net income attributable to noncontrolling interests	(30,379)	(63,657)	(132,921)	(180,010)
Net income (loss) attributable to Wynn Resorts, Limited	**$ (3,496)**	**$ 156,115**	**$ 195,927**	**$ 107,564**

(1) Includes lease revenue accounted for under lease accounting guidance. For more information on leases, see Note 13, "Leases".

(2) Adjusted Property EBITDA is net income (loss) before interest, income taxes, depreciation and amortization, litigation settlement expense, pre-opening expenses, property charges and other, management and license fees, corporate expenses and other, stock-based compensation, (loss) gain on extinguishment of debt, change in derivatives fair value, change in Redemption Note fair value and other non-operating income and expenses. 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, as well as a basis for determining certain incentive compensation. The Company also presents Adjusted Property EBITDA because it is used by some investors 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 GAAP. In order to view the operations of their casinos on a more stand-alone basis, gaming companies, including us, have historically excluded from their EBITDA calculations pre-opening expenses, property charges, corporate expenses and stock-based compensation, that 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, income taxes and other non-recurring charges, which are not reflected in Adjusted Property EBITDA. Also, the Company's calculation of Adjusted Property EBITDA may be different from the calculation methods used by other companies and, therefore, comparability may be limited.

(3) Excludes $0.7 million included in pre-opening expenses for the nine months ended September 30, 2019, and $0.2 million and $0.5 million for the three and nine months ended September 30, 2018, respectively.

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	September 30, 2019	December 31, 2018
Assets		
Macau Operations:		
Wynn Palace	$ 3,730,804	$ 3,858,904
Wynn Macau	1,680,088	1,903,921
Other Macau	71,485	68,487
Total Macau Operations	**5,482,377**	**5,831,312**
Las Vegas Operations	2,835,398	2,792,508
Encore Boston Harbor	2,481,267	1,865,286
Corporate and other	2,478,016	2,727,163
Total	**$ 13,277,058**	**$ 13,216,269**

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

The following discussion should be read in conjunction with, and is qualified in its entirety by, the condensed consolidated financial statements and the notes thereto included elsewhere in this Form 10-Q and the consolidated financial statements appearing in our annual report on Form 10-K for the year ended December 31, 2018. Unless the context otherwise requires, all references herein to the "Company," "we," "us," or "our," or similar terms, refer to Wynn Resorts, Limited, a Nevada corporation, and its consolidated subsidiaries. This discussion and analysis contains forward-looking statements. Please refer to the section below entitled "Special Note Regarding Forward-Looking Statements."

Overview

We are a designer, developer, owner and operator of destination casino resorts. In the Macau Special Administrative Region of the People's Republic of China ("Macau"), we own approximately 72% of Wynn Macau, Limited ("WML"), which includes the operations of the Wynn Palace and Wynn Macau resorts, which we refer to as our Macau Operations. In Las Vegas, Nevada, we operate and, with the exception of certain retail space, own 100% of Wynn Las Vegas. Additionally, we are a 50.1% owner and managing member of a joint venture that owns and leases certain retail space at Wynn Las Vegas (the "Retail Joint Venture"). We refer to Wynn Las Vegas and the Retail Joint Venture as our Las Vegas Operations. On June 23, 2019, we opened Encore Boston Harbor, an integrated resort in Everett, Massachusetts.

Macau Operations

We operate our Macau Operations under a 20-year casino concession agreement granted by the Macau government in June 2002. We lease from the Macau government approximately 51 acres of land in the Cotai area of Macau where Wynn Palace is located and 16 acres of land in downtown Macau's inner harbor where Wynn Macau is located.

Wynn Palace features the following as of September 30, 2019:

- Approximately 424,000 square feet of casino space, offering 24-hour gaming and a full range of games with 381 table games and 1,137 slot machines, private gaming salons and sky casinos;
- A luxury hotel with a total of 1,706 guest rooms, suites and villas;
- 14 food and beverage outlets;
- Approximately 106,000 square feet of high-end, brand-name retail space;
- Approximately 37,000 square feet of meeting and convention space;
- Recreation and leisure facilities, including a gondola ride, health club, spa, salon and pool; and
- Public attractions including a performance lake, floral art displays and fine art displays.

Wynn Macau features the following as of September 30, 2019:

- Approximately 272,000 square feet of casino space, offering 24-hour gaming and a full range of games with 329 table games and 706 slot machines, private gaming salons, sky casinos and a poker pit;
- Two luxury hotel towers with a total of 1,010 guest rooms and suites;
- 12 food and beverage outlets;
- Approximately 59,000 square feet of high-end, brand-name retail space;
- Approximately 31,000 square feet of meeting and convention space;
- Recreation and leisure facilities, including two health clubs, spas, a salon and a pool; and
- A rotunda show featuring a Chinese zodiac-inspired ceiling along with gold "prosperity tree" and "dragon of fortune" attractions.

In response to our evaluation of our Macau Operations and our commitment to creating a unique customer experience, we have made and expect to continue to make enhancements and refinements to these resorts.

Las Vegas Operations

Wynn Las Vegas is located at the intersection of the Las Vegas Strip and Sands Avenue, and occupies approximately 215 acres of land fronting the Las Vegas Strip.

Wynn Las Vegas features the following as of September 30, 2019:

- Approximately 194,000 square feet of casino space, offering 24-hour gaming and a full range of games with 236 table games and 1,789 slot machines, private gaming salons, a sky casino, a poker room, and a race and sports book;
- Two luxury hotel towers with a total of 4,748 guest rooms, suites and villas;
- 33 food and beverage outlets;
- Approximately 160,000 square feet of high-end, brand-name retail space (the majority of which is owned and operated by the Retail Joint Venture);
- Approximately 290,000 square feet of meeting and convention space;
- Two nightclubs and a beach club;
- Recreation and leisure facilities, including swimming pools, private cabanas, two full service spas and salons, and a wedding chapel; and
- A specially designed theater presenting "Le Rêve—The Dream," a water-based theatrical production and a theater presenting entertainment productions and various headliner entertainment acts.

In response to our evaluation of our Las Vegas Operations and our commitment to creating a unique customer experience, we have made and expect to continue to make enhancements and refinements to this resort.

Encore Boston Harbor

On June 23, 2019, the Company opened Encore Boston Harbor, an integrated resort in Everett, Massachusetts, adjacent to Boston along the Mystic River, which occupies approximately 33 acres of land.

Encore Boston Harbor features the following as of September 30, 2019:

- Approximately 210,000 square feet of casino space, offering 24-hour gaming and a full range of games with 145 table games and 3,101 slot machines, private and high-limit gaming areas, and a poker room;
- A luxury hotel tower with a total of 671 guest rooms and suites;
- 13 food and beverage outlets;
- One nightclub;
- Approximately 8,000 square feet of retail space;
- Approximately 71,000 square feet of meeting and convention space;
- Recreation and leisure facilities, including a spa and salon; and
- Public attractions including a waterfront park, floral displays, and water shuttle service to downtown Boston.

In response to our evaluation of Encore Boston Harbor and our commitment to creating a unique customer experience, we have made and expect to continue to make enhancements and refinements to this resort.

Construction and Development Opportunities

We recently completed our reconfiguration of the Wynn Las Vegas golf course and opened the golf course on October 11, 2019. We are constructing an approximately 430,000 square foot meeting and convention facility at Wynn Las Vegas. The facility will feature approximately 217,000 square feet of state-of-the-art meeting and convention space available for group reservations. Based on current designs, we estimate the total project budget to be approximately $425.0 million. As of September 30, 2019, we have incurred $302.7 million in total project costs. We expect to open the additional meeting and convention space in the first quarter of 2020.

We are currently reconfiguring the West Casino at Wynn Macau. When completed, the enhanced space will consist of approximately 44 mass market table games, a refurbished high-limit slot area, two new restaurants and approximately 7,000 square feet of retail space, and will provide for improved pedestrian access from the boardwalk. We estimate the total project budget to be approximately $70.0 million. We expect to complete the gaming enhancements and open the new restaurants in the fourth quarter of 2019, and we expect to open the new retail space at varying times in the fourth quarter of 2019 and first quarter of 2020.

We are in the preliminary planning and design stages of developing the Crystal Pavilion at Wynn Palace. We expect the Crystal Pavilion will become a unique world-class cultural destination, incorporating an art museum, an immersive theater and interactive installations, an expansive food hall, additional hotel rooms, and several signature entertainment features. We estimate construction of the initial phase of the Crystal Pavilion will begin in late 2021.

We are exploring various development opportunities with respect to the approximately 38 acres of land located on the Las Vegas Strip directly across from Wynn Las Vegas.

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

Key Operating Measures

Certain key operating measures specific to the gaming industry are included in our discussion of our operational performance for the periods for which the Condensed Consolidated Statements of Operations are presented. These key operating measures are defined below:

- Table drop in mass market for our Macau Operations is the amount of cash that is deposited in a gaming table's drop box plus cash chips purchased at the casino cage.
- Table drop for our Las Vegas Operations is the amount of cash and net markers issued that are deposited in a gaming table's drop box.
- Table drop for Encore Boston Harbor is the amount of cash and gross markers issued that are deposited in a gaming table's drop box.
- Rolling chips are non-negotiable identifiable chips that are used to track turnover for purposes of calculating incentives within our Macau Operations' VIP program.
- Turnover is the sum of all losing rolling chip wagers within our Macau Operations' VIP program.
- Table games win is the amount of table drop or turnover that is retained and recorded as casino revenues. Table games win is before discounts, commissions and the allocation of casino revenues to rooms, food and beverage and other revenues for services provided to casino customers on a complimentary basis.
- Slot machine win is the amount of handle (representing the total amount wagered) that is retained by us and is recorded as casino revenues. Slot machine win is after adjustment for progressive accruals and free play, but before discounts and the allocation of casino revenues to rooms, food and beverage and other revenues for services provided to casino customers on a complimentary basis.
- Average daily rate ("ADR") is calculated by dividing total room revenues, including complimentaries (less service charges, if any), by total rooms occupied.
- Revenue per available room ("REVPAR") is calculated by dividing total room revenues, including complimentaries (less service charges, if any), by total rooms available.
- Occupancy is calculated by dividing total occupied rooms, including complimentary rooms, by the total rooms available.

Below is a discussion of the methodologies used to calculate win percentages at our resorts.

In our VIP operations in Macau, customers primarily purchase rolling chips from the casino cage and can only use them to make wagers. Winning wagers are paid in cash chips. The loss of the rolling chips in the VIP operations is recorded as turnover and provides a base for calculating VIP win percentage. It is customary in Macau to measure VIP play using this rolling chip method. We expect our win as a percentage of turnover from these operations to be within the range of 2.7% to 3.0%.

In our mass market operations in Macau, customers may purchase cash chips at either the gaming tables or at the casino cage. The measurements from our VIP and mass market operations are not comparable as the measurement method used in our mass market operations tracks the initial purchase of chips at the table and at the casino cage, while the measurement method from our VIP operations tracks the sum of all losing wagers. Accordingly, the base measurement from the VIP operations is much larger than the base measurement from the mass market operations. As a result, the expected win percentage with the same amount of gaming win is lower in the VIP operations when compared to the mass market operations.

In Las Vegas, customers purchase chips at the gaming tables in exchange for cash and markers. Customers may then redeem markers at the gaming tables or at the casino cage. The cash and markers, net of redemptions, used to purchase chips are deposited in the gaming table's drop box. This is the base of measurement that we use for calculating win percentage. Each type of table game has its own theoretical win percentage. Our expected table games win percentage is 22% to 26%.

At Encore Boston Harbor, customers purchase chips at the gaming tables in exchange for cash and markers. Customers may then redeem markers only at the casino cage. The cash and gross markers used to purchase chips are deposited in the gaming table's drop box. This is the base of measurement that we use for calculating win percentage. Each type of table game has its own theoretical win percentage. Our expected table games win percentage is 16% to 20%.

Results of Operations

Summary of third quarter 2019 results

The following table summarizes our financial results for the periods presented (in thousands, except per share data):

	Three Months Ended September 30,				Nine Months Ended September 30,			
	2019	2018	Increase/ (Decrease)	Percent Change	2019	2018	Increase/ (Decrease)	Percent Change
Operating revenues	$ 1,647,762	$ 1,709,072	$ (61,310)	(3.6)	$ 4,957,640	$ 5,030,074	$ (72,434)	(1.4)
Net income (loss) attributable to Wynn Resorts, Limited	(3,496)	156,115	(159,611)	(102.2)	195,927	107,564	88,363	82.1
Diluted net income (loss) per share	(0.03)	1.44	(1.47)	(102.1)	1.83	1.01	0.82	81.2
Adjusted Property EBITDA (1)	396,946	504,367	(107,421)	(21.3)	1,372,306	1,545,045	(172,739)	(11.2)

(1) See Item 1—"Financial Statements," Note 16, "Segment Information," for a reconciliation of Adjusted Property EBITDA to net income (loss) attributable to Wynn Resorts, Limited.

The decrease in operating revenues for the three months ended September 30, 2019 was primarily driven by decreases of $132.4 million and $105.3 million from Wynn Palace and Wynn Macau, respectively. Operating revenues from Encore Boston Harbor were $175.8 million.

The decrease in net income (loss) attributable to Wynn Resorts, Limited for the three months ended September 30, 2019 was primarily driven by a decrease in VIP turnover and VIP table games win at our Macau Operations and increased depreciation expense from Encore Boston Harbor.

The decrease in Adjusted Property EBITDA for the three months ended September 30, 2019 was driven by decreases of $64.0 million, $43.9 million, and $7.3 million from Wynn Palace, Wynn Macau and our Las Vegas Operations, respectively. Adjusted Property EBITDA from Encore Boston Harbor was $7.7 million.

Financial results for the three months ended September 30, 2019 compared to the three months ended September 30, 2018.

Operating revenues

The following table presents our operating revenues (in thousands):

	Three Months Ended September 30,			
	2019	2018	Increase/ (Decrease)	Percent Change
Operating revenues				
Macau Operations:				
Wynn Palace	$ 598,171	$ 730,572	$ (132,401)	(18.1)
Wynn Macau	474,281	579,620	(105,339)	(18.2)
Total Macau Operations	**1,072,452**	**1,310,192**	**(237,740)**	(18.1)
Las Vegas Operations	399,506	398,880	626	0.2
Encore Boston Harbor (1)	175,804	—	175,804	—
	$ 1,647,762	**$ 1,709,072**	**$ (61,310)**	(3.6)

(1) Encore Boston Harbor opened on June 23, 2019.

The following table presents our casino and non-casino operating revenues (in thousands):

	Three Months Ended September 30,			
	2019	2018	Increase/ (Decrease)	Percent Change
Operating revenues				
Casino revenues	**$ 1,108,364**	**$ 1,222,029**	**$ (113,665)**	(9.3)
Non-casino revenues:				
Rooms	205,876	183,044	22,832	12.5
Food and beverage	228,508	193,874	34,634	17.9
Entertainment, retail and other	105,014	110,125	(5,111)	(4.6)
Total non-casino revenues	**539,398**	**487,043**	**52,355**	10.7
	$ 1,647,762	**$ 1,709,072**	**$ (61,310)**	(3.6)

Casino revenues for the three months ended September 30, 2019 were 67.3% of operating revenues, compared to 71.5% for the same period of 2018. Non-casino revenues for the three months ended September 30, 2019 were 32.7% of operating revenues, compared to 28.5% for the same period of 2018.

Casino revenues

Casino revenues decreased primarily due to decreased VIP turnover and VIP table games win at our Macau Operations, partially offset by increased mass market table drop and slot machine handle at our Macau Operations and casino revenues from Encore Boston Harbor totaling $114.9 million. The table below sets forth our casino revenues and associated key operating measures (dollars in thousands, except for win per unit per day):

	Three Months Ended September 30,			
	2019	2018	Increase/ (Decrease)	Percent Change
Macau Operations:				
Wynn Palace:				
Total casino revenues	$ 497,657	$ 625,586	$ (127,929)	(20.4)
VIP:				
Average number of table games	108	112	(4)	(3.6)
VIP turnover	$ 10,517,685	$ 15,525,637	$ (5,007,952)	(32.3)
VIP table games win	$ 335,277	$ 528,219	$ (192,942)	(36.5)
VIP win as a % of turnover	3.19%	3.40%	(0.21)	
Table games win per unit per day	$ 33,595	$ 51,463	$ (17,868)	(34.7)
Mass market:				
Average number of table games	216	206	10	4.9
Table drop	$ 1,298,827	$ 1,189,895	$ 108,932	9.2
Table games win	$ 324,177	$ 308,149	$ 16,028	5.2
Table games win %	25.0%	25.9%	(0.9)	
Table games win per unit per day	$ 16,346	$ 16,291	$ 55	0.3
Average number of slot machines	1,087	1,056	31	2.9
Slot machine handle	$ 973,676	$ 922,514	$ 51,162	5.5
Slot machine win	$ 47,289	$ 46,044	$ 1,245	2.7
Slot machine win per unit per day	$ 473	$ 474	$ (1)	(0.2)
Wynn Macau:				
Total casino revenues	$ 408,820	$ 503,557	$ (94,737)	(18.8)
VIP:				
Average number of table games	104	109	(5)	(4.6)
VIP turnover	$ 8,024,990	$ 13,966,931	$ (5,941,941)	(42.5)
VIP table games win	$ 221,097	$ 420,864	$ (199,767)	(47.5)
VIP win as a % of turnover	2.76%	3.01%	(0.25)	
Table games win per unit per day	$ 23,036	$ 42,061	$ (19,025)	(45.2)
Mass market:				
Average number of table games	205	200	5	2.5
Table drop	$ 1,319,405	$ 1,183,667	$ 135,738	11.5
Table games win	$ 272,511	$ 250,229	$ 22,282	8.9
Table games win %	20.7%	21.1%	(0.4)	
Table games win per unit per day	$ 14,440	$ 13,625	$ 815	6.0
Average number of slot machines	786	845	(59)	(7.0)
Slot machine handle	$ 999,985	$ 895,249	$ 104,736	11.7
Slot machine win	$ 46,981	$ 34,769	$ 12,212	35.1
Slot machine win per unit per day	$ 649	$ 447	$ 202	45.2

	Three Months Ended September 30,		Increase/ (Decrease)	Percent Change
	2019	2018		
Las Vegas Operations:				
Total casino revenues	$ 87,002	$ 92,886	$ (5,884)	(6.3)
Average number of table games	237	235	2	0.9
Table drop	$ 430,837	$ 404,033	$ 26,804	6.6
Table games win	$ 85,738	$ 86,709	$ (971)	(1.1)
Table games win %	19.9%	21.5%	(1.6)	
Table games win per unit per day	$ 3,927	$ 4,003	$ (76)	(1.9)
Average number of slot machines	1,783	1,823	(40)	(2.2)
Slot machine handle	$ 883,931	$ 810,120	$ 73,811	9.1
Slot machine win	$ 58,176	$ 55,937	$ 2,239	4.0
Slot machine win per unit per day	$ 355	$ 334	$ 21	6.3
Encore Boston Harbor (1):				
Total casino revenues	$ 114,885	$ —	$ 114,885	—
Average number of table games	145	—	145	—
Table drop	$ 379,626	$ —	$ 379,626	—
Table games win	$ 74,882	$ —	$ 74,882	—
Table games win %	19.7%	—%	19.7	
Table games win per unit per day	$ 5,631	$ —	$ 5,631	—
Average number of slot machines	3,101	—	3,101	—
Slot machine handle	$ 892,706	$ —	$ 892,706	—
Slot machine win	$ 62,381	$ —	$ 62,381	—
Slot machine win per unit per day	$ 219	$ —	$ 219	—

(1) Encore Boston Harbor opened on June 23, 2019.

Non-casino revenues

The table below sets forth our room revenues and associated key operating measures:

	Three Months Ended September 30,			
	2019	2018	Increase/ (Decrease)	Percent Change
Macau Operations:				
Wynn Palace:				
Total room revenues (dollars in thousands)	$ 44,884	$ 44,296	$ 588	1.3
Occupancy	97.2%	96.0%	1.2	
ADR	$ 273	$ 275	$ (2)	(0.7)
REVPAR	$ 265	$ 264	$ 1	0.4
Wynn Macau:				
Total room revenues (dollars in thousands)	$ 26,740	$ 28,091	$ (1,351)	(4.8)
Occupancy	99.4%	99.0%	0.4	
ADR	$ 283	$ 276	$ 7	2.5
REVPAR	$ 281	$ 273	$ 8	2.9
Las Vegas Operations:				
Total room revenues (dollars in thousands)	$ 116,072	$ 110,657	$ 5,415	4.9
Occupancy	87.9%	89.6%	(1.7)	
ADR	$ 306	$ 289	$ 17	5.9
REVPAR	$ 269	$ 259	$ 10	3.9
Encore Boston Harbor (1):				
Total room revenues (dollars in thousands)	$ 18,180	$ —	$ 18,180	—
Occupancy	69.6%	—%	69.6	
ADR	$ 465	$ —	$ 465	—
REVPAR	$ 324	$ —	$ 324	—

(1) Encore Boston Harbor opened on June 23, 2019.

Room revenues increased $22.8 million, primarily due to $18.2 million from Encore Boston Harbor and higher ADR at our Las Vegas Operations, partially offset by rooms out of service for renovations at Wynn Macau.

Food and beverage revenues increased $34.6 million, primarily due to $29.0 million from Encore Boston Harbor and increased covers at our high-volume restaurants at our Macau Operations.

Entertainment, retail and other revenues decreased $5.1 million, primarily due to the closure of certain owned retail outlets at Wynn Macau and their conversion to leased outlets beginning in the first quarter of 2019, the effect of which was partially offset by Entertainment, retail and other revenues of $13.8 million from Encore Boston Harbor. During the third quarter of 2018, Wynn Palace and Wynn Macau recorded business interruption insurance proceeds of $5.4 million and $5.3 million, respectively, related to the full settlement of claims from Typhoon Hato in 2017.

Operating expenses

The table below presents operating expenses (in thousands):

	Three Months Ended September 30,			
	2019	2018	Increase/ (Decrease)	Percent Change
Operating expenses:				
Casino	$ 722,692	$ 783,171	$ (60,479)	(7.7)
Rooms	75,188	62,965	12,223	19.4
Food and beverage	196,661	162,311	34,350	21.2
Entertainment, retail and other	42,078	44,028	(1,950)	(4.4)
General and administrative	246,442	192,327	54,115	28.1
Provision for doubtful accounts	4,036	3,285	751	22.9
Pre-opening	1,616	13,714	(12,098)	(88.2)
Depreciation and amortization	172,998	137,458	35,540	25.9
Property charges and other	8,216	18,830	(10,614)	(56.4)
Total operating expenses	**$ 1,469,927**	**$ 1,418,089**	**$ 51,838**	3.7

Total operating expenses increased $51.8 million compared to the third quarter of 2018, primarily due to operating expenses associated with the opening of Encore Boston Harbor on June 23, 2019, partially offset by decreased casino expenses and pre-opening expenses.

Casino expenses decreased commensurate with the decrease in casino revenues at our Macau Operations and Las Vegas Operations, partially offset by $64.8 million from Encore Boston Harbor.

Room expenses increased primarily due to $9.5 million from Encore Boston Harbor and an increase of $2.0 million at our Las Vegas Operations. The increase at our Las Vegas Operations was primarily due to increased payroll costs.

Food and beverage expenses increased primarily due to $28.3 million from Encore Boston Harbor and increases of $2.2 million and $2.4 million at Wynn Palace and Wynn Macau, respectively. The increases at Wynn Palace and Wynn Macau were driven by incremental costs associated with opening new food and beverage outlets at Wynn Palace and increased costs of goods sold.

Entertainment, retail and other expenses decreased $2.0 million, primarily due to the closure of certain owned retail outlets at Wynn Macau and their conversion to leased outlets beginning in the first quarter of 2019.

General and administrative expenses increased primarily due to the opening of Encore Boston Harbor, partially offset by a decrease of $8.9 million primarily related to corporate and other general and administrative expenses. The decrease in corporate and other general and administrative expenses was primarily due to a decrease in legal expenses.

For the three months ended September 30, 2019, pre-opening expenses totaled $1.6 million, which primarily related to the additional meeting and convention facility at our Las Vegas Operations. For the three months ended September 30, 2018, pre-opening expenses totaled $13.7 million, which primarily related to the development of Encore Boston Harbor.

Depreciation and amortization increased primarily due to additional depreciation expense of $36.3 million associated with the opening of Encore Boston Harbor.

Interest expense, net of capitalized interest

The following table summarizes information related to interest expense (dollars in thousands):

	Three Months Ended September 30,			
	2019	2018	Increase/ (Decrease)	Percent Change
Interest expense				
Interest cost, including amortization of debt issuance costs and original issue discount and premium	$ 117,960	$ 109,176	$ 8,784	8.0
Capitalized interest	(3,308)	(16,169)	12,861	(79.5)
	$ 114,652	**$ 93,007**	**$ 21,645**	23.3
Weighted average total debt balance	$ 9,261,889	$ 8,875,084		
Weighted average interest rate	5.08%	4.92%		

Interest costs increased due to an increase in the weighted average debt balance and weighted average interest rate. Capitalized interestdecreased due to the completion of Encore Boston Harbor construction activities on June 23, 2019.

Other non-operating income and expenses

We recorded a $12.2 million loss on extinguishment of debt for the three months ended September 30, 2019 related to the Refinancing Transactions. For more information on the Refinancing Transactions, see "Liquidity and Capital Resources."

We incurred a foreign currency remeasurement loss of $8.7 million and gain of $11.2 million for the three months ended September 30, 2019 and 2018, respectively. The impact of the exchange rate fluctuation of the Macau pataca, in relation to the U.S. dollar, on the remeasurements of U.S. dollar denominated debt and other obligations from our Macau-related entities drove the variability between periods.

Income taxes

We recorded an income tax expense of $19.7 million and an income tax benefit of $3.9 million for the three months ended September 30, 2019 and 2018, respectively. The 2019 income tax expense primarily related to the increase in the valuation allowance for U.S foreign tax credits and the2018 income tax benefit primarily related to an increase in deferred tax assets.

Net income attributable to noncontrolling interests

Net income attributable to noncontrolling interests was $30.4 million for the three months ended September 30, 2019, compared to $63.7 million for the same period of 2018. These amounts are primarily related to the noncontrolling interests' share of net income from WML.

Financial results for the nine months ended September 30, 2019 compared to the nine months ended September 30, 2018.

Operating revenues

The following table presents our operating revenues (in thousands):

	Nine Months Ended September 30,			
	2019	2018	Increase/ (Decrease)	Percent Change
Operating revenues				
Macau Operations:				
Wynn Palace	$ 1,953,709	$ 2,017,004	$ (63,295)	(3.1)
Wynn Macau	1,544,646	1,741,145	(196,499)	(11.3)
Total Macau Operations	**3,498,355**	**3,758,149**	**(259,794)**	(6.9)
Las Vegas Operations	1,264,681	1,271,925	(7,244)	(0.6)
Encore Boston Harbor (1)	194,604	—	194,604	—
	$ 4,957,640	**$ 5,030,074**	**$ (72,434)**	(1.4)

(1) Encore Boston Harbor opened on June 23, 2019.

The following table presents casino and non-casino operating revenues (in thousands):

	Nine Months Ended September 30,			
	2019	2018	Increase/ (Decrease)	Percent Change
Operating revenues				
Casino revenues	**$ 3,435,968**	**$ 3,564,195**	**$ (128,227)**	(3.6)
Non-casino revenues:				
Rooms	595,953	559,405	36,548	6.5
Food and beverage	619,749	580,963	38,786	6.7
Entertainment, retail and other	305,970	325,511	(19,541)	(6.0)
Total non-casino revenues	**1,521,672**	**1,465,879**	**55,793**	3.8
	$ 4,957,640	**$ 5,030,074**	**$ (72,434)**	(1.4)

Casino revenues for the nine months ended September 30, 2019 were 69.3% of operating revenues, compared to 70.9% for the same period of 2018. Non-casino revenues for the nine months ended September 30, 2019 were 30.7% of operating revenues, compared to 29.1% for the same period of 2018.

Casino revenues

Casino revenues decreased primarily due to decreased VIP turnover and VIP table games win at our Macau Operations and decreased table drop at our Las Vegas Operations, partially offset by increased mass market table drop at our Macau Operations and casino revenues from Encore Boston Harbor totaling $127.9 million. The table below sets forth our casino revenues and associated key operating measures (dollars in thousands, except for win per unit per day):

	Nine Months Ended September 30,			
	2019	2018	Increase/(Decrease)	Percent Change
Macau Operations:				
Wynn Palace:				
Total casino revenues	$ 1,649,377	$ 1,719,072	$ (69,695)	(4.1)
VIP:				
Average number of table games	111	114	(3)	(2.6)
VIP turnover	$ 36,533,594	$ 44,940,535	$ (8,406,941)	(18.7)
VIP table games win	$ 1,232,870	$ 1,348,291	$ (115,421)	(8.6)
VIP win as a % of turnover	3.37%	3.00%	0.37	
Table games win per unit per day	$ 40,868	$ 43,302	$ (2,434)	(5.6)
Mass market:				
Average number of table games	213	209	4	1.9
Table drop	$ 3,869,904	$ 3,625,959	$ 243,945	6.7
Table games win	$ 936,497	$ 898,876	$ 37,621	4.2
Table games win %	24.2%	24.8%	(0.6)	
Table games win per unit per day	$ 16,071	$ 15,750	$ 321	2.0
Average number of slot machines	1,092	1,062	30	2.8
Slot machine handle	$ 2,886,566	$ 2,921,582	$ (35,016)	(1.2)
Slot machine win	$ 142,257	$ 145,993	$ (3,736)	(2.6)
Slot machine win per unit per day	$ 477	$ 503	$ (26)	(5.2)
Wynn Macau:				
Total casino revenues	$ 1,340,266	$ 1,515,859	$ (175,593)	(11.6)
VIP:				
Average number of table games	109	111	(2)	(1.8)
VIP turnover	$ 27,494,650	$ 44,982,849	$ (17,488,199)	(38.9)
VIP table games win	$ 822,204	$ 1,223,219	$ (401,015)	(32.8)
VIP win as a % of turnover	2.99%	2.72%	0.27	
Table games win per unit per day	$ 27,634	$ 40,204	$ (12,570)	(31.3)
Mass market:				
Average number of table games	205	202	3	1.5
Table drop	$ 4,018,533	$ 3,799,636	$ 218,897	5.8
Table games win	$ 816,180	$ 758,748	$ 57,432	7.6
Table games win %	20.3%	20.0%	0.3	
Table games win per unit per day	$ 14,551	$ 13,747	$ 804	5.8
Average number of slot machines	813	902	(89)	(9.9)
Slot machine handle	$ 2,720,137	$ 2,861,703	$ (141,566)	(4.9)
Slot machine win	$ 127,690	$ 116,960	$ 10,730	9.2
Slot machine win per unit per day	$ 575	$ 475	$ 100	21.1

	Nine Months Ended September 30,			
	2019	2018	Increase/(Decrease)	Percent Change
Las Vegas Operations:				
Total casino revenues	$ 318,439	$ 329,264	$ (10,825)	(3.3)
Average number of table games	238	237	1	0.4
Table drop	$ 1,275,676	$ 1,344,344	$ (68,668)	(5.1)
Table games win	$ 323,503	$ 342,129	$ (18,626)	(5.4)
Table games win %	25.4%	25.4%	—	
Table games win per unit per day	$ 4,982	$ 5,297	$ (315)	(5.9)
Average number of slot machines	1,793	1,824	(31)	(1.7)
Slot machine handle	$ 2,484,880	$ 2,332,700	$ 152,180	6.5
Slot machine win	$ 167,848	$ 154,618	$ 13,230	8.6
Slot machine win per unit per day	$ 343	$ 310	$ 33	10.6
Encore Boston Harbor (1):				
Total casino revenues	$ 127,886	$ —	$ 127,886	—
Average number of table games	144	—	144	—
Table drop	$ 416,202	$ —	$ 416,202	—
Table games win	$ 81,482	$ —	$ 81,482	—
Table games win %	19.6%	—%	19.6	
Table games win per unit per day	$ 5,639	$ —	$ 5,639	—
Average number of slot machines	3,105	—	3,105	—
Slot machine handle	$ 990,634	$ —	$ 990,634	—
Slot machine win	$ 70,880	$ —	$ 70,880	—
Slot machine win per unit per day	$ 228	$ —	$ 228	—

(1) Encore Boston Harbor opened on June 23, 2019.

Non-casino revenues

The table below sets forth our room revenues and associated key operating measures:

	Nine Months Ended September 30,			
	2019	2018	Increase/(Decrease)	Percent Change
Macau Operations:				
Wynn Palace:				
Total room revenues (dollars in thousands)	$ 131,382	$ 125,461	$ 5,921	4.7
Occupancy	97.3%	96.3%	1.0	
ADR	$ 270	$ 261	$ 9	3.4
REVPAR	$ 262	$ 251	$ 11	4.4
Wynn Macau:				
Total room revenues (dollars in thousands)	$ 82,071	$ 83,575	$ (1,504)	(1.8)
Occupancy	99.2%	99.1%	0.1	
ADR	$ 285	$ 280	$ 5	1.8
REVPAR	$ 282	$ 277	$ 5	1.8
Las Vegas Operations:				
Total room revenues (dollars in thousands)	$ 362,715	$ 350,369	$ 12,346	3.5
Occupancy	86.9%	87.1%	(0.2)	
ADR	$ 325	$ 313	$ 12	3.8
REVPAR	$ 283	$ 273	$ 10	3.7
Encore Boston Harbor (1):				
Total room revenues (dollars in thousands)	$ 19,785	$ —	$ 19,785	—
Occupancy	69.3%	—%	69.3	
ADR	$ 493	$ —	$ 493	—
REVPAR	$ 341	$ —	$ 341	—

(1) Encore Boston Harbor opened on June 23, 2019.

Room revenues increased $36.5 million, primarily due to $19.8 million from Encore Boston Harbor and higher ADR at Wynn Palace and our Las Vegas Operations, partially offset by rooms out of service for renovations at Wynn Macau.

Food and beverage revenues increased $38.8 million, primarily due to $32.8 million from Encore Boston Harbor and increased covers at our high-volume restaurants at our Macau Operations.

Entertainment, retail and other revenues decreased $19.5 million primarily due to the closure of certain owned retail outlets at Wynn Macau and their conversion to leased outlets beginning in the first quarter of 2019, the effect of which was partially offset by Entertainment, retail and other revenues of $14.1 million from Encore Boston Harbor. During the third quarter of 2018, Wynn Palace and Wynn Macau recorded business interruption insurance proceeds of $5.4 million and $5.3 million, respectively, related to the full settlement of claims from Typhoon Hato in 2017.

Operating expenses

The table below presents operating expenses (in thousands):

	Nine Months Ended September 30,			
	2019	2018	Increase/ (Decrease)	Percent Change
Operating expenses:				
Casino	$ 2,197,750	$ 2,254,766	$ (57,016)	(2.5)
Rooms	205,042	189,837	15,205	8.0
Food and beverage	527,502	468,265	59,237	12.7
Entertainment, retail and other	129,636	138,647	(9,011)	(6.5)
General and administrative	665,988	545,543	120,445	22.1
Litigation settlement	—	463,557	(463,557)	(100.0)
Provision for doubtful accounts	13,039	2,586	10,453	404.2
Pre-opening	99,212	35,255	63,957	181.4
Depreciation and amortization	449,824	411,685	38,139	9.3
Property charges and other	17,920	30,672	(12,752)	(41.6)
Total operating expenses	**$ 4,305,913**	**$ 4,540,813**	**$ (234,900)**	(5.2)

Total operating expenses decreased $234.9 million compared to the nine months ended September 30, 2018, primarily due to a prior year litigation settlement expense of $463.6 million. The decrease was partially offset by operating expenses associated with the opening of Encore Boston Harbor on June 23, 2019.

Casino expenses decreased commensurate with the decrease in casino revenues at our Macau Operations and Las Vegas Operations, partially offset by $73.0 million of casino expenses from Encore Boston Harbor.

Room expenses increased primarily due to $10.0 million from Encore Boston Harbor and increases of $3.0 million and $1.5 million from our Las Vegas Operations and Wynn Palace, respectively. The increases from Wynn Palace and our Las Vegas Operations were primarily driven by increased payroll costs.

Food and beverage expenses increased primarily due to $31.9 million from Encore Boston Harbor and increases of $11.9 million, $8.7 million and $6.6 million at Wynn Palace, Wynn Macau and our Las Vegas Operations, respectively. The increases at Wynn Palace and Wynn Macau were driven by incremental costs associated with opening new food and beverage outlets at Wynn Palace and increased cost of goods sold. The increase at our Las Vegas Operations was primarily driven by increased payroll costs.

Entertainment, retail and other expenses decreased $9.0 million, primarily due to the closure of certain owned retail outlets at Wynn Macau and their conversion to leased outlets beginning in the first quarter of 2019.

General and administrative expenses increased primarily due to $67.1 million from Encore Boston Harbor and increases of $4.7 million, $9.2 million, and $4.9 million, at Wynn Palace, Wynn Macau, and our Las Vegas Operations, respectively. These increases were primarily attributable to increased payroll costs and property taxes at our Macau Operations and increased advertising costs at our Las Vegas Operations. Corporate and other general and administrative expenses increased $34.6 million, primarily due to a fine of $35.0 million assessed by the Massachusetts Gaming Commission.

Litigation settlement expense of $463.6 million was incurred in the first quarter of 2018 in connection with the repayment of the Redemption Note for claims related to the allegedly below-market interest rate of the Redemption Note.

The provision for doubtful accounts increased $8.0 million and $1.3 million at our Las Vegas Operations and Wynn Macau, respectively. The change was primarily due to the impact of historical collection patterns and current collection trends, as well as the specific review of customer accounts, on our estimated allowance for the respective periods.

For the nine months ended September 30, 2019 and 2018, pre-opening expenses totaled $99.2 million and $35.3 million, respectively, which primarily related to the development of Encore Boston Harbor.

Depreciation and amortization increased primarily due to additional depreciation expense of $41.6 million associated with the opening of Encore Boston Harbor.

Interest expense, net of capitalized interest

The following table summarizes information related to interest expense (dollars in thousands):

	Nine Months Ended September 30,			
	2019	2018	Increase/ (Decrease)	Percent Change
Interest expense				
Interest cost, including amortization of debt issuance costs and original issue discount and premium	$ 351,135	$ 318,792	$ 32,343	10.1
Capitalized interest	(50,154)	(37,660)	(12,494)	33.2
	$ 300,981	**$ 281,132**	**$ 19,849**	7.1
Weighted average total debt balance	9,277,142	9,022,065		
Weighted average interest rate	5.00%	4.71%		

Interest costs increased due to an increase in the weighted average debt balance and weighted average interest rate. Capitalized interest increased due to Encore Boston Harbor construction activities. Encore Boston Harbor opened on June 23, 2019.

Other non-operating income and expenses

During the first quarter of 2018, we repaid the $1.94 billion principal amount of the Redemption Note and recorded a loss of $69.3 million from the change in the fair value of the Redemption Note.

We recorded a $12.2 million loss on extinguishment of debt for the nine months ended September 30, 2019 related to the Refinancing Transactions. For more information on the Refinancing Transactions, see "Liquidity and Capital Resources." We recorded a $2.1 million net gain on extinguishment of debt for the nine months ended September 30, 2018, related to the repayment of the Redemption Note, Wynn Resorts' purchase of $40.0 million of Wynn Las Vegas' 5 1/2% Senior Notes due 2025 and 5 1/4% Senior Notes due 2027 and the execution of the supplemental indenture related to Wynn Las Vegas' 4 1/4% Senior Notes due 2023.

We incurred a foreign currency remeasurement loss of $3.3 million and gain of $1.0 million for the nine months ended September 30, 2019 and 2018, respectively. The changes were primarily due to the impact of the exchange rate fluctuation of the Macau pataca, in relation to the U.S. dollar, on the remeasurements of U.S. dollar denominated debt and other obligations from our Macau-related entities.

Income taxes

We recorded an income tax expense of $19.4 million and an income tax benefit of $124.6 million for the nine months ended September 30, 2019 and 2018, respectively. The 2019 income tax expense is primarily related to the increase in the valuation allowance for U.S foreign tax credits and 2018 income tax benefit primarily related to the settlement of the Redemption Note.

Net income attributable to noncontrolling interests

Net income attributable to noncontrolling interests was $132.9 million for the nine months ended September 30, 2019, compared to $180.0 million for the same period of 2018. These amounts are primarily related to the noncontrolling interests' share of net income from WML.

Adjusted Property EBITDA

We use Adjusted Property EBITDA to manage the operating results of our segments. Adjusted Property EBITDA is net income (loss) before interest, income taxes, depreciation and amortization, litigation settlement expense, pre-opening expenses, property charges and other, management and license fees, corporate expenses and other, stock-based compensation, (loss) gain on extinguishment of debt, change in derivatives fair value, change in Redemption Note fair value and other non-operating income and expenses. Adjusted Property EBITDA is presented exclusively as a supplemental disclosure because we believe that it is widely

used to measure the performance, and as a basis for valuation, of gaming companies. We use Adjusted Property EBITDA as a measure of the operating performance of our segments and to compare the operating performance of our properties with those of our competitors, as well as a basis for determining certain incentive compensation. We also present Adjusted Property EBITDA because it is used by some investors 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 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, corporate expenses and stock-based compensation, that 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, income taxes and other non-recurring charges, which are not reflected in Adjusted Property EBITDA. Also, the Company's calculation of Adjusted Property EBITDA may be different from the calculation methods used by other companies and, therefore, comparability may be limited.

The following table summarizes Adjusted Property EBITDA (in thousands) for Wynn Palace, Wynn Macau, Las Vegas Operations, and Encore Boston Harbor as reviewed by management and summarized in Item 1—"Notes to Condensed Consolidated Financial Statements," Note 16, "Segment Information." That footnote also presents a reconciliation of Adjusted Property EBITDA to net income (loss) attributable to Wynn Resorts, Limited.

	Three Months Ended September 30,				Nine Months Ended September 30,			
	2019	2018	Increase/ (Decrease)	Percent Change	2019	2018	Increase/ (Decrease)	Percent Change
Wynn Palace	$ 162,167	$ 226,141	$ (63,974)	(28.3)	$ 551,918	$ 617,317	$ (65,399)	(10.6)
Wynn Macau	138,989	182,928	(43,939)	(24.0)	478,751	565,677	(86,926)	(15.4)
Las Vegas Operations	88,046	95,298	(7,252)	(7.6)	333,747	362,051	(28,304)	(7.8)
Encore Boston Harbor	7,744	—	7,744	—	7,890	—	7,890	—

Adjusted Property EBITDA at Wynn Palace decreased 28.3% and 10.6% for the three and nine months ended September 30, 2019, respectively, primarily due to a decrease in VIP turnover and VIP table games win.

Adjusted Property EBITDA at Wynn Macau decreased 24.0% for the three months ended September 30, 2019, primarily due to a decrease in VIP turnover and VIP table games win. Adjusted Property EBITDA at Wynn Macau decreased 15.4% for the nine months ended September 30, 2019 primarily due to a decrease in VIP turnover and VIP table games win, a decrease in entertainment, retail and other revenues primarily related to the closure of certain owned retail outlets, and increased general and administrative expenses.

Adjusted Property EBITDA at our Las Vegas Operations decreased 7.6% for the three months ended September 30, 2019, primarily due to a decrease in table games win percentage and increases in general and administrative expenses and provision for doubtful accounts. Adjusted Property EBITDA at our Las Vegas Operations decreased 7.8% for the nine months ended September 30, 2019 primarily due to decreased table drop, increased food and beverage expenses, general and administrative expenses and provision for doubtful accounts.

Adjusted Property EBITDA at Encore Boston Harbor was $7.7 million and $7.9 million for the three and nine months ended September 30, 2019. Encore Boston Harbor opened on June 23, 2019.

Refer to the discussions above regarding the specific details of our results of operations.

Liquidity and Capital Resources

Our cash flows were as follows (in thousands):

	Nine Months Ended September 30,	
Cash Flows - Summary	**2019**	**2018**
Net cash provided by operating activities	**$ 779,885**	**$ 497,889**
Net cash used in investing activities:		
Capital expenditures, net of construction payables and retention	(878,335)	(1,154,255)
Purchase of intangible and other assets	(6,000)	(102,388)
Proceeds from the sale or maturity of investment securities	—	359,461
Purchase of investment securities	—	(34,098)
Proceeds from sale of assets	592	2,387
Net cash used in investing activities	**(883,743)**	**(928,893)**
Net cash used in financing activities:		
Proceeds from issuance of long-term debt	2,549,072	2,288,605
Repayments of long-term debt	(2,443,367)	(3,030,526)
Proceeds from note receivable from sale of ownership interest in subsidiary	—	75,000
Proceeds from issuance of common stock, net of issuance costs	—	915,187
Repurchase of common stock	(65,705)	(2,805)
Finance lease payment	(36)	—
Proceeds from exercise of stock options	14,696	20,313
Dividends paid	(460,139)	(350,694)
Distribution to noncontrolling interest	(3,725)	(301,113)
Payments to acquire derivatives	—	(3,900)
Payments for financing costs	(22,359)	(33,787)
Net cash used in financing activities	**(431,563)**	**(423,720)**
Effect of exchange rate on cash, cash equivalents and restricted cash	**(1,610)**	**1,090**
Decrease in cash, cash equivalents and restricted cash	**$ (537,031)**	**$ (853,634)**

Operating Activities

Our operating cash flows primarily consist of operating income (excluding depreciation and amortization and other non-cash charges), interest paid and earned, and changes in working capital accounts such as receivables, inventories, prepaid expenses, and payables. Our table games play is a mix of cash play and credit play, while our slot machine play is conducted primarily on a cash basis. A significant portion of our table games revenue is attributable to the play of a limited number of premium international customers who gamble on credit. The ability to collect these gaming receivables may impact our operating cash flow for the period. Our rooms, food and beverage, and entertainment, retail and other revenue is conducted on a cash and credit basis. Accordingly, operating cash flows will be impacted by changes in operating income and accounts receivable, net.

The increase in net cash provided by operations was primarily driven by changes in our working capital accounts and an increase in deferred tax assets related to the settlement of the Redemption Note during the nine months ended September 30, 2018. In the nine months ended September 30, 2018, the Company recorded and paid a $463.6 million litigation settlement expense.

Investing Activities

During the nine months ended September 30, 2019, we incurred capital expenditures of $421.4 million related to the construction of Encore Boston Harbor, $104.1 million at Wynn Macau primarily related to the room remodel and West Casino renovation, $47.2 million and $71.9 million at Wynn Palace and our Las Vegas Operations, respectively, primarily related to

maintenance capital expenditures, and $166.4 million primarily related to the construction of the additional meeting and convention space at Wynn Las Vegas and the reconfiguration of the Wynn Las Vegas golf course. During the nine months ended September 30, 2018, we incurred $603.6 million in capital expenditures, for Encore Boston Harbor and $336.2 million for the acquisition of land on the Las Vegas Strip directly across from Wynn Las Vegas.

Financing Activities

During the nine months ended September 30, 2019, we borrowed an additional $250.0 million term loan under the Wynn Resorts Credit Agreement, and in connection with the Refinancing Transactions described below, we repaid $991.3 million of outstanding principal under the Wynn America Credit Facilities and $746.3 million of outstanding principal under the Wynn Resorts Term Loan along with related financing costs, using proceeds from the borrowing of $1.03 billion under the WRF Credit Facilities and issuance of $750.0 million of WRF 2029 notes. We also repaid $174.7 million, net of amounts borrowed, on the Wynn Macau Senior Revolving Credit Facility. In addition, we used cash of $460.1 million for the payment of dividends.

During the nine months ended September 30, 2018, we repaid the Redemption Note principal amount of $1.94 billion using cash on hand and amounts borrowed under the Bridge Facility and the WA Senior Revolving Credit Facility. In April 2018, we repaid all amounts borrowed under the Bridge Facility and the WA Senior Revolving Credit Facility using net proceeds of $915.2 million from a registered public equity offering. In addition, during the nine months ended September 30, 2018, we borrowed $624.4 million under the Macau Senior Revolving Credit Facility, $615.0 million under the Retail Term Loan, and we used cash of $350.7 million for the payment of dividends and $301.1 million for distributions to noncontrolling interest holders of the Retail Joint Venture.

Capital Resources

The following table summarizes our unrestricted cash and cash equivalents and available revolver borrowing capacity under the Company as of September 30, 2019 (in thousands):

	Total Cash and Cash Equivalents	Revolver Borrowing Capacity
Wynn Macau, Limited	$ 947,206	$ 298,322
Wynn Resorts Finance, LLC	17,001	806,950
Wynn Resorts, Limited and other	712,625	—
Total cash and cash equivalents	**$ 1,676,832**	**$ 1,105,272**

Wynn Macau, Limited generates cash from our Macau Operations, which we expect to use to service our Wynn Macau Credit Facilities and WML Notes, pay dividends to shareholders of WML (of which we own approximately 72%), and fund working capital and capital expenditure requirements. The Wynn Macau Credit Facilities contain customary negative covenants and financial covenants, including, but not limited to, covenants that restrict our ability to pay dividends or distributions to any direct or indirect subsidiaries.

Wynn Resorts Finance, LLC (formerly known as Wynn America, LLC) ("WRF") generates cash from dividends and distributions from its subsidiaries, including Wynn Macau, Limited, and contributions from Wynn Resorts as required. We expect to use WRF cash to service our WRF Senior Secured Credit Facilities, WRF 2029 Notes, and WLV Notes, make distributions to Wynn Resorts, and to fund working capital and capital expenditure requirements. The WRF Senior Secured Credit Facilities contain customary negative and financial covenants, including, but not limited to, covenants that restrict our ability to pay dividends or distributions to any direct or indirect subsidiaries.

Wynn Resorts, Limited 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. Wynn Resorts, Limited and other primarily generates cash from royalty and management agreements with our resorts, dividends and distributions from our subsidiaries, and the operations of the Retail Joint Venture of which we own 50.1%. We expect to use this cash to service our Retail Term Loan, fund the construction of the additional meeting and convention space in Las Vegas, and pay dividends.

Refinancing Transactions

On September 20, 2019, WRF and its subsidiary Wynn Resorts Capital Corp. (collectively with WRF, the "WRF Issuers"), each an indirect wholly owned subsidiary of the Company, issued $750.0 million aggregate principal amount of 5 1/8% Senior

Notes due 2029 (the "2029 Notes") pursuant to an indenture (the "2029 Indenture") among the WRF Issuers, the guarantors party thereto, and U.S. Bank National Association, as trustee (the "Trustee"), in a private offering. The 2029 Notes were issued at par. Concurrently with the issuance of the 2029 Notes, WRF entered into a credit agreement (the "WRF Credit Agreement") providing for a new first lien term loan facility in an aggregate principal amount of $1.0 billion (the "WRF Term Loan") and a new first lien revolving credit facility in an aggregate principal amount of $850.0 million (the "WRF Revolver" and together with the WRF Term Loan, the "WRF Senior Secured Credit Facilities") (the WRF Senior Secured Credit Facilities and 2029 Notes are collectively referred to as the "Refinancing Transactions").

Subject to certain exceptions, the WRF Senior Secured Credit Facilities bear interest at LIBOR plus 1.75% per annum. The annual fee required to pay for unborrowed amounts under the WRF Revolver, if any, is 0.25% per annum, payable quarterly in arrears, calculated based on the daily average of the unborrowed amounts under such credit facilities. The Company is required to make quarterly repayments on the WRF Term Loan of $12.5 million beginning in the fourth quarter of 2019, with any remaining principal amount outstanding repayable in full on September 20, 2024.

The WRF Credit Agreement contains restrictions that limit the amount of certain restricted payments WRF and its restricted subsidiaries may make, including dividends and distributions paid to Wynn Resorts. Such restrictions include WRF's requirement to maintain a Fixed Charge Coverage Ratio (as defined in the WRF Credit Agreement) greater than or equal to 2.00 to 1.00 and a Consolidated Total Net Leverage Ratio (as defined in the WRF Credit Agreement) not to exceed 5.50 to 1.00 at each fiscal quarter. WRF may make ordinary course dividends or distributions to Wynn Resorts in an amount not to exceed $1.0 billion in any fiscal year, with certain carryover provisions for unused amounts from the two preceding fiscal years, and unlimited provided that the Consolidated Total Net Leverage Ratio does not exceed 5.50 to 1.00 on a pro forma basis for the distribution, plus certain other amounts subject to thresholds and limitations.

The 2029 Notes will mature on October 1, 2029 and bear interest at the rate of 5 1/8% per annum, payable in arrears semi-annually on April 1 and October 1 of each year, beginning on April 1, 2020. The 2029 Indenture contains covenants that limit the ability of the WRF Issuers and the guarantors to, among other things, create or incur liens to secure debt in excess of the greater of $1.85 billion or an amount that would cause the Consolidated Senior Secured Net Leverage Ratio (as defined in the 2029 Indenture) to be greater than 3.00 to 1.00.

Wynn Resorts Finance used the net proceeds from the Refinancing Transactions to refinance the existing Wynn America Credit Facilities and the Wynn Resorts Term Loan and to pay related fees and expenses.

For more information on the Refinancing Transactions, see Item 1—"Notes to Condensed Consolidated Financial Statements," Note 6, "Long-Term Debt."

Other Factors Affecting Liquidity

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.

Legal proceedings in which we are involved also may impact our liquidity. No assurance can be provided as to the outcome of such proceedings. In addition, litigation inherently involves significant costs. For information regarding legal proceedings, see Item 1—"Notes to Condensed Consolidated Financial Statements," Note 14, "Commitments and Contingencies."

Our Board of Directors has authorized an equity repurchase program of up to $1.0 billion. Under the equity repurchase program, we may repurchase the Company's outstanding shares 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. As of September 30, 2019, we had $800.1 million in repurchase authority remaining under the program.

We have in the past repurchased, and in the future, we may periodically consider repurchasing our outstanding notes for cash. The amount of any notes to be repurchased, as well as the timing of any repurchases, will be based on business, market and other conditions and factors, including price, contractual requirements or consents, and capital availability.

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 domestic and international markets. There can be no assurances regarding the business prospects with respect to any other opportunity. Any new development would require us to

obtain additional financing. We may decide to conduct any such development through Wynn Resorts, Limited or through subsidiaries separate from the Las Vegas or Macau-related entities.

Off-Balance Sheet Arrangements

We have not entered into any transactions with special purpose entities nor do we engage in any derivatives except for an interest rate collar associated with our Retail Term Loan. We do not have any retained or contingent interest in assets transferred to an unconsolidated entity. As of September 30, 2019, we had outstanding letters of credit totaling $18.1 million.

Contractual Commitments

During the nine months ended September 30, 2019, there have been no material changes to the contractual obligations previously reported in our Annual Report on Form 10-K for the year ended December 31, 2018, other than an increase in our fixed interest rate long-term debt obligations of $750.0 million and an increase in our annual fixed interest payments of $38.4 million, offset by a decrease in our variable interest rate long-term debt obligations of $646.0 million and a decrease in our annual estimated variable interest payments of $47.5 million, primarily in connection with the Refinancing Transactions as described above.

Critical Accounting Policies and Estimates

A description of our critical accounting policies is included in Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2018. There have been no significant changes to these policies for the nine months ended September 30, 2019.

Recently Adopted Accounting Standards and Accounting Standards Issued But Not Yet Adopted

See related disclosure in Item 1—"Notes to Condensed Consolidated Financial Statements," Note 2, "Basis of Presentation and Significant Accounting Policies."

Special Note Regarding Forward-Looking Statements

We make forward-looking statements in this Quarterly Report on Form 10-Q based upon the beliefs and assumptions of our management and on information currently available to us. Forward-looking statements include, but are not limited to, information about our business strategy, development activities, competition and possible or assumed future results of operations, throughout this report and are often preceded by, followed by or include the words "may," "will," "should," "would," "could," "believe," "expect," "anticipate," "estimate," "intend," "plan," "continue" or the negative of these terms or similar expressions.

Forward-looking statements are subject to a number of risks and uncertainties that could cause actual results to differ materially from those we express in these forward-looking statements, including the risks and uncertainties in Item 1A — "Risk Factors" of our Annual Report on Form 10-K for the year ended December 31, 2018 and other factors we describe from time to time in our periodic filings with the Securities and Exchange Commission ("SEC"), such as:

- controversy and litigation related to Stephen A. Wynn and his separation from the Company;
- extensive regulation of our business and the cost of compliance or failure to comply with applicable laws and regulations;
- pending or future claims and legal proceedings, regulatory or enforcement actions or probity investigations;
- our ability to maintain our gaming licenses and concessions;
- our dependence on key employees;
- general global political and economic conditions, in the U.S. and China (including the Chinese government's ongoing anti-corruption campaign), which may impact levels of travel, leisure and consumer spending;
- restrictions or conditions on visitation by citizens of mainland China to Macau;
- the impact on the travel and leisure industry from factors such as an outbreak of an infectious disease, extreme weather patterns or natural disasters, military conflicts and any future security alerts and/or terrorist attacks;
- doing business in foreign locations such as Macau;
- our ability to maintain our customer relationships and collect and enforce gaming receivables;
- our relationships with Macau gaming promoters;
- our dependence on a limited number of resorts and locations for all of our cash flow and our subsidiaries' ability to pay us dividends and distributions;

- competition in the casino/hotel and resort industries and actions taken by our competitors, including new development and construction activities of competitors;
- factors affecting the development and success of new gaming and resort properties (including limited labor resources, government labor and gaming policies and transportation infrastructure in Macau; and cost increases, environmental regulation, and our ability to secure necessary permits and approvals in Everett, Massachusetts);
- construction risks (including disputes with and defaults by contractors and subcontractors; construction, equipment or staffing problems; shortages of materials or skilled labor; environment, health and safety issues; and unanticipated cost increases);
- legalization and growth of gaming in other jurisdictions;
- any violations by us of the anti-money laundering laws or Foreign Corrupt Practices Act;
- changes in gaming laws or regulations;
- changes in federal, foreign, or state tax laws or the administration of such laws;
- potential violations of law by Mr. Kazuo Okada, a former stockholder of ours;
- continued compliance with all provisions in our debt agreements;
- conditions precedent to funding under our credit facilities;
- leverage and debt service (including sensitivity to fluctuations in interest rates);
- cybersecurity risk, including misappropriation of customer information or other breaches of information security;
- our ability to protect our intellectual property rights; and
- our current and future insurance coverage levels.

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 available to us at the time this statement is made. We undertake no obligation to update or revise any forward-looking statement, whether as a result of new information, future developments or otherwise.

Item 3. 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. 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 will have the desired effect, and interest rate fluctuations could have a negative impact on our results of operations.

Interest Rate Sensitivity

As of September 30, 2019, approximately 54.5% of our long-term debt was based on fixed rates. Based on our borrowings as of September 30, 2019, an assumed 100 basis point change in the variable rates would cause our annual interest expense to change by $43.8 million.

In order to mitigate exposure to interest rate fluctuations on the Retail Term Loan, the Company entered into a five year interest rate collar with a notional value of $615.0 million. The interest rate collar establishes a range whereby the Company will pay the counterparty if one-month LIBOR falls below the established floor rate of 1.00%, and the counterparty will pay the Company if one-month LIBOR exceeds the ceiling rate of 3.75%.

Foreign Currency Risks

We expect most of the revenues and expenses for any casino that we operate in Macau will be denominated in Hong Kong dollars or Macau patacas; however, a significant portion of our Wynn Macau, Limited debt is denominated in U.S. dollars. Fluctuations in the exchange rates resulting in weakening of the Macau pataca or the Hong Kong dollar in relation to the U.S. dollar could have materially adverse effects on our results, financial condition and ability to service debt. Based on our balances

as of September 30, 2019, an assumed 1% change in the U.S. dollar/Hong Kong dollar exchange rate would cause a foreign currency transaction gain/loss of $27.7 million.

Item 4. Controls and Procedures

Disclosure Controls and Procedures

The Company's management, with the participation of the Company's Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), 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 the end of such period, the Company's disclosure controls and procedures were 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 were effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Management's Report on Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter to which this report relates that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Part II. OTHER INFORMATION

Item 1. 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. For information regarding the Company's legal proceedings see Item 1—"Notes to Condensed Consolidated Financial Statements," Note 14, "Commitments and Contingencies" of Part I in this Quarterly Report on Form 10-Q.

Item 1A. Risk Factors

A description of our risk factors can be found in Item 1A, Part I of our Annual Report on Form 10-K for the year ended December 31, 2018. There were no material changes to those risk factors during the nine months ended September 30, 2019 other than resolution of certain litigation as discussed in Item 1—"Notes to Condensed Consolidated Financial Statements," Note 14, "Commitments and Contingencies" of Part I in this Quarterly Report on Form 10-Q.

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

Issuer Purchases of Equity Securities

The following table summarizes the share repurchases made by the Company under its equity repurchase program during the quarter ended September 30, 2019:

For the Month Ended	Number of Shares Repurchased	Weighted Average Price Paid Per Share	Shares Repurchased as Part of a Publicly Announced Program	Approximate Dollar Value Remaining Under the Program (in thousands) (1)
July 31, 2019	—	$ —	—	$ 828,366
August 31, 2019	269,617	$ 104.63	269,617	$ 800,149
September 30, 2019	—	$ —	—	$ 800,149

(1) The Company's Board of Directors authorized an equity repurchase program in April of 2016 of up to $1.0 billion of our common stock. Repurchases may be made at the discretion of the Company from time to time on the open market or in privately negotiated transactions. The Company is not obligated to make any repurchases, and the repurchase program may be discontinued at any time. Any shares acquired are available for general corporate purposes. Any shares repurchased during the periods presented are recorded in Treasury Stock.

The following table summarizes the shares repurchased in satisfaction of tax withholding obligations on vested restricted stock during the quarter ended September 30, 2019, which were not part of the Company's publicly announced repurchase program:

For the Month Ended	Number of Shares Repurchased	Weighted Average Price Paid Per Share	Approximate Dollar Value of Repurchased Shares (in thousands)
July 31, 2019	11,644	$ 139.37	$ 1,623
August 31, 2019	1,150	$ 114.73	$ 132
September 30, 2019	910	$ 109.97	$ 101

Item 5. Other Information

None.

Item 6. Exhibits

(a) Exhibits

Exhibit No.	Description
3.1	Third Amended and Restated Articles of Incorporation of the Registrant. (Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on May 8, 2015.)
3.2	Eighth Amended and Restated Bylaws of the Registrant. (Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on November 6, 2015.)
*4.1	Indenture, dated as of September 20, 2019, by and among Wynn Resorts Finance, LLC, and Wynn Resorts Capital Corp., as joint and several obligors and the Guarantors named therein and U.S. Bank National Association, as trustee.
*10.1	Credit Agreement, dated as of September 20, 2019, by and among Wynn Resorts Finance, LLC, as borrower, the subsidiaries of borrower party hereto, as guarantors, Deutsche Bank AG New York Branch, as administrative agent and as collateral agent.
*31.1	Certification of Chief Executive Officer of Periodic Report Pursuant to Rule 13a – 14(a) and Rule 15d – 14(a).
*31.2	Certification of Chief Financial Officer of Periodic Report Pursuant to Rule 13a – 14(a) and Rule 15d – 14(a).
*32	Certification of CEO and CFO Pursuant to 18 U.S.C. Section 1350.
101	The following material from Wynn Resorts, Limited's Quarterly Report on Form 10-Q, formatted in Inline XBRL (Inline Extensible Business Reporting Language): (i) the Condensed Consolidated Balance Sheets as of September 30, 2019 and December 31, 2018; (ii) the Condensed Consolidated Statements of Operations for the three and nine months ended September 30, 2019 and 2018; (iii) the Condensed Consolidated Statements of Comprehensive Income (Loss) for the three and nine months ended September 30, 2019 and 2018; (iv) the Condensed Consolidated Statements of Stockholders' Equity for the three and nine months ended September 30, 2019 and 2018; (v) the Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2019 and 2018; and (vi) Notes to Condensed Consolidated Financial Statements. The instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
104	Cover Page Interactive Data File - The cover page XBRL tags are embedded within the Inline XBRL document.

Wynn Resorts, Limited agrees to furnish to the U.S. Securities and Exchange Commission, upon request, a copy of each agreement with respect to long-term debt not filed herewith in reliance upon the exemption from filing applicable to any series of debt which does not exceed 10% of the total consolidated assets of the company.

* Filed herein

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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

WYNN RESORTS, LIMITED

Dated: November 6, 2019

By: /s/ Craig S. Billings
Craig S. Billings
President, Chief Financial Officer and Treasurer
(Principal Financial and Accounting Officer)

Exhibit 4.1

WYNN RESORTS FINANCE, LLC
and
WYNN RESORTS CAPITAL CORP.,
as joint and several obligors

AND

EBH HOLDINGS, LLC,
EBH MA PROPERTY, LLC,
WYNN GROUP ASIA, INC.,
EVERETT PROPERTY, LLC,
WYNN AMERICA GROUP, LLC,
WYNN LAS VEGAS HOLDINGS, LLC,
WYNN LAS VEGAS, LLC,
WYNN MA, LLC,
WYNN SUNRISE, LLC
and
WYNN LAS VEGAS CAPITAL CORP.,
as guarantors

5.125% SENIOR NOTES DUE 2029

INDENTURE

Dated as of September 20, 2019

U.S. BANK NATIONAL ASSOCIATION

Trustee

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EXHIBIT A-1	FORM OF NOTE
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EXHIBIT B	FORM OF CERTIFICATE OF TRANSFER
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EXHIBIT D	FORM OF CERTIFICATE FROM ACQUIRING INSTITUTIONAL ACCREDITED INVESTOR
EXHIBIT E	FORM OF NOTATION OF GUARANTEE
EXHIBIT F	FORM OF SUPPLEMENTAL INDENTURE TO BE DELIVERED BY SUBSEQUENT GUARANTORS

INDENTURE dated as of September 20, 2019 among Wynn Resorts Finance, LLC, a Nevada limited liability company ("*Wynn Resorts Finance*") and Wynn Resorts Capital Corp., a Nevada corporation ("*Wynn Resorts Capital*," and together with Wynn Resorts Finance, the "*Issuers*"), as joint and several obligors, and EBH Holdings, LLC, a Nevada limited liability company, EBH MA Property, LLC, a Massachusetts limited liability company, Wynn Group Asia, Inc., a Nevada corporation, Everett Property, LLC, a Massachusetts limited liability company, Wynn America Group, LLC, a Nevada limited liability company, Wynn Las Vegas Holdings, LLC, a Nevada limited liability company, Wynn Las Vegas, LLC, a Nevada limited liability company, Wynn MA, LLC, a Nevada limited liability company, Wynn Sunrise, LLC, a Nevada limited liability company and Wynn Las Vegas Capital Corp, a Nevada corporation, as guarantors (the "*Initial Guarantors*") and U.S. Bank National Association, as trustee (the "*Trustee*").

The Issuers, the Initial Guarantors and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders (as defined) of the 5.125% Senior Notes due 2029 (the "*Notes*"):

ARTICLE 1.
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01*Definitions.*

"*144A Global Note*" means a Global Note substantially in the form of Exhibit A-1 hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee that shall be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"*2023 Notes*" means the 4.25% Senior Notes due 2023 of Wynn Las Vegas.

"*2025 Notes*" means the 5.50% Senior Notes due 2025 of Wynn Las Vegas.

"*2027 Notes*" means the 5.25% Senior Notes due 2027 of Wynn Las Vegas.

"*Act of Terrorism*" means an act of any person directed towards the overthrowing or influencing of any government de jure or de facto, or the inducement of fear in or the disruption of the economic system of any society, by force or by violence, including (i) the hijacking or destruction of any conveyance (including an aircraft, vessel, or vehicle), transportation infrastructure or building, (ii) the seizing or detaining, and threatening to kill, injure, or continue to detain, or the assassination of, another individual, (iii) the use of any (a) biological agent, chemical agent, or nuclear weapon or device, or (b) explosive or firearm, with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property, and (iv) a credible threat, attempt, or conspiracy to do any of the foregoing.

"*Additional Notes*" means Additional Notes (other than the Initial Notes) issued under this Indenture in accordance with Section 2.13 hereof, as part of the same series as the Initial Notes.

Any Additional Notes shall vote on all matters as one class with the Initial Notes being issued on the Issue Date, including, without limitation, waivers, amendments and redemptions.

"*Adjusted Treasury Rate*" means, with respect to any redemption date:

(1) the yield, under the heading which represents the average for the immediately preceding week, appearing in the most recently published statistical release designated "H.15(519)" or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption "Treasury Constant Maturities," for the maturity corresponding to the Comparable Treasury Issue (if no maturity is within three months before or after the Remaining Life, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue shall be determined and the Adjusted Treasury Rate shall be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month); or

(2) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per annum equal to the semiannual equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date.

The Adjusted Treasury Rate shall be calculated on the third Business Day preceding the redemption date or, in the case of a satisfaction and discharge or a defeasance, on the third Business Day prior to the date on which Wynn Resorts Finance deposits the amount required under this Indenture most nearly equal to the period from the redemption date to the maturity date.

"*Affiliate*" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; provided that beneficial ownership of 10% or more of the Voting Stock of a Person shall be deemed to be control. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"*Agent*" means any Registrar, Paying Agent or additional paying agent.

"*Allocable Overhead*" means, at any time with respect to each Qualifying Project, an amount equal to (1) the amount of corporate or other organizational overhead expenses of, and actually incurred by, an Issuer or any Guarantor calculated in good faith on a consolidated basis, after the elimination of intercompany transactions, in accordance with US GAAP, divided by (2) the number of Qualifying Projects. However, amounts allocated to any Qualifying Project shall be prorated based on the period within such period that such Qualifying Project was in operation or financing therefor was obtained. With respect to any amounts payable pursuant to any agreements entered into by and among an Issuer, any Guarantor and/or any of their respective Affiliates, any payment

in respect of Allocable Overhead shall not include any fee, profit or similar component and shall represent only the payment or reimbursement of actual costs and expenses.

"*Applicable Procedures*" means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depositary that apply to such transfer or exchange.

"*Attributable Debt*" in respect of a Sale and Leaseback Transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such Sale and Leaseback Transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with US GAAP; provided, however, that if such Sale and Leaseback Transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby shall be determined in accordance with the definition of "Capital Lease Obligation."

"*Bank Refinancing*" means (i) the refinancing of that certain Credit Agreement dated as of November 20, 2014 (as amended), by and among Wynn Resorts Finance, the guarantors party thereto, Deutsche Bank AG New York Branch, as administrative agent and collateral agent, and the other lenders party thereto, (ii) the payment of a dividend to Wynn Resorts, which will use the proceeds of such dividend to repay that certain Credit Agreement dated as of October 30, 2018 (as amended), by and among Wynn Resorts, the guarantors party thereto, Deutsche Bank AG New York Branch, as administrative agent and collateral agent, and the lenders party thereto and (iii) the payment of related fees and expenses in connection with the foregoing.

"*Bankruptcy Law*" means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

"*Beneficial Owner*" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" shall be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only after the passage of time. The terms "Beneficially Owns" and "Beneficially Owned" have a corresponding meaning.

"*Board of Directors*" means:

(1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(3) with respect to a partnership, the board of directors of the general partner of the partnership;

(4) with respect to a limited liability company, the Person or Persons who are the managing member, members or managers or any controlling committee or managing members or managers thereof; and

(5) with respect to any other Person, the board or committee of such Person serving a similar function.

"*Business Day*" means any day other than a Legal Holiday.

"*Capital Expenditures*" means, for any period any expenditures by an Issuer or a Guarantor for the acquisition or leasing of fixed or capital assets (including Capital Lease Obligations) that should be capitalized in accordance with US GAAP and any expenditures by such Person for maintenance, repairs, restoration or refurbishment of the condition or usefulness of Property of such Person that should be capitalized in accordance with US GAAP; *provided* that the following items shall not constitute Capital Expenditures: (a) expenditures made in connection with the replacement, substitution, restoration or repair of assets to the extent financed with (x) insurance proceeds paid on account of the loss of or damage to the assets being replaced, restored or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation (or transfers in lieu thereof) of the assets being replaced; (b) the purchase price of assets purchased with the trade-in of existing assets solely to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such assets for the asset being traded in at such time; (c) the purchase of property or equipment to the extent financed with the proceeds of asset sales or other dispositions outside the ordinary course of business; (d) expenditures that constitute acquisitions not prohibited hereunder; (e) any capitalized interest expense reflected as additions to property in the consolidated balance sheet of the Issuers and the Guarantors (including in connection with sale-leaseback transactions not prohibited hereunder); (f) any non-cash compensation or other non-cash costs reflected as additions to property in the consolidated balance sheet of the Issuers and the Guarantors; and (g) capital expenditures relating to the construction or acquisition of any property or equipment which has been transferred to a Person other than an Issuer or a Guarantor pursuant to a sale-leaseback transaction not prohibited hereunder and capital expenditures arising pursuant to sale-leaseback transactions.

"*Capital Lease Obligation*" means, any lease of any Property by that Person as lessee that, in conformity with GAAP, is required to be classified and accounted for as a capital lease on the balance sheet of that Person; *provided*, *however*, that for the avoidance of doubt, any lease that was accounted for, or would have been required to be accounted for, by any Person as an operating lease prior to the adoption of FASB ASC 842 and any similar lease entered into subsequent to the adoption of FASB ASC 842 by any Person may, in the sole discretion of Wynn Resorts Finance, be accounted for as an operating lease and not as a capital lease.

"*Capital Stock*" means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests (whether general or limited); and

(4) any other interests or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"*Change of Control*" means the occurrence of any of the following:

(1) 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 Wynn Resorts Finance and the Guarantors, taken as a whole, to any "person" (as that term is used in Section 13(d)(3) of the Exchange Act), other than to any Parent Entity and any Subsidiary of any Parent Entity;

(2) the adoption of a plan relating to the liquidation or dissolution of either Issuer or any successor thereto;

(3) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any "person" (as that term is used in Section 13(d)(3) of the Exchange Act) becomes the Beneficial Owner, directly or indirectly, of more than 50% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of Equity Interests; or

(4) the first day on which Wynn Resorts ceases to own, directly or indirectly, 60% or more of the voting power of the outstanding Equity Interests of Wynn Resorts Finance.

Notwithstanding the above, a Change of Control shall not occur solely by reason of a Permitted C-Corp. Conversion.

"*Change of Control Triggering Event*" means the occurrence of both a Change of Control and a Ratings Event.

"*Clearstream*" means Clearstream Banking, S.A.

"*Code*" means the Internal Revenue Code of 1986, as amended.

"*Comparable Treasury Issue*" means the United States Treasury security selected by an Independent Investment Banker as having a maturity comparable to the remaining term of the Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of such securities ("*Remaining Life*").

"*Comparable Treasury Price*" means (1) the average of four Reference Treasury Dealer Quotations for such redemption date, after excluding the highest and lowest Reference Treasury

Dealer Quotations, or (2) if the Independent Investment Banker obtains fewer than four such Reference Treasury Dealer Quotations, the average of all such quotations.

"*Consolidated EBITDA*" means, for any Test Period, the sum (without duplication) of Consolidated Net Income for such Test Period; *plus*

(a) in each case to the extent deducted in calculating such Consolidated Net Income:

(i) provisions for taxes based on income or profits or capital gains, plus franchise or similar taxes, of the Issuers and the Guarantors for such Test Period;

(ii) Consolidated Interest Expense of the Issuers and the Guarantors for such Test Period, whether paid or accrued and whether or not capitalized;

(iii) any cost, charge, fee or expense (including discounts and commissions and including fees and charges incurred in respect of letters of credit or bankers acceptance financings) (or any amortization of any of the foregoing) associated with any issuance (or proposed issuance) of debt, or equity or any refinancing transaction (or proposed refinancing transaction) or any amendment or other modification of any debt instrument;

(iv) depreciation, amortization (including amortization of goodwill and other intangibles) and any other non-cash charges or expenses, including any write off or write downs, reducing Consolidated Net Income (excluding (x) any amortization of a prepaid cash expense that was paid in a prior Test Period and (y) any non-cash charges and expenses that result in an accrual of a reserve for cash charges in any future Test Period that Wynn Resorts Finance elects not to add back in the current Test Period (it being understood that reserves may be charged in the current Test Period or when paid, as reasonably determined by Wynn Resorts Finance)) of the Issuers and the Guarantors for such Test Period; *provided* that if any such non-cash charges or expenses represent an accrual of a reserve for potential cash items in any future Test Period, the cash payment in respect thereof in such future Test Period shall be subtracted from Consolidated EBITDA to the extent Wynn Resorts Finance elected to previously add back such amounts to Consolidated EBITDA;

(v) any Pre-Opening Expenses;

(vi) the amount of any restructuring costs, charges, accruals, expenses or reserves (including those relating to severance, relocation costs and one-time compensation charges), costs incurred in connection with any non-recurring strategic initiatives, other business optimization expenses (including incentive costs and expenses relating to business optimization programs and signing, retention and completion bonuses) and any unusual or non-recurring costs, charges, accruals, reserves or items of loss or expense (including, without limitation, losses on asset sales (other than asset sales in the ordinary course of business));

(vii) any charges, fees and expenses (or any amortization thereof) (including, without limitation, all legal, accounting, advisory or other transaction-related fees, charges, costs and expenses and any bonuses or success fee payments related to the Transactions) related to the Transactions,

any acquisition or investment or disposition (or any such proposed acquisition, investment or disposition) (including amortization or write offs of debt issuance or deferred financing costs, premiums and prepayment penalties), in each case, whether or not successful;

(viii) any losses resulting from mark to market accounting of swap contracts or other derivative instruments; and

(ix) the aggregate amount of accrued and unpaid Management Fees, IP Licensing Fees and Allocable Overhead; *provided* that the cash payment in respect of such accrued and unpaid Management Fees, IP Licensing Fees and Allocable Overhead (other than to the extent any such accrual occurred prior to the Issue Date) in any future Test Period shall be subtracted from Consolidated EBITDA in such Test Period to the extent Wynn Resorts Finance elected to previously add back such amounts to Consolidated EBITDA; *minus*

(b) in each case to the extent included in calculating such Consolidated Net Income:

(i) non-cash items increasing such Consolidated Net Income for such Test Period, other than the accrual of revenue in the ordinary course of business, and other than any items which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges for any prior Test Period subsequent to the issue date which was not added back to Consolidated EBITDA when accrued;

(ii) the amount of any gains resulting from mark to market accounting of swap contracts or other derivative instruments; *plus*

(c) the amount of cost savings, operating expense reductions, other operating improvements and synergies projected by Wynn Resorts Finance in good faith to be realized as a result of specified actions taken or with respect to which steps have been initiated (in the good faith determination of Wynn Resorts Finance) during such Test Period (or with respect to Specified Transactions, are reasonably expected to be initiated within eighteen (18) months of the closing date of the Specified Transaction), including in connection with any Specified Transaction (calculated on a pro forma basis as though such cost savings, operating expense reductions, other operating improvements and synergies had been realized during the entirety of such Test Period), net of the amount of actual benefits realized during such Test Period from such actions; *provided* that (i) such actions are to be taken within eighteen (18) months after the consummation of such Specified Transaction, restructuring or implementation of an initiative that is expected to result in such cost savings, operating expense reductions, other operating improvements or synergies, (ii) no cost savings, operating expense reductions, other operating improvements and synergies shall be added pursuant to this clause (c) to the extent duplicative of any expenses or charges otherwise added to Consolidated EBITDA, whether through a pro forma adjustment or otherwise, for such Test Period, and (iii) projected amounts (and not yet realized) may no longer be added in calculating Consolidated EBITDA pursuant to this clause (c) to the extent more than eighteen (18) months have elapsed after the specified action taken in order to realize such projected cost savings, operating expense reductions, other operating improvements and synergies; *provided*, that the aggregate amount of additions made to Consolidated EBITDA for any Test Period pursuant to this clause (c) shall not (i) exceed 20.0% of Consolidated EBITDA for such Test Period (after giving effect to this clause (c)) or (ii) be duplicative of one another; *plus*

(d) to the extent not included in Consolidated Net Income, the amount of business interruption insurance proceeds received during such Test Period or after such Test Period and on or prior to the date the calculation is made with respect to such Test Period, attributable to

any property which has been closed or had operations curtailed for such Test Period; *provided* that such amount of insurance proceeds shall only be included pursuant to this clause (d) to the extent of the amount of insurance proceeds *plus* Consolidated EBITDA attributable to such property for such Test Period (without giving effect to this clause (d)) does not exceed Consolidated EBITDA attributable to such property during the most recently completed four fiscal quarters for which financial results are available that such property was fully operational (or if such property has not been fully operational for four consecutive fiscal quarters for which financial results are available prior to such closure or curtailment, the Consolidated EBITDA attributable to such property during the Test Period prior to such closure or curtailment (for which financial results are available) annualized over four fiscal quarters); *plus*

(e) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any Test Period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (b) above for any previous Test Period and not added back.

Consolidated EBITDA shall be further adjusted:

(A) to include the Consolidated EBITDA of any Person, property, business or asset (including a management agreement or similar agreement) acquired by an Issueror any Guarantor during such Test Period and required to become a Guarantor pursuant to the terms of this Indenture based on the Consolidated EBITDA of such Person (or attributable to such property, business or asset) for such period (including the portion thereof occurring prior to such acquisition), determined as if references the Issuers and the Guarantors in Consolidated Net Income and other defined terms therein were to such Person and its Subsidiaries;

(B) to exclude the Consolidated EBITDA of any Guarantor, property, business or asset sold, transferred or otherwise disposed of, closed or classified as discontinued operations by an Issuer or any Guarantor during such Test Period, based on the actual Consolidated EBITDA of such Person for such period (including the portion thereof occurring prior to such sale, transfer, disposition, closing, classification or conversion), determined as if references to the Issuers and the Guarantors in Consolidated Net Income and other defined terms therein were to such Person and its Subsidiaries;

(C) in any fiscal quarter during which a purchase of property that prior to such purchase was subject to any operating lease that will be terminated in connection with such purchase shall occur and during the three (3) following fiscal quarters, by increasing Consolidated EBITDA by an amount equal to the quarterly payment in respect of such lease (as if such purchase did not occur) times (a) four (4) (in the case of the quarter in which such purchase occurs), (b) three (3) (in the case of the quarter following such purchase), (c) two (2) (in the case of the second quarter following such purchase) and (d) one (1) (in the case of the third quarter following such purchase), all as determined on a consolidated basis for the Issuers and the Guarantors;

(D) in the event of any Expansion Capital Expenditures or Development Projects that were opened for business during such Test Period, by multiplying the Consolidated EBITDA attributable to such Expansion Capital Expenditures or Development Projects (as determined by Wynn Resorts Finance in good faith) in respect of the first three (3) complete fiscal quarters following opening of the business representing such Expansion Capital Expenditures or Development Projects by: (x) 4 (with respect to the first such quarter), (y) 2 (with respect to the first two such quarters), and (z) 4/3 (with respect to the first three such quarters) and, for the avoidance of doubt, excluding Consolidated EBITDA attributable to such Expansion Capital Expenditures or Development Projects during the quarter in which the business representing such Expansion Capital Expenditure or Development Projects opened when calculating

Consolidated EBITDA during any such three fiscal quarters (unless such business opened on the first day of a fiscal quarter);

(E) with respect to each fiscal quarter during any Test Period ending on or prior to the eighth (8th) full fiscal quarter after the Issue Date, Consolidated EBITDA attributable to the Wynn Massachusetts Resort (as determined by Wynn Resorts Finance in good faith) shall, in each case, be the greater of (1) $50.0 million and (2) actual Consolidated EBITDA attributable to the Wynn Massachusetts Resort for such fiscal quarter; and

to exclude the amount, if any, by which the dividends and distributions paid or, at Wynn Resorts Finance's election, declared to Wynn Group Asia by its direct and indirect Subsidiaries that are included in Consolidated Net Income pursuant to clause (c) of the definition thereof during the applicable Test Period exceed the applicable Recurring Dividend Amount for such Test Period.

"*Consolidated Indebtedness*" means, as at any date of determination, the aggregate amount of all Indebtedness of the Issuers and the Guarantors(other than (x) any such Indebtedness that has been discharged, (y) any escrowed indebtedness, and (z) intercompany indebtedness) on such date, in an amount that would be reflected on a balance sheet on such date prepared on a consolidated basis in accordance with US GAAP, consisting of Indebtedness for borrowed money, obligations in respect of Capital Lease Obligations, purchase money Indebtedness, Indebtedness of the kind described in clause (5) of the definition of "Indebtedness," Indebtedness evidenced by promissory notes and similar instruments and contingent obligations in respect of any of the foregoing (to be included only to the extent set forth in clause (iii) below); *provided* that (i) Consolidated Indebtedness shall not include (A) Indebtedness in respect of letters of credit, except to the extent of unreimbursed amounts thereunder or (B) Indebtedness in respect of disqualified capital stock, (ii) the amount of Consolidated Indebtedness, in the case of Indebtedness of a Guarantor that is not a wholly-owned Guarantor, shall be reduced by an amount directly proportional to the amount (if any) by which Consolidated EBITDA was reduced (including through the calculation of Consolidated Net Income) in respect of such non-controlling interest in such Guarantor owned by a Person other than an Issuer or any other Guarantor, (iii) Consolidated Indebtedness shall not include contingent obligations, *provided*, *however*, that if and when any such contingent obligation is demanded for payment from an Issuer or any Guarantor, then the amounts of such contingent obligation shall be included in such calculations.

"*Consolidated Interest Expense*" means, for any Test Period, the sum of interest expense of the Issuers and the Guarantors for such Test Period as determined on a consolidated basis in accordance with US GAAP, *plus*, to the extent deducted in arriving at Consolidated Net Income and without duplication, (a) the interest portion of payments on Capital Lease Obligations, (b) amortization of financing fees, debt issuance costs and interest or deferred financing or debt issuance costs, (c) arrangement, commitment or upfront fees, original issue discount, redemption or prepayment premiums, (d) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing, (e) interest with respect to Indebtedness that has been discharged and any escrowed indebtedness, (f) the accretion or accrual of discounted liabilities during such period, (g) interest expense attributable to the movement of the mark-to-market valuation of obligations under swap contracts or other derivative instruments, (h) payments made under swap contracts relating to interest rates with respect to such Test Period and any costs associated with breakage in respect of hedging agreements for interest rates, (i) all interest expense consisting of liquidated damages for failure to timely comply with registration rights obligations and financing fees, all as calculated on a consolidated basis in accordance with US GAAP, (j) fees and expenses associated with the consummation of the Transactions (k) annual or quarterly agency fees paid to the administrative agent under the Senior Credit Facilities and (l) costs and fees associated with obtaining swap contracts and fees payable thereunder.

"*Consolidated Net Income*" means, for any Test Period, the aggregate of the net income of the Issuers and the Guarantors for such Test Period, on a consolidated basis, determined in accordance with US GAAP; *provided* that, without duplication:

(a) any gain or loss (together with any related provision for taxes thereon) realized in connection with (i) any asset sale or (ii) any disposition of any securities by an Issuer or any of the Guarantors shall be excluded;

(b) any extraordinary gain or loss (together with any related provision for taxes thereon) shall be excluded;

(c) the net income of any Person that (i) is not a Subsidiary, (ii) is accounted for by the equity method of accounting or (iii) is a Subsidiary (or former Subsidiary) with respect to which a Trigger Event has occurred following the occurrence and during the continuance of such Trigger Event shall be excluded; *provided* that Consolidated Net Income of the Issuers and the Guarantors shall be increased by the amount of dividends or distributions or other payments (including management fees) that are actually paid or are payable in cash to an Issuer or a Guarantor in respect of such period by such Persons (or to the extent converted into cash) (including at Wynn Resorts Finance's election in the case of the direct and indirect Subsidiaries of Wynn Group Asia, dividends and distributions declared (but not yet paid) during such period; *provided* that in the event Wynn Resorts Finance elects to include any such declared (but not yet paid) dividend or distribution in Consolidated Net Income during any period, in no event shall the subsequent payment of such dividends and distributions be so included); *provided further*, that in the case of any such Person acquired by an Issuer or a Guarantor during such test Period, the foregoing shall be determined as if such Person had been acquired on the first day of such Test Period;

(d) the undistributed earnings of any Subsidiary of Wynn Resorts Finance that is not a an Issuer or a Guarantor to the extent that, on the date of determination the payment of cash dividends or similar cash distributions by such Subsidiary (or loans or advances by such subsidiary to any parent company) are not permitted by the terms of any contractual obligation or requirement of law applicable to such Subsidiary shall be excluded, unless such restrictions with respect to the payment of cash dividends and other similar cash distributions have been waived; *provided* that Consolidated Net Income of the Issuers and the Guarantors shall be increased by the amount of dividends or distributions or other payments (including management fees) that are actually paid or are payable in cash to an Issuer or a Guarantor(not subject to such restriction) thereof in respect of such period by such Subsidiaries (or to the extent converted into cash); *provided further*, that in the case of any such Person acquired by an Issuer or a Guarantor during such test Period, the foregoing shall be determined as if such Person had been acquired on the first day of such Test Period;

(e) any goodwill or other asset impairment charges or other asset write-offs or write downs, including any resulting from the application of Accounting Standards Codification Nos. 350 and No. 360, and any expenses or charges relating to the amortization of intangibles as a result of the application of Accounting Standards Codification No. 805, shall be excluded;

(f) any non-cash charges or expenses related to the repurchase of stock options to the extent not prohibited by the indenture, and any non-cash charges or expenses related to the grant, issuance or repricing of, or any amendment or substitution with respect to, stock appreciation or similar rights, stock options, restricted stock, or other Equity Interests or other equity based awards or rights or equivalent instruments, shall be excluded;

(g) the cumulative effect of a change in accounting principles shall be excluded;

(h) any expenses or reserves for liabilities shall be excluded to the extent that an Issuer or a Guarantor is entitled to indemnification therefor under binding agreements; *provided* that any such liabilities for which an Issuer or any of Guarantors is not actually indemnified shall reduce Consolidated Net Income for the period in which it is determined that such Issuer or such Guarantor will not be indemnified (to the extent such liabilities would otherwise reduce Consolidated Net Income without giving effect to this clause (h));

(i) losses, to the extent covered by insurance and actually reimbursed, or, so long as Wynn Resorts Finance has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded; and

(j) gains and losses resulting solely from fluctuations in currency values and the related tax effects shall be excluded, and charges relating to Accounting Standards Codification Nos. 815 and 820 shall be excluded.

"*Consolidated Senior Secured Net Leverage Ratio*" means, as of any date of determination, the ratio of (a) (i) Consolidated Indebtedness of the Issuers and the Guarantors that is secured by Liens on the property or assets of an Issuer or a Guarantor as of such date (other than (x) any such Consolidated Indebtedness that is expressly subordinated in right of payment to the Notes and (y) any such Consolidated Indebtedness that benefits from the pledge securing the Existing LV Notes (but is not otherwise secured by any Liens on property or assets of an Issuer or a Guarantor as of such date)) *minus* (ii) Unrestricted Operating Cash to (b) Consolidated EBITDA for the Test Period most recently ended prior to such date; *provided*, that for purposes of calculating the Consolidated Senior Secured Net Leverage Ratio, Consolidated EBITDA for the fiscal quarter in which a Qualifying Act of Terrorism shall have occurred and the next two succeeding fiscal quarters thereafter shall, in each case, be the greater of (1) Substituted Consolidated EBITDA and (2) actual Consolidated EBITDA for such fiscal quarter.

"*Corporate Trust Office of the Trustee*" means the address of the Trustee specified in Section 14.01 hereof or such other address as to which the Trustee may give notice to the Issuers.

"*Custodian*" means the Trustee, as custodian with respect to the Notes in global form, or any successor entity thereto.

"*Default*" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"*Definitive Note*" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06 hereof, substantially in the form of Exhibit A-1 hereto except that such Note shall not bear the Global Note Legend and shall not have the "Schedule of Exchanges of Interest in the Global Note" attached thereto.

"*Depositary*" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 hereof as the Depositary with respect to the Notes, and any and all successors thereto appointed as depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

"*Derivative Instrument*" means with respect to a Person other than any Person that is a Regulated Bank, means any contract, instrument or other right to receive payment or delivery of cash or other assets to which such Person or any Affiliate of such Person that is acting in concert with such Person in connection with such Person's investment in the Notes (other than a Screened Affiliate) is a party (whether or not requiring further performance by such Person), the value and/or cash flows of which (or any material portion thereof) are materially affected by the value and/or performance of the Notes and/ or the creditworthiness of any Issuer and/or any one or more of the Guarantors (the "*Performance References*").

"*Designated Officer*" means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, the Controller, the Secretary, the Assistant Secretary or any Vice President of such Person.

"*Development Project*" means investments, Capital Expenditures and other expenditures, directly or indirectly, (a) in any joint ventures in which an Issuer or any Guarantor, directly or indirectly, has control or with whom it has a management, development or similar contract and, in the case of a joint venture, in which an Issuer or any Guarantor owns (directly or indirectly) at least 25% of the Equity Interest in such joint venture, or (b) in, or expenditures with respect to, casinos, casino resorts, "racinos," racetracks, non-gaming resorts, hotels, distributed gaming applications, entertainment developments, restaurants, retail developments or taverns or persons that own casinos, casino resorts, "racinos," racetracks, non-gaming resorts, hotels, distributed gaming applications, entertainment developments, restaurants, retail developments or taverns (including casinos, casino resorts, "racinos," racetracks, non-gaming resorts, hotels, distributed gaming applications, entertainment developments, restaurants, retail developments or taverns in development or under construction that are not presently open or operating with respect to which an Issuer or any of Guarantor has (directly or indirectly through subsidiaries) entered into a management, development or similar contract (or an agreement to enter into such a management, development or similar contract) and such contract remains in full force and effect at the time of such investment, though it may be subject to regulatory approvals), in each case, used to finance, or made for the purpose of allowing such joint ventures, casinos, casino resorts, "racinos," racetracks, non-gaming resorts, hotels, distributed gaming applications, entertainment developments, restaurants, retail developments or taverns, as the case may be, to finance, the purchase, development, construction or other acquisition of any fixed or capital assets or the refurbishment of existing assets or properties that develops, adds to or significantly improves the property of such joint ventures, casinos, casino resorts, "racinos," racetracks, non-gaming resorts, hotels, distributed gaming applications, entertainment developments, restaurants, retail developments or taverns and assets ancillary or related thereto (including, without limitation, hotels, restaurants, entertainment, retail and other similar projects), or the construction and development of casinos, casino resorts, "racinos," racetracks, non-gaming resorts, hotels, distributed gaming applications, entertainment developments, restaurants, retail developments or taverns or assets ancillary or related thereto (including, without limitation, hotels, restaurants, entertainment, retail and other similar projects) and including Pre-Opening Expenses with respect to such joint ventures, casinos, casino resorts, "racinos," racetracks, non-gaming resorts, hotels, distributed gaming applications, entertainment developments, restaurants, retail developments and taverns.

"*Domestic Subsidiary*" means any Subsidiary of Wynn Resorts Finance (other than Wynn Resorts Capital) that was formed under the laws of the United States or any state of the United States or the District of Columbia or that guarantees or otherwise provides direct credit support for any Indebtedness of Wynn Resorts Finance.

"*Equity Interests*" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

"*Euroclear*" means Euroclear Bank, S.A./N.V., as operator of the Euroclear system.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended.

"*Excluded Subsidiary*" means any Subsidiary of Wynn Resorts Finance, other than Wynn Resorts Capital, that is designated by the Board of Directors of Wynn Resorts Capital as an Excluded Subsidiary pursuant to a resolution of the Board of Directors (and any Subsidiary of each such Excluded Subsidiary), but only to the extent that such Subsidiary of Wynn Resorts Finance does not, directly or indirectly, guarantee or otherwise provide direct credit support for the Senior Credit Facilities or any other Indebtedness of Wynn Resorts Finance and is not subject to any covenants in, or Liens securing, the Existing LV Notes; provided that if any Excluded Subsidiary directly or indirectly, guarantees or otherwise provides direct credit support for any Indebtedness of Wynn Resorts Finance or becomes subject to the covenants in, or Liens securing, the Existing LV Notes, such Excluded Subsidiary will thereafter not be an Excluded Subsidiary.

"*Existing LV Notes*" means the 2023 Notes, the 2025 Notes and the 2027 Notes.

"*Expansion Capital Expenditures*" means any capital expenditure by an Issuer or any of Guarantor in respect of the purchase, construction, or other acquisition of any fixed or capital assets or the refurbishment of existing assets or properties that, in Wynn Resorts Finance's reasonable determination, adds to or improves (or is reasonably expected to add to or improve) the property of the Issuers and the Guarantors, excluding any such capital expenditures fully financed with net cash proceeds of an asset sale or casualty event and excluding capital expenditures made in the ordinary course made to maintain, repair, restore or refurbish the property of the Issuers and the Guarantors in its then existing state or to support the continuation of such Person's day to day operations as then conducted.

"*Fair Market Value*" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by (1) an appropriate officer of Wynn Resorts Finance, in the case of any value equal to or less than $50.0 million or (2) the Board of Directors of Wynn Resorts Capital, in the event of any value greater than $50.0 million (in each case, unless otherwise provided in this Indenture).

"*Funded Debt*" means all Indebtedness of Wynn Resorts Finance or any Guarantor that (i) matures by its terms on, or is renewable at the option of any obligor thereon to, a date more than one year after the date of original issuance of such Indebtedness and (ii) ranks at least pari passu with the Notes or the applicable Note Guarantee.

"*Gaming Authority*" means any agency, authority, board, bureau, commission, department, office or instrumentality of any nature whatsoever of the United States federal government, any foreign government, any state, province or city or other political subdivision or otherwise, whether on the Issue Date or hereafter in existence, including the Massachusetts Gaming Commission, the Nevada Gaming Commission, the Nevada Gaming Control Board, the Clark County Liquor and Gaming Licensing Board and any other applicable gaming regulatory authority or agency, in each case, with authority to regulate the sale or distribution of liquor or any gaming operation (or proposed gaming operation) owned, managed or operated by Wynn Resorts Finance or any of the Guarantors.

"*Gaming Facility*" means any gaming establishment, facility and other property or assets ancillary or related thereto or used in connection therewith, including, without limitation, any casinos, hotels, resorts, theaters, parking facilities, timeshare operations, retail shops, restaurants, other buildings, land, golf courses and other recreation and entertainment facilities, marinas, vessels and related equipment.

"*Gaming Law*" means the gaming laws, rules, regulations or ordinances of any jurisdiction or jurisdictions to which Wynn Resorts Finance or any of the Guarantors is, or may be, at any time subject.

"*Gaming License*" means any license, permit, franchise or other authorization from any Gaming Authority necessary on the Issue Date or at any time thereafter to own, lease, operate or otherwise conduct the gaming business of Wynn Resorts Finance or any of the Guarantors.

"*Global Note Legend*" means the legend set forth in Section 2.06(f)(2), which is required to be placed on all Global Notes issued under this Indenture.

"*Global Notes*" means each of the global Notes issued in accordance with Section 2.01 and substantially in the form of Exhibit A-1 attached hereto that, except as otherwise provided in Section 2.01(b) hereof, bear the Global Note Legend and that have the "Schedule of Exchanges of Interests in the Global Note" attached thereto, and that are deposited with or on behalf of and registered in the name of the Depositary.

"*Government Securities*" means securities that are:

(1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America;

which, in either case, are not callable or redeemable at the option of the issuer thereof, and will include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act of 1933, as amended), as custodian with respect to any such Government Security or a specific payment of principal of or interest on any such Government Security held by such custodian for the account of the holder of such depository receipt; provided that (except as required by law) such custodian

is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Security or the specific payment of principal of or interest on the Government Security evidenced by such depository receipt.

"*Guarantee*" means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

"*Guarantor*" means each of:

(1) the Domestic Subsidiaries, other than Excluded Subsidiaries, and

(2) any other Person that provides a Guarantee by executing a supplemental indenture in accordance with the provisions of this Indenture,

and, except to the extent the applicable Note Guarantee is released in accordance with Section 11.05 hereof, their respective successors and assigns (other than the Issuers). A Person shall cease to be a Guarantor following the release of its Note Guarantee as described in Section 11.05 hereof.

"*Hedging Obligations*" means, with respect to any specified Person, the obligations of such Person under:

(1) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements;

(2) other agreements or arrangements designed to manage interest rates or interest rate risk; and

(3) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates and/or commodity prices.

"*Holder*" or "*holder*" means any registered holder, from time to time, of the Notes. Only registered holders shall have any rights under this Indenture.

"*IAI Global Note*" means a Global Note substantially in the form of Exhibit A-1 hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee that shall be issued in a denomination equal to the outstanding principal amount of the Notes sold to Institutional Accredited Investors.

"*Immaterial Subsidiary*" means, as of any date, any Subsidiary whose total assets, as of that date, are less than $150.0 million; provided that a Subsidiary shall not be considered to be an Immaterial Subsidiary if it, directly or indirectly, guarantees or otherwise provides direct credit support for any Indebtedness of Wynn Resorts Finance.

"*Indebtedness*" means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables), whether or not contingent:

(1) in respect of borrowed money;

(2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof);

(3) in respect of banker's acceptances;

(4) representing a Capital Lease Obligation or Attributable Debt;

(5) representing the balance deferred and unpaid of the purchase price of any property or services due more than six months after such property is acquired or such services are completed; or

(6) representing any Hedging Obligations,

if and to the extent any of the preceding items (other than letters of credit, Attributable Debt and Hedging Obligations) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with US GAAP. In addition, the term "Indebtedness" includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person.

The amount of any Indebtedness outstanding as of any date shall be:

(1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;

(2) the principal amount of the Indebtedness, together with any interest on the Indebtedness that is more than 30 days past due, in the case of any other Indebtedness;

(3) in the case of a Guarantee of Indebtedness, the maximum amount of the Indebtedness guaranteed under such Guarantee; and

(4) in the case of Indebtedness of others secured by a Lien on any asset of the specified Person, the lesser of:

(a) the face amount of such Indebtedness (plus, in the case of any letter of credit or similar instrument, the amount of any reimbursement obligations in respect thereof), and

(b) the Fair Market Value of the asset(s) subject to such Lien.

Notwithstanding anything contained in this Indenture to the contrary, any obligation of the Issuers or Guarantors incurred in the ordinary course of business in respect of casino

chips or similar instruments shall not constitute "Indebtedness" for any purpose under this Indenture.

"*Indenture*" means this Indenture, as amended or supplemented from time to time.

"*Independent Investment Banker*" means one of the Reference Treasury Dealers appointed by Wynn Resorts Finance.

"*Indirect Participant*" means a Person who holds a beneficial interest in a Global Note through a Participant.

"*Initial Notes*" means the first $750,000,000 aggregate principal amount of Notes issued under this Indenture on the Issue Date.

"*Initial Purchasers*" means Deutsche Bank Securities Inc., Goldman Sachs & Co. LLC, Scotia Capital (USA) Inc., BofA Securities, Inc., BNP Paribas Securities Corp., Fifth Third Securities, Inc., J.P. Morgan Securities LLC, Mizuho Securities USA LLC, SunTrust Robinson Humphrey, Inc., SMBC Nikko Securities America, Inc., Credit Agricole Securities (USA) Inc. and Citizens Capital Markets, Inc.

"*Institutional Accredited Investor*" means an institution that is an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act, who are not also QIBs.

"*Investment Grade*" means a rating of Baa3 or better by Moody's (or its equivalent under any successor rating categories of Moody's), a rating of BBB- or better by S&P (or its equivalent under any successor rating categories of S&P) or the equivalent Investment Grade credit rating from any additional Rating Agency or Rating Agencies selected by Wynn Resorts Finance, as applicable.

"*IP Licensing Fees*" means any fees payable by an Issuer or a Guarantor to any Affiliate (other than an Issuer or a Guarantor) pursuant to (a) (i) that certain 2014 Intellectual Property Licensing Agreement, dated as of November 20, 2014, among Wynn Resorts Holdings, LLC, Wynn Resorts and Wynn Massachusetts Resort and (ii) that certain Intellectual Property Licensing Agreement, dated as of February 26, 2015, among Wynn Resorts, Wynn Resorts Holdings, LLC and Wynn Las Vegas, (iii) that certain Intellectual Property License Agreement, dated as of September 19, 2009, among Wynn Resorts Holdings, LLC, Wynn Resorts, and Wynn Macau, Limited, and (iv) that certain Amended and Restated Intellectual Property License Agreement, dated as of September 19, 2009, by and among Wynn Resorts Holdings, LLC, Wynn Resorts, and Wynn Resorts (Macau), S.A. and (b) without duplication to any fees paid under any agreement described in clause (a), licensing agreements in form and substance substantially similar to any agreement described in clause (a).

"*Issue Date*" means September 20, 2019.

"*Issuers*" means Wynn Resorts Finance and Wynn Resorts Capital.

"*Joint Venture*" means any partnership, corporation or other entity, in which up to and including 50% of the partnership interests, outstanding Voting Stock or other Equity Interests is owned, directly or indirectly, by Wynn Resorts Finance and/or one or more of its Subsidiaries.

"*Legal Holiday*" means a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on such payment for the intervening period.

"*Lien*" means, with respect to any asset, (i) any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, (ii) any lease in the nature thereof, or (iii) any agreement to deliver a security interest in any asset. Notwithstanding the foregoing, the trust established and maintained for the sole purpose of holding title to an aircraft shall not be considered a Lien for purposes of this Indenture.

"*Long Derivative Instrument*" means a Derivative Instrument (i) the value of which generally increases, and/or the payment or delivery obligations under which generally decrease, with positive changes to the Performance References and/or (ii) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with negative changes to the Performance References.

"*Macau Resort*" means the hotel towers, casino facilities and retail and convention spaces that are owned and/or operated by Affiliates of Wynn Resorts, in the Macau Special Administrative Region of the People's Republic of China, which include Wynn Macau, Wynn Encore and Wynn Palace hotel towers, casino facilities and retail and convention spaces adjacent thereto.

"*Management Fees*" means (a) any fees, costs, expenses or reimbursements payable by an Issuer or a Guarantor to any Affiliate (other than an Issuer or a Guarantor) pursuant to (i) that certain Management Fee and Corporate Allocation Agreement, dated as of November 20, 2014, between Wynn Massachusetts Resort and Wynn Resorts and (ii) that certain Management Agreement, dated February 26, 2015, between Wynn Las Vegas and Wynn Resorts and (b) without duplication to any fees, costs, expenses or reimbursements paid or made under any agreement described in clause (a), management agreements in form and substance substantially similar to any agreement described in clause (a).

"*Minimum Cage Cash Amount*" means, as of any date of determination, an amount equal to $15.0 million multiplied by the number of material Gaming Facilities (as determined by Wynn Resorts Finance in good faith) owned and operated by an Issuer or a Guarantor. For purposes of this definition, as of the Issue Date each of (a) the Wynn Las Vegas Resort and Encore at Wynn Las Vegas (taken as a whole) and (b) the Wynn Massachusetts Resort shall count as material Gaming Facilities such that as of the Issue Date the Minimum Cage Cash Amount shall be $30.0 million.

"*Moody's*" means Moody's Investors Service, Inc., or any successor to its statistical rating business, except that any reference to a particular rating by Moody's shall be deemed to be a reference to the corresponding rating by any such successor.

"*Net Short*" means, with respect to a Holder or Beneficial Owner, as of a date of determination, either (i) the value of its Short Derivative Instruments exceeds the sum of (x) the value of its Notes plus (y) the value of its Long Derivative Instruments as of such date of determination or (ii) it is reasonably expected that such would have been the case were a "Failure to Pay" or "Bankruptcy Credit Event" (each as defined in the 2014 ISDA Credit Derivatives Definitions) to have occurred with respect to an Issuer or any Guarantor immediately prior to such date of determination.

"*New Revolving Credit Facility*" means the first lien revolving credit facility in an aggregate principal amount of up to $850.0 million entered into on the Issue Date by Wynn Resorts Finance.

"*New Term Facility*" means the first lien term loan A facility in an aggregate principal amount of up to $1,000.0 million entered into on the Issue Date by Wynn Resorts Finance.

"*Non-U.S. Person*" means a Person who is not a U.S. Person.

"*Note Guarantee*" means the Guarantee, by each Guarantor of the Issuers' obligations under this Indenture and the Notes, executed pursuant to the provisions of this Indenture.

"*Notes*" has the meaning assigned to it in the preamble to this Indenture. The Initial Notes and the Additional Notes shall be treated as a single class for all purposes under this Indenture, and unless the context otherwise requires, all references to the Notes shall include the Initial Notes and any Additional Notes.

"*Obligations*" means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness (including, without limitation, interest accruing at the then applicable rate provided in such documentation after the maturity of such Indebtedness and interest accruing at the then applicable rate provided in such documentation after the filing of a petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any debtor under such documentation, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding).

"*Officer*" means:

(1) with respect to a corporation, a Designated Officer of such corporation;

(2) with respect to a partnership, a Designated Officer of the general partner of such partnership; and

(3) with respect to a limited liability company, a Designated Officer of such limited liability company, or a Designated Officer of the manager or managing member of such limited liability company, as the case may be (or, if such manager or managing member is an individual, such individual).

"*Officers' Certificate*" means, with respect to any Person, a certificate signed on behalf of such Person by:

(1) with respect to a corporation, two Designated Officers of such corporation;

(2) with respect to a partnership, two Designated Officers of the general partner of such partnership; and

(3) with respect to a limited liability company, two Designated Officers of the manager or managing member of such limited liability company, as the case may be (or, if such manager or managing member is an individual, such individual),

in each case, that meets the requirement of Section 14.05 hereof.

"*Opinion of Counsel*" means an opinion from legal counsel that meets the requirements of Section 14.05 hereof. The counsel may be an employee of or counsel to Wynn Resorts Finance, any Guarantor, as the case may be.

"*Parent Entity*" means (a) Wynn Resorts, (b) Wynn Resorts Holdings or (c) any entity that is or becomes a holding company or intermediary holding company for Wynn Resorts Holdings or Wynn Resorts Finance.

"*Participant*" means, with respect to the Depositary, a Person who has an account with the Depositary.

"*Permitted C-Corp. Conversion*" means a transaction resulting in Wynn Resorts Finance or any of the Guarantors becoming a subchapter "C" corporation under the Code, so long as, in connection with such transaction:

(1) the subchapter "C" corporation resulting from such transaction is a corporation organized and existing under the laws of any state of the United States or the District of Columbia and the Beneficial Owners of the Equity Interests of the subchapter "C" corporation shall be the same, and shall be in the same percentages, as the Beneficial Owners of Equity Interests of the applicable entity immediately prior to such transaction;

(2) the subchapter "C" corporation resulting from such transaction assumes in writing all of the obligations, if any, of the applicable entity under (a) this Indenture, the Notes, and the Note Guarantees by the Guarantors and (b) all other documents and instruments to which such Person is a party (other than, in the case of clause (a) only, any documents and instruments that, individually or in the aggregate, are not material to the subchapter "C" corporation);

(3) the Trustee is given not less than 45 days' advance written notice of such transaction;

(4) such transaction would not cause or result in a Default or an Event of Default;

(5) such transaction does not result in the loss or suspension or material impairment of any Gaming License unless a comparable Gaming License is effective prior to or simultaneously with such loss, suspension or material impairment;

(6) such transaction does not require any Holder or Beneficial Owner of the Notes to obtain a Gaming License or be qualified or found suitable under the laws of any applicable gaming jurisdiction;

(7) Wynn Resorts Finance shall have delivered to the Trustee an Opinion of Counsel of national repute in the United States reasonably acceptable to the Trustee, confirming that neither Issuer, nor any Guarantor nor any of the Holders shall recognize income, gain or loss for United States federal or state income tax purposes as a result of such Permitted C-Corp. Conversion; and

(8) Wynn Resorts Finance shall have delivered to the Trustee a certificate of the Chief Financial Officer of Wynn Resorts Finance confirming that the conditions in clauses (1) through (7) have been satisfied.

"*Person*" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

"*Pre-Opening Expenses*" means, with respect to any fiscal period, the amount of expenses (including Consolidated Interest Expense) incurred with respect to capital projects which are appropriately classified as "pre-opening expenses" on the applicable financial statements of the Issuers and the Guarantors for such period.

"*Principal Property*" means any real estate or other physical facility or depreciable asset or securities the net book value of which on the date of determination exceeds the greater of $25.0 million and 2.0% of the Total Assets.

"*Private Placement Legend*" means the legend set forth in Section 2.06(g)(1) hereof to be placed on all Notes issued under this Indenture except where otherwise permitted by the provisions of this Indenture.

"Property" means any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including all contract rights, income or revenue rights, real property interests, trademarks, trade names, equipment and proceeds of the foregoing and, with respect to any Person, Equity Interests or other ownership interests of any other Person.

"*QIB*" means a "qualified institutional buyer" as defined in Rule 144A.

"*Qualifying Act of Terrorism*" means (a) any Act of Terrorism which occurs on any property of Wynn Resorts Finance or its Affiliates or in which Wynn Resorts Finance or any of its Affiliates, or any property of any of them, is the target or (b) any Act of Terrorism which occurs at any gaming facility or material hospitality or entertainment establishment in any market in which Wynn Resorts Finance or any of its Affiliates operates a facility.

"*Qualifying Project*" means the facilities of Wynn Resorts and its Subsidiaries which are operating or for which the financing for the development, construction and opening thereof has been obtained. For purposes of this definition, each of the Wynn Las Vegas Resort, Encore at Wynn Las Vegas, the Macau Resort and the Wynn Massachusetts Resort shall count as separate projects.

"*Rating Agencies*" means (a) each of Moody's and S&P; and (b) if either Moody's or S&P ceases to rate the Notes or fails to make a rating of the Notes publicly available for reasons outside

of our control, a "nationally recognized statistical rating organization" within the meaning of Section 3(a)(62) of the Exchange Act selected by us (as certified by a resolution of Wynn Resorts Capital's Board of Directors) as a replacement agency for Moody's or S&P, or each of them, as the case may be.

"*Rating Categories*" means (a) with respect to S&P, any of the following categories: BB, B, CCC, CC, C and D (or equivalent successor categories); (b) with respect to Moody's, any of the following categories: Ba, B, Caa, Ca, C and D (or equivalent successor categories); and (c) the equivalent of any such category of S&P or Moody's used by another Rating Agency selected by us. In determining whether the rating of the Notes has decreased by one or more gradations, gradations within Rating Categories ((i) + and—for S&P; (ii) 1, 2 and 3 for Moody's; and (iii) the equivalent gradations for another Rating Agency selected by us) shall be taken into account (e.g., with respect to S&P, a decline in a rating from BB+ to BB, or from BB- to B+, will constitute a decrease of one gradation).

"*Rating Date*" means the date that is 60 days prior to the earlier of (a) a Change of Control or (b) public notice of the occurrence of a Change of Control or the intention by Wynn Resorts Finance to affect a Change of Control.

"*Ratings Event*" shall be deemed to occur if on, or within 60 days after the earlier of, (i) the occurrence of a Change of Control or (ii) public notice of the occurrence of a Change of Control or the intention by Wynn Resorts Finance and its consolidated subsidiaries to effect a Change of Control (which period shall be extended so long as the rating of the notes is under publicly announced consideration for a possible downgrade by any of the Rating Agencies):

(1) the rating of the Notes by each Rating Agency shall be decreased by one or more gradations to or within a Rating Category (including gradations within Rating Categories as well as between Rating Categories) as compared to the rating of the Notes on the Rating Date, and

(2) the Notes are rated below the respective rating of the Notes on the Issue Date by both Rating Agencies. On the Issue Date, Moody's had assigned a rating of B1 to the Notes and S&P had assigned a rating of BB to the Notes.

"*Recurring Dividend Amount*" means, the amount of dividends paid to (or, at Wynn Resorts Finance's option, declared to be paid to) Wynn Group Asia by its direct and Subsidiaries during the applicable Test Period in the amounts set forth below:

Test Period Ending	Recurring Dividend Amount (millions)
September 30, 2019	$432.0
September 30, 2020	$475.0
September 30, 2021	$532.0
September 30, 2022	$575.0
September 30, 2023	$632.0
September 30, 2024 and thereafter	$695.0

"*Reference Treasury Dealer*" means any primary U.S. Government securities dealer in New York City selected by Wynn Resorts Finance.

"*Reference Treasury Dealer Quotations*" means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Independent Investment Banker at 5:00 p.m., New York City time, on the third Business Day preceding such redemption date or, in the case of a satisfaction and discharge or a defeasance, on the third Business Day prior to the date on which Wynn Resorts Finance deposits the amount required under this Indenture most nearly equal to the period from the redemption date to the maturity date. Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Independent Investment Banker at 5:00 p.m., New York City time, on the third Business Day preceding such redemption date or, in the case of a satisfaction and discharge or a defeasance, on the third Business Day prior to the date on which Wynn Resorts Finance deposits the amount required under this Indenture most nearly equal to the period from the redemption date to the maturity date.

"*Regulated Bank*" means (x) a banking organization with a consolidated combined capital and surplus of at least $5.0 billion that is (i) a U.S. depository institution the deposits of which are insured by the Federal Deposit Insurance Corporation; (ii) a corporation organized under section 25A of the U.S. Federal Reserve Act of 1913; (iii) a branch, agency or commercial lending company of a foreign bank operating pursuant to approval by and under the supervision of the Board of Directors under 12 CFR part 211; (iv) a non-U.S. branch of a foreign bank managed and controlled by a U.S. branch referred to in clause (iii); or (v) any other U.S. or non-U.S. depository institution or any branch, agency or similar office thereof supervised by a bank regulatory authority in any jurisdiction or (y) any Affiliate of a Person set forth in clause (x) to the extent that (1) all of the Capital Stock of such Affiliate is directly or indirectly owned by either (I) such Person set forth in clause (x) or (II) a parent entity that also owns, directly or indirectly, all of the Capital Stock of such Person set forth in clause (x) and (2) such Affiliate is a securities broker or dealer registered with the SEC under Section 15 of the Exchange Act.

"*Regulation S*" means Regulation S promulgated under the Securities Act.

"*Regulation S Global Note*" means a Regulation S Temporary Global Note or Regulation S Permanent Global Note, as appropriate.

"*Regulation S Permanent Global Note*" means a permanent Global Note in the form of Exhibit A-1 hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Regulation S Temporary Global Note upon expiration of the Restricted Period.

"*Regulation S Temporary Global Note*" means a temporary Global Note in the form of Exhibit A-2 hereto deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes initially sold in reliance on Rule 903 of Regulation S.

"*Responsible Officer*," when used with respect to the Trustee, means any officer within the corporate trust department of the Trustee located at the Corporate Trust Office of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and who shall have direct responsibility for the administration of this Indenture, and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"*Restricted Definitive Note*" means a Definitive Note bearing the Private Placement Legend.

"*Restricted Global Note*" means a Global Note bearing the Private Placement Legend.

"*Restricted Period*" means the 40-day distribution compliance period as defined in Regulation S.

"*Restructuring*" means (i) Wynn Resorts' contribution of all of its equity interests in Wynn Group Asia to Wynn Resorts Finance, making Wynn Group Asia a wholly-owned subsidiary of Wynn Resorts Finance and (ii) Wynn Resorts Finance's contribution of all of its equity interests in Wynn MA, LLC and Everett Property, LLC to Wynn America Group, LLC, making each a wholly-owned subsidiary of Wynn America Group, LLC.

"*Rule 144*" means Rule 144 promulgated under the Securities Act.

"*Rule 144A*" means Rule 144A promulgated under the Securities Act.

"*Rule 903*" means Rule 903 promulgated under the Securities Act.

"*Rule 904*" means Rule 904 promulgated under the Securities Act.

"*S&P*" means Standard & Poor's Rating Services, a division of the McGraw Hill Companies, Inc., or any successor to its statistical rating business, except that any reference to a particular rating by S&P shall be deemed to be a reference to the corresponding rating by any such successor.

"*Sale and Leaseback Transaction*" means, with respect to any Person, an arrangement whereby such Person enters into a lease of property previously transferred by such Person to the lessor.

"*Screened Affiliate*" means any Affiliate of a Holder (i) that makes investment decisions independently from such Holder and any other Affiliate of such Holder that is not a Screened Affiliate, (ii) that has in place customary information screens between it and such Holder and any other Affiliate of such Holder that is not a Screened Affiliate and such screens prohibit the sharing of information with respect to Wynn Resorts Finance or its Subsidiaries, (iii) whose investment policies are not directed by such Holder or any other Affiliate of such Holder that is acting in concert with such Holder in connection with its investment in the Notes, and (iv) whose investment decisions are not influenced by the investment decisions of such Holder or any other Affiliate of such Holder that is acting in concert with such Holders in connection with its investment in the Notes.

"*SEC*" means the Securities and Exchange Commission.

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

"*Senior Credit Facilities*" means the New Revolving Credit Facility and the New Term Facility, including, in each case, any related notes, mortgages, letters of credit, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any appendices, exhibits, annexes or schedules to any of the foregoing (as the same may be in effect from time to time) and any amendments, supplements, modifications, extensions, renewals, restatements, refundings, exchanges or refinancings thereof (whether with the original agents and lenders or other agents or lenders or otherwise, and whether provided under the original credit agreement or other credit agreements or otherwise) and any indentures or credit facilities or commercial paper facilities with banks or other institutional lenders or investors that extend, replace, refund, exchange, refinance, renew or defease any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding, exchange or refinancing facility or indenture that increases the amount borrowable thereunder or alters the maturity thereof or adds Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders.

"*Short Derivative Instrument*" means a Derivative Instrument (i) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with positive changes to the Performance References and/or (ii) the value of which generally increases, and/or the payment or delivery obligations under which generally decrease, with negative changes to the Performance References.

"Specified Transaction" means any (a) incurrence or repayment of Indebtedness (other than for working capital purposes or under a revolving credit facility), (b) investment that results in a Person becoming a Guarantor, (c) acquisition, (d) asset sale, and (e) acquisition or investment constituting an acquisition of assets constituting a business unit, line of business or division of another Person. For the avoidance of doubt, the Transactions shall constitute a Specified Transaction.

"*Stated Maturity*" means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the documentation governing such Indebtedness as of the Issue Date, and shall not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"*Subsidiary*" means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof);

(2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof); or

(3) any limited liability company (a) the manager or managing member of which is such Person or a Subsidiary of such Person or (b) the only members of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

"*Substituted Consolidated EBITDA*" means with respect to any fiscal quarter, the greater of Consolidated EBITDA for the fiscal quarter (a) during the immediately preceding fiscal year corresponding to such fiscal quarter and (b) immediately preceding the fiscal quarter in which the applicable Qualifying Act of Terrorism shall have occurred, in each case subject to customary seasonal adjustments (as determined in good faith by Wynn Resorts Finance).

"*Test Period*" means, for any date of determination, the period of the four most recently ended consecutive fiscal quarters of the Issuers and the Guarantors for which quarterly or annual financial statements have been delivered or are required to have been delivered to the trustee pursuant to the "Reports" covenant; provided that, solely for purposes of determining (x) adjustments to Consolidated EBITDA for purposes of clause (F) of the definition thereof, (y) Consolidated Net Income related to dividends and distributions paid or declared to Wynn Group Asia by its direct or indirect Subsidiaries for purposes of clause (c) of the definition thereof, and (z) the Recurring Dividend Amount, "Test Period" shall be deemed the period of the four most recently ended consecutive fiscal quarters of Wynn Resorts Finance and its Subsidiaries ending September 30 for which quarterly or annual financial statements have been delivered or are required to have been delivered to the trustee.

"*Total Assets*" means at any date, the total assets of Wynn Resorts Finance and the Guarantors at such date, determined on a consolidated basis in accordance with US GAAP.

"*Transactions*" means, collectively, (a) the issuance of the Notes, (b) the entering into of the Senior Credit Facilities and the borrowings thereunder on the Issue Date, (c) the Bank Refinancing, (d) the Restructuring, and (e) the payment of fees and expenses in connection with the foregoing.

"*Trigger Event*" means the transfer of shares of Equity Interests of any Subsidiary or any gaming facility into trust or other similar arrangement required by any Gaming Authority from time to time.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939, as amended, as in effect of the Issue Date.

"*Trustee*" means the party named as such in the preamble to this Indenture until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"*Unrestricted Operating Cash*" means, as of any date of determination, cash and cash equivalents of the Issuers and the Guarantors that would not appear as "restricted" on a combined or consolidated balance sheet of the Issuers and the Guarantors in an amount in excess of the Minimum Cage Cash Amount and excluding cash and cash equivalents constituting dividends paid to Wynn Group Asia by its direct and indirect Subsidiaries.

"*Unrestricted Definitive Note*" means a Definitive Note that does not bear and is not required to bear the Private Placement Legend.

"*Unrestricted Global Note*" means a Global Note that does not bear and is not required to bear the Private Placement Legend.

"*US GAAP*" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect on the Issue Date.

"*U.S. Person*" means a U.S. Person as defined in Rule 902(k) promulgated under the Securities Act.

"*Voting Stock*" of any Person as of any date means 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.

"*Wynn Group Asia*" means Wynn Group Asia, Inc., a Nevada corporation.

"*Wynn Las Vegas*" means Wynn Las Vegas, LLC, a Nevada limited liability company, or any successor thereto.

"*Wynn Massachusetts Resort*" means the casino resort and related amenities owned and/or operated by Wynn Resorts Finance and its Subsidiaries in Everett, Massachusetts.

"*Wynn Resorts*" means Wynn Resorts, Limited, a Nevada corporation, or any successor thereto.

"*Wynn Resorts Capital*" means Wynn Resorts Capital Corp., a Nevada corporation, or any successor thereto.

"*Wynn Resorts Finance*" means Wynn Resorts Finance, LLC, a Nevada limited liability company, or any successor thereto.

"*Wynn Resorts Holdings*" means Wynn Resorts Holdings, LLC, a Nevada limited liability company, or any successor thereto.

Section 1.02*Other Definitions.*

Term	Defined in Section
"Authentication Order"	2.02
"Beneficiary"	13.01
"Change of Control Offer"	4.11(a)
"Change of Control Payment"	4.11(a)
"Change of Control Payment Date"	4.11(a)(2)
"Covenant Defeasance"	8.03
"Directing Holder"	6.06
"DTC"	2.03
"Initial Default"	6.01
"Legal Defeasance"	8.02
"Noteholder Direction"	6.06
"Note Obligations"	13.01(b)
"Paying Agent"	2.03
"Position Representation"	6.06
"Registrar"	2.03
"Verification Covenant"	6.06

Section 1.03*Rules of Construction.*

Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) "or" is not exclusive;

(4) words in the singular include the plural, and in the plural include the singular;

(5) "will" shall be interpreted to express a command;

(6) provisions apply to successive events and transactions;

(7) references to sections of or rules under the Securities Act shall be deemed to include substitute, replacement of successor sections or rules adopted by the SEC from time to time;

(8) references to any statute, law, rule or regulation shall be deemed to refer to the same as from time to time amended and in effect and to any successor statute, law, rule or regulation;

(9) references to any contract, agreement or instrument shall mean the same as amended, modified, supplemented or amended and restated from time to time, in each case, in accordance with any applicable restrictions contained therein or in this Indenture; and

(10) the consummation by the Issuers on the Issue Date of the transactions described in the Issuers' Offering Memorandum, dated as of September 12, 2019, relating to the offering of the Initial Notes, shall be deemed to occur concurrently.

ARTICLE 2.
THE NOTES

Section 2.01*Form and Dating.*

(a) *General*. The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibits A-1 and A-2 hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Note shall be dated the date of its authentication. The Notes shall be in denominations of $2,000 or an integral multiple of $1,000 in excess of $2,000.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Issuers, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

(b) *Global Notes.* Notes issued in global form shall be substantially in the form of Exhibits A-1 and A-2 attached hereto (including the Global Note Legend thereon and the "*Schedule of Exchanges of Interests in the Global Note*" attached thereto), which Notes shall be deposited on behalf of the holders of the Notes represented thereby with the Trustee, as Custodian for the Depositary, and registered in the name of the Depositary or the nominee of the Depositary. Notes issued in definitive form shall also be substantially in the form of Exhibit A-1 attached hereto (but without the Global Note Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Any Notes issued in global form and definitive form shall be duly executed by the Issuers and authenticated by the Trustee as hereinafter provided. Each Global Note shall represent such of the outstanding Notes as shall be specified therein and each shall provide that it represents the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) *Temporary Global Notes*. Notes offered and sold in reliance on Regulation S shall be issued initially in the form of the Regulation S Temporary Global Note substantially in the form of Exhibit A-2 attached hereto, which shall be deposited on behalf of the holders of the Notes

represented thereby with the Trustee, as Custodian for the Depositary, and registered in the name of the Depositary or the nominee of the Depositary for the accounts of designated agents holding on behalf of Euroclear or Clearstream, duly executed by the Issuers and authenticated by the Trustee as hereinafter provided. The Restricted Period shall be terminated upon the receipt by the Trustee of:

(1) a written certificate from the Depositary, together with copies of certificates from Euroclear and Clearstream certifying that they have received certification of non-United States beneficial ownership of 100% of the aggregate principal amount of the Regulation S Temporary Global Note (except to the extent of any Beneficial Owners thereof who acquired an interest therein during the Restricted Period pursuant to another exemption from registration under the Securities Act and who shall take delivery of a beneficial ownership interest in a 144A Global Note or an IAI Global Note bearing a Private Placement Legend, all as contemplated by Section 2.06(b) hereof); and

(2) an Officers' Certificate from each of the Issuers.

Following the termination of the Restricted Period, beneficial interests in the Regulation S Temporary Global Note shall be exchanged for beneficial interests in the Regulation S Permanent Global Note pursuant to the Applicable Procedures. Simultaneously with the authentication of the Regulation S Permanent Global Note, the Trustee shall cancel the Regulation S Temporary Global Note. The aggregate principal amount of the Regulation S Temporary Global Note and the Regulation S Permanent Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

(d) *Euroclear and Clearstream Procedures Applicable* . The provisions of the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "General Terms and Conditions of Clearstream Banking" and "Customer Handbook" of Clearstream shall be applicable to transfers of beneficial interests in the Regulation S Temporary Global Note and the Regulation S Permanent Global Note that are held by Participants through Euroclear or Clearstream.

Section 2.02*Execution and Authentication.*

A Designated Officer on behalf of each of Wynn Resorts Finance and Wynn Resorts Capital must sign the Notes for the Issuers by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note shall nevertheless be valid.

A Note shall not be valid until authenticated by the manual signature of the Trustee. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee shall, upon receipt of a written order of the Issuers signed by a Designated Officer of each of Wynn Resorts Finance and Wynn Resorts Capital (an "*Authentication Order*"),

authenticate Notes for original issue that may be validly issued under this Indenture, including any Additional Notes (including Notes to be issued in substitution for outstanding Notes to reflect any name change of either Issuer, by succession permitted hereunder or otherwise).

The aggregate principal amount of Notes outstanding at any time may not exceed aggregate principal amount of Notes authorized for issuance by the Issuers pursuant to one or more Authentication Orders, except as provided in Section 2.07 hereof.

The Trustee may appoint an authenticating agent acceptable to the Issuers to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Issuers.

Section 2.03*Registrar and Paying Agent.*

The Issuers shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("*Registrar*") and an office or agency where Notes may be presented for payment ("*Paying Agent*"). The Registrar shall keep a register of the Notes and of their transfer and exchange. The Issuers may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Issuers may change any Paying Agent or Registrar without notice to any Holder. The Issuers shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Issuers fail to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. Either or both of the Issuers or any of their Subsidiaries may act as Paying Agent or Registrar.

The Issuers initially appoint The Depository Trust Company ("*DTC*") to act as Depositary with respect to the Global Notes.

The Issuers initially appoint the Trustee to act as the Registrar and Paying Agent and to act as Custodian with respect to the Global Notes.

Section 2.04*Paying Agent to Hold Money in Trust.*

The Issuers shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and shall notify the Trustee of any default by the Issuers in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Issuers at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Issuers or a Subsidiary thereof) shall have no further liability for the money. If either Issuer or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Issuers, the Trustee shall serve as Paying Agent for the Notes.

Section 2.05*Holder Lists.*

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders. If the Trustee is not the Registrar, the Issuers shall furnish to the Trustee at least seven Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes.

Section 2.06*Transfer and Exchange.*

(a) *Transfer and Exchange of Global Notes.* A Global Note may not be transferred as a whole except by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. All Global Notes shall be exchanged by the Issuers for Definitive Notes if:

(1) Wynn Resorts Finance delivers to the Trustee written notice from the Depositary that it is unwilling or unable to continue to act as Depositary or that it is no longer a clearing agency registered under the Exchange Act and, in either case, a successor Depositary is not appointed by Wynn Resorts Finance within 120 days after the date of such notice from the Depositary;

(2) the Issuers in their sole discretion determine that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and delivers a written notice to such effect to the Trustee; provided that in no event shall the Regulation S Temporary Global Note be exchanged by the Issuers for Definitive Notes prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act; or

(3) following the occurrence and during the continuation of a Default or Event of Default, any Person having a beneficial interest in a Global Note requests that the Global Notes should be exchanged for Definitive Notes and delivers a written notice to such effect to the Trustee.

Upon the occurrence of either of the preceding events in (1) or (2) above, Definitive Notes shall be issued in such names as the Depositary shall instruct the Trustee. Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or 2.10 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Note. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a). However, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b) or (c) hereof.

(b) *Transfer and Exchange of Beneficial Interests in the Global Notes*. The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests

in the Restricted Global Notes shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also shall require compliance with either subparagraph (1) or (2) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(1) *Transfer of Beneficial Interests in the Same Global Note*. Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; provided, however, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Temporary Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person. Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(1).

(2) *All Other Transfers and Exchanges of Beneficial Interests in Global Notes*. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(1) above, the transferor of such beneficial interest must deliver to the Registrar either:

(A) both:

(i) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged; and

(ii) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase; or

(B) both:

(i) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged; and

(ii) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in (1) above;

provided that in no event shall Definitive Notes be issued upon the transfer or exchange of beneficial interests in the Regulation S Temporary Global Note prior

to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903 under the Securities Act.

Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(g) hereof.

(3) *Transfer of Beneficial Interests to Another Restricted Global Note*. A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.06(b)(2) above and the Registrar receives the following:

(A) if the transferee shall take delivery in the form of a beneficial interest in the 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transferee shall take delivery in the form of a beneficial interest in the Regulation S Temporary Global Note or the Regulation S Permanent Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transferee shall take delivery in the form of a beneficial interest in the IAI Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(4) *Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an Unrestricted Global Note.* A beneficial interest in any Restricted Global Note may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.06(b)(2) above and the Registrar receives the following:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or

(B) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to this paragraph (4) above at a time when an Unrestricted Global Note has not yet been issued, the Issuers shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to this paragraph (4) above.

Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(c) *Transfer or Exchange of Beneficial Interests for Definitive Notes.*

(1) *Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes*. If any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then, upon receipt by the Registrar of the following documentation:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to an Institutional Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable; or

(F) if such beneficial interest is being transferred to the Issuers or any of their Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(g) hereof, and the Issuers shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall deliver such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c)(1) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(2) *Beneficial Interests in Regulation S Temporary Global Note to Definitive Notes.* Notwithstanding Sections 2.06(c)(1)(A) and (C) hereof, a beneficial interest in the Regulation S Temporary Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

(3) *Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes*. A holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only if the Registrar receives the following:

(i) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or

(ii) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(4) *Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes*. If any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon satisfaction of the conditions set forth in Section 2.06(b)(2) hereof, the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and the Issuers shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(4) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest requests through instructions to the Registrar from or through the Depositary and the Participant or Indirect Participant. The Trustee shall deliver such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(4) shall not bear the Private Placement Legend.

(d) *Transfer and Exchange of Definitive Notes for Beneficial Interests.*

(1) *Restricted Definitive Notes to Beneficial Interests in Restricted Global Notes.* If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to an Institutional Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable; or

(F) if such Restricted Definitive Note is being transferred to the Issuers or any of their Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof,

the Trustee shall cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the appropriate Restricted Global Note, in the case of clause (B) above, the 144A Global Note, in the case of clause (C) above, the Regulation S Global Note.

(2) *Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes.* A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if the Registrar receives the following:

(A) if the Holder of such Definitive Notes proposes to exchange such Notes for a beneficial interest in the Unrestricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(c) thereof; or

(B) if the Holder of such Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.06(d)(2), the Trustee shall cancel the Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(3) *Unrestricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes.* A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraphs (2) or (3) above at a time when an Unrestricted Global Note has not yet been issued, the Issuers shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more

Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

(e) *Transfer and Exchange of Definitive Notes for Definitive Notes.* Upon request by a Holder of Definitive Notes and such Holder's compliance with the provisions of this Section 2.06(e), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder must present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder must provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(e).

(1) *Restricted Definitive Notes to Restricted Definitive Notes.* Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer shall be made pursuant to Rule 144A, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transfer shall be made pursuant to Rule 903 or Rule 904, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transfer shall be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(2) *Restricted Definitive Notes to Unrestricted Definitive Notes.* Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if the Registrar receives the following:

(A) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or

(B) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and if the Registrar so requests, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities

Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(3) *Unrestricted Definitive Notes to Unrestricted Definitive Notes.* A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) *Legends*. The following legends shall appear on the face of all Global Notes and Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture.

(1) *Private Placement Legend.*

(A) Except as permitted by subparagraph (B) below, each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

"THIS NOTE HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") AND, ACCORDINGLY, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS, EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) (A "QIB"), (B) IT IS NOT A U.S. PERSON, IS NOT ACQUIRING THIS NOTE FOR THE ACCOUNT OR BENEFIT OF A U.S. PERSON AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATION S UNDER THE SECURITIES ACT OR (C) IT IS AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT) (AN "IAI"), (2) AGREES THAT IT WILL NOT, PRIOR TO THE DATE [IN THE CASE OF RULE 144A NOTES: ON WHICH WYNN RESORTS FINANCE INSTRUCTS THE TRUSTEE THAT THIS RESTRICTIVE LEGEND SHALL BE DEEMED REMOVED (WHICH INSTRUCTION IS EXPECTED TO BE GIVEN ON OR ABOUT THE ONE-YEAR ANNIVERSARY OF THE ISSUANCE OF THIS NOTE)] [IN THE CASE OF REGULATION S NOTES: 40 DAYS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH WYNN RESORTS FINANCE OR ANY AFFILIATE OF WYNN RESORTS FINANCE WAS THE OWNER OF THIS NOTE (OR ANY PREDECESSOR OF SUCH NOTE)] RESELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT (A) TO WYNN RESORTS FINANCE OR ANY SUBSIDIARY THEREOF, (B) TO A PERSON WHOM THE HOLDER REASONABLY BELIEVES IS A QIB PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QIB IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT, (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (E) TO AN IAI THAT, PRIOR TO SUCH TRANSFER, FURNISHES TO THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE REGISTRATION OF TRANSFER OF THIS NOTE (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE) AND AN OPINION OF COUNSEL ACCEPTABLE TO WYNN RESORTS

FINANCE THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT OR (F) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND, IN EACH CASE, IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS, AND (3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS NOTE OR AN INTEREST HEREIN IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THIS NOTE OR ANY INTEREST HEREIN WITHIN THE TIME PERIOD REFERRED TO ABOVE, THE HOLDER MUST CHECK THE APPROPRIATE BOX SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS CERTIFICATE TO THE TRUSTEE. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANINGS GIVEN TO THEM BY RULE 902 OF REGULATION S UNDER THE SECURITIES ACT. THE INDENTURE CONTAINS A PROVISION REQUIRING THE TRUSTEE TO REFUSE TO REGISTER ANY TRANSFER OF THIS NOTE IN VIOLATION OF THE FOREGOING RESTRICTIONS."

(B) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraphs (b)(4), (c)(3), (c)(4), (d)(2), (d)(3), (e)(2) or (e)(3) of this Section 2.06 (and all Notes issued in exchange therefor or substitution thereof) shall not bear the Private Placement Legend.

(2) *Global Note Legend.* Each Global Note shall bear a legend in substantially the following form:

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (1) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06 OF THE INDENTURE, (2) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (3) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (4) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE ISSUERS.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("DTC"), TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER,

PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

(3) *Regulation S Temporary Global Note Legend.* The Regulation S Temporary Global Note shall bear a Legend in substantially the following form:

"THE RIGHTS ATTACHING TO THIS REGULATION S TEMPORARY GLOBAL NOTE, AND THE CONDITIONS AND PROCEDURES GOVERNING ITS EXCHANGE FOR CERTIFICATED NOTES, ARE AS SPECIFIED IN THE INDENTURE (AS DEFINED HEREIN). NEITHER THE HOLDER NOR THE BENEFICIAL OWNERS OF THIS REGULATION S TEMPORARY GLOBAL NOTE SHALL BE ENTITLED TO RECEIVE PAYMENT OF INTEREST HEREON."

(g) *Cancellation and/or Adjustment of Global Notes.* At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who shall take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who shall take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(h) *General Provisions Relating to Transfers and Exchanges.*

(1) To permit registrations of transfers and exchanges, the Issuers shall execute and the Trustee shall authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 or at the Registrar's request.

(2) No service charge shall be made to a Holder of a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Issuers may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.10, 3.06, 4.11 and 9.04 hereof).

(3) The Registrar shall not be required to register the transfer of or exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(4) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes shall be the valid obligations of the Issuers,

evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(5) Neither the Registrar nor the Issuers shall be required:

(A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.02 hereof and ending at the close of business on the day of selection;

(B) to register the transfer of or to exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part; or

(C) to register the transfer of or to exchange a Note between a record date and the next succeeding interest payment date.

(6) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuers may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuers shall be affected by notice to the contrary.

(7) The Trustee shall authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.02 hereof.

(8) All certifications and certificates required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

(9) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.07*Replacement Notes.*

If any mutilated Note is surrendered to the Trustee or the Issuers and the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, the Issuers shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note if the Trustee's requirements are met. If required by the Trustee or the Issuers, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Issuers to protect the Issuers, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Issuers may charge for their expenses in replacing a Note.

Every replacement Note is an additional obligation of the Issuers and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08*Outstanding Notes.*

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Issuers or an Affiliate of either Issuer holds the Note.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than an Issuer, a Subsidiary of an Issuer or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

Section 2.09*Treasury Notes.*

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Issuers, or any of their Affiliates, shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that the Trustee knows are so owned shall be so disregarded.

Section 2.10*Temporary Notes.*

Until certificates representing Notes are ready for delivery, the Issuers may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of certificated Notes but may have variations that the Issuers consider appropriate for temporary Notes and as may be reasonably acceptable to the Trustee. Without unreasonable delay, the Issuers shall prepare and the Trustee shall authenticate Definitive Notes in exchange for temporary Notes.

Holders of temporary Notes shall be entitled to all of the benefits of this Indenture.

Section 2.11*Cancellation.*

The Issuers at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel all Notes surrendered for

registration of transfer, exchange, payment, replacement or cancellation and shall destroy canceled Notes in its customary manner. Certification of the destruction of all canceled Notes shall be delivered to the Issuers upon their request. The Issuers may not issue new Notes to replace Notes that they have paid or that have been delivered to the Trustee for cancellation.

Section 2.12*Defaulted Interest.*

If the Issuers default in a payment of interest on the Notes, they shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, in each case, at the rate provided in the Notes and in Section 4.01 hereof. The Issuers shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment. The Issuers shall fix or cause to be fixed each such special record date and payment date, provided that no such special record date may be less than 10 days prior to the related payment date for such defaulted interest. At least 15 days before the special record date, the Issuers (or, upon the written request of the Issuers, the Trustee in the name and at the expense of the Issuers) shall mail or cause to be mailed to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

Section 2.13*Issuance of Additional Notes.*

The Issuers will be entitled, upon delivery of an Officers' Certificate, Opinion of Counsel and Authentication Order, subject to compliance with Section 2.02 hereof, to issue Additional Notes under this Indenture, which shall have identical terms as the Initial Notes issued on the Issue Date, other than with respect to the date of issuance, the initial date from which interest shall accrue on such Additional Notes and issue price. Without the consent of any Holder of Notes, the Issuers will be entitled to make any amendments to this Indenture or the Note Guarantees as they reasonably determine appropriate in good faith to facilitate the issuance of such Additional Notes.

With respect to any Additional Notes, the Issuers will set forth in a resolution of the Board of Directors of Wynn Resorts Capital and an Officers' Certificate, a copy of each which shall be delivered to the Trustee, the following information:

(a) the aggregate principal amount of such Additional Notes to be authenticated and delivered pursuant to this Indenture; and

(b) which such Additional Notes shall be Notes issued in the form of Restricted Global Notes or Restricted Definitive Notes, as the case may be, or shall be Notes issued in the form of Unrestricted Global Notes or Unrestricted Definitive Notes, as the case may be.

With respect to any Additional Notes, the Opinion of Counsel delivered to the Trustee shall state:

(c) that the form and terms of such Additional Notes have been established conformity with this Indenture; and

(d) that such Additional Notes, when authenticated and delivered by the Trustee and issued by Wynn Resorts Finance and Wynn Resorts Capital in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Issuers, enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting the enforcement of creditors' rights and to general equity principles.

ARTICLE 3.
REDEMPTION AND PREPAYMENT

Section 3.01*Notices to Trustee.*

If the Issuers elect to redeem Notes pursuant to the optional redemption provisions of Section 3.07 hereof, they must furnish to the Trustee, at least 15 days but not more than 60 days before a redemption date, an Officers' Certificate setting forth:

(a) the clause of this Indenture pursuant to which the redemption shall occur;

(b) the redemption date;

(c) the principal amount of Notes to be redeemed; and

(d) the redemption price.

Section 3.02*Selection of Notes to Be Redeemed or Purchased.*

If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee shall select Notes for redemption or purchase as follows:

(a) if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Notes are listed; or

(b) if the Notes are not listed on any national securities exchange, on a pro rata basis, by lot or by such method as the Trustee shall deem fair and appropriate, and in compliance with the procedures of the Depositary.

In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased shall be selected, unless otherwise provided herein, not less than 15 nor more than 60 days prior to the redemption or purchase date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee shall promptly notify the Issuers in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected shall be in amounts of $2,000 or integral multiples of $1,000 in excess of $2,000; provided, however, that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder, even if not a multiple of $1,000, shall be redeemed or purchased. Except as

provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03*Notice of Redemption.*

At least 15 days but not more than 60 days before a redemption date, the Issuers shall deliver or cause to be delivered a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be delivered more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Articles 8 or 12 of this Indenture.

The notice shall identify the Notes to be redeemed and shall state:

(a) the redemption date;

(b) the redemption price;

(c) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion shall be issued upon cancellation of the original Note;

(d) the name and address of the Paying Agent;

(e) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(f) that, unless the Issuers default in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(g) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and

(h) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes.

At the Issuers' request, the Trustee shall give the notice of redemption in the Issuers' name and at their expense; provided, however, that the Issuers have delivered to the Trustee, at least 20 days prior to the redemption date (or such shorter time period otherwise agreed to by the Trustee), an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04*Effect of Notice of Redemption.*

Any such redemption pursuant to this Article 3 may, at the discretion of the Issuers, be subject to one or more conditions precedent, including a Change of Control. In addition, if such redemption is subject to the satisfaction of one or more conditions precedent, the related notice shall

describe each such condition, and if applicable, shall state that, in the discretion of the Issuers, the date of redemption may be delayed until such time as any or all such conditions shall be satisfied or waived (provided that in no event shall such date of redemption be delayed to a date later than 60 days after the date on which such notice was mailed), or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied or waived by the date of redemption, or by the date of redemption as so delayed. If mailed in the manner provided in Section 3.03 hereof, the notice of redemption shall be conclusively presumed to have been given whether or not the Holder receives such notice.

Section 3.05*Deposit of Redemption or Purchase Price.*

One Business Day prior to the redemption or purchase price date, the Issuers shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued interest and premium, if any, on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent shall promptly return to the Issuers any money deposited with the Trustee or the Paying Agent by the Issuers in excess of the amounts necessary to pay the redemption or purchase price of, and accrued interest and premium, if any, on, all Notes to be redeemed or purchased.

If the Issuers comply with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest shall cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after an interest record date but on or prior to the related interest payment date, then any accrued and unpaid interest shall be paid to the Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Issuers to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06*Notes Redeemed or Purchased in Part.*

Upon surrender of a Note that is redeemed or purchased in part, the Issuers shall issue and, upon receipt of an Authentication Order, the Trustee shall authenticate for the Holder at the expense of the Issuers a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered.

Section 3.07*Optional Redemption.*

The Notes are redeemable at the Issuers' election, in whole or in part at any time prior to their Stated Maturity.

(a) The redemption price for the Notes that are redeemed before July 1, 2029 will be equal to the greater of:

(1) 100% of the principal amount of the Notes to be redeemed; or

(2) as determined by an Independent Investment Banker, the sum of the present values of the remaining scheduled payments of principal and interest on the Notes to be redeemed (not including any portion of such payments of interest accrued to the date of redemption) discounted to the redemption date on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at the Adjusted Treasury Rate, plus 50 basis points,

plus, in either of the above cases, accrued and unpaid interest to, but not including, the date of redemption on the Notes to be redeemed.

(b) The redemption price for Notes that are redeemed on or after July 1, 2029 will be equal to the sum of 100% of their principal amount, plus accrued and unpaid interest to, but not including, the date of redemption on the Notes to be redeemed.

Section 3.08*Mandatory Redemption.*

Other than as set forth in Section 3.09 below, the Issuers are not required to make mandatory redemption or sinking fund payments with respect to the Notes.

Section 3.09*Mandatory Disposition or Redemption Pursuant to Gaming Laws.*

Notwithstanding any other provision hereof, each holder, by accepting a Note, shall be deemed to have agreed that, if any Gaming Authority requires a Holder or Beneficial Owner of Notes to be registered, licensed, qualified or found suitable under any applicable Gaming Law, such Holder or Beneficial Owner, as the case may be, shall apply for a license, qualification or a finding of suitability in accordance with such Gaming Law and shall cooperate with the requests of any Gaming Authority for information, documentation, and/or testimony. If such Holder or Beneficial Owner (1) fails to apply for a license, qualification or finding of suitability within 30 days after being requested to do so (or such lesser period as required by the Gaming Authority), or (2) is notified by a Gaming Authority that it shall not be licensed, qualified or found suitable, then the Issuers shall have the right, at their option, to:

(a) require the Holder or Beneficial Owner to dispose of its Notes within 30 days (or such lesser period as required by the Gaming Authority) following the earlier of:

(1) the termination of the period described above for the Holder or Beneficial Owner to apply for a license, qualification or finding of suitability if the Holder fails to apply for a license, qualification or finding of suitability during such period; or

(2) the receipt of the notice from the Gaming Authority that the Holder or Beneficial Owner shall not be licensed, qualified or found suitable by the Gaming Authority; or

(b) redeem the Notes of the Holder or Beneficial Owner at a redemption price equal to:

(1) the price required by applicable law or by order of any Gaming Authority; or

(2) the lesser of:

(A) the principal amount of the Notes; and

(B) the price that the Holder or Beneficial Owner paid for the Notes,

in each case, together with accrued and unpaid interest, if any, on the Notes to, but not including, the earlier of (1) the date of redemption or such earlier date as is required by the Gaming Authority or (2) the date of the finding of unsuitability by the Gaming Authority, which may be less than 30 days following the notice of redemption. The Issuers shall notify the Trustee in writing of any redemption pursuant to this Section 3.09 as soon as reasonably practicable.

Immediately upon a determination by a Gaming Authority that a Holder or Beneficial Owner of Notes shall not be licensed, qualified or found suitable, the Holder or Beneficial Owner shall not have any further rights with respect to the Notes to:

(a) exercise, directly or indirectly, through any Person, any right conferred by the Notes; or

(b) receive any interest or any other distribution or payment with respect to the Notes, or any remuneration in any form from the Issuers for services rendered or otherwise, except the redemption price of the Notes.

Neither the Issuers nor the Trustee shall be responsible for any costs or expenses any Holder or Beneficial Owner may incur in connection with its registration, application for a license, qualification or a funding of suitability, or any renewal or continuation of the foregoing or compliance with any other requirement of a Gaming Authority. Those costs and expenses will be the obligations of the Holder or Beneficial Owner, as applicable. In addition, any Holder or Beneficial Owner, as applicable, required to be licensed, qualified or found suitable under applicable Gaming Laws must pay all investigative fees and costs of any Gaming Authority in connection with such license, qualification, finding of suitability or application therefor.

ARTICLE 4.
COVENANTS

Section 4.01*Payment of Notes.*

The Issuers shall pay or cause to be paid the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than the Issuers or a Subsidiary thereof, holds as of 10:00 a.m. Eastern Time on the due date money deposited by the Issuers in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

The Issuers shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to 1% per annum in excess of the then applicable interest rate on the Notes to the extent lawful; they shall pay interest (including post-

petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

Section 4.02*Maintenance of Office or Agency.*

The Issuers shall maintain in the Borough of Manhattan, the City of New York, an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Issuers in respect of the Notes and this Indenture may be served. The Issuers shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuers fail to maintain any such required office or agency or fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Issuers may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Issuers of their obligation to maintain an office or agency in the Borough of Manhattan, the City of New York for such purposes. The Issuers shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuers hereby designate the Corporate Trust Office of the Trustee as one such office or agency of the Issuers in accordance with Section 2.03 hereof.

Section 4.03*Reports.*

(1) So long as any notes are outstanding, Wynn Resorts Finance shall furnish to the Trustee:

(a) within 90 days after the end of each fiscal year beginning with the fiscal year ended December 31, 2019, annual reports of Wynn Resorts Finance containing substantially all of the information that would have been required to be contained in an Annual Report on Form 10-K under the Exchange Act if Wynn Resorts Finance had been a reporting company under the Exchange Act (but only to the extent similar information is included in the Issuers' Offering Memorandum, dated as of September 12, 2019, relating to the offering of the Initial Notes), including (i) "Management's Discussion and Analysis of Financial Condition and Results of Operations", (ii) audited financial statements prepared in accordance with US GAAP and (iii) a calculation of Consolidated EBITDA for the end of such fiscal year;

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year beginning with the fiscal quarter ended September 30, 2019, quarterly reports of Wynn Resorts Finance containing substantially all of the information that would have been required to be contained in a Quarterly Report on Form 10-Q under the Exchange Act if Wynn Resorts Finance had been a reporting company under the Exchange Act (but only to the extent similar information is provided in the Issuers' Offering Memorandum, dated as of September 12, 2019, relating to the offering of

the Initial Notes), including (i) "Management' Discussion and Analysis of Financial Condition and Results of Operations", (ii) unaudited quarterly financial statements prepared in accordance with US GAAP and reviewed pursuant to Statement on Auditing Standards No. 100 (or any successor provision) and (iii) a calculation of Consolidated EBITDA for the relevant period; and

(c) within 10 business days after the occurrence of each event that would have been required to be reported in a Current Report on Form 8-K under the Exchange Act if Wynn Resorts Finance had been a reporting company under the Exchange Act, current reports containing substantially all of the information that would have been required to be contained in a Current Report on Form 8-K under the Exchange Act if Wynn Resorts Finance had been a reporting company under the Exchange Act; provided, however, that no such current report will be required to be furnished if Wynn Resorts Finance determines in its good faith judgment that such event is not material to noteholders or the business, assets, operations, financial positions or prospects of Wynn Resorts Finance and the Guarantors, taken as a whole; *provided*, *further*, however, that such reports (i) will not be required to comply with Section 302 or Section 404 of the Sarbanes-Oxley Act of 2002, or related Items 307 and 308 of Regulation S-K promulgated by the SEC, or Item 10(e) of Regulation S-K (with respect to any non-US GAAP financial measures contained therein), (ii) will not be required to contain the separate financial information for Guarantors contemplated by Rule 3-10 or Rule 3-16 of Regulation S-X promulgated by the SEC, (iii) will only be required to include limited executive compensation disclosure consisting of a summary compensation table (including any equity awards), a description of employment agreements with officers and a description of any incentive plans and (iv) will not be required to include exhibits that would otherwise be required to be filed pursuant to Item 601 of Regulation S-K.

(2) So long as any notes are outstanding, Wynn Resorts Finance shall also:

(a) issue a press release to an internationally recognized wire service no fewer than three business days prior to the first public disclosure of the annual and quarterly reports required by clauses (a) and (b) of this Section 4.03 announcing the date on which such reports will become publicly available and directing noteholders, prospective investors, broker-dealers and securities analysts to contact the investor relations office of Wynn Resorts Finance to obtain copies of such reports;

(b) within 10 business days after furnishing to the trustee the annual and quarterly reports required by clauses (a) and (b) of this Section 4.03, hold a conference call to discuss such reports and the results of operations for the relevant reporting period;

(c) issue a press release to an internationally recognized wire service no fewer than three business days prior to the date of the conference call required to be held in accordance with this paragraph, announcing the time and date of such conference call and either including all information necessary to access the call or directing noteholders, prospective investors, broker-dealers and securities analysts to contact the appropriate person at Wynn Resorts Finance to obtain such information; and

(d) maintain a website to which noteholders, prospective investors, broker-dealers and securities analysts are given access and to which all of the reports and press releases required by this Section 4.03 are posted within the time periods required by this Section 4.03.

(3) Wynn Resorts Finance shall furnish to noteholders, prospective investors, brokerdealers and securities analysts, upon their request, any information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act so long as the notes are not freely transferable under the Securities Act.

(4) Notwithstanding anything to the contrary in this Section 4.03, Wynn Resorts Finance may fulfill the requirement to furnish any such information described in Section 4.03(1)(a), (b) and (c) by filing the information with the SEC within the time periods specified in the SEC's rules and regulations that are then applicable to Wynn Resorts Finance.

(5) Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuers' compliance with any of their covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

Any Parent Entity may satisfy the obligations of Wynn Resorts Finance set forth in this Section 4.03 by providing the requisite financial and other information of such Parent Entity instead of Wynn Resorts Finance; provided that to the extent such information related to such Parent Entity, such information is accompanied by consolidating information, which may be unaudited, that explains in reasonable detail the differences between the information of such Parent Entity, on the one hand, and the information relating to Wynn Resorts Finance and its Subsidiaries on a stand-alone basis, on the other hand.

Section 4.04*Compliance Certificate.*

(a) The Issuers shall deliver to the Trustee, within 90 days after the end of each fiscal year, an Officers' Certificate stating that a review of the activities of the Issuers and their respective Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Issuers have kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge the Issuers have kept, observed, performed and fulfilled each and every covenant contained in this Indenture and are not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default has occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Issuers are taking or proposes to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Issuers are taking or propose to take with respect thereto.

(b) So long as not contrary to the then current recommendations of the American Institute of Certified Public Accountants, the year-end financial statements delivered pursuant to Section 4.03(1)(a) above shall be accompanied by a written statement of the Issuers' independent public accountants (who shall be a firm of established national reputation) that in making the examination necessary for certification of such financial statements, nothing has come to their attention that would lead them to believe that the Issuers have violated any provisions of Article 4 or Article 5

hereof or, if any such violation has occurred, specifying the nature and period of existence thereof, it being understood that such accountants shall not be liable directly or indirectly to any Person for any failure to obtain knowledge of any such violation.

(c) So long as any of the Notes are outstanding, the Issuers shall deliver to the Trustee, forthwith upon any Officer becoming aware of any Default or Event of Default, an Officers' Certificate specifying such Default or Event of Default and what action the Issuers are taking or proposes to take with respect thereto.

Section 4.05*Taxes.*

The Issuers shall pay, and shall cause each of their respective Subsidiaries to pay, prior to delinquency, all material taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders of the Notes.

Section 4.06*Stay, Extension and Usury Laws.*

The Issuers and each of the Guarantors covenant (to the extent that they may lawfully do so) that they shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and each Issuer and each of the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07*Limitation on Liens Securing Indebtedness*

Other than as provided below under Section 4.09, neither Issuer nor any Guarantor may issue, assume or guarantee any Indebtedness secured by a Lien upon any Principal Property or on any evidences of Indebtedness or shares of Capital Stock of, or other ownership interests in, any Subsidiaries (regardless of whether the Principal Property, Indebtedness, Capital Stock or ownership interests were acquired before or after the Issue Date) without effectively providing that the Notes shall be secured equally and ratably with (or prior to) such Indebtedness so long as such Indebtedness shall be so secured, except that this restriction will not apply to:

(a) Liens existing on the Issue Date (excluding Liens securing the Senior Credit Facilities);

(b) Liens affecting property of a corporation or other entity existing at the time it becomes a Guarantor or at the time it is merged into or consolidated with an Issuer or a Guarantor (provided that such Liens are not incurred in connection with, or in contemplation of, such entity becoming a Guarantor or such merger or consolidation and do not extend to or cover property of an Issuer or any Guarantor other than property of the entity so acquired or which becomes a Guarantor);

(c) Liens (including purchase money Liens) existing at the time of acquisition thereof on property acquired after the Issue Date or to secure Indebtedness incurred prior to, at the time of, or within 24 months after the acquisition for the purpose of financing all or part of the purchase price of property acquired after the Issue Date (provided that such Liens do not extend to or cover any property of an Issuer or any Guarantor other than the property so acquired);

(d) Liens on any property acquired, developed, constructed or otherwise improved by Wynn Resorts Finance or any Subsidiary (including liens on the Equity Interests of any Subsidiary of Wynn Resorts Finance and substantially all assets of such Subsidiary, in each case to the extent such property constitutes substantially all of the business of such Subsidiary) to secure or provide for the payment of any part of the purchase price of the property or the cost of the development, construction or improvement thereof (including architectural, engineering, financing, consultant, advisor and legal fees, preopening costs and gaming licensing fees), or any Indebtedness incurred to provide funds for such purposes, or any Lien on any such property existing at the time of acquisition thereof;

(e) Liens in favor of the Issuers or the Guarantors;

(f) Liens on the stock, partnership or other equity interest of Wynn Resorts Finance or any Guarantor in any Joint Venture or any Subsidiary that owns an equity interest in such Joint Venture to secure Indebtedness, provided the amount of such Indebtedness is contributed and/or advanced solely to such Joint Venture;

(g) Liens to government entities, including pollution control or industrial revenue bond financing;

(h) Liens required by any contract or statute in order to permit Wynn Resorts Finance or a Subsidiary of Wynn Resorts Finance to perform any contract or subcontract made by it with or at the request of a governmental entity;

(i) Liens imposed by Gaming Laws or Gaming Authorities, and Liens on deposits made to secure Gaming License applications or to secure the performance of surety or other bonds issued in connection therewith; provided, however, that to the extent such Liens are not imposed by law, such Liens shall in no event encumber any property other than cash and cash equivalents;

(j) mechanic's, materialman's, carrier's or other like Liens, arising in the ordinary course of business;

(k) licenses and sublicenses of software and other technology licenses entered into in the ordinary course of business;

(l) Liens for taxes, assessments or governmental charges, levies or claims that are not yet due and payable or delinquent or that are being contested in good faith by appropriate proceedings;

(m) filing of Uniform Commercial Code financing statements as a precautionary measure in connection with operating leases entered into in the ordinary course of business;

(n) survey exceptions, easements, encroachments, subdivisions or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property that were not incurred in connection with Indebtedness and that do not individually or in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person; and

(o) any extension, renewal, replacement or refinancing of any Indebtedness secured by a Lien permitted by any of the foregoing clauses (a) through (f) and (n).

Section 4.08*Limitation on Sale and Leaseback Transactions.*

Other than as provided below under Section 4.09, neither Issuer nor any Guarantor will enter into any Sale and Leaseback Transaction unless either:

(a) such Issuer or such Guarantor would be entitled, pursuant to the provisions described in clauses (a) through (o) under Section 4.07 to create, assume or suffer to exist a Lien on the property to be leased without equally and ratably securing the Notes; or

(b) an amount equal to the greater of the net cash proceeds of such sale or the Fair Market Value of such property (in the good faith opinion of the Board of Directors of Wynn Resorts Capital) is applied within 120 days to the retirement or other discharge of its Funded Debt.

Section 4.09*Exempted Liens and Sale and Leaseback Transactions.*

Notwithstanding the restrictions set forth in Section 4.07 and Section 4.08, an Issuer or any Guarantor may create, assume or suffer to exist Liens or enter into Sale and Leaseback Transactions not otherwise permitted in Section 4.07 or Section 4.08, respectively, provided that at the time of such event, and after giving effect thereto, the sum of outstanding Indebtedness secured by such Liens (not including Liens permitted under Section 4.07) plus all Attributable Debt in respect of such Sale and Leaseback Transactions entered into (not including Sale and Leaseback Transactions permitted under Section 4.08), measured, in each case, at the time any such Lien is incurred or any such Sale and Leaseback Transaction is entered into, by the Issuers and the Guarantors does not exceed the greater of (x) $1,850.0 million and (y) an amount that would cause the Consolidated Senior Secured Net Leverage Ratio to be greater than 3.00 to 1.00 on a pro forma basis and Liens securing Indebtedness in excess of such amount to the extent such Lien is incurred in connection with an extension, renewal, replacement or refinancing of Indebtedness (not to exceed the principal amount of such extended, renewed, replaced or refinanced Indebtedness plus fees, expenses and premium payable thereon) secured by a Lien incurred pursuant to the provisions of this Section 4.09 or any previous extension, renewal, replacement or refinancing of any such Indebtedness (which extended, renewed, replaced or refinanced Indebtedness shall, for the avoidance of doubt, thereafter be included in the calculation of such amount); *provided* that the foregoing shall not apply to any Liens that secure any of the Existing LV Notes so long as such Liens are limited solely to the pledge of the stock of the issuer of such Existing LV Notes.

Section 4.10*Corporate and Organizational Existence.*

Subject to Article 5 hereof, except in the case of a Permitted C-Corp. Conversion, each of the Issuers shall, and shall cause the Guarantors to, do or cause to be done all things necessary to preserve and keep in full force and effect:

(a) its corporate or limited liability company existence, and the corporate, partnership or other existence of each of its Subsidiaries, in accordance with their respective organizational documents (as the same may be amended from time to time); and

(b) the rights (charter and statutory), licenses and franchises of the Issuers and their respective Subsidiaries; *provided, however*, that the Issuers and the Guarantors shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of their respective Subsidiaries (other than the Issuers), if the Board of Directors of Wynn Resorts Capital or the applicable Guarantor shall determine that the preservation thereof is no longer desirable in the conduct of the business of Wynn Resorts Finance and the Guarantors, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders of the Notes.

Section 4.11*Offer to Purchase Upon Change of Control.*

(a) Upon the occurrence of a Change of Control Triggering Event, the Issuers shall make an offer (a "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess of $2,000) of each Holder's Notes at a purchase price equal to 101 % of the aggregate principal amount thereof plus accrued and unpaid interest on the Notes purchased, if any, to, but not including, the date of purchase (the "*Change of Control Payment*"). Within ten days following any Change of Control Triggering Event, the Issuers shall mail a notice to each Holder describing the transaction or transactions that constitute the Change of Control Triggering Event and stating:

(1) that the Change of Control Offer is being made pursuant to this Section 4.11 and that all Notes tendered shall be accepted for payment;

(2) the purchase price and the purchase date, which shall be no earlier than 15 days and no later than 60 days from the date such notice is mailed (the "*Change of Control Payment Date*");

(3) that any Note not tendered shall continue to accrue interest;

(4) that, unless the Issuers default in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest after the Change of Control Payment Date;

(5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer shall be required to surrender the Notes, with the form entitled "Option of Holder to Elect Purchase" attached to the Notes completed, or transfer by book-entry transfer, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(6) that Holders shall be entitled to withdraw their election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing his election to have the Notes purchased; and

(7) that Holders whose Notes are being purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to $2,000 or in integral multiples of $1,000 in excess of $2,000.

The Issuers shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the purchase of the Notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of Section 4.11 of this Indenture, the Issuers shall comply with the applicable securities laws and regulations and shall not be deemed to have breached their obligations under this Section 4.11 by virtue of such compliance.

(b) On the Change of Control Payment Date, the Issuers shall, to the extent lawful:

(1) accept for payment all Notes or portions thereof properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

(3) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by the Issuers.

The Paying Agent shall promptly deliver to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee shall promptly authenticate and mail (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; provided that each new Note shall be in a principal amount of $2,000 or in integral multiples of $1,000 in excess of $2,000. The Issuers shall publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(c) Notwithstanding anything to the contrary in this Section 4.11, the Issuers shall not be required to make a Change of Control Offer upon a Change of Control Triggering Event if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.11 and purchases all Notes validly tendered and not withdrawn under the Change of Control Offer, or (2) a notice of redemption has been given pursuant to this Indenture as described above under Section 3.03 hereof, unless and until there is a default in payment of the applicable redemption price. Notwithstanding anything to the contrary contained herein, a Change of Control Offer may be made in advance of a Change of Control Triggering Event, conditioned upon the consummation of such Change of Control, if a

definitive agreement is in place for the Change of Control at the time the Change of Control Offer is made.

(d) If Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in a Change of Control Offer and the Issuers, or any third party making a Change of Control Offer in lieu of the Issuers as described in Section 4.11(c), purchase all of the Notes validly tendered and not withdrawn by such Holders, the Issuers or such third party will have the right, upon not less than 30 nor more than 60 days' prior notice, given not more than 30 days following such purchase pursuant to the Change of Control Offer described above, to redeem all Notes that remain outstanding following such purchase at a price in cash equal to 101% of the principal amount thereof plus accrued and unpaid interest to, but not including, the date of redemption (subject to the right of Holders of record of Notes on the relevant record date to receive interest due on the relevant interest payment date).

ARTICLE 5.
SUCCESSORS

Section 5.01*Merger, Consolidation, or Sale of Assets.*

Neither Issuer may, directly or indirectly, (1) consolidate or merge with or into another Person (whether or not such Issuer is the surviving entity) or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions, to another Person, unless:

(a) either (1) such Issuer is the surviving entity or (2) the Person formed by or surviving any such consolidation or merger (if other than such Issuer) or to which such sale, assignment, transfer, conveyance or other disposition shall have been made is a corporation organized or existing under the laws of the United States, any state of the United States or the District of Columbia;

(b) the Person formed by or surviving any such consolidation or merger (if other than such Issuer) or the Person to which such sale, assignment, transfer, conveyance or other disposition shall have been made assumes all the obligations of such Issuer under the Notes and this Indenture pursuant to agreements reasonably satisfactory to the Trustee; and

(c) immediately after such transaction, no Default or Event of Default exists.

In addition, no Issuer may, directly or indirectly, lease all or substantially all of its properties or assets, taken as a whole, in one or more related transactions, to any other Person.

Notwithstanding the provisions of this Section 5.01, Wynn Resorts Finance or any of the Guarantors that is not a subchapter "C" corporation is permitted to convert into a corporation pursuant to a Permitted C-Corp. Conversion.

Section 5.02*Successor Corporation Substituted.*

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of either Issuer in a transaction that is subject

to, and that complies with the provisions of, Section 5.01 hereof, the successor Person formed by such consolidation or into or with which such Issuer is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture referring to such "Issuer" shall refer instead to the successor Person and not to such Issuer), and may exercise every right and power of such Issuer under this Indenture with the same effect as if such successor Person had been named as such Issuer herein; provided, however, that the predecessor Issuer shall not be relieved from the obligation to pay the principal of and interest and premium, if any, on the Notes, except in the case of a sale of all of such Issuer's assets in a transaction that is subject to, and that complies with the provisions of Section 5.01 hereof.

ARTICLE 6.
DEFAULTS AND REMEDIES

Section 6.01*Events of Default.*

Each of the following is an "Event of Default":

(a) default for 30 days in the payment when due of interest on the Notes;

(b) default in the payment when due (at maturity, upon redemption, repurchase or otherwise) of the principal of, or premium, if any, on, the Notes;

(c) failure by Wynn Resorts Capital, Wynn Resorts Finance or any Guarantor:

(1) to comply with any payment obligations (including, without limitation, obligations as to the timing or amount of such payments) described under Section 4.11 hereof;

(2) to comply with Section 5.01 hereof;

(d) failure by Wynn Resorts Capital, Wynn Resorts Finance or any Guarantor for 60 days after receipt of written notice from the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding voting as a single class to comply with any of the other agreements in this Indenture not set forth in Section 6.01(c) above;

(e) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by Wynn Resorts Finance or any Guarantor (or the payment of which is guaranteed by Wynn Resorts Finance or any of the Guarantors) whether such Indebtedness or guarantee exists on the Issue Date, or is created after the Issue Date, if that default results in the acceleration of such Indebtedness prior to its express maturity, and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness the maturity of which has been so accelerated, aggregates $125.0 million or more, if such acceleration is not annulled within 30 days after written notice as provided in this Indenture;

(f) failure by Wynn Resorts Capital, Wynn Resorts Finance or any Guarantor to pay final non-appealable judgments (not paid or covered by insurance as to which the relevant insurance company has not denied responsibility) aggregating in excess of $125.0 million, which judgments are not paid, bonded, discharged or stayed for a period of 60 days;

(g) either Issuer or any Guarantor:

(1) commences a voluntary case,

(2) consents to the entry of an order for relief against it in an involuntary case,

(3) consents to the appointment of a custodian of it or for all or substantially all of its property,

(4) makes a general assignment for the benefit of its creditors, or

(5) generally is not paying its debts as they become due; or

(h) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(1) is for relief against either Issuer or any Guarantor in an involuntary case;

(2) appoints a custodian of either Issuer or any Guarantor; or

(3) orders the liquidation of either Issuer or any Guarantor;

and the order or decree remains unstayed and in effect for 60 consecutive days; *provided* that (i) if a Default for a failure to report or failure to deliver a required certificate in connection with another default (the "*Initial Default*") occurs, then at the time such Initial Default is cured, such Default for a failure to report or failure to deliver a required certificate in connection with another default that resulted solely because of that Initial Default will also be cured without any further action and (ii) any Default or Event of Default for the failure to comply with the time periods prescribed in Section 4.03 or otherwise to deliver any notice or certificate pursuant to any other provision of this Indenture shall be deemed to be cured upon the delivery of any such report required by such covenant or such notice or certificate, as applicable, even though such delivery is not within the prescribed period specified in this Indenture.

Section 6.02*Acceleration.*

In the case of an Event of Default specified in clause (g) or (h) of Section 6.01 hereof, with respect to either Issuer or any Guarantor, all outstanding Notes shall become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately. Upon any such declaration, the Notes shall become due and payable immediately. The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may on behalf of

all of the Holders rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium, if any, that has become due solely because of the acceleration) have been cured or waived.

Section 6.03*Other Remedies.*

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.04*Waiver of Past Defaults.*

Holders of not less than a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may, on behalf of the Holders of all of the Notes, waive an existing Default or Event of Default and its consequences hereunder, except a continuing Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Notes (including in connection with an offer to purchase); provided, however, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05*Control by Majority.*

Holders of a majority in principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. In addition, the Trustee may refuse to follow any direction that conflicts with law or this Indenture that the Trustee determines may be unduly prejudicial to the rights of other Holders of Notes or that may involve the Trustee in personal liability.

Section 6.06*Limitation on Suits.*

Except to enforce the right to receive payment of principal, interest, or premium, if any, when due, a Holder of a Note may pursue a remedy with respect to this Indenture or the Notes only if:

(a) such Holder of a Note gives to the Trustee written notice that an Event of Default is continuing;

(b) the Holders of at least 25% in aggregate principal amount of the then outstanding Notes make a written request to the Trustee to pursue the remedy;

(c) such Holder or Holders offer and, if requested, provide to the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;

(d) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of security or indemnity; and

(e) during such 60-day period, the Holders of a majority in aggregate principal amount of the then outstanding Notes do not give the Trustee a direction inconsistent with such request within such 60-day period.

Notwithstanding the foregoing, any notice of Default, notice of acceleration or instruction to the Trustee to provide a notice of Default, notice of acceleration or take any other action (a "Noteholder Direction") provided by any one or more Holders (each a "Directing Holder") must be accompanied by a written representation from each such Holder to Wynn Resorts Finance and the Trustee that such Holder is not (or, in the case such Holder is the Depositary or its nominee, that such Holder is being instructed solely by Beneficial Owners that are not) Net Short (a "Position Representation"), which representation, in the case of a Noteholder Direction relating to a notice of Default shall be deemed repeated at all times until the resulting Event of Default is cured or otherwise ceases to exist or the Notes are accelerated. In addition, each Directing Holder must, at the time of providing a Noteholder Direction, covenant to provide the Issuers with such other information as the Issuers may reasonably request from time to time in order to verify the accuracy of such Holder's Position Representation within five Business Days of request therefor (a "Verification Covenant"). In any case in which the Holder is the Depositary or its nominee, any Position Representation or Verification Covenant required hereunder shall be provided by the Beneficial Owner of the Notes in lieu of the Depositary or its nominee.

The Trustee shall not have any obligation to check, verify or confirm any information in any Position Representation and may rely conclusively on any Position Representation delivered to it.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note.

Section 6.07*Rights of Holders of Notes to Receive Payment.*

Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder; provided that a Holder shall not have the right to institute any such suit for the enforcement of payment if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the

surrender, impairment, waiver or loss of the Lien of this Indenture upon any property subject to such Lien.

Section 6.08*Collection Suit by Trustee.*

If an Event of Default specified in Section 6.01(a) or (b) occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Issuers for the whole amount of principal of, premium, if any, and interest remaining unpaid on, the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09*Trustee May File Proofs of Claim.*

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Issuers (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10*Priorities.*

If the Trustee collects any money pursuant to this Article 6, it shall pay out the money in the following order:

First: to the Trustee, for amounts due under Section 7.06 hereof, including payment of all compensation, expense and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any and interest, respectively; and

Third: to the Issuers or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.10.

Section 6.11 *Undertaking for Costs.*

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

ARTICLE 7.
TRUSTEE

Section 7.01 *Duties of Trustee.*

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(1) the duties of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee need perform only those duties that are specifically set forth in this Indenture, and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this Section 7.01(c) does not limit the effect of paragraph (b) of this Section 7.01;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), and (c) of this Section 7.01.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability. The Trustee shall be under no obligation to exercise any of its rights and powers under this Indenture at the request of any Holders, unless such Holder shall have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuers. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02*Rights of Trustee.*

(a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuers shall be sufficient if signed by an Officer of either Issuer.

(f) [Reserved].

(g) Except as expressly provided herein, the Trustee shall have no duty to inquire as to the performance of the Issuers with respect to the covenants contained in Articles 4 and 5 hereof.

(h) The Trustee shall not be deemed to have knowledge of an Event of Default except (i) any Default or Event of Default occurring pursuant to Sections 6.01(a) and (b) hereof or (ii) any Default or Event of Default of which the Trustee shall have received written notification or obtained actual knowledge thereof.

(i) The Trustee may request that the Issuers deliver Officers' Certificates setting forth the names of individuals and their titles and specimen signatures of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificates may be signed by any person authorized to sign an Officers' Certificate, as the case may be, including any person specified as so authorized in any such certificate previously delivered and not superseded.

(j) Any permissive right granted to the Trustee shall not be construed as a mandatory duty.

(k) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(l) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions or utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

(m) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

Section 7.03*Individual Rights of Trustee.*

The Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Issuers or any Affiliate of the Issuers with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.09 hereof.

Section 7.04*Trustee's Disclaimer.*

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Issuers' use of the proceeds

from the Notes or any money paid to the Issuers or upon the Issuers' direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

Section 7.05*Notice of Defaults.*

If a Default or Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail a notice of the Default or Event of Default to Holders within 90 days after it occurs. Except in the case of a Default or Event of Default in payment of principal of, premium, if any, or interest on, any Note, the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders of the Notes.

Section 7.06*Compensation and Indemnity.*

(a) The Issuers shall pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuers shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

(b) The Issuers and the Guarantors shall indemnify the Trustee against any and all losses, liabilities or expenses incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Issuers and the Guarantors (including this Section 7.06) and defending itself against any claim (whether asserted by the Issuers, the Guarantors or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder or thereunder, respectively, except to the extent any such loss, liability or expense may be attributable to its negligence or willful misconduct. The Trustee shall notify the Issuers promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuers shall not relieve the Issuers or any of the Guarantors of their obligations hereunder. The Issuers or such Guarantor shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have separate counsel and the Issuers shall pay the reasonable fees and expenses of such counsel. Neither the Issuers nor any Guarantor need pay for any settlement made without its consent, which consent shall not be unreasonably withheld.

(c) The obligations of the Issuers and the Guarantors under this Section 7.06 shall survive the satisfaction and discharge of this Indenture, and the resignation or removal of the Trustee.

(d) To secure the Issuers' and the Guarantors' payment obligations in this Section 7.06, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(g) or (h) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

Section 7.07*Replacement of Trustee.*

(a) A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.07.

(b) The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Issuers in writing. The Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Issuers in writing. The Issuers may remove the Trustee if:

(1) the Trustee fails to comply with Section 7.09 hereof;

(2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(3) a custodian or public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting.

(c) If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuers shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Issuers.

(d) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuers, or the Holders of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.09, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuers. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, provided all sums owing to the Trustee hereunder have been paid and subject to the Lien *provided* for in Section 7.06 hereof. Notwithstanding replacement of the Trustee pursuant to this Section

7.07, the Issuers' obligations under Section 7.06 hereof shall continue for the benefit of the retiring Trustee.

Section 7.08*Successor Trustee by Merger, etc.*

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

Section 7.09*Eligibility; Disqualification; Conflicting Interests.*

(a) There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $100 million as set forth in its most recent published annual report of condition.

(b) If the Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee and the Issuers shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

Section 7.10*Preferential Collection of Claims Against the Issuers.*

The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship described in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall continue to be subject to Section 311(a) of the Trust Indenture Act.

ARTICLE 8.
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01*Option to Effect Legal Defeasance or Covenant Defeasance.*

The Issuers may, at the option of their respective Boards of Directors evidenced by a resolution set forth in an Officers' Certificate of each Issuer, at any time, elect to have either Section 8.02 or 8.03 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02*Legal Defeasance and Discharge.*

Upon the Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Issuers shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes, each of the Guarantors shall be deemed to be discharged from their obligations with respect to their Note Guarantees on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Issuers and each of the Guarantors shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes (including the Note Guarantees), which shall thereafter be deemed to be "outstanding" only

for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in Sections 8.02(a) and (b) below, and to have satisfied all their other obligations under such Notes, the Note Guarantees, and this Indenture (and the Trustee, on demand of and at the expense of the Issuers, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder:

(a) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, or interest or premium, if any, on such Notes when such payments are due from the trust referred to in Section 8.04 hereof;

(b) the Issuers' obligations with respect to such Notes under Article 2 and Section 4.02 hereof;

(c) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Issuers' and the Guarantors' obligations in connection therewith; and

(d) this Article 8.

Subject to compliance with this Article 8, the Issuers may exercise their option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

Section 8.03*Covenant Defeasance.*

Upon the Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Issuers and any Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from each of their obligations under the covenants contained in Sections 4.07, 4.08, 4.10 and 4.11 hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied (hereinafter, "*Covenant Defeasance*"), and the Notes shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes and Note Guarantees, the Issuers and each of the Guarantors released may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes and Note Guarantees shall be unaffected thereby. In addition, upon the Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.03 hereof, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(c) through 6.01(g) hereof shall not constitute Events of Default.

Section 8.04*Conditions to Legal or Covenant Defeasance.*

In order to exercise either Legal Defeasance or Covenant Defeasance under either Section 8.02 or 8.03 hereof:

(a) the Issuers must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination of cash in U.S. dollars and non-callable Government Securities, in amounts as shall be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm, or firm of independent public accountants, to pay the principal of, or interest and premium, if any, on the outstanding Notes on the stated maturity or on the applicable redemption date, as the case may be, and the Issuers must specify whether the Notes are being defeased to maturity or to a particular redemption date;

(b) in the case of an election under Section 8.02 hereof, the Issuers must deliver to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that (1) the Issuers have received from, or there has been published by, the Internal Revenue Service a ruling or (2) since the Issue Date, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the outstanding Notes shall not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and shall be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of an election under Section 8.03 hereof, the Issuers have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that the Holders of the outstanding Notes shall not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and shall be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Default or Event of Default has occurred and is continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) and the deposit shall not result in a breach or violation of, or constitute a default under, any other instrument to which either Issuer or any Guarantor is a party or by which either Issuer or any Guarantor is bound;

(e) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under any material agreement or instrument (other than this Indenture) to which either Issuer or any Guarantor is a party or by which any such Person is bound;

(f) in the case of an election under Section 8.02 hereof, the Issuers must deliver to the Trustee an Opinion of Counsel to the effect that, assuming no intervening bankruptcy of the Issuers or any Guarantor between the date of deposit and the 91st day following the deposit and assuming that no Holder of Notes is an "insider" of either Issuer under applicable bankruptcy law, after the 91st day following the deposit, the trust funds shall not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally;

(g) the Issuers must deliver to the Trustee an Officers' Certificate stating that the deposit was not made by the Issuers with the intent of preferring the Holders of Notes over the other creditors of the Issuers with the intent of defeating, hindering, delaying or defrauding creditors of the Issuers or others; and

(h) the Issuers must deliver to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

Section 8.05*Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions.*

Subject to Section 8.06 hereof, all money and Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "Trustee") pursuant to Section 8.04 hereof in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuers acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Issuers shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Notwithstanding anything in this Article 8 to the contrary, the Trustee shall deliver or pay to the Issuers from time to time upon the request of the Issuers any money or non-callable Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(b) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06*Repayment to Issuers.*

Any money deposited with the Trustee or any Paying Agent, or then held by the Issuers, in trust for the payment of the principal of, premium, if any, or interest on any Note and remaining unclaimed for two years after such principal, premium, if any, or interest has become due and payable shall be paid to the Issuers on its request or (if then held by the Issuers) shall be discharged from such trust; and the Holder of such Note shall thereafter be permitted to look only to the Issuers for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuers as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Issuers cause to be published once, in the New York Times (national edition) and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after

a date specified therein, which shall not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining shall be repaid to the Issuers.

Section 8.07*Reinstatement.*

If the Trustee or Paying Agent is unable to apply any United States dollars or non-callable Government Securities in accordance with Section 8.02 or 8.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuers' or the Guarantors' obligations under this Indenture, the Notes and the Note Guarantee shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, as the case may be; provided, however, that, if the Issuers make any payment of principal of, premium, if any, or interest on any Note following the reinstatement of its obligations, the Issuers shall subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 9.
AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01*Without Consent of Holders of Notes.*

Notwithstanding Section 9.02 of this Indenture, without the consent of any Holder, the Issuers, the Guarantors and the Trustee may amend or supplement this Indenture, the Notes or the Note Guarantees to:

(a) cure any ambiguity, defect or inconsistency;

(b) provide for uncertificated Notes in addition to or in place of certificated Notes;

(c) provide for the assumption of the Issuers' or any Guarantor's obligations to the Holders of the Notes and Note Guarantees by a successor to the Issuers or such Guarantor, as the case may be, in the case of a merger or consolidation or sale of all or substantially all of Wynn Resorts Finance's or such Guarantor's assets pursuant to Article 5 or Article 11 hereof;

(d) make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the legal rights hereunder of any such Holder;

(e) conform the text of this Indenture, the Notes or the Note Guarantees to any provision of the "Description of the Notes" in the Issuers' Offering Memorandum, dated as of September 12, 2019, relating to the offering of the Initial Notes, to the extent that such provision in the "Description of the Notes" was intended to be a verbatim recitation of a provision of this Indenture, the Notes or the Note Guarantees, which intent may be evidenced by an Officers' Certificate to that effect;

(f) to release the Note Guarantee of a Guarantor in accordance with the terms of this Indenture;

(g) provide for the issuance of Additional Notes in accordance with the limitations set forth in this Indenture as of the Issue Date;

(h) allow any Guarantor to execute a supplemental indenture and/or a Note Guarantee with respect to the Notes;

(i) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act, if then applicable;

(j) to comply with requirements of applicable Gaming Laws or to provide for requirements imposed by applicable Gaming Authorities;

(k) to provide for the acceptance or appointment of a successor trustee; or

(l) provide for the Notes to become secured.

Upon the request of the Issuers accompanied by a resolution of their respective Boards of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee shall join with the Issuers and the Guarantors in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise.

Section 9.02 *With Consent of Holders of Notes.*

Except as provided below in this Section 9.02, the Issuers, the Guarantors and the Trustee may amend or supplement this Indenture (including, without limitation, Section 4.11 hereof), the Notes and the Note Guarantees, with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Notes or the Note Guarantees, may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with purchase of, or a tender offer or exchange offer for, the Notes).

Upon the request of the Issuers accompanied by a resolution of their respective Boards of Directors authorizing the execution of any such amended or supplemental Indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee shall join with the Issuers and the Guarantors in the execution of such amended or

supplemental Indenture unless such amended or supplemental Indenture directly affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amended or supplemental Indenture.

It is not necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment or waiver, but it is sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Issuers shall mail to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Issuers to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver. Subject to Sections 6.04 and 6.07 hereof, the Holders of a majority in aggregate principal amount of the Notes then outstanding voting as a single class may waive compliance in a particular instance by the Issuers with any provision of this Indenture or the Notes or by the Guarantors with any provision of the Note Guarantees. However, without the consent of each Holder affected an amendment, supplement or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

(a) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(b) reduce the principal of or change the fixed maturity of any Note or alter or waive any of the provisions with respect to the redemption of the Notes, except as provided above with respect to Section 4.11 hereof;

(c) reduce the rate of or change the time for payment of interest, including default interest, on any Note;

(d) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the then outstanding Notes and a waiver of the payment default that resulted from such acceleration);

(e) make any Note payable in money other than that stated in the Notes;

(f) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders of Notes to receive payments of principal of, or interest or premium, if any, on the Notes;

(g) waive a redemption payment with respect to any Note (other than a payment required by Sections 4.11 hereof);

(h) amend or modify any Note Guarantee in a manner that would adversely affect the holders of the Notes or release any Guarantor from any of its obligations under its Note Guarantee or this Indenture (except in accordance with the terms of this Indenture); or

(i) make any change in the foregoing amendment and waiver provisions.

Section 9.03*Revocation and Effect of Consents.*

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

Section 9.04*Notation on or Exchange of Notes.*

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Issuers in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

Section 9.05*Trustee to Sign Amendments, etc.*

The Trustee shall sign any amended or supplemental indenture authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Issuers and the Guarantors may not sign an amendment or supplemental indenture until their respective Boards of Directors approve it. In executing any amended or supplemental indenture, the Trustee shall be entitled to receive and (subject to Section 7.01 hereof) shall be fully protected in relying upon, in addition to the documents required by Section 14.02 hereof, an Officers' Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture and an Opinion of Counsel stating that the supplemental indenture is a valid and binding obligation of the Issuers, enforceable against each of them in accordance with its terms.

ARTICLE 10.
[RESERVED]

ARTICLE 11.
NOTE GUARANTEES

Section 11.01*Note Guarantee.*

(a) Subject to this Article 11, each of the Guarantors hereby, jointly and severally, unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Issuers hereunder or thereunder, that:

(1) the principal of, premium, if any, and interest on the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Issuers to the Holders or the Trustee hereunder or thereunder shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(2) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and performance and not a guarantee of collection.

(b) The Guarantors hereby agree that their obligations hereunder are unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuers, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor. Each of the Guarantors hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of either Issuer, any right to require a proceeding first against the Issuers, protest, notice and all demands whatsoever and covenant that this Note Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and this Indenture. Each Guarantor waives any right or claims of right to cause a marshalling of the Issuers' or any Guarantor's assets or to proceed against any Guarantor, any Issuer or any other guarantor of any Obligations that are Guaranteed in any particular order, including, but not limited to, any right arising out of Nevada Revised Statutes 40.430, to the fullest extent permitted by Nevada Revised Statutes 40.495(2).

(c) If any Holder or the Trustee is required by any court or otherwise to return to the Issuers, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either Issuer or any Guarantor, any amount paid by either to the Trustee or such Holder, this Note Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(d) Each of the Guarantors agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each of the Guarantors further agrees that, as between the

Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (1) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Note Guarantee. The Guarantors shall have the right to seek contribution from any non-paying Guarantor, as the case may be, so long as the exercise of such right does not impair the rights of the Holders under the Note Guarantee.

Section 11.02*Limitation on Guarantor Liability.*

Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Note Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Note Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of each such Guarantor shall be limited to the maximum amount that shall, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor, as the case may be, that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 11, result in the obligations of such Guarantor under its Note Guarantee not constituting a fraudulent transfer or conveyance.

Section 11.03*Execution and Delivery of Note Guarantee.*

To evidence its Note Guarantee set forth in Section 11.01, each of the Guarantors hereby agrees that a notation of such Note Guarantee substantially in the form attached as Exhibit E hereto shall be endorsed by an Officer of such Guarantor on each Note authenticated and delivered by the Trustee and that this Indenture shall be executed on behalf of such Guarantor by one of its Officers.

Each of the Guarantors hereby agrees that its Note Guarantee set forth in Section 11.01 shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Note Guarantee.

If an Officer whose signature is on this Indenture or on the Note Guarantee no longer holds that office at the time the Trustee authenticates the Note on which a Note Guarantee is endorsed, the Note Guarantee shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Note Guarantee set forth in this Indenture on behalf of the Guarantors.

Section 11.04*Guarantors May Consolidate, etc., on Certain Terms.*

(a) A Guarantor may not consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, other than either of the Issuers or another Guarantor, unless:

(1) immediately after giving effect to that transaction, no Default or Event of Default exists; and

(2) the Person surviving any such consolidation or merger assumes all the obligations of that Guarantor under this Indenture and its Note Guarantee pursuant to a supplemental indenture and other appropriate documents satisfactory to the Trustee.

(b) In case of any consolidation or merger involving a Guarantor under this Section 11.04 hereof, and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the Note Guarantee endorsed upon the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Guarantor, such successor Person shall succeed to and be substituted for the Guarantor with the same effect as if it had been named herein as a Guarantor. Such successor Person thereupon may cause to be signed any or all of the Note Guarantees to be endorsed upon all of the Notes issuable hereunder which theretofore shall not have been signed by the Issuers and delivered to the Trustee. All the Note Guarantees so issued shall in all respects have the same legal rank and benefit under this Indenture as the Note Guarantees theretofore and thereafter issued in accordance with the terms of this Indenture as though all of such Note Guarantees had been issued at the date of the execution hereof.

(c) Except as set forth in Articles 4 and 5 hereof, nothing contained in this Indenture or in any of the Notes shall prevent any consolidation or merger of a Guarantor with or into the Issuers or another Guarantor.

(d) Notwithstanding the foregoing, each Guarantor is permitted to reorganize as a corporation pursuant to a Permitted C-Corp. Conversion.

Section 11.05*Release of Guarantees.*

Subject to compliance with the provisions described above under this Article 11, the Note Guarantee of a Guarantor and the security interests granted by that Guarantor to secure its Note Guarantee will be released:

(a) in connection with any sale, assignment, exchange, transfer conveyance or other disposition of all or substantially all of the assets of that Guarantor (including by way of merger, consolidation, amalgamation or otherwise) to a Person that is not (either before or after giving effect to such transaction) an Issuer or a Guarantor;

(b) in connection with any sale, assignment, exchange, transfer, conveyance or other disposition of all of the Capital Stock of that Guarantor by way of merger, consolidation, amalgamation or otherwise to a Person that is not (either before or after giving effect to such transaction) an Issuer or a Guarantor;

(c) upon Legal Defeasance as provided for in Section 8.02 hereof or satisfaction and discharge of this Indenture as provided for in Section 12.01 hereof; or

(d) upon the liquidation or dissolution of a Guarantor in a transaction or series of transactions that does not violate the terms of this Indenture.

Section 11.06*Additional Note Guarantees.*

Each Domestic Subsidiary of Wynn Resorts Finance that incurs or guarantees obligations under the Senior Credit Facilities or certain other capital markets debt securities (excluding any project financings in connection with Expansion Capital Expenditures) in excess of $100.0 million will guarantee the Notes and execute a supplemental indenture within 10 Business Days of such incurrence or guarantee; *provided* that any Domestic Subsidiary that constitutes an Immaterial Subsidiary or an Excluded Subsidiary need not become a guarantor until such time as it ceases to be an Immaterial Subsidiary or an Excluded Subsidiary.

ARTICLE 12.
SATISFACTION AND DISCHARGE

Section 12.01*Satisfaction and Discharge.*

This Indenture shall be discharged and shall cease to be of further effect as to all Notes issued hereunder, when:

(a) either:

(1) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to the Issuers, have been delivered to the Trustee for cancellation; or

(2) all Notes that have not been delivered to the Trustee for cancellation will become due and payable by reason of the mailing of a notice of redemption or otherwise or will become due and payable within one year and the Issuers have or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in such amounts as shall be sufficient without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to, but not including, the date of maturity or redemption;

(b) no Default or Event of Default has occurred and is continuing on the date of such deposit or shall occur as a result of the deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) and the deposit shall not result in a breach or violation of, or constitute a default under, any other instrument to which either Issuer or any Guarantor is a party or by which either Issuer or any Guarantor is bound;

(c) the Issuers or any Guarantor have paid or caused to be paid all sums payable by the Issuers under this Indenture; and

(d) the Issuers have delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at maturity or the redemption date, as the case may be.

In addition, the Issuers must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money has been deposited with the Trustee pursuant to subclause (2) of clause (a) of this Section, the provisions of Section 12.02 and Section 8.06 shall survive. In addition, nothing in this Section 12.01 shall be deemed to discharge those provisions of Section 7.06 hereof, that, by their terms, survive the satisfaction and discharge of this Indenture.

Section 12.02*Application of Trust Money.*

Subject to the provisions of Section 8.06, all money deposited with the Trustee pursuant to Section 12.01 shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuers acting as their own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 12.01 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuers' and any Guarantor's obligations under this Indenture, the Notes and the Note Guarantees shall be revived and reinstated as though no deposit had occurred pursuant to Section 12.01; provided that if the Issuers have made any payment of principal of, premium, if any, or interest on any Notes because of the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

ARTICLE 13.
JOINT AND SEVERAL LIABILITY

Section 13.01*Joint and Several Liability.*

(a) Notwithstanding any contrary provision contained in this Indenture and the Notes, the covenants, agreements and obligations of the Issuers, and either of them, shall be deemed joint and several obligations of the Issuers. Any waiver including, without limitation, any suretyship waiver, made by either Issuer in this Indenture or the Notes shall be deemed to be made also by the

other Issuer and references in any such waiver to either Issuer shall be deemed to include the other Issuer and each of them to the fullest extent permitted by applicable law.

(b) Notwithstanding any contrary provision contained in this Indenture or the Notes, each such document to which both Issuers are party shall be deemed to include, without limitation, the following waivers:

Each of the Issuers hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including, without limitation, (i) any right to require the Trustee or any of the Holders (each a "*Beneficiary*") to proceed against either of the Issuers or any other Person or to proceed against or exhaust any security held by a Beneficiary at any time or to pursue any other remedy in the power of a Beneficiary before proceeding against such Issuer or other Person, (ii) the defense of the statute of limitations in any action hereunder or in any action for the collection or performance of the Obligations under this Indenture and the Notes (collectively, the "*Note Obligations*"), (iii) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any Person or the failure of a Beneficiary to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any Person, (iv) appraisal, valuation, stay, extension, marshaling of assets, redemption, exemption, demand, presentment, protest and notice of any kind, including, without limitation, notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of a Beneficiary, any Issuer, any endorser, guarantor or creditor of either Issuer or on the part of any other Person under this or any other instrument or document in connection with any Obligation or evidence of Indebtedness held by a Beneficiary as collateral or in connection with the Note Obligations, (v) any defense based upon an election of remedies by a Beneficiary, including, without limitation, an election to proceed by non judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of either Issuer, the right of either Issuer to proceed against the other Issuer or any other Person for reimbursement, or both, (vi) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal, (vii) any duty on the part of a Beneficiary to disclose to either Issuer any facts a Beneficiary may now or hereafter know about either of the Issuers or any other Person, regardless of whether a Beneficiary has reason to believe that any such facts materially increase the risk beyond that which such Issuer intends to assume, or has reason to believe that such facts are unknown to such Issuer, or has a reasonable opportunity to communicate such facts to the either Issuer, because each Issuer acknowledges that each Issuer is fully responsible for being and keeping informed of the financial condition of each of the Issuers or any other Person and of all circumstances bearing on the risk of nonpayment of any Note Obligations, (viii) any defense arising because of the election of a Beneficiary, in any proceeding instituted under the Bankruptcy Law, of the application of Section 1111(b)(2) of the Bankruptcy Law, (ix) any defense based upon any borrowing or grant of a security interest under Section 364 of the Bankruptcy Law, (x) any claim or other rights which it may now or hereafter acquire against the other Issuer or any other Person that arises from the existence of performance of each Issuer of its obligations under this Indenture or the Notes, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, indemnification, any right to participate in any claim or remedy by a Beneficiary against the other Issuer or any collateral which a Beneficiary now has or hereafter acquires, whether

or not such claim, remedy or right arises in equity or under contract, statute or common law, by any payment made hereunder or otherwise, including, without limitation, the right to take or receive from either of the Issuers or any other Person, directly or indirectly, in cash or other property or by set off or in any other manner, payment or security on account of such claim or other rights, (xi) any rights which it may acquire by way of contribution under this Indenture or the Notes, by any payment made hereunder or otherwise, including, without limitation, the right to take or receive from any other Person, directly or indirectly, in cash or other property or by set off or in any other manner, payment or security on account of such contribution rights, and (xii) any defense based on one action laws and any other anti-deficiency protections granted to guarantors by applicable law. No failure or delay on the Trustee's part in exercising any power, right or privilege under this Indenture shall impair or waive one such power, right or privilege. Each of the Issuers acknowledges and agrees that any nonrecourse or exculpation provided for in this Indenture or the Notes, or any other provision of this Indenture or the Notes, limiting the Beneficiaries' recourse to specific collateral, or limiting the Beneficiaries' right to enforce a deficiency judgment against the Issuers, shall have absolutely no application to the Issuers' liability under this Indenture or the Notes.

(c) In the event of any inconsistency between the provisions of this Article 13 and the corresponding provisions of this Indenture or the Notes, the provisions of this Indenture shall govern.

ARTICLE 14.
MISCELLANEOUS

Section 14.01*Notices.*

Any notice or communication by the Issuers, any Guarantor or the Trustee to the others is duly given if in writing and delivered in Person or mailed by first class mail (registered or certified, return receipt requested), telex, fax or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Issuers and/or any Guarantor:

c/o Wynn Resorts Finance, LLC
3131 Las Vegas Boulevard
South Las Vegas, Nevada 89109

Fax No.: (702) 770-1518
Attention: General Counsel

With a further copy to:

Latham & Watkins LLP
885 Third Avenue
New York, New York 10022
Fax No.: (212) 751-4864
Attention: Senet Bischoff

Erika Weinberg

If to the Trustee:

U.S. Bank National Association
EP-MN-WS3C
60 Livingston Avenue
St. Paul, MN 55107-2292
Fax No.: (651) 495-8097
Attention: Corporate Trust Department – Wynn Administrator

The Issuers, any Guarantor or the Trustee, by notice to the others may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt acknowledged, if faxed; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder shall be mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Issuers mail a notice or communication to Holders, they shall mail a copy to the Trustee and each Agent at the same time.

Section 14.02*Certificate and Opinion as to Conditions Precedent.*

Upon any request or application by the Issuers to the Trustee to take any action under this Indenture, the Issuers shall furnish to the Trustee:

(a) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 14.03 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(b) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 14.03 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 14.03*Statements Required in Certificate or Opinion.*

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture must include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

Section 14.04*Rules by Trustee and Agents.*

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 14.05*No Personal Liability of Directors, Officers, Employees and Equity Holders.*

No past, present or future director, officer, employee, incorporator, organizer, equity holder or member of either Issuer or any Guarantor, as such, shall have any liability for any obligations of either Issuer or any Guarantor under the Notes, the Note Guarantees or this Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

Section 14.06*Governing Law.*

THIS INDENTURE, THE NOTES AND THE NOTE GUARANTEES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE NEW YORK OBLIGATIONS LAW.

Section 14.07*No Adverse Interpretation of Other Agreements.*

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Issuers or their respective Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 14.08*Successors.*

All agreements of the Issuers in this Indenture and the Notes shall bind their successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 11.05.

Section 14.09*Severability.*

In case any provision in this Indenture or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 14.10*Counterpart Originals.*

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

Section 14.11*Table of Contents, Headings, etc.*

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

[Signatures Pages Follow]

SIGNATURES

Dated as of September 20, 2019 **ISSUERS:**

WYNN RESORTS FINANCE, LLC

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: /s/ Craig S. Billings
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN RESORTS CAPITAL CORP.

By: /s/ Craig S. Billings
Name: Craig S. Billings
Title: President and Treasurer

GUARANTORS:

EBH HOLDINGS, LLC

By: Wynn MA, LLC, its sole member

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: /s/ Craig S. Billings
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

EBH MA PROPERTY, LLC

By: Wynn MA, LLC, its managing member

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: /s/ Craig S. Billings
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN GROUP ASIA, INC.

By: /s/ Craig S. Billings
Name: Craig S. Billings
Title: Treasurer

EVERETT PROPERTY, LLC

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: /s/ Craig S. Billings
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN AMERICA GROUP, LLC

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: /s/ Craig S. Billings
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN LAS VEGAS HOLDINGS, LLC

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: /s/ Craig S. Billings
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN LAS VEGAS, LLC

By: Wynn Las Vegas Holdings, LLC, its sole member

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: /s/ Craig S. Billings
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN MA, LLC

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: /s/ Craig S. Billings
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN SUNRISE, LLC

By: Wynn Las Vegas, LLC its sole member

By: Wynn Las Vegas Holdings, LLC, its sole member

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: /s/ Craig S. Billings

Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN LAS VEGAS CAPITAL CORP.

By: /s/ Craig S. Billings
Name: Craig S. Billings
Title: President and Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION,
not in its individual capacity but solely as Trustee

By:/s/ Raymond S. Haverstock
Name: Raymond S. Haverstock
Title: Authorized Signatory

EXHIBIT A-1

[Face of Note]

CUSIP/ISIN 983133 AA7/US983133AA70

5.125% Senior Notes due 2029

No. ___ $_____

WYNN RESORTS FINANCE, LLC
WYNN RESORTS CAPITAL CORP.

promise to pay to _____ or registered assigns,

the principal sum of

DOLLARS on October 1, 2029.

Interest Payment Dates: April 1 and October 1

Record Dates: March 15 and September 15

Dated: September 20, 2019

WYNN RESORTS FINANCE, LLC

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: _____
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN RESORTS CAPITAL CORP.

By: _____
Name: Craig S. Billings
Title: President and Treasurer

This is one of the Notes referred to
in the within-mentioned Indenture:

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By:
Authorized Signatory

[*Insert the Private Placement Legend, if applicable, pursuant to Section 2.06(f)(1) of the Indenture*]

[*Insert the Global Notes Legend, if applicable, pursuant to Section 2.06(f)(2) of the Indenture*]

Capitalized terms used herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

(1) *Interest*. Wynn Resorts Finance, LLC, a Nevada limited liability company ("*Wynn Resorts Finance*") and Wynn Resorts Capital Corp., a Nevada corporation ("Wynn Resorts Capital," and together with Wynn Resorts Finance, the "*Issuers*"), as joint and several obligors, promise to pay interest on the principal amount of this Note at 5.125% per annum from September 20, 2019 until maturity. The Issuers shall pay interest semi-annually in arrears on April 1 and October 1 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, an "*Interest Payment Date*"). Interest on the Notes shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; *provided* that if there is no existing Default in the payment of interest, and if this Note is authenticated between a record date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date; *provided*, *further*, that the first Interest Payment Date shall be April 1, 2020. The Issuers shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at a rate that is 1% per annum in excess of the rate then in effect; they shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

(2) *Method of Payment*. The Issuers shall pay interest on the Notes (except defaulted interest) to the Persons who are registered Holders of Notes at the close of business on the March 15 or September 15 next preceding the Interest Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. The Notes shall be payable as to principal, premium, if any, and interest at the office or agency of the Issuers maintained for such purpose within or without the City and State of New York, or, at the option of the Issuers, payment of interest, if any, may be made by check mailed to the Holders at their addresses set forth in the register of Holders; *provided* that payment by wire transfer of immediately available funds shall be required with respect to principal of and interest, premium, if any, on, all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to the Issuers or the Paying Agent. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

(3) *Paying Agent and Registrar*. Initially, U.S. Bank National Association, the Trustee under the Indenture, shall act as Paying Agent and Registrar. The Issuers may change any

Paying Agent or Registrar without notice to any Holder. Either Issuer or any Guarantor may act in any such capacity.

(4) *Indenture*. The Issuers issued the Notes under an Indenture dated as of September 20, 2019 (the "*Indenture*") among the Issuers, the Guarantors and the Trustee. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. The Notes are unsecured obligations of the Issuers. The Indenture does not limit the aggregate principal amount of Notes that may be issued thereunder. Notes issued after the date of the Indenture in compliance with the applicable requirements of the Indenture are referred to as "*Additional Notes*." The term "*Notes*" includes any Additional Notes hereafter issued.

(5) *Optional Redemption*. The Notes are redeemable at the Issuers' election, in whole or in part at any time prior to their Stated Maturity.

(a) The redemption price for the Notes that are redeemed before July 1, 2029 will be equal to the greater of:

i. 100% of the principal amount of the Notes to be redeemed; or

ii. as determined by an Independent Investment Banker, the sum of the present values of the remaining scheduled payments of principal and interest on the Notes to be redeemed (not including any portion of such payments of interest accrued to the date of redemption) discounted to the redemption date on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at the Adjusted Treasury Rate, plus 50 basis points,

plus, in either of the above cases, accrued and unpaid interest to, but not including, the date of redemption on the Notes to be redeemed.

(b) The redemption price for Notes that are redeemed on or after July 1, 2029 will be equal to the sum of 100% of their principal amount, plus accrued and unpaid interest to, but not including, the date of redemption on the Notes to be redeemed.

Any such redemption may, at the discretion of the Issuers, be subject to one or more conditions precedent, including a Change of Control. In addition, if such redemption is subject to the satisfaction of one or more conditions precedent, the related notice shall describe each such condition, and if applicable, shall state that, in the discretion of the Issuers, the date of redemption may be delayed until such time as any or all such conditions shall be satisfied or waived (provided that in no event shall such date of redemption be delayed to a date later than 60 days after the date on which such notice was mailed), or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied or waived by the date of redemption, or by the date of redemption as so delayed.

Unless the Issuers default in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(6) *Mandatory Redemption*. Other than as set forth in Paragraph 7 below, the Issuers shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

(7) *Mandatory Disposition or Redemption Pursuant to Gaming Laws*. Notwithstanding any other provision of the Indenture or this Note, each Holder, by accepting this Note, shall be deemed to have agreed that, if any Gaming Authority requires a Holder or Beneficial Owner of Notes to be registered, licensed, qualified or found suitable under any applicable Gaming Law, such Holder or Beneficial Owner, as the case may be, shall apply for a license, qualification or a finding of suitability in accordance with such Gaming Law and shall cooperate with the requests of any Gaming Authority for information, documentation, and/or testimony. If such Holder or Beneficial Owner (a) fails to apply for a license, qualification or finding of suitability within 30 days after being requested to do so (or such lesser period as required by the Gaming Authority), or (b) is notified by a Gaming Authority that it shall not be licensed, qualified or found suitable, then the Issuers shall have the right, at their option, to: (1) require the Holder or Beneficial Owner to dispose of its Notes within 30 days (or such lesser period as required by the Gaming Authority) following the earlier of: (a) the termination of the period described above for the Holder or Beneficial Owner to apply for a license, qualification or finding of suitability if the Holder fails to apply for a license, qualification or finding of suitability during such period, or (b) the receipt of the notice from the Gaming Authority that the Holder or Beneficial Owner shall not be licensed, qualified or found suitable by the Gaming Authority; or (2) redeem the Notes of the Holder or Beneficial Owner at a redemption price equal to: (a) the price required by applicable law or by order of any Gaming Authority, or (b) the lesser of: (i) the principal amount of the Notes, and (ii) the price that the Holder or Beneficial Owner paid for the Notes, in either case, together with accrued and unpaid interest, if any, on the Notes to, but not including, the earlier of (A) the date of redemption or such earlier date as is required by the Gaming Authority or (B) the date of the finding of unsuitability by the Gaming Authority, which may be less than 30 days following the notice of redemption. The Issuers shall notify the Trustee in writing of any redemption pursuant to this Section 7 as soon as practicable.

Immediately upon a determination by a Gaming Authority that a Holder or Beneficial Owner of Notes shall not be licensed, qualified or found suitable, the Holder or Beneficial Owner shall not have any further rights with respect to the Notes to: (a) exercise, directly or indirectly, through any Person, any right conferred by the Notes; or (b) receive any interest or any other distribution or payment with respect to the Notes, or any remuneration in any form from the Issuers for services rendered or otherwise, except the redemption price of the Notes.

Neither the Issuers nor the Trustee shall be responsible for any costs or expenses any Holder or Beneficial Owner may incur in connection with its registration, application for a license, qualification or a finding of suitability, or any renewal or continuation of the foregoing or compliance with any other requirement of a Gaming Authority. Those costs and expenses will be the obligations of the Holder or Beneficial Owner, as applicable. In addition, any Holder or Beneficial Owner, as applicable, required to be licensed, qualified or found suitable under applicable Gaming Laws must pay all investigative fees and costs of any Gaming Authority in connection with such license, qualification, finding of suitability or application therefor.

(8) *Repurchase at Option of Holder.* If a Change of Control Triggering Event occurs, the Issuers shall make an offer (a "*Change of Control Offer*") to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess of $2,000) of each Holder's Notes at a purchase price equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to, but not including, the date of purchase (the "*Change of Control Payment*"). Within 10 days following any Change of Control Triggering Event, the Issuers shall mail a notice to each Holder setting forth the procedures governing the Change of Control Offer as required by the Indenture.

(9) *Notice of Redemption.* Notice of redemption shall be delivered at least 15 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be delivered more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of the Indenture. Notes in denominations larger than $2,000 may be redeemed in part but only in whole multiples of $1,000 in excess of $2,000, unless all of the Notes held by a Holder are to be redeemed. On and after the redemption date interest ceases to accrue on Notes or portions thereof called for redemption.

(10) *Denominations, Transfer, Exchange* . The Notes are in registered form without coupons in denominations of $2,000 and integral multiples of $1,000 in excess of $2,000. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Issuers may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Issuers need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Issuers need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a record date and the corresponding Interest Payment Date.

(11) *Persons Deemed Owners*. The registered Holder of a Note may be treated as its owner for all purposes.

(12) *Amendment, Supplement and Waiver.*

(a) Subject to certain exceptions, the Indenture, the Notes and the Note Guarantees may be amended or supplemented with the consent of the Holders of at least a majority in principal amount of the then outstanding Notes, voting as a single class, and any existing Default or Event of Default or compliance with any provision of the Indenture, the Notes or the Note Guarantees may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes, voting as a single class.

(b) Without the consent of each Holder of Notes affected, an amendment, supplement or waiver may not (with respect to any Notes held by a non-consenting Holder) (i) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver, (ii) reduce the principal of or change the fixed maturity of any Note or alter or waive any of the provisions with respect to the redemption of the Notes (other than Section 4.11 of the

Indenture), (iii) reduce the rate of or change the time for payment of interest, including default interest, on any Note; (iv) waive a Default or Event of Default in the payment of principal of, or interest, premium, if any, on, the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the then outstanding Notes and a waiver of the payment default that resulted from such acceleration), (v) make any Note payable in money other than that stated herein, (vi) make any change in Section 6.04 of the Indenture or the rights of Holders of Notes to receive payments of principal of, or interest, premium, if any, on, the Notes, (vii) waive a redemption payment with respect to any Note (other than a payment required by Section 4.11 of the Indenture), (viii) amend or modify any Note Guarantee in a manner that would adversely affect the Holders of the Notes or release any Guarantor from any of its obligations under its Note Guarantee or the Indenture (except in accordance with the terms of the indenture) or (ix) make any change in the preceding amendment and waiver provisions.

(c) Without the consent of any Holder of a Note, the Issuers, the Guarantors and the Trustee may amend or supplement the Indenture, the Notes or the Note Guarantees to (i) cure any ambiguity, defect or inconsistency, (ii) provide for uncertificated Notes in addition to or in place of certificated Notes, (iii) provide for the assumption of the either Issuers' or any Guarantor's obligations to the Holders of the Notes and Note Guarantees by a successor to the Issuers or such Guarantor, as the case may be, in the case of a merger or consolidation or sale of all or substantially all of the Wynn Resorts Finance's or such Guarantor's assets pursuant to Article 5 or Article 11 of the Indenture, (iv) make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the legal rights of any such Holder under the Indenture, (v) to conform the text of the Indenture, the Notes or the Note Guarantees to any provision of the "Description of the Notes" in the Issuers' Offering Memorandum, dated as of September 12, 2019, relating to the offering of the Initial Notes, to the extent that such provision in the "Description of the Notes" was intended to be a verbatim recitation of a provision of the Indenture, the Notes or the Note Guarantees, which intent may be evidenced by an Officers' Certificate to that effect, (vi) to release the Note Guarantee of a Guarantor in accordance with the terms of the Indenture, (vii) provide for the issuance of Additional Notes in accordance with the limitations set forth in the Indenture as of the date of the Indenture, (viii) allow any Guarantor to execute a supplemental indenture to the Indenture and/or a Note Guarantee with respect to the Notes, (ix) to comply with requirements of the SEC in order to effect or maintain the qualification of the Indenture under the Trust Indenture Act, if then applicable, (x) to comply with requirements of applicable Gaming Laws or to provide for requirements imposed by applicable Gaming Authorities; (xi) to provide for the acceptance or appointment of a successor trustee or (xii) provide for the Notes to be secured.

(13) *Defaults and Remedies*. Events of Default include: (i) default for 30 days in the payment when due of interest, if any, with respect to the Notes; (ii) default in payment when due of principal of, or premium, if any, on the Notes when the same becomes due and payable at maturity, upon redemption (including in connection with an offer to purchase) or otherwise, (iii) failure by Wynn Resorts Capital, Wynn Resorts Finance or any of Guarantors to comply with Sections 4.11 or 5.01 of the Indenture; (iv) failure by Wynn Resorts Capital, Wynn Resorts Finance or any Guarantor for 60 days after written notice from the Trustee or Holders of at least 25% in aggregate principal amount of the Notes then outstanding voting as a single class to comply with

any of the other agreements in the Indenture or the Notes, not set forth in clause (iii) above; (v) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by Wynn Resorts Finance or any Guarantor (or the payment of which is guaranteed by Wynn Resorts Finance or any of the Guarantors) whether such Indebtedness or guarantee now exists, or is created after the date of the Indenture, if that default results in the acceleration of such Indebtedness prior to its express maturity, and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness the maturity of which has been so accelerated, aggregates $125.0 million or more, if such acceleration is not annulled within 30 days after written notice as provided in the Indenture; (vi) failure by Wynn Resorts Capital, Wynn Resorts Finance or any of the Guarantors to pay final non-appealable judgments (not paid or covered by insurance as to which the relevant insurance company has not denied responsibility) aggregating in excess of $125.0 million, which judgments are not paid, bonded, discharged or stayed for a period of 60 days; or (vii) certain events of bankruptcy or insolvency described in the Indenture with respect to (a) either Issuer or (b) any Guarantor; *provided* that (i) if a Default for a failure to report or failure to deliver a required certificate in connection with another default (the "*Initial Default*") occurs, then at the time such Initial Default is cured, such Default for a failure to report or failure to deliver a required certificate in connection with another default that resulted solely because of that Initial Default will also be cured without any further action and (ii) any Default or Event of Default for the failure to comply with the time periods prescribed in Section 4.03 or otherwise to deliver any notice or certificate pursuant to any other provision of the Indenture shall be deemed to be cured upon the delivery of any such report required by such covenant or such notice or certificate, as applicable, even though such delivery is not within the prescribed period specified in the Indenture.

In the case of an Event of Default arising from certain events of bankruptcy or insolvency with respect to (a) either Issuer or (b) any Guarantor, all outstanding Notes shall become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately. Holders of the Notes may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any continuing Default or Event of Default if it determines that withholding notice is in their interest, except a Default or Event of Default relating to the payment of principal or interest or premium, if any. The Holders of a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may, on behalf of the Holders of all of the Notes, waive any existing Default or Event of Default and its consequences under the Indenture, except a continuing Default or Event of Default in the payment of interest or premium, if any, on, or the principal of, the Notes. The Issuers are required to deliver to the Trustee annually a statement regarding compliance with the Indenture. Upon becoming aware of any Default or Event of Default, the Issuers are required to deliver to the Trustee a statement specifying such Default or Event of Default.

(14) *[Reserved]*.

(15) *Trustee Dealings with Issuers*. The Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Issuers or any Affiliate of the Issuers with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties.

(16) *No Recourse Against Others*. No past, present or future director, officer, employee, incorporator, organizer, equity holder or member of either Issuer or any Guarantor, as such, shall have any liability for any obligations of either Issuer or any Guarantor under the Notes, the Note Guarantees, the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

(17) *Authentication*. This Note shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

(18) *Abbreviations*. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

(19) *Governing Law*. THE INDENTURE, THIS NOTE AND THE NOTE GUARANTEES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTION 4-1401 OF THE NEW YORK OBLIGATIONS LAW.

(20) *CUSIP Numbers*. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuers have caused CUSIP numbers to be printed on the Notes and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

The Issuers shall furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

c/o Wynn Resorts Finance, LLC
3131 Las Vegas Boulevard, South
Las Vegas, NV 89109
Fax No.: (702) 770-1520
Attention: General Counsel

Assignment Form

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to:

(Insert assignee's legal name)

(Insert assignee's soc. sec. or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint
to transfer this Note on the books of the Issuers. The agent may substitute another to act for him.

Date: _____

Your Signature:

(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

Option of Holder to Elect Purchase

If you want to elect to have this Note purchased by the Issuers pursuant to Section 4.11 of the Indenture, check the appropriate box below:

Section 4.11

If you want to elect to have only part of the Note purchased by the Issuers pursuant to Section 4.11 of the Indenture, state the amount you elect to have purchased:

$_____

Date: _____

Your Signature:

(Sign exactly as your name appears on the face of this Note)

Tax Identification No.:

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global Note or Definitive Note for an interest in this Global Note, have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease (or increase)	Signature of authorized officer of Trustee or Custodian

* *This schedule should be included only if the Note is issued in global form.*

EXHIBIT A-2

[Face of Regulation S Temporary Global Note]

CUSIP/ISIN U98354 AA8/USU98354AA80

5.125% Senior Notes due 2029

No. ___ $_____

WYNN RESORTS FINANCE, LLC
WYNN RESORTS CAPITAL CORP.

promise to pay to _____ or registered assigns,

the principal sum of

DOLLARS on October 1, 2029.

Interest Payment Dates: April 1 and October 1

Record Dates: March 15 and September 15

Dated: September 20, 2019

WYNN RESORTS FINANCE, LLC

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: _____
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN RESORTS CAPITAL CORP.

By: _____
Name: Craig S. Billings
Title: President and Treasurer

This is one of the Notes referred to
in the within-mentioned Indenture:

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By:
Authorized Signatory

[Back of Regulation S Temporary Global Note]
5.125% Senior Notes due 2029

[*Insert the Private Placement Legend, if applicable, pursuant to Section 2.06(f)(1) of the Indenture*]

[*Insert the Global Notes Legend, if applicable, pursuant to Section 2.06(f)(2) of the Indenture*]

[*Insert the Regulation S Temporary Global Note Legend pursuant to Section 2.06(f)(3) of the Indenture*]

Capitalized terms used herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

(1) *Interest*. Wynn Resorts Finance, LLC, a Nevada limited liability company ("*Wynn Resorts Finance*") and Wynn Resorts Capital Corp., a Nevada corporation ("Wynn Resorts Capital," and together with Wynn Resorts Finance, the "*Issuers*"), as joint and several obligors, promise to pay interest on the principal amount of this Note at 5.125% per annum from September 20, 2019 until maturity. The Issuers shall pay interest semi-annually in arrears on April 1 and October 1 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, an "*Interest Payment Date*"). Interest on the Notes shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; *provided* that if there is no existing Default in the payment of interest, and if this Note is authenticated between a record date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date; *provided*, *further*, that the first Interest Payment Date shall be April 1, 2020. The Issuers shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at a rate that is 1% per annum in excess of the rate then in effect; they shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

(2) *Method of Payment.* The Issuers shall pay interest on the Notes (except defaulted interest) to the Persons who are registered Holders of Notes at the close of business on the March 15 or September 15 next preceding the Interest Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. The Notes shall be payable as to principal, premium, if any, and interest at the office or agency of the Issuers maintained for such purpose within or without the City and State of New York, or, at the option of the Issuers, payment of interest, if any, may be made by check mailed to the Holders at their addresses set forth in the register of Holders; *provided* that payment by wire transfer of immediately available funds shall be required with respect to principal of and interest, premium, if any, on, all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to the Issuers or the Paying Agent. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

(3) *Paying Agent and Registrar*. Initially, U.S. Bank National Association, the Trustee under the Indenture, shall act as Paying Agent and Registrar. The Issuers may change any Paying Agent or Registrar without notice to any Holder. Either Issuer or any Guarantor may act in any such capacity.

(4) *Indenture*. The Issuers issued the Notes under an Indenture dated as of September 20, 2019 (the "*Indenture*") among the Issuers, the Guarantors and the Trustee. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. The Notes are unsecured obligations of the Issuers. The Indenture does not limit the aggregate principal amount of Notes that may be issued thereunder. Notes issued after the date of the Indenture in compliance with the applicable requirements of the Indenture are referred to as "*Additional Notes*." The term "*Notes*" includes any Additional Notes hereafter issued.

(5) *Optional Redemption*. The Notes are redeemable at the Issuers' election, in whole or in part at any time prior to their Stated Maturity.

(a) The redemption price for the Notes that are redeemed before July 1, 2029 will be equal to the greater of:

i. 100% of the principal amount of the Notes to be redeemed; or

ii. as determined by an Independent Investment Banker, the sum of the present values of the remaining scheduled payments of principal and interest on the Notes to be redeemed (not including any portion of such payments of interest accrued to the date of redemption) discounted to the redemption date on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at the Adjusted Treasury Rate, plus 50 basis points,

plus, in either of the above cases, accrued and unpaid interest to, but not including, the date of redemption on the Notes to be redeemed.

(b) The redemption price for Notes that are redeemed on or after July 1, 2029 will be equal to the sum of 100% of their principal amount, plus accrued and unpaid interest to, but not including, the date of redemption on the Notes to be redeemed.

Any such redemption may, at the discretion of the Issuers, be subject to one or more conditions precedent, including a Change of Control. In addition, if such redemption is subject to the satisfaction of one or more conditions precedent, the related notice shall describe each such condition, and if applicable, shall state that, in the discretion of the Issuers, the date of redemption may be delayed until such time as any or all such conditions shall be satisfied or waived (provided that in no event shall such date of redemption be delayed to a date later than 60 days after the date on which such notice was mailed), or such redemption may not occur and such notice may be

rescinded in the event that any or all such conditions shall not have been satisfied or waived by the date of redemption, or by the date of redemption as so delayed.

Unless the Issuers default in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(6) *Mandatory Redemption*. Other than as set forth in Paragraph 7 below, the Issuers shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

(7) *Mandatory Disposition or Redemption Pursuant to Gaming Laws*. Notwithstanding any other provision of the Indenture or this Note, each Holder, by accepting this Note, shall be deemed to have agreed that, if any Gaming Authority requires a Holder or Beneficial Owner of Notes to be registered, licensed, qualified or found suitable under any applicable Gaming Law, such Holder or Beneficial Owner, as the case may be, shall apply for a license, qualification or a finding of suitability in accordance with such Gaming Law and shall cooperate with the requests of any Gaming Authority for information, documentation, and/or testimony. If such Holder or Beneficial Owner (a) fails to apply for a license, qualification or finding of suitability within 30 days after being requested to do so (or such lesser period as required by the Gaming Authority), or (b) is notified by a Gaming Authority that it shall not be licensed, qualified or found suitable, then the Issuers shall have the right, at their option, to: (1) require the Holder or Beneficial Owner to dispose of its Notes within 30 days (or such lesser period as required by the Gaming Authority) following the earlier of: (a) the termination of the period described above for the Holder or Beneficial Owner to apply for a license, qualification or finding of suitability if the Holder fails to apply for a license, qualification or finding of suitability during such period, or (b) the receipt of the notice from the Gaming Authority that the Holder or Beneficial Owner shall not be licensed, qualified or found suitable by the Gaming Authority; or (2) redeem the Notes of the Holder or Beneficial Owner at a redemption price equal to: (a) the price required by applicable law or by order of any Gaming Authority, or (b) the lesser of: (i) the principal amount of the Notes, and (ii) the price that the Holder or Beneficial Owner paid for the Notes, in either case, together with accrued and unpaid interest, if any, on the Notes to, but not including, the earlier of (A) the date of redemption or such earlier date as is required by the Gaming Authority or (B) the date of the finding of unsuitability by the Gaming Authority, which may be less than 30 days following the notice of redemption. The Issuers shall notify the Trustee in writing of any redemption pursuant to this Section 7 as soon as practicable.

Immediately upon a determination by a Gaming Authority that a Holder or Beneficial Owner of Notes shall not be licensed, qualified or found suitable, the Holder or Beneficial Owner shall not have any further rights with respect to the Notes to: (a) exercise, directly or indirectly, through any Person, any right conferred by the Notes; or (b) receive any interest or any other distribution or payment with respect to the Notes, or any remuneration in any form from the Issuers for services rendered or otherwise, except the redemption price of the Notes.

Neither the Issuers nor the Trustee shall be responsible for any costs or expenses any Holder or Beneficial Owner may incur in connection with its registration, application for a license, qualification or a finding of suitability, or any renewal or continuation of the foregoing or compliance with any other requirement of a Gaming Authority. Those costs and expenses will be the obligations

of the Holder or Beneficial Owner, as applicable. In addition, any Holder or Beneficial Owner, as applicable, required to be licensed, qualified or found suitable under applicable Gaming Laws must pay all investigative fees and costs of any Gaming Authority in connection with such license, qualification, finding of suitability or application therefor.

(8) *Repurchase at Option of Holder.* If a Change of Control Triggering Event occurs, the Issuers shall make an offer (a "*Change of Control Offer*") to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess of $2,000) of each Holder's Notes at a purchase price equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to, but not including, the date of purchase (the "*Change of Control Payment*"). Within 10 days following any Change of Control Triggering Event, the Issuers shall mail a notice to each Holder setting forth the procedures governing the Change of Control Offer as required by the Indenture.

(9) *Notice of Redemption.* Notice of redemption shall be delivered at least 15 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be delivered more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of the Indenture. Notes in denominations larger than $2,000 may be redeemed in part but only in whole multiples of $1,000 in excess of $2,000, unless all of the Notes held by a Holder are to be redeemed. On and after the redemption date interest ceases to accrue on Notes or portions thereof called for redemption.

(10) *Denominations, Transfer, Exchange* . The Notes are in registered form without coupons in denominations of $2,000 and integral multiples of $1,000 in excess of $2,000. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Issuers may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Issuers need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Issuers need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a record date and the corresponding Interest Payment Date.

This Regulation S Temporary Global Note is exchangeable in whole or in part for one or more Global Notes only (i) on or after the termination of the 40-day distribution compliance period (as defined in Regulation S) and (ii) upon presentation of certificates (accompanied by an Opinion of Counsel, if applicable) required by Article 2 of the Indenture. Upon exchange of this Regulation S Temporary Global Note for one or more Global Notes, the Trustee shall cancel this Regulation S Temporary Global Note.

(11) *Persons Deemed Owners*. The registered Holder of a Note may be treated as its owner for all purposes.

(12) *Amendment, Supplement and Waiver.*

(a) Subject to certain exceptions, the Indenture, the Notes and the Note Guarantees may be amended or supplemented with the consent of the Holders of at least a majority in principal amount of the then outstanding Notes, voting as a single class, and any existing Default or Event of Default or compliance with any provision of the Indenture, the Notes or the Note Guarantees may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes, voting as a single class.

(b) Without the consent of each Holder of Notes affected, an amendment, supplement or waiver may not (with respect to any Notes held by a non-consenting Holder) (i) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver, (ii) reduce the principal of or change the fixed maturity of any Note or alter or waive any of the provisions with respect to the redemption of the Notes (other than Section 4.11 of the Indenture), (iii) reduce the rate of or change the time for payment of interest, including default interest, on any Note; (iv) waive a Default or Event of Default in the payment of principal of, or interest, premium, if any, on, the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the then outstanding Notes and a waiver of the payment default that resulted from such acceleration), (v) make any Note payable in money other than that stated herein, (vi) make any change in Section 6.04 of the Indenture or the rights of Holders of Notes to receive payments of principal of, or interest, premium, if any, on, the Notes, (vii) waive a redemption payment with respect to any Note (other than a payment required by Section 4.11 of the Indenture), (viii) amend or modify any Note Guarantee in a manner that would adversely affect the Holders of the Notes or release any Guarantor from any of its obligations under its Note Guarantee or the Indenture (except in accordance with the terms of the indenture) or (ix) make any change in the preceding amendment and waiver provisions.

(c) Without the consent of any Holder of a Note, the Issuers, the Guarantors and the Trustee may amend or supplement the Indenture, the Notes or the Note Guarantees to (i) cure any ambiguity, defect or inconsistency, (ii) provide for uncertificated Notes in addition to or in place of certificated Notes, (iii) provide for the assumption of the either Issuers' or any Guarantor's obligations to the Holders of the Notes and Note Guarantees by a successor to the Issuers or such Guarantor, as the case may be, in the case of a merger or consolidation or sale of all or substantially all of the Wynn Resorts Finance's or such Guarantor's assets pursuant to Article 5 or Article 11 of the Indenture, (iv) make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the legal rights of any such Holder under the Indenture, (v) to conform the text of the Indenture, the Notes or the Note Guarantees to any provision of the "Description of the Notes" in the Issuers' Offering Memorandum, dated as of September 12, 2019, relating to the offering of the Initial Notes, to the extent that such provision in the "Description of the Notes" was intended to be a verbatim recitation of a provision of the Indenture, the Notes or the Note Guarantees, which intent may be evidenced by an Officers' Certificate to that effect, (vi) to release the Note Guarantee of a Guarantor in accordance with the terms of the Indenture, (vii) provide for the issuance of Additional Notes in accordance with the limitations set forth in the Indenture as of the date of the Indenture, (viii) allow any Guarantor to execute a supplemental indenture to the Indenture and/or a Note Guarantee with respect to the Notes, (ix) to comply with requirements of the SEC in order to effect or maintain the qualification of the Indenture under the Trust Indenture Act, if then applicable, (x) to comply with requirements of

applicable Gaming Laws or to provide for requirements imposed by applicable Gaming Authorities; (xi) to provide for the acceptance or appointment of a successor trustee or (xii) provide for the Notes to be secured.

(13) *Defaults and Remedies*. Events of Default include: (i) default for 30 days in the payment when due of interest, if any, with respect to the Notes; (ii) default in payment when due of principal of, or premium, if any, on the Notes when the same becomes due and payable at maturity, upon redemption (including in connection with an offer to purchase) or otherwise, (iii) failure by Wynn Resorts Capital, Wynn Resorts Finance or any of Guarantors to comply with Sections 4.11 or 5.01 of the Indenture; (iv) failure by Wynn Resorts Capital, Wynn Resorts Finance or any Guarantor for 60 days after written notice from the Trustee or Holders of at least 25% in aggregate principal amount of the Notes then outstanding voting as a single class to comply with any of the other agreements in the Indenture or the Notes, not set forth in clause (iii) above; (v) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by Wynn Resorts Finance or any Guarantor (or the payment of which is guaranteed by Wynn Resorts Finance or any of the Guarantors) whether such Indebtedness or guarantee now exists, or is created after the date of the Indenture, if that default results in the acceleration of such Indebtedness prior to its express maturity, and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness the maturity of which has been so accelerated, aggregates $125.0 million or more, if such acceleration is not annulled within 30 days after written notice as provided in the Indenture; (vi) failure by Wynn Resorts Capital, Wynn Resorts Finance or any of the Guarantors to pay final non-appealable judgments (not paid or covered by insurance as to which the relevant insurance company has not denied responsibility) aggregating in excess of $125.0 million, which judgments are not paid, bonded, discharged or stayed for a period of 60 days; or (vii) certain events of bankruptcy or insolvency described in the Indenture with respect to (a) either Issuer or (b) any Guarantor; *provided* that (i) if a Default for a failure to report or failure to deliver a required certificate in connection with another default (the "*Initial Default*") occurs, then at the time such Initial Default is cured, such Default for a failure to report or failure to deliver a required certificate in connection with another default that resulted solely because of that Initial Default will also be cured without any further action and (ii) any Default or Event of Default for the failure to comply with the time periods prescribed in Section 4.03 or otherwise to deliver any notice or certificate pursuant to any other provision of the Indenture shall be deemed to be cured upon the delivery of any such report required by such covenant or such notice or certificate, as applicable, even though such delivery is not within the prescribed period specified in the Indenture.

In the case of an Event of Default arising from certain events of bankruptcy or insolvency with respect to (a) either Issuer or (b) any Guarantor, all outstanding Notes shall become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately. Holders of the Notes may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any continuing Default or Event of Default if it determines that withholding notice is in their interest,

except a Default or Event of Default relating to the payment of principal or interest or premium, if any. The Holders of a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may, on behalf of the Holders of all of the Notes, waive any existing Default or Event of Default and its consequences under the Indenture, except a continuing Default or Event of Default in the payment of interest or premium, if any, on, or the principal of, the Notes. The Issuers are required to deliver to the Trustee annually a statement regarding compliance with the Indenture. Upon becoming aware of any Default or Event of Default, the Issuers are required to deliver to the Trustee a statement specifying such Default or Event of Default.

(14) *[Reserved]*.

(15) *Trustee Dealings with Issuers*. The Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Issuers or any Affiliate of the Issuers with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties.

(16) *No Recourse Against Others*. No past, present or future director, officer, employee, incorporator, organizer, equity holder or member of either Issuer or any Guarantor, as such, shall have any liability for any obligations of either Issuer or any Guarantor under the Notes, the Note Guarantees, or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

(17) *Authentication*. This Note shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

(18) *Abbreviations*. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

(19) *Governing Law*. THE INDENTURE, THIS NOTE AND THE NOTE GUARANTEES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTION 4-1401 OF THE NEW YORK OBLIGATIONS LAW.

(20) *CUSIP Numbers*. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuers have caused CUSIP numbers to be printed on the Notes and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

The Issuers shall furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

c/o Wynn Resorts Finance, LLC
3131 Las Vegas Boulevard, South
Las Vegas, NV 89109
Fax No.: (702) 770-1520
Attention: General Counsel

Assignment Form

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to:

(Insert assignee's legal name)

(Insert assignee's soc. sec. or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint
to transfer this Note on the books of the Issuers. The agent may substitute another to act for him.

Date: _____

Your Signature:

(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

Option of Holder to Elect Purchase

If you want to elect to have this Note purchased by the Issuers pursuant to Section 4.11 of the Indenture, check the appropriate box below:

Section 4.11

If you want to elect to have only part of the Note purchased by the Issuers pursuant to Section 4.11 of the Indenture, state the amount you elect to have purchased:

$_____

Date: _____

Your Signature:

(Sign exactly as your name appears on the face of this Note)

Tax Identification No.:

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global Note or Definitive Note for an interest in this Global Note, have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease (or increase)	Signature of authorized officer of Trustee or Custodian

* *This schedule should be included only if the Note is issued in global form.*

EXHIBIT B

FORM OF CERTIFICATE OF TRANSFER

Wynn Resorts Finance, LLC
Wynn Resorts Capital Corp.
3131 Las Vegas Boulevard, South
Las Vegas, Nevada 89109
Fax No.: (702) 770-1100
Attention: President

U.S. Bank National Association
EP-MN-WS3C
60 Livingston Avenue
St. Paul, Minnesota 55107
Fax: (651) 495-8097
Attention: Corporate Trust Department – Wynn Administrator

Re: 5.125% Senior Notes due 2029

Reference is hereby made to the Indenture, dated as of September 20, 2019 (the "*Indenture*"), among Wynn Resorts Finance, LLC, a Nevada limited liability company ("*Wynn Resorts Finance*"), Wynn Resorts Capital Corp., a Nevada corporation ("*Wynn Resorts Capital*" and, together with Wynn Resorts Finance, the "*Issuers*"), the Guarantors party thereto and U.S. Bank National Association, as trustee (the "*Trustee*"). Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____, (the "*Transferor*") owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of $_____ in such Note[s] or interests (the "*Transfer*"), to _____ (the "*Transferee*"), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. **Check if Transferee will take delivery of a beneficial interest in the 144A Global Note or a Restricted Definitive Note pursuant to Rule 144A.** The Transfer is being effected pursuant to and in accordance with Rule 144A under the Securities Act of 1933, as amended (the "*Securities Act*"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A, and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement

Legend printed on the 144A Global Note and/or the Restricted Definitive Note and in the Indenture and the Securities Act.

2. **Check if Transferee will take delivery of a beneficial interest in the Regulation S Temporary Global Note, the Regulation S Permanent Global Note or a Restricted Definitive Note pursuant to Regulation S.** The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a Person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act, (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Private Placement Legend printed on the Regulation S Permanent Global Note, the Regulation S Temporary Global Note and/or the Restricted Definitive Note and in the Indenture and the Securities Act.

3. **Check and complete if Transferee will take delivery of a beneficial interest in the IAI Global Note or a Restricted Definitive Note pursuant to any provision of the Securities Act other than Rule 144A or Regulation S .** The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act;

or

(b) such Transfer is being effected to the Wynn Resorts Finance or a subsidiary thereof;

or

(c) such Transfer is being effected to an Institutional Accredited Investor and pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144, Rule 903 or Rule 904, and the Transferor hereby further certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial

interests in a Restricted Global Note or Restricted Definitive Notes and the requirements of the exemption claimed, which certification is supported by (1) a certificate executed by the Transferee in the form of Exhibit D to the Indenture and (2) an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification), to the effect that such Transfer is in compliance with the Securities Act. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the IAI Global Note and/or the Restricted Definitive Notes and in the Indenture and the Securities Act.

4. **Check if Transferee will take delivery of a beneficial interest in an Unrestricted Global Note or of an Unrestricted Definitive Note.**

(a) **Check if Transfer is pursuant to Rule 144.** (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(b) **Check if Transfer is Pursuant to Regulation S.** (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(c) **Check if Transfer is Pursuant to Other Exemption.** (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement

Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of Wynn Resorts Finance.

[Insert Name of Transferor]

By:
Name:
Title:

Dated: _____

ANNEX A TO CERTIFICATE OF TRANSFER

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP _____), or

(ii) ☐ Regulation S Global Note (CUSIP _____), or

(iii) ☐ IAI Global Note (CUSIP _____); or

(b) ☐ a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP _____), or

(ii) ☐ Regulation S Global Note (CUSIP _____), or

(iii) ☐ IAI Global Note (CUSIP _____); or

(iv) ☐ Unrestricted Global Note (CUSIP _____); or

(b) ☐ a Restricted Definitive Note; or

(c) ☐ an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.

EXHIBIT C

FORM OF CERTIFICATE OF EXCHANGE

Wynn Resorts Finance, LLC
Wynn Resorts Capital Corp.
3131 Las Vegas Boulevard, South
Las Vegas, Nevada 89109
Fax: (702) 770-1100
Attention: President

U.S. Bank National Association
EP-MN-WS3C
60 Livingston Avenue
St. Paul, Minnesota 55107
Fax No.: (651) 495-8097
Attention: Corporate Trust Department – Wynn Administrator

Re: 5.125% Senior Notes due 2029

(CUSIP _____)

Reference is hereby made to the Indenture, dated as of September 20, 2019 (the "*Indenture*"), among Wynn Resorts Finance, LLC, a Nevada limited liability company ("*Wynn Resorts Finance*"), Wynn Resorts Capital Corp., a Nevada corporation ("*Wynn Resorts Capital*" and, together with Wynn Resorts Finance, the "*Issuers*"), the Guarantors party thereto and U.S. Bank National Association, as trustee (the "*Trustee*"). Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____, (the "*Owner*") owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of $_____ in such Note[s] or interests (the "*Exchange*"). In connection with the Exchange, the Owner hereby certifies that:

1. Exchange of Restricted Definitive Notes or Beneficial Interests in a Restricted Global Note for Unrestricted Definitive Notes or Beneficial Interests in an Unrestricted Global Note

(a) ☐ **Check if Exchange is from beneficial interest in a Restricted Global Note to beneficial interest in an Unrestricted Global Note.** In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the Securities Act of 1933, as amended (the "Securities Act"), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest in an Unrestricted

Global Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(b) ☐ **Check if Exchange is from beneficial interest in a Restricted Global Note to Unrestricted Definitive Note.** In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(c) ☐ **Check if Exchange is from Restricted Definitive Note to beneficial interest in an Unrestricted Global Note.** In connection with the Owner's Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(d) ☐ **Check if Exchange is from Restricted Definitive Note to Unrestricted Definitive Note.** In connection with the Owner's Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2. **Exchange of Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes for Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes**

(a) ☐ **Check if Exchange is from beneficial interest in a Restricted Global Note to Restricted Definitive Note.** In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner's own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

(b) ☐ **Check if Exchange is from Restricted Definitive Note to beneficial interest in a Restricted Global Note.** In connection with the Exchange of the Owner's Restricted Definitive Note for a beneficial interest in the [CHECK ONE] ☐ 144A Global Note, ☐ Regulation S Global Note, ☐ IAI Global Note with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of Wynn Resorts Finance.

[Insert Name of Transferor]

By:

Name:
Title:

Dated: _____

EXHIBIT D

FORM OF CERTIFICATE FROM
ACQUIRING INSTITUTIONAL ACCREDITED INVESTOR

Wynn Resorts Finance, LLC
Wynn Resorts Capital Corp.
3131 Las Vegas Boulevard, South
Las Vegas, Nevada 89109
Fax No.: (702) 770-1100
Attention: President

U.S. Bank National Association
EP-MN-WS3C
60 Livingston Avenue
St. Paul, Minnesota 55107
Fax No.: (651) 495-8097
Attention: Corporate Trust Department – Wynn Administrator

Re: 5.125% Senior Notes due 2029

Reference is hereby made to the Indenture, dated as of September 20, 2019 (the "*Indenture*"), among Wynn Resorts Finance, LLC, a Nevada limited liability company ("*Wynn Resorts Finance*"), Wynn Resorts Capital Corp., a Nevada corporation ("*Wynn Resorts Capital*" and, together with Wynn Resorts Finance, the "*Issuers*"), the Guarantors party thereto and U.S. Bank National Association, as trustee (the "*Trustee*"). Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

In connection with our proposed purchase of $_____ aggregate principal amount of:

(a) ☐ a beneficial interest in a Global Note, or

(b) ☐ a Definitive Note,

we confirm that:

1. We understand that any subsequent transfer of the Notes or any interest therein is subject to certain restrictions and conditions set forth in the Indenture and the undersigned agrees to be bound by, and not to resell, pledge or otherwise transfer the Notes or any interest therein except in compliance with, such restrictions and conditions and the Securities Act of 1933, as amended (the "*Securities Act*").

2. We understand that the offer and sale of the Notes have not been registered under the Securities Act, and that the Notes and any interest therein may not be offered or sold except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should sell the Notes or any interest therein,

we will do so only (A) to Wynn Resorts Finance or any subsidiary thereof, (B) in accordance with Rule 144A under the Securities Act to a "qualified institutional buyer" (as defined therein), (C) to an institutional "accredited investor" (as defined below) that, prior to such transfer, furnishes (or has furnished on its behalf by a U.S. broker-dealer) to you and to Wynn Resorts Finance a signed letter substantially in the form of this letter and an Opinion of Counsel in form reasonably acceptable to Wynn Resorts Finance to the effect that such transfer is in compliance with the Securities Act, (D) outside the United States in accordance with Rule 904 of Regulation S under the Securities Act, or (E) pursuant to the provisions of Rule 144(k) under the Securities Act, and we further agree to provide to any Person purchasing the Definitive Note or beneficial interest in a Global Note from us in a transaction meeting the requirements of clauses (A) through (E) of this paragraph a notice advising such purchaser that resales thereof are restricted as stated herein.

3. We understand that, on any proposed resale of the Notes or beneficial interest therein, we will be required to furnish to you and Wynn Resorts Finance such certifications, legal opinions and other information as you and Wynn Resorts Finance may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. We further understand that the Notes purchased by us will bear a legend to the foregoing effect.

4. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

5. We are acquiring the Notes or beneficial interest therein purchased by us for our own account or for one or more accounts (each of which is an institutional "accredited investor") as to each of which we exercise sole investment discretion.

You and Wynn Resorts Finance are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

[Insert Name of Accredited Investor]

By:

Name:
Title:

Dated: _____

EXHIBIT E

[FORM OF NOTATION OF GUARANTEE]

For value received, each of the Guarantors (which terms include any successor Person under the Indenture) executing this Notation of Guarantee has, jointly and severally, unconditionally guaranteed, to the extent set forth in the Indenture and subject to the provisions in the Indenture dated as of September 20, 2019 (the "*Indenture*") among Wynn Resorts Finance, LLC, a Nevada limited liability company ("*Wynn Resorts Finance*") and Wynn Resorts Capital Corp., a Nevada corporation ("*Wynn Resorts Capital*," and together with Wynn Resorts Finance, the "*Issuers*"), as joint and several obligors, and EBH Holdings, LLC, a Nevada limited liability company, EBH MA Property, LLC, a Massachusetts limited liability company, Wynn Group Asia, Inc., a Nevada corporation, Everett Property, LLC, a Massachusetts limited liability company, Wynn America Group, LLC, a Nevada limited liability company, Wynn Las Vegas Holdings, LLC, a Nevada limited liability company, Wynn Las Vegas, LLC, a Nevada limited liability company, Wynn MA, LLC, a Nevada limited liability company, Wynn Sunrise, LLC, a Nevada limited liability company and Wynn Las Vegas Capital Corp., a Nevada corporation, as guarantors (the "*Guarantors*") and U.S. Bank National Association, as trustee (the "*Trustee*"), (a) the due and punctual payment of the principal of, premium, if any, and interest on the Notes (as defined in the Indenture), whether at maturity, by acceleration, redemption or otherwise, the due and punctual payment of interest on overdue principal of and interest on the Notes, if any, if lawful, and the due and punctual performance of all other obligations of the Issuers to the Holders or the Trustee all in accordance with the terms of the Indenture and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that the same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. The obligations of the Guarantor(s) to the Holders of Notes and to the Trustee pursuant to the Note Guarantee and the Indenture are expressly set forth in Article 11 of the Indenture and reference is hereby made to the Indenture for the precise terms of the Note Guarantee. Each Holder of a Note, by accepting the same, (a) agrees to and shall be bound by such provisions and (b) appoints the Trustee attorney-in-fact of such Holder for such purpose.

[Name of Guarantor(s)]

By:
Name:
Title:

EXHIBIT F

[FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS]

Supplemental Indenture (this "*Supplemental Indenture*"), dated as of _____, 20__, among _____ (the "*Guaranteeing Subsidiary*"), a subsidiary of Wynn Resorts Finance, LLC, a Nevada limited liability company ("*Wynn Resorts Finance*"), Wynn Resorts Capital Corp., a Nevada corporation ("*Wynn Resorts Capital*," and together with Wynn Resorts Finance, the "*Issuers*") and the Guarantors (as defined in the Indenture referred to herein) and U.S. Bank National Association, as trustee under the Indenture referred to below (the "*Trustee*").

W I T N E S S E T H

WHEREAS, the Issuers have heretofore executed and delivered to the Trustee an indenture (the "*Indenture*"), dated as of September 20, 2019 providing for the issuance of an aggregate principal amount of $750,000,000 of 5.125% Senior Notes due 2029 (the "*Notes*");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Issuers' Obligations under the Notes and the Indenture on the terms and conditions set forth herein (the "*Note Guarantee*"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. Agreement to Guarantee. The Guaranteeing Subsidiary hereby agrees as follows:

(a) Along with all Guarantors named in the Indenture, to jointly, severally and unconditionally Guarantee to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, the Notes or the obligations of the Issuers hereunder or thereunder, that:

(i) the principal of, premium, if any, and interest on the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Issuers to the Holders or the Trustee hereunder or thereunder shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately.

(b) The obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or the Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuers, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor.

(c) The following is hereby waived: diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of either Issuer, any right to require a proceeding first against the Issuers, protest, notice and all demands whatsoever, any right or claims of right to cause a marshalling of the Issuers' or any Guarantor's assets or to proceed against any Guarantor, any Issuer or any other guarantor of any Obligations which are Guaranteed in any particular order, including, but not limited to, any right arising out of Nevada Revised Statutes 40.430, to the fullest extent permitted by Nevada Revised Statutes 40.495(2).

(d) This Note Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and the Indenture, and the Guaranteeing Subsidiary accepts all obligations of a Guarantor under the Indenture.

(e) If any Holder or the Trustee is required by any court or otherwise to return to the Issuers, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either of the Issuers or any Guarantor, any amount paid by either to the Trustee or such Holder, this Note Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(f) The Guaranteeing Subsidiary shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby.

(g) As between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 of the Indenture for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 of the Indenture, such obligations

(whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Note Guarantee.

(h) The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Note Guarantee.

(i) Pursuant to Section 11.02 of the Indenture, after giving effect to any maximum amount and all other contingent and fixed liabilities that are relevant under any applicable Bankruptcy Law or fraudulent conveyance laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under Article 11 of the Indenture, this new Note Guarantee shall be limited to the maximum amount permissible such that the obligations of such Guarantor under this Note Guarantee shall not constitute a fraudulent transfer or conveyance.

3. Execution and Delivery. Each Guaranteeing Subsidiary agrees that the Note Guarantees shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Note Guarantee.

4. Guaranteeing Subsidiary may Consolidate, etc. on Certain Terms.

(a) A Guaranteeing Subsidiary may not consolidate with or merge with or into (whether or not such Guaranteeing Subsidiary is the surviving Person) another Person, other than either of the Issuers or another Guarantor, except as set forth in the Indenture.

(b) Notwithstanding the foregoing provisions of this Section 4 or the provisions of Section 11.04 of the Indenture, each Guarantor is permitted to reorganize as a corporation pursuant to a Permitted C-Corp. Conversion.

5. Releases.

Subject to compliance with the provisions described in Section 4 above and under Article 11 of the Indenture, the Note Guarantee of a Guaranteeing Subsidiary will be released on the terms set forth in the Indenture.

6. No Recourse Against Others. No past, present or future director, officer, employee, incorporator, organizer, equity holder or member of any Guarantor, as such, shall have any liability for any obligations of either Issuer or any Guarantor under the Notes, the Note Guarantees or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

7. NEW YORK LAW TO GOVERN. THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTION 4-1401 OF THE NEW YORK OBLIGATIONS LAW.

8. Conflicts with Indenture. This Supplemental Indenture is subject to all terms of the Indenture. To the extent any provision of this Supplemental Indenture conflicts with express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

9. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

10. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

11. The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary and the Issuers.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated: _____, 20___

[Guaranteeing Subsidiary]

By: _____
Name:
Title:

Issuers:

WYNN RESORTS FINANCE, LLC,
a Nevada limited liability company

By: __
Name:
Title:

WYNN RESORTS CAPITAL CORP.,

a Nevada corporation

By:_____
Name:
Title:

Guarantors:

EBH HOLDINGS, LLC

By: Wynn MA, LLC, its sole member

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: _____
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

EBH MA PROPERTY, LLC

By: Wynn MA, LLC, its managing member

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: _____
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN GROUP ASIA, INC.

By: _____
Name: Craig S. Billings
Title: Treasurer

EVERETT PROPERTY, LLC

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: _____
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN AMERICA GROUP, LLC

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: _____
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN LAS VEGAS HOLDINGS, LLC

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: _____
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN LAS VEGAS, LLC

By: Wynn Las Vegas Holdings, LLC, its sole member

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: _____
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN MA, LLC

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: _____
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN SUNRISE, LLC

By: Wynn Las Vegas, LLC its sole member

By: Wynn Las Vegas Holdings, LLC, its sole member

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member
By: Wynn Resorts, Limited, its sole member

By: _____
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN LAS VEGAS CAPITAL CORP.

By: _____
Name: Craig S. Billings
Title: President and Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

Exhibit 10.1

CREDIT AGREEMENT

Dated as of September 20, 2019

among

WYNN RESORTS FINANCE, LLC,
as Borrower,

THE SUBSIDIARIES OF BORROWER PARTY HERETO,
as Guarantors,

THE LENDERS PARTY HERETO,

THE L/C LENDERS PARTY HERETO,

DEUTSCHE BANK AG NEW YORK BRANCH,
as Administrative Agent,

and

DEUTSCHE BANK AG NEW YORK BRANCH,
as Collateral Agent

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and

DEUTSCHE BANK SECURITIES INC.
GOLDMAN SACHS BANK USA
THE BANK OF NOVA SCOTIA
BOFA SECURITIES, INC.
BNP PARIBAS SECURITIES CORP.
CITIZENS BANK, NATIONAL ASSOCIATION
CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK
FIFTH THIRD BANK
JPMORGAN CHASE BANK, N.A.
MIZUHO BANK, LTD.
SUMITOMO MITSUI BANKING CORPORATION
and
SUNTRUST ROBINSON HUMPHREY, INC.,
as Joint Lead Arrangers and Joint Bookrunners

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EXHIBITS:

CREDIT AGREEMENT, dated as of September 20, 2019 (this "**Agreement**"), among **WYNN RESORTS FINANCE, LLC**, a Nevada limited liability company ("**Borrower**"); the **SUBSIDIARY GUARANTORS** party hereto from time to time; the **LENDERS** from time to time party hereto; the **L/C LENDERS** party hereto; **DEUTSCHE BANK AG NEW YORK BRANCH**, as administrative agent (in such capacity, together with its successors in such capacity, "**Administrative Agent**"); and **DEUTSCHE BANK AG NEW YORK BRANCH**, as collateral agent (in such capacity, together with its successors in such capacity, "**Collateral Agent**").

WHEREAS, Borrower has requested that the Lenders provide first lien revolving credit and term loan facilities, and the Lenders have indicated their willingness to lend, and the L/C Lender has indicated its willingness to issue letters of credit, in each case, on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

ARTICLE I.

DEFINITIONS, ACCOUNTING MATTERS AND RULES OF CONSTRUCTION

SECTION 1.01. Certain Defined Terms. As used herein, the following terms shall have the following meanings:

"**ABR Loans**" shall mean Loans that bear interest at rates based upon the Alternate Base Rate.

"**Acquisition**" shall mean, with respect to any Person, any transaction or series of related transactions for the (a) acquisition of all or substantially all of the Property of any other Person, or of any business or division of any other Person (other than any then-existing Company), (b) acquisition of more than 50% of the Equity Interests of any other Person, or otherwise causing any other Person to become a Subsidiary of such Person or (c) merger or consolidation of such Person or any other combination of such Person with any other Person (other than any of the foregoing between or among any then-existing Companies).

"**Act**" has the meaning set forth in Section 13.14.

"**Act of Terrorism**" shall mean an act of any person directed towards the overthrowing or influencing of any government de jure or de facto, or the inducement of fear in or the disruption of the economic system of any society, by force or by violence, including (i) the hijacking or destruction of any conveyance (including an aircraft, vessel, or vehicle), transportation infrastructure or building, (ii) the seizing or detaining, and threatening to kill, injure, or continue to detain, or the assassination of, another individual, (iii) the use of any (a) biological agent, chemical agent, or nuclear weapon or device, or (b) explosive or firearm, with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property, and (iv) a credible threat, attempt, or conspiracy to do any of the foregoing.

"**Additional Credit Party**" has the meaning set forth in Section 9.11.

"**Adjusted Maximum Amount**" has the meaning set forth in Section 6.10.

"**Administrative Agent**" has the meaning set forth in the introductory paragraph hereof.

"**Affected Classes**" has the meaning set forth in Section 13.04(b)(A).

"**Affiliate**" shall mean, with respect to any Person, any other Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, "**control**" (including, with its correlative meanings, "**controlled by**" and "**under common control with**") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

"**Affiliate Lender**" shall have the meaning assigned to such term in Section 13.05(e).

"**Agent**" shall mean any of Administrative Agent, Auction Manager, Collateral Agent, and/or Lead Arrangers, as applicable.

"**Agent Party**" has the meaning set forth in Section 13.02(e).

"**Agent Related Parties**" shall mean each Agent and any sub-agent thereof and their respective Affiliates, directors, officers, employees, agents and advisors.

"**Agreement**" has the meaning set forth in the introductory paragraph hereof.

"**Allocable Overhead**" shall mean, at any time with respect to each Qualifying Project, an amount equal to (1) the amount of corporate or other organizational overhead expenses of, and actually incurred by, Wynn Resorts and its Subsidiaries calculated in good faith on a consolidated basis, after the elimination of intercompany transactions, in accordance with GAAP, divided by (2) the number of Qualifying Projects. However, amounts allocated to any Qualifying Project shall be prorated based on the period within such period that such Qualifying Project was in operation or financing therefor was obtained. With respect to any amounts payable pursuant to any agreements entered into by and among Wynn Resorts, any of its Subsidiaries and/or any of their respective Affiliates, any payment in respect of Allocable Overhead shall not include any fee, profit or similar component and shall represent only the payment or reimbursement of actual costs and expenses.

"**Alternate Base Rate**" shall mean, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) the LIBO Rate for a one month Interest Period beginning on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.0%; *provided* that, the LIBO Rate for any day shall be based on the LIBO Rate at approximately 11:00 a.m. London time on such day; *provided*, further, that the Alternate Base Rate shall not be less than 1.0%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the LIBO Rate, respectively.

"**Alternate Currency**" shall mean Canadian Dollars, Euro, Pound Sterling and any other lawful currency reasonably acceptable to the applicable L/C Lender.

"**Alternative Currency Equivalent**" shall mean, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternate Currency as determined by Administrative Agent or the applicable L/C Lender, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternate Currency with Dollars.

"**Anti-Terrorism Laws**" has the meaning set forth in Section 8.22(a).

"**Applicable Fee Percentage**" shall mean (a) with respect to any Unutilized R/C Commitments under the Closing Date Revolving Facility, 0.25% and (b) with respect to any other Revolving Facility, the "Applicable Fee Percentage" set forth in the applicable Refinancing Amendment, Extension Amendment, or Incremental Joinder Agreement.

"**Applicable Lending Office**" shall mean, for each Lender and for each Type of Loan, the "Lending Office" of such Lender (or of an Affiliate of such Lender) (a) that is a lender on the Closing Date, designated for such Type of Loan on Annexes A-1 and A-2 hereof, (b) set forth on such Lender's signature page to an Incremental Joinder Agreement for any Lender making any Incremental Commitment pursuant to Section 2.12, (c) set forth on such Lender's signature page to any Refinancing Amendment for any Lender providing Credit Agreement Refinancing Indebtedness pursuant to Section 2.15, (d) set forth in the Assignment Agreement for any Person that becomes a "Lender" hereunder pursuant to an Assignment Agreement, or (e) such other office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to Administrative Agent and Borrower as the office by which its Loans of such Type are to be made and maintained.

"**Applicable Margin**" shall mean:

(i) with respect to the Term A Facility Loans and the Revolving Loans under the Closing Date Revolving Facility, (a) 1.75% *per annum*, with respect to LIBOR Loans and (b) 0.75% *per annum*, with respect to ABR Loans; *provided* that the Applicable Margin with respect to the Term A Facility Loans and the Revolving Loans under the Closing Date Revolving Facility shall be reduced to (a) 1.50% *per annum*, with respect to LIBOR Loans and (b) 0.50% *per annum*, with respect to ABR Loans, from and after the date the Applicable Margin Stepdown Condition are first satisfied; and

(ii) with respect to any other Facility, the "Applicable Margin" set forth in the applicable Refinancing Amendment, Extension Amendment, or Incremental Joinder Agreement.

"**Applicable Margin Stepdown Condition**" shall mean a condition satisfied on the first date on which (x) (A) the WLV Lien Limitation is no longer in effect and (B) after the occurrence described in the foregoing clause (x)(A), Wynn Las Vegas remains a Credit Party and (y) the Senior Facilities then in effect have received a facility rating of (1) Ba3 or higher from Moody's and (2) BB- or higher from S&P.

"**Approved Commercial Bank**" means a commercial bank with a consolidated combined capital and surplus of at least $1,000,000,000.

"**Approved Fund**" shall mean any Fund that is administered, advised, or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of an entity that administers, advises, or manages a Lender.

"**Asset Sale**" shall mean (a) any conveyance, sale, lease, transfer or other disposition (including by way of merger or consolidation and including any sale and leaseback transaction) of any Property (including accounts receivable and Equity Interests of any Person owned by Borrower or any of its Restricted Subsidiaries but not any Equity Issuance) (whether owned on the Closing Date or thereafter acquired) by Borrower or any of its Restricted Subsidiaries to any Person (other than (i) with respect to any Credit Party, to any Credit Party, and (ii) with respect to any other Company, to any Company) to the extent that the aggregate value of such Property sold in any single transaction or related series of transactions is greater than or equal to $100.0 million and (b) any issuance or sale by any Restricted Subsidiary of its Equity Interests to any Person (other than to any Company); *provided* that the following shall not constitute an "Asset Sale": (i) any conveyance, sale, lease, transfer, or other disposition of inventory, (ii) conveyances, sales, leases, transfers, or other dispositions in the ordinary course of business, (iii) any conveyance, sale, lease, transfer, or other disposition of obsolete or worn out assets or assets no longer useful in the business of the Credit Parties, (iv) conveyance, sale, lease, transfer, or other disposition of accounts or notes received in connection with compromise, settlement, or collection thereof, (v) licenses of Intellectual Property entered into in the ordinary course of business, and (vi) any conveyance, sale, transfer, or other disposition of cash and/or Cash Equivalents.

"**Assignment Agreement**" shall mean an Assignment and Assumption Agreement substantially in the form attached as Exhibit J hereto.

"**Auction Amount**" shall have the meaning provided in Exhibit N hereto.

"**Auction Manager**" shall mean DB, or another financial institution as shall be selected by Borrower in a written notice to Administrative Agent, in each case in its capacity as Auction Manager.

"**Auction Procedures**" shall mean, collectively, the auction procedures, auction notice, return bid and Borrower Assignment Agreement in substantially the form set forth as Exhibit N hereto or such other form as is reasonably acceptable to Auction Manager and Borrower so long as the same are reasonably consistent with the provisions hereof; *provided*, *however*, Auction Manager, with the prior written consent of Borrower, may amend or modify the procedures, notices, bids and Borrower Assignment Agreement in connection with any Borrower Loan Purchase (but excluding economic terms of a particular auction after any Lender has validly tendered Loans requested in an offer relating to such auction, other than to increase the Auction Amount or raise the Discount Range applicable

to such auction); *provided*, *further*, that no such amendments or modifications may be implemented after 24 hours prior to the date and time return bids are due in such auction.

"**Auto-Extension Letter of Credit**" shall have the meaning provided by Section 2.03(b).

"**Available Amount**" shall mean, on any date, an amount not less than zero, equal to:

(a) the aggregate amount of Excess Cash Flow for all fiscal years ending after the Closing Date (not less than zero) (commencing with the fiscal year ending December 31, 2019) and prior to such date; *plus*

(b) in the event of (i) the Revocation of a Subsidiary that was designated as an Unrestricted Subsidiary, (ii) the merger, consolidation or amalgamation of an Unrestricted Subsidiary with or into Borrower or a Restricted Subsidiary (where the surviving entity is Borrower or a Restricted Subsidiary) or (iii) the transfer or other conveyance of assets of an Unrestricted Subsidiary to, or liquidation of an Unrestricted Subsidiary into, Borrower or a Restricted Subsidiary, an amount equal to the sum of (x) the fair market value of the Investments deemed made by Borrower and its Restricted Subsidiaries in such Unrestricted Subsidiary at the time such Subsidiary was designated as an Unrestricted Subsidiary, *plus* (y) the amount of the Investments of Borrower and its Restricted Subsidiaries in such Unrestricted Subsidiary made after such designation and prior to the time of such Revocation, merger, consolidation, amalgamation, conveyance or transfer (or of the assets transferred or conveyed, as applicable), other than, in the case of this clause (y), to the extent such Investments funded Investments by such Unrestricted Subsidiary into a Person that, after giving effect to the transaction described in clauses (i), (ii), or (iii) above, will be an Unrestricted Subsidiary, in each case to the extent Investments were made in reliance on the Available Amount; *provided,* that clauses (x) and (y) shall not be duplicative of any reductions in the amount of such Investments pursuant to the proviso to the definition of "Investments"; *plus*

(c) the aggregate amount of any returns, received since the Closing Date and on or prior to such date (including with respect to contracts related to such Investments and including dividends, interest, distributions, returns of principal, sale proceeds, repayments, income, payments under contracts relating to such Indebtedness and similar amounts) by Borrower or any Restricted Subsidiary in respect of any Investments pursuant to Section 10.04(l) to the extent not included in Consolidated Net Income; *plus*

(d) the amount of any Declined Amounts; *minus*

(e) the aggregate amount of any (i) Investments made pursuant to Section 10.04(l), (ii) Restricted Payments made pursuant to Section 10.06(i)(ii), and (iii) Junior Prepayments pursuant to Section 10.09(a)(ii) (in each case, in reliance on the then-outstanding Available Amount) made since the Closing Date and on or prior to such date.

"**Available Equity Amount**" shall mean, on any date, an amount not less than zero, equal to:

(a) the aggregate amount of Equity Issuance Proceeds (including upon conversion or exchange of a debt instrument or Disqualified Capital Stock into or for any Equity Interests (other than Disqualified Capital Stock) received by Borrower after the Closing Date and on or prior to such date other than the proceeds of any Specified Equity Contribution; *plus*

(b) the aggregate fair market value of assets or Property acquired in exchange for Equity Interests (other than Disqualified Capital Stock) of Borrower after the Closing Date and on or prior to such date; *plus*

(c) the aggregate principal amount of debt instruments or Disqualified Capital Stock issued after the Closing Date that are converted into or exchanged for any Equity Interests (other than Disqualified Capital Stock) by Borrower after the Closing Date and on or prior to such date, together with the fair market value of any assets or Property received in such conversion or exchange; *plus*

(d) the aggregate amount of any returns, received since the Closing Date and on or prior to such date (including with respect to contracts related to such Investments and including dividends, interest, distributions, returns of principal, sale proceeds, repayments, income, payments under contracts relating to such Indebtedness and similar amounts) by Borrower or any Restricted Subsidiary in respect of any Investments pursuant to Section 10.04(y) to the extent not included in Consolidated Net Income; *minus*

(e) the aggregate amount of any (i) Investments made pursuant to Section 10.04(y), (ii) Restricted Payments made pursuant to Section 10.06(p), and (iii) Junior Prepayments pursuant to Section 10.09(l) (in each case, in reliance on the then-outstanding Available Equity Amount) made since the Closing Date and on or prior to such date.

"**Bail-In Action**" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Bankruptcy Code**" shall mean Title 11 of the United States Code entitled "Bankruptcy," as now or hereinafter in effect, or any successor statute thereto.

"**Beneficial Owner**" has the meaning assigned to such term in Rules 13d-3 and 13d-5 under the Exchange Act. The terms "**Beneficially Owns**" and "**Beneficially Owned**" have a corresponding meaning.

"**Beneficial Ownership Certification**" shall mean a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"**Beneficial Ownership Regulation**" shall mean 31 C.F.R. § 1010.230.

"**Benefit Plan**" shall mean any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code, or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"**BHC Act Affiliate**" of a party shall mean an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"**Board of Directors**" shall mean, as to any person, the board of directors or other governing body of such person, or if such person is owned or managed by a single entity, the board of directors or other governing body of such entity. With respect to Borrower, the Board of Directors of Borrower may include the Board of Directors of any direct or indirect parent of Borrower.

"**Borrower**" has the meaning set forth in the introductory paragraph hereof.

"**Borrower Assignment Agreement**" shall mean, with respect to any assignment to Borrower or one of its Subsidiaries pursuant to Section 13.05(d) consummated pursuant to the Auction Procedures, an Assignment and Acceptance Agreement substantially in the form of Annex C to the Auction Procedures (as may be modified from time to time as set forth in the definition of "Auction Procedures").

"**Borrower Loan Purchase**" shall mean any purchase of Term Loans or Revolving Loans by Borrower or one of its Subsidiaries pursuant to Section 13.05(d).

"**Borrower Materials**" has the meaning set forth in Section 9.04.

"**Borrowing**" shall mean Loans of the same Class and Type made, converted or continued on the same date and, in the case of LIBOR Loans, as to which a single Interest Period is in effect.

"**Business Day**" shall mean any day, except a Saturday or Sunday, (a) on which commercial banks are not authorized or required to close in New York and (b) if such day relates to a borrowing of, a payment or prepayment of principal of or interest on, a continuation or conversion of or into, or an Interest Period for, a LIBOR Loan or a notice by Borrower with respect to any such borrowing, payment, prepayment, continuation, conversion or Interest Period, that is also a day on which dealings in Dollar deposits are carried out in the London interbank market.

"**Calculation Date**" shall mean the last day of the most recent Test Period.

"**Capital Expenditures**" shall mean, for any period any expenditures by Borrower or its Restricted Subsidiaries for the acquisition or leasing of fixed or capital assets (including Capital Lease Obligations) that should be capitalized in accordance with GAAP and any expenditures by such Person for maintenance, repairs, restoration or refurbishment of the condition or usefulness of Property of such Person that should be capitalized in accordance with GAAP; *provided* that the following items shall not constitute Capital Expenditures: (a) expenditures made in connection with the replacement, substitution, restoration or repair of assets to the extent financed with (x) insurance proceeds paid on account of the loss of or damage to the assets being replaced, restored or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation (or transfers in lieu thereof) of the assets being replaced; (b) the purchase price of assets purchased with the trade-in of existing assets solely to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such assets for the asset being traded in at such time; (c) the purchase of property or equipment to the extent financed with the proceeds of asset sales or other dispositions outside the ordinary course of business that are not required to be applied to prepay the Term Loans pursuant to Section 2.10(a)(iii); (d) expenditures that constitute Permitted Acquisitions or other Acquisitions not prohibited hereunder; (e) any capitalized interest expense reflected as additions to property in the consolidated balance sheet of Borrower and its Restricted Subsidiaries (including in connection with sale-leaseback transactions not prohibited hereunder); (f) any non-cash compensation or other non-cash costs reflected as additions to property in the consolidated balance sheet of Borrower and its Restricted Subsidiaries; and (g) capital expenditures relating to the construction or acquisition of any property or equipment which has been transferred to a Person other than Borrower or any of its Restricted Subsidiaries pursuant to a sale-leaseback transaction not prohibited hereunder and capital expenditures arising pursuant to sale-leaseback transactions.

"**Capital Lease**" as applied to any Person, shall mean any lease of any Property by that Person as lessee that, in conformity with GAAP, is required to be classified and accounted for as a capital lease on the balance sheet of that Person; *provided*, *however*, that for the avoidance of doubt, any lease that was accounted for, or would have been required to be accounted for, by any Person as an operating lease prior to the adoption of FASB ASC 842 and any similar lease entered into subsequent to the adoption of FASB ASC 842 by any Person may, in the sole discretion of Borrower, be accounted for as an operating lease and not as a Capital Lease.

"**Capital Lease Obligations**" shall mean, for any Person, all obligations of such Person to pay rent or other amounts under a Capital Lease, and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP; *provided*, *however*, that for the avoidance of doubt, any lease that was accounted for, or would have been required to be accounted for, by any Person as an operating lease prior to the adoption of FASB ASC 842 and any similar lease entered into subsequent to the adoption ofFASB ASC 842 by any Person may, in the sole discretion of Borrower, be accounted for as an operating lease and not as a Capital Lease.

"**Cash Collateralize**" shall mean, in respect of an obligation, to provide and pledge (as a first priority perfected security interest) cash collateral in Dollars or other credit support, in each case, at a location and pursuant to documentation in form and substance reasonably satisfactory to (a) Administrative Agent and (b) in the case of obligations owing to an L/C Lender, such L/C Lender (and "**Cash Collateral**" and "**Cash Collateralization**" have corresponding meanings).

"**Cash Equivalents**" shall mean, for any Person: (a) direct obligations of the United States, or of any agency thereof, or obligations guaranteed as to principal and interest by the United States, or by any agency thereof, in either case maturing not more than three years from the date of acquisition thereof by such Person; (b) time deposits, certificates of deposit or bankers' acceptances (including eurodollar deposits) issued by (i) any bank or trust company organized under the laws of the United States or any state thereof and having capital, surplus and undivided profits of at least $250.0 million that is assigned at least a "B" rating by Thomson Financial BankWatch or (ii) any Lender or bank holding company owning any Lender (in each case, at the time of acquisition); (c) commercial paper maturing not more than three years from the date of acquisition thereof by such Person and (i) issued by any Lender or bank holding company owning any Lender or (ii) rated at least "A-2" or the equivalent thereof by S&P or at least "P-2" or the equivalent thereof by Moody's or at least "F-2" or the equivalent thereof by Fitch, respectively, or, if none of S&P, Moody's nor Fitch shall be rating such securities, then from another nationally recognized rating service (in each case, at the time of acquisition); (d) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clause (a) above or (e) below entered into with a bank meeting the qualifications described in clause (b) above (in each case, at the time of acquisition); (e) securities with maturities of three years or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, or by any political subdivision or taxing authority thereof or by any foreign government, and having an investment grade rating from S&P, Moody's or Fitch or, if none of S&P, Moody's nor Fitch shall be rating such securities, then from another nationally recognized rating service (in each case, at the time of acquisition); (f) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) above (in each case, at the time of acquisition); (g) money market mutual funds that invest primarily in the foregoing items (determined at the time such investment in such fund is made); (h) corporate notes having an investment grade rating from S&P, Moody's or Fitch or, if none of S&P, Moody's nor Fitch shall be rating such notes, then from another nationally recognized rating service; provided, that at no time shall the value of Cash Equivalents under this clause (h) exceed 10% of the aggregate value of Cash and Cash Equivalents then held by Borrower and its Subsidiaries; or (i) marketable direct obligations issued by, or unconditionally guaranteed by, a country other than the United States, or issued by any agency of such country and backed by the full faith and credit of such country, so long as the indebtedness of such country has an investment grade rating from S&P, Moody's or Fitch or, if none of S&P, Moody's nor Fitch shall be rating such securities, then from another nationally recognized rating service (in each case, at the time of acquisition), (ii) time deposits, certificates of deposit or bankers' acceptances issued by any commercial bank which is organized and existing under the laws of a country other than the United States or payable to a Company promptly following demand and maturing within two years of the date of acquisition and (iii) other customarily utilized high-quality or cash equivalent-type Investments in a country other than the United States.

"**Cash Management Agreement**" shall mean any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

"**Cash Management Bank**" shall mean any Person that is a party to a Cash Management Agreement with Borrower and/or any of its Restricted Subsidiaries if such Person was, at the date of entering into such Cash Management Agreement, an Agent, a Lender or an Affiliate of an Agent or a Lender, and such Person executes and delivers to Administrative Agent a letter agreement in form and substance reasonably acceptable to Administrative Agent pursuant to which such Person (a) appoints Collateral Agent as its agent under the applicable Credit Documents and (b) agrees to be bound by the provisions of Section 12.03.

"**Casualty Event**" shall mean any loss of title or any loss of or damage to or destruction of, or any condemnation or other taking (or settlement in lieu thereof) (including by any Governmental Authority) of, any Property of Borrower or any Restricted Subsidiary; *provided*, *however*, no such event shall constitute a Casualty Event if the proceeds thereof or other compensation in respect thereof is less than $100.0 million. "Casualty Event" shall include, but not be limited to, any taking of all or any part of any Real Property of Borrower or any of its Restricted Subsidiaries or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any Law (or settlement in lieu thereof), or by reason of the temporary requisition of the use or occupancy of all or any part of any Real Property of Borrower or any of its Restricted Subsidiaries or any part thereof by any Governmental Authority, civil or military.

"**CFC**" shall mean a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"**CFC Holdco**" shall mean any Subsidiary that has no material assets other than Equity Interests in one or more Foreign Subsidiaries that is a CFC.

"**Change in Law**" shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"**Change of Control**" shall be deemed to have occurred if:

(a) Wynn Resorts shall at any time fail to own, directly or indirectly, 60% or more of the voting power of the total outstanding Voting Stock of Borrower; or

(b) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any "person" (as that term is used in Section 13(d)(3) of the Exchange Act) becomes the Beneficial Owner, directly or indirectly, of more than 50% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than number of Equity Interests (but excluding (i) any employee benefit plan of such person or its subsidiaries, any person or entity acting in its capacity as a trustee, agent, or other fiduciary or administrator of any such plan, or any person formed as a holding company for Wynn Resorts (in a transaction where the Voting Stock of Wynn Resorts outstanding prior to such transaction is converted into or exchanged for the Voting Stock of the surviving or transferee person constituting all or substantially all of the outstanding shares of such Voting Stock of such surviving or transferee person (immediately after giving effect to such issuance)) and (ii) any person that has received Voting Stock of Wynn Resorts in consideration of any acquisition or Investment, whether by purchase, merger, consolidation, or otherwise, by Wynn Resorts or any of its Subsidiaries, which person is temporarily holding such Voting Stock pending distribution to other persons (so long as, immediately after giving effect to such distribution, no Change of Control shall otherwise have occurred)).

"**Charges**" has the meaning set forth in Section 13.19.

"**Class**" has the meaning set forth in Section 1.03.

"**Closing Date**" shall mean the date on which the initial extension of credit is made hereunder, which date is September 20, 2019.

"**Closing Date Mortgaged Real Property**" has the meaning set forth in Section 9.16.

"**Closing Date Refinancing**" shall mean the repayment and replacement of all loans and commitments under the Existing Credit Agreements.

"**Closing Date Revolving Commitment**" shall mean a Revolving Commitment established on the Closing Date.

"**Closing Date Revolving Facility**" shall mean the credit facility comprising the Closing Date Revolving Commitments.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"**Collateral**" shall mean all of the Pledged Collateral, the Mortgaged Real Property, all Property encumbered pursuant to Sections 9.08, 9.11, and 9.16 and all other Property of a Credit Party, whether now owned or hereafter acquired, upon which a Lien securing the Obligations is granted or purported to be granted under any Security Document. "Collateral" shall not include any assets or Property that has been released (in accordance with the Credit Documents) from the Lien granted to Collateral Agent pursuant to the Security Documents, unless and until such time as such assets or Property are required by the Credit Documents to again become subject to a Lien in favor of Collateral Agent.

"**Collateral Account**" shall mean (a) a Deposit Account (as defined in the UCC) of Borrower with respect to which Collateral Agent has "control" (as defined in Section 9-104 of the UCC) or (b) a Securities Account (as defined in the UCC) of Borrower with respect to which Collateral Agent has "control" (as defined in Section 9-106 of the UCC).

"**Collateral Agency Agreement**" shall mean that certain Collateral Agency Agreement, dated as December 14, 2004, among Bank of America, N.A., Deutsche Bank Trust Company Americas, as collateral agent under the Collateral Agency Intercreditor Agreement, and certain funding agents (including the trustees under the Wynn Las Vegas Notes) from time to time party thereto, as amended by that certain Amendment to Collateral Agency Agreement, dated as of July 29, 2005 and to be supplemented after the Closing Date by an assumption agreement executed by Collateral Agent.

"**Collateral Agency Intercreditor Agreement**" shall mean that certain Intercreditor Agreement, dated as of December 14, 2004, among Deutsche Bank Trust Company Americas, as the collateral agent and certain secured parties (including the trustees under the Wynn Las Vegas Notes) from time to time party thereto to be supplemented after the Closing Date by a joinder executed by Collateral Agent.

"**Collateral Agent**" has the meaning set forth in the introductory paragraph hereof.

"**Commitment Letter**" shall mean the Commitment Letter, dated as of August 23, 2019, as supplemented by Joinder Agreement No. 1 to the Commitment Letter, dated as of September 5, 2019 and Joinder Agreement No. 2 to the Commitment Letter, dated as of September 10, 2019, by and among Borrower and the Lead Arrangers.

"**Commitments**" shall mean the Revolving Commitments, the Term A Facility Commitments, any Other Commitments, any Incremental Term A Loan Commitments, and any New Term Loan Commitments.

"**Commodity Exchange Act**" shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"**Companies**" shall mean Borrower and its Subsidiaries; and "**Company**" shall mean any one of them.

"**Competitor**" has the meaning set forth in the definition of "Disqualified Lender".

"**Consolidated Cash Interest Expense**" shall mean, with respect to Borrower and the Restricted Subsidiaries on a consolidated basis for any period, Consolidated Interest Expense for such period, less the sum of, without duplication, (a) pay in kind Consolidated Interest Expense and other non-cash Consolidated Interest Expense (including as a result of the effects of purchase accounting), (b) to the extent included in Consolidated Interest Expense, any debt issuance costs, commissions, financing fees paid by, or on behalf of, Borrower or any Restricted Subsidiary, including such fees paid in connection with the Transactions, and the expensing or amortization thereof or of any bridge, commitment, upfront, ticking or other financing fees, including those paid in connection with the Transactions or any amendment of this Agreement or any amendment or refinancing of any other Indebtedness permitted hereunder, and (c) the amortization of debt discounts, if any, or fees in respect of Swap Contracts.

"**Consolidated Companies**" shall mean Borrower and each Subsidiary of Borrower (whether now existing or hereafter created or acquired), the financial statements of which are (or should be) consolidated with the financial statements of Borrower in accordance with GAAP.

"**Consolidated Current Assets**" means, with respect to any Person at any date, the total consolidated current assets of such Person and its Subsidiaries (other than Unrestricted Subsidiaries) that would, in accordance with GAAP, be classified as current assets on a consolidated balance sheet of such Person and its Subsidiaries (other than Unrestricted Subsidiaries), other than (x) cash and Cash Equivalents and (y) the current portion of deferred income tax assets.

"**Consolidated Current Liabilities**" means, with respect to any Person at any date, all liabilities of such Person and its Subsidiaries (other than Unrestricted Subsidiaries) at such date that would, in accordance with GAAP, be classified as current liabilities on a consolidated balance sheet of such Person and its Subsidiaries (other than Unrestricted Subsidiaries), other than (x) the current portion of any Indebtedness and (y) the current portion of deferred income taxes.

"**Consolidated EBITDA**" shall mean, for any Test Period, the sum (without duplication) of Consolidated Net Income for such Test Period;*plus*

(a) in each case to the extent deducted in calculating such Consolidated Net Income:

(i) provisions for taxes based on income or profits or capital gains, plus franchise or similar taxes, of Borrower and its Restricted Subsidiaries for such Test Period;

(ii) Consolidated Interest Expense of Borrower and its Restricted Subsidiaries for such Test Period, whether paid or accrued and whether or not capitalized;

(iii) any cost, charge, fee or expense (including discounts and commissions and including fees and charges incurred in respect of letters of credit or bankers acceptance financings) (or any amortization of any of the foregoing) associated with any issuance (or proposed issuance) of debt, or equity or any refinancing transaction (or proposed refinancing transaction) or any amendment or other modification of any debt instrument;

(iv) depreciation, amortization (including amortization of goodwill and other intangibles) and any other non-cash charges or expenses, including any write off or write downs, reducing Consolidated Net Income (excluding (x) any amortization of a prepaid cash expense that was paid in a prior Test Period and (y) any non-cash charges and expenses that result in an accrual of a reserve for cash charges in any future Test Period that Borrower elects not to add back in the current Test Period (it being understood that reserves may be charged in the current Test Period or when paid, as reasonably determined by Borrower)) of Borrower and its Restricted Subsidiaries for such Test Period; *provided* that if any such non-cash charges or expenses represent an accrual of a reserve for potential cash items in any future Test Period, the cash payment in respect thereof in such future Test Period shall be subtracted from Consolidated EBITDA to the extent Borrower elected to previously add back such amounts to Consolidated EBITDA;

(v) any Pre-Opening Expenses;

(vi) the amount of any restructuring costs, charges, accruals, expenses or reserves (including those relating to severance, relocation costs and one-time compensation charges), costs incurred in connection with any non-recurring strategic initiatives, other business optimization expenses (including incentive costs and expenses relating to business optimization programs and signing, retention and completion bonuses) and any unusual or non-recurring costs, charges, accruals, reserves or items of loss or expense (including, without limitation, losses on asset sales (other than asset sales in the ordinary course of business));

(vii) any charges, fees and expenses (or any amortization thereof) (including, without limitation, all legal, accounting, advisory or other transaction-related fees, charges,

costs and expenses and any bonuses or success fee payments related to the Transactions) related to the Transactions, any Permitted Acquisition or Investment (including any other Acquisition) or disposition (or any such proposed acquisition, Investment or disposition) (including amortization or write offs of debt issuance or deferred financing costs, premiums and prepayment penalties), in each case, whether or not successful;

(viii) any losses resulting from mark to market accounting of Swap Contracts or other derivative instruments; and

(ix) the aggregate amount of accrued and unpaid Management Fees, IP Licensing Fees and Allocable Overhead; *provided* that the cash payment in respect of such accrued and unpaid Management Fees, IP Licensing Fees and Allocable Overhead (other than to the extent any such accrual occurred prior to the Closing Date) in any future Test Period shall be subtracted from Consolidated EBITDA in such Test Period to the extent Borrower elected to previously add back such amounts to Consolidated EBITDA; *minus*

(b) in each case to the extent included in calculating such Consolidated Net Income:

(i) non-cash items increasing such Consolidated Net Income for such Test Period, other than the accrual of revenue in the ordinary course of business, and other than any items which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges for any prior Test Period subsequent to the issue date which was not added back to Consolidated EBITDA when accrued;

(ii) the amount of any gains resulting from mark to market accounting of Swap Contracts or other derivative instruments; *plus*

(c) the amount of cost savings, operating expense reductions, other operating improvements and synergies projected by Borrower in good faith to be realized as a result of specified actions taken or with respect to which steps have been initiated (in the good faith determination of Borrower) during such Test Period (or with respect to Specified Transactions, are reasonably expected to be initiated within eighteen (18) months of the closing date of the Specified Transaction), including in connection with any Specified Transaction (calculated on a Pro Forma Basis as though such cost savings, operating expense reductions, other operating improvements and synergies had been realized during the entirety of such Test Period), net of the amount of actual benefits realized during such Test Period from such actions; *provided* that (i) a duly completed Officer's Certificate of Borrower shall be delivered to Administrative Agent together with the applicable Section 9.04 Financials, providing reasonable detail with respect to such cost savings, operating expense reductions, other operating improvements and synergies and certifying that such savings, operating expense reductions, other operating improvements and synergies are reasonably expected to be realized within eighteen (18) months of the taking of such specified actions and are factually supportable in the good faith judgment of Borrower, (ii) such actions are to be taken within eighteen (18) months after the consummation of such Specified Transaction, restructuring or implementation of an initiative that is expected to result in such cost savings, operating expense reductions, other operating improvements or synergies, (iii) no cost savings, operating expense reductions, other operating improvements and synergies shall be added pursuant to this clause (c) to the extent duplicative of any expenses or charges otherwise added to Consolidated EBITDA, whether through a pro forma adjustment or otherwise, for such Test Period, and (iv) projected amounts (and not yet realized) may no longer be added in calculating Consolidated EBITDA pursuant to this clause (c) to the extent more than eighteen (18) months have elapsed after the specified action taken in order to realize such projected cost savings, operating expense reductions, other operating improvements and synergies; *provided*, that the aggregate amount of additions made to Consolidated EBITDA for any Test Period pursuant to this clause (c) and Section 1.06(c) shall not (i) exceed 20.0% of Consolidated EBITDA for such Test Period (after giving effect to this clause (c) and Section 1.06(c)) or (ii) be duplicative of one another; *plus*

(d) to the extent not included in Consolidated Net Income, the amount of business interruption insurance proceeds received during such Test Period or after such Test Period and on or prior to the date the calculation is made with respect to such Test Period, attributable to any property which has been closed or had operations curtailed

for such Test Period; *provided* that such amount of insurance proceeds shall only be included pursuant to this clause (d) to the extent of the amount of insurance proceeds *plus* Consolidated EBITDA attributable to such property for such Test Period (without giving effect to this clause (d)) does not exceed Consolidated EBITDA attributable to such property during the most recently completed four fiscal quarters for which financial results are available that such property was fully operational (or if such property has not been fully operational for four consecutive fiscal quarters for which financial results are available prior to such closure or curtailment, the Consolidated EBITDA attributable to such property during the Test Period prior to such closure or curtailment (for which financial results are available) annualized over four fiscal quarters); *plus*

(e) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any Test Period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (b) above for any previous Test Period and not added back.

Consolidated EBITDA shall be further adjusted:

(A) to include the Consolidated EBITDA of (i) any Person, property, business or asset (including a management agreement or similar agreement) (other than an Unrestricted Subsidiary) acquired by Borrower or any Restricted Subsidiary during such Test Period and (ii) any Unrestricted Subsidiary that is revoked and converted into a Restricted Subsidiary during such Test Period, in each case, based on the Consolidated EBITDA of such Person (or attributable to such property, business or asset) for such period (including the portion thereof occurring prior to such acquisition or Revocation), determined as if references to Borrower and its Restricted Subsidiaries in Consolidated Net Income and other defined terms therein were to such Person and its Subsidiaries;

(B) to exclude the Consolidated EBITDA of (i) any Person, property, business or asset (other than an Unrestricted Subsidiary) sold, transferred or otherwise disposed of, closed or classified as discontinued operations by Borrower or any Restricted Subsidiary during such Test Period and (ii) any Restricted Subsidiary that is designated as an Unrestricted Subsidiary during such Test Period, in each case based on the actual Consolidated EBITDA of such Person for such period (including the portion thereof occurring prior to such sale, transfer, disposition, closing, classification or conversion), determined as if references to Borrower and its Restricted Subsidiaries in Consolidated Net Income and other defined terms therein were to such Person and its Subsidiaries;

(C) in any fiscal quarter during which a purchase of property that prior to such purchase was subject to any operating lease that will be terminated in connection with such purchase shall occur and during the three (3) following fiscal quarters, by increasing Consolidated EBITDA by an amount equal to the quarterly payment in respect of such lease (as if such purchase did not occur) times (a) four (4) (in the case of the quarter in which such purchase occurs), (b) three (3) (in the case of the quarter following such purchase), (c) two (2) (in the case of the second quarter following such purchase) and (d) one (1) (in the case of the third quarter following such purchase), all as determined on a consolidated basis for Borrower and its Restricted Subsidiaries;

(D) in the event of any Expansion Capital Expenditures or Development Projects that were opened for business during such Test Period, by multiplying the Consolidated EBITDA attributable to such Expansion Capital Expenditures or Development Projects (as determined by Borrower in good faith) in respect of the first three (3) complete fiscal quarters following opening of the business representing such Expansion Capital Expenditures or Development Projects by: (x) 4 (with respect to the first such quarter), (y) 2 (with respect to the first two such quarters), and (z) 4/3 (with respect to the first three such quarters) and, for the avoidance of doubt, excluding Consolidated EBITDA attributable to such Expansion Capital Expenditures or Development Projects during the quarter in which the business representing such Expansion Capital Expenditure or Development Projects opened when calculating Consolidated EBITDA during any such three fiscal quarters (unless such business opened on the first day of a fiscal quarter);

(E) with respect to each fiscal quarter during any Test Period ending on or prior to the eighth (8^{th}) full fiscal quarter after the Closing Date (which, for the avoidance of doubt, shall include the sixth (6^{th}), seventh (7^{th}) and eighth (8^{th}) full fiscal quarters after the Closing Date to the extent any such fiscal quarters are included in any

Test Period), Consolidated EBITDA attributable to the Wynn Massachusetts Resort (as determined by Borrower in good faith) shall, in each case, be the greater of (1) $50.0 million and (2) actual Consolidated EBITDA attributable to the Wynn Massachusetts Resort for such fiscal quarter; and

(F) to exclude the amount, if any, by which the dividends and distributions paid or, at Borrower's election, declared to Wynn Group Asia by its direct and indirect Subsidiaries that are included in Consolidated Net Income pursuant to clause (c) of the definition thereof during the applicable Test Period exceed the applicable Recurring Dividend Amount for such Test Period.

"**Consolidated First Lien Net Leverage Ratio**" shall mean, as of any date of determination, the ratio of (a) (i) Consolidated Indebtedness of Borrower and its Restricted Subsidiaries that is secured by Liens on the property or assets of Borrower or its Restricted Subsidiaries as of such date that ranks *pari passu* with the Liens securing the Obligations (other than (x) any such Consolidated Indebtedness that is expressly subordinated in right of payment to the Obligations pursuant to a written agreement and (y) any such Consolidated Indebtedness that benefits from the Wynn Las Vegas Pledge (but is not otherwise secured by any Liens on property or assets of Borrower or its Restricted Subsidiaries as of such date)) *minus* (ii) Unrestricted Operating Cash to (b) Consolidated EBITDA for the Test Period most recently ended prior to such date; *provided*, that for purposes of calculating the Consolidated First Lien Net Leverage Ratio, Consolidated EBITDA for the fiscal quarter in which a Qualifying Act of Terrorism shall have occurred and the next two succeeding fiscal quarters thereafter shall, in each case, be the greater of (1) Substituted Consolidated EBITDA and (2) actual Consolidated EBITDA for such fiscal quarter.

"**Consolidated Fixed Charge Coverage Ratio**" shall mean, for any Test Period, the ratio of (a) Consolidated EBITDA for such Test Period to (b) Consolidated Cash Interest Expense (net of cash interest income (other than notes receivable and similar items)) (other than (A) Consolidated Cash Interest Expense in respect of Indebtedness that has been Discharged and Escrowed Indebtedness, (B) Consolidated Cash Interest Expense in respect of Indebtedness which constitutes Development Expenses or the proceeds of which were applied to fund Development Expenses (but only for so long as such Indebtedness or such funded expenses, as the case may be, constitute Development Expenses), and (C) Consolidated Cash Interest Expense consisting of cash costs associated with breakage or termination in respect of Swap Contracts for interest rates and costs and fees associated with obtaining Swap Contracts and fees payable thereunder) for such Test Period, all determined on a consolidated basis in accordance with GAAP; *provided*, that for purposes of calculating the Consolidated Fixed Charge Coverage Ratio, Consolidated EBITDA for the fiscal quarter in which a Qualifying Act of Terrorism shall have occurred and the next two succeeding fiscal quarters thereafter shall, in each case, be the greater of (1) Substituted Consolidated EBITDA and (2) actual Consolidated EBITDA for such fiscal quarter.

"**Consolidated Indebtedness**" shall mean, as at any date of determination, (a) the aggregate amount of all Indebtedness of Borrower and its Restricted Subsidiaries (other than (x) any such Indebtedness that has been Discharged, (y) any Escrowed Indebtedness, and (z) Intercompany Contribution Indebtedness) on such date, in an amount that would be reflected on a balance sheet on such date prepared on a consolidated basis in accordance with GAAP, consisting of Indebtedness for borrowed money, obligations in respect of Capital Leases, purchase money Indebtedness, Indebtedness of the kind described in clause (d) of the definition of "Indebtedness," Indebtedness evidenced by promissory notes and similar instruments and Contingent Obligations in respect of any of the foregoing (to be included only to the extent set forth in clause (iii) below) *minus* (b) Development Expenses (excluding Development Expenses to the extent proceeds thereof consist of Unrestricted Operating Cash that was deducted from Consolidated Indebtedness for purposes of determining the Consolidated First Lien Net Leverage Ratio, Consolidated Senior Secured Net Leverage Ratio, or Consolidated Total Net Leverage Ratio pursuant to the definitions thereof, if any); *provided* that (i) Consolidated Indebtedness shall not include (A) Indebtedness in respect of letters of credit (including Letters of Credit), except to the extent of unreimbursed amounts thereunder or (B) Indebtedness of the type described in clause (i) of the definition thereof, (ii) the amount of Consolidated Indebtedness, in the case of Indebtedness of a Restricted Subsidiary that is not a Wholly Owned Subsidiary, shall be reduced by an amount directly proportional to the amount (if any) by which Consolidated EBITDA was reduced (including through the calculation of Consolidated Net Income) in respect of such non-controlling interest in such Restricted Subsidiary owned by a Person other than Borrower or any of its Restricted Subsidiaries, (iii) Consolidated Indebtedness shall not include Contingent Obligations, *provided*, *however*, that if and when any such Contingent Obligation is demanded for payment from Borrower or any

of its Restricted Subsidiaries, then the amounts of such Contingent Obligation shall be included in such calculations, and (iv) the amount of Consolidated Indebtedness, in the case of Indebtedness of a Restricted Subsidiary of Borrower that is not a Guarantor and which Indebtedness is not guaranteed by any Credit Party shall be reduced by an amount directly proportional to the amount by which Consolidated EBITDA was reduced due to the undistributed earnings of such Subsidiary being excluded from Consolidated Net Income pursuant to clause (d) thereof.

"**Consolidated Interest Expense**" shall mean, for any Test Period, the sum of interest expense of Borrower and its Restricted Subsidiaries for such Test Period as determined on a consolidated basis in accordance with GAAP, *plus*, to the extent deducted in arriving at Consolidated Net Income and without duplication, (a) the interest portion of payments on Capital Leases, (b) amortization of financing fees, debt issuance costs and interest or deferred financing or debt issuance costs, (c) arrangement, commitment or upfront fees, original issue discount, redemption or prepayment premiums, (d) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing, (e) interest with respect to Indebtedness that has been Discharged and any Escrowed Indebtedness, (f) the accretion or accrual of discounted liabilities during such period, (g) interest expense attributable to the movement of the mark-to-market valuation of obligations under Swap Contracts or other derivative instruments, (h) payments made under Swap Contracts relating to interest rates with respect to such Test Period and any costs associated with breakage in respect of hedging agreements for interest rates, (i) all interest expense consisting of liquidated damages for failure to timely comply with registration rights obligations and financing fees, all as calculated on a consolidated basis in accordance with GAAP, (j) fees and expenses associated with the consummation of the Transactions (k) annual or quarterly agency fees paid to Administrative Agent and (l) costs and fees associated with obtaining Swap Contracts and fees payable thereunder.

"**Consolidated Net Income**" shall mean, for any Test Period, the aggregate of the net income of Borrower and its Restricted Subsidiaries for such Test Period, on a consolidated basis, determined in accordance with GAAP; *provided* that, without duplication:

(a) any gain or loss (together with any related provision for taxes thereon) realized in connection with (i) any asset sale or (ii) any disposition of any securities by such Person or any of its Restricted Subsidiaries shall be excluded;

(b) any extraordinary gain or loss (together with any related provision for taxes thereon) shall be excluded;

(c) the net income of any Person that (i) is not a Restricted Subsidiary, (ii) is accounted for by the equity method of accounting, (iii) is an Unrestricted Subsidiary or (iv) is a Restricted Subsidiary (or former Restricted Subsidiary) with respect to which a Trigger Event has occurred following the occurrence and during the continuance of such Trigger Event shall be excluded; *provided* that Consolidated Net Income of Borrower and its Restricted Subsidiaries shall be increased by the amount of dividends or distributions or other payments (including management fees) that are actually paid or are payable in cash to Borrower or a Restricted Subsidiary thereof in respect of such period by such Persons (or to the extent converted into cash) (including at Borrower's election in the case of the direct and indirect Subsidiaries of Wynn Group Asia, dividends and distributions declared (but not yet paid) during such period; *provided* that in the event Borrower elects to include any such declared (but not yet paid) dividend or distribution in Consolidated Net Income of Borrower during any period, in no event shall the subsequent payment of such dividends and distributions be so included); *provided further*, that in the case of any such Person acquired by Borrower or any Restricted Subsidiary during such Test Period, the foregoing shall be determined as if such Person had been acquired on the first day of such Test Period;

(d) the undistributed earnings of any Restricted Subsidiary of Borrower that is not a Guarantor to the extent that, on the date of determination the payment of cash dividends or similar cash distributions by such Restricted Subsidiary (or loans or advances by such subsidiary to any parent company) are not permitted by the terms of any Contractual Obligation (other than under any Credit Document) or Requirement of Law applicable to such Restricted Subsidiary shall be excluded, unless such restrictions with respect to the payment of cash dividends and other similar cash distributions have been waived; *provided* that Consolidated Net Income of Borrower and its Restricted Subsidiaries shall be increased by the amount of dividends or distributions or other payments (including management fees) that are actually paid or are payable in cash to Borrower or a Restricted

Subsidiary (not subject to such restriction) thereof in respect of such period by such Restricted Subsidiaries (or to the extent converted into cash);*provided further*, that in the case of any such Person acquired by Borrower or any Restricted Subsidiary during such Test Period, the foregoing shall be determined as if such Person had been acquired on the first day of such Test Period;

(e) any goodwill or other asset impairment charges or other asset write-offs or write downs, including any resulting from the application of Accounting Standards Codification Nos. 350 and No. 360, and any expenses or charges relating to the amortization of intangibles as a result of the application of Accounting Standards Codification No. 805, shall be excluded;

(f) any non-cash charges or expenses related to the repurchase of stock options to the extent not prohibited by this Agreement, and any non-cash charges or expenses related to the grant, issuance or repricing of, or any amendment or substitution with respect to, stock appreciation or similar rights, stock options, restricted stock, or other Equity Interests or other equity based awards or rights or equivalent instruments, shall be excluded;

(g) the cumulative effect of a change in accounting principles shall be excluded;

(h) any expenses or reserves for liabilities shall be excluded to the extent that Borrower or any of its Restricted Subsidiaries is entitled to indemnification therefor under binding agreements; *provided* that any such liabilities for which Borrower or any of its Restricted Subsidiaries is not actually indemnified shall reduce Consolidated Net Income for the period in which it is determined that Borrower or such Restricted Subsidiary will not be indemnified (to the extent such liabilities would otherwise reduce Consolidated Net Income without giving effect to this clause (h));

(i) losses, to the extent covered by insurance and actually reimbursed, or, so long as Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded;

(j) gains and losses resulting solely from fluctuations in currency values and the related tax effects shall be excluded, and charges relating to Accounting Standards Codification Nos. 815 and 820 shall be excluded; and

(k) the net income (or loss) of a Restricted Subsidiary that is not a Wholly Owned Subsidiary shall be included in an amount proportional to Borrower's economic ownership interest therein.

"**Consolidated Senior Secured Net Leverage Ratio**" shall mean, as of any date of determination, the ratio of (a) (i) Consolidated Indebtedness of Borrower and its Restricted Subsidiaries that is secured by Liens on the property or assets of Borrower or its Restricted Subsidiaries as of such date (other than (x) any such Consolidated Indebtedness that is expressly subordinated in right of payment to the Obligations pursuant to a written agreement and (y) any such Consolidated Indebtedness that benefits from the Wynn Las Vegas Pledge (but is not otherwise secured by any Liens on property or assets of Borrower or its Restricted Subsidiaries as of such date)) *minus* (ii) Unrestricted Operating Cash to (b) Consolidated EBITDA for the Test Period most recently ended prior to such date; *provided*, that for purposes of calculating the Consolidated Senior Secured Net Leverage Ratio, Consolidated EBITDA for the fiscal quarter in which a Qualifying Act of Terrorism shall have occurred and the next two succeeding fiscal quarters thereafter shall, in each case, be the greater of (1) Substituted Consolidated EBITDA and (2) actual Consolidated EBITDA for such fiscal quarter.

"**Consolidated Total Net Leverage Ratio**" shall mean, as of any date of determination, the ratio of (a) (i) Consolidated Indebtedness of Borrower and its Restricted Subsidiaries *minus* (ii) Unrestricted Operating Cash to (b) Consolidated EBITDA for the Test Period most recently ended prior to such date;*provided*, that for purposes of calculating the Consolidated Total Net Leverage Ratio, Consolidated EBITDA for the fiscal quarter in which a Qualifying

Act of Terrorism shall have occurred and the next two succeeding fiscal quarters thereafter shall, in each case, be the greater of (1) Substituted Consolidated EBITDA and (2) actual Consolidated EBITDA for such fiscal quarter.

"**Contingent Obligation**" shall mean, as to any Person, any obligation of such Person guaranteeing or intended to guarantee any Indebtedness ("**primary obligations**") of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; or (d) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided*, *however*, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business and any lease guarantees executed by any Company in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated potential liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"**Contractual Obligation**" shall mean as to any Person, any provision of any security issued by such Person or of any mortgage, deed of trust, security agreement, pledge agreement, promissory note, indenture, credit or loan agreement, guaranty, securities purchase agreement, instrument, lease, contract, agreement or other contractual obligation to which such Person is a party or by which it or any of its Property is bound or subject.

"**Covenant Suspension Period**" shall mean the period commencing on the date of any Qualifying Act of Terrorism and continuing until (and including) the last day of the second full fiscal quarter following the fiscal quarter in which the Qualifying Act of Terrorism occurs; *provided*, *however*, that if a separate and distinct Qualifying Act of Terrorism occurs during any Covenant Suspension Period, such Covenant Suspension Period shall continue until (and including) the last day of the second full fiscal quarter following the fiscal quarter in which such subsequent Qualifying Act of Terrorism shall occur. Notwithstanding the foregoing, Borrower may, in its sole discretion, elect that any Covenant Suspension Period end on any date prior to the date that such Covenant Suspension Period would otherwise end absent such election.

"**Covered Entity**" shall mean any of the following: (a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b), (b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"**Covered Party**" shall have the meaning assigned thereto in Section 13.22.

"**Covered Taxes**" shall mean (a) all Taxes imposed on or with respect to any payment made by or on account of any obligation of any Credit Party under this Agreement, any Note, any Guarantee or any other Credit Document and (b) to the extent not otherwise described in the foregoing clause (a), Other Taxes; other than, in the case of clause (a) or (b), Excluded Taxes.

"**Credit Agreement Refinancing Indebtedness**" shall mean (a) Permitted First Priority Refinancing Debt, (b) Permitted Second Priority Refinancing Debt, (c) Permitted Unsecured Refinancing Debt or (d) other Indebtedness incurred pursuant to a Refinancing Amendment (including, without limitation, Other Term Loans and Other Revolving Loans), in each case, issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace or refinance, in whole or part, then-existing Term Loans, Revolving Loans (and/or unused Revolving Commitments) and/or Credit Agreement Refinancing Indebtedness ("**Refinanced Debt**"); *provided* that (i) such Indebtedness has the same or a later maturity and, except in the case of any Indebtedness consisting of a revolving credit facility, a Weighted Average Life to Maturity (without giving effect

to any prepayments that reduce scheduled amortization) equal to or greater than the Refinanced Debt (*provided* that (A) this clause (i) shall not apply to unsecured bridge facilities providing for extensions on customary terms to a date that is no earlier than the applicable maturity date, (B) the stated maturity may be earlier if the stated maturity is not earlier than the earlier of (1) the stated maturity of such Indebtedness in effect prior to such refinancing or (2) 91 days after the Final Maturity Date in effect at the time of issuance and (C) the Weighted Average Life to Maturity may be shorter if the Weighted Average Life to Maturity is not shorter than the Weighted Average Life to Maturity of the Refinanced Debt that would result if all payments of principal on the Refinanced Debt that were due on or after the date that is 91 days after the Final Maturity Date in effect at the time of issuance were instead due on the date that is 91 days after the Final Maturity Date in effect at the time of issuance), (ii) such Indebtedness shall not have a greater principal amount than the principal amount of the Refinanced Debt, *plus*, accrued interest, fees and premiums (if any) thereon, *plus*, other fees and expenses associated with the refinancing (including any arrangement fees, upfront fees and original issue discount), *plus* any unutilized commitments thereunder, (iii) such Refinanced Debt shall be repaid, defeased or satisfied and discharged on a dollar-for-dollar basis, and all accrued interest, fees and premiums (if any) in connection therewith shall be paid, on the date such Credit Agreement Refinancing Indebtedness is issued, incurred or obtained, (iv) to the extent such Credit Agreement Refinancing Indebtedness consists of a revolving credit facility, the Revolving Commitments shall be reduced and/or terminated, as applicable, such that the Total Revolving Commitments (after giving effect to such Credit Agreement Refinancing Indebtedness and such reduction or termination) shall not exceed the Total Revolving Commitments immediately prior to the incurrence of such Credit Agreement Refinancing Indebtedness, *plus*, accrued interest, fees and premiums (if any) thereon, *plus*, other fees and expenses associated with the refinancing (including any arrangement fees, upfront fees, and original issue discount), (v) the terms (excluding maturity, amortization, pricing, fees, rate floors, premiums, optional prepayment or optional redemption provisions) of such Indebtedness are (as determined by Borrower in good faith) substantially similar to the terms of the Revolving Commitments or the Term A Facility Loans, as applicable, as existing on the date of incurrence of such Credit Agreement Refinancing Indebtedness except, to the extent such terms (x) at the option of Borrower (1) reflect market terms and conditions (taken as a whole) at the time of incurrence or issuance (as determined by Borrower in good faith), (2) with respect to any Credit Agreement Refinancing Indebtedness that is unsecured, are customary for issuances of "high yield" securities, or (3) are not materially more restrictive to Borrower (as reasonably determined by Borrower in good faith), when taken as a whole, than the terms of the Term A Facility Loans or the Revolving Facility, as the case may be (except for covenants or other provisions applicable only to periods after the Final Maturity Date (in the case of term Indebtedness) or the latest R/C Maturity Date (in the case of revolving Indebtedness) (it being understood that any Credit Agreement Refinancing Indebtedness may provide for the ability to participate (i) with respect to any borrowings, voluntary prepayments or voluntary commitment reductions, on a pro rata basis, greater than pro rata basis or less than pro rata basis with the applicable Loans or facility and (ii) with respect to any mandatory prepayments, on a pro rata basis (only in respect of a Credit Agreement Refinancing Indebtedness that ranks *pari passu* with the Obligations) or less than pro rata basis with the applicable Loans (and on a greater than pro rata basis with respect to prepayments of any such Credit Agreement Refinancing Indebtedness with the proceeds of permitted refinancing Indebtedness), or (y) are (1) added to the Term A Facility Loans or Revolving Facility, (2) applicable only after the Final Maturity Date (in the case of term Indebtedness) or the latest R/C Maturity Date (in the case of revolving Indebtedness), or (3) otherwise reasonably satisfactory to Administrative Agent; *provided* that, in each of clauses (v)(x) and (v)(y) of the definition of "Credit Agreement Refinancing Indebtedness", if any financial maintenance covenant is added for the benefit of any Credit Agreement Refinancing Indebtedness that is more favorable to the Lenders under such facilities than the Financial Maintenance Covenant, then the Financial Maintenance Covenant shall be conformed to match such financial maintenance covenant (except to the extent such financial maintenance covenant applies only to periods after the Final Maturity Date (in the case of term Indebtedness) or the latest R/C Maturity Date (in the case of revolving Indebtedness)) (it being understood that to the extent any financial maintenance covenant or other provision is added for the benefit of any such Credit Agreement Refinancing Indebtedness, no consent shall be required from Administrative Agent or any of the Lenders to the extent that such financial maintenance covenant (together with any related "equity cure" provisions) or other provision is also added for the benefit of any corresponding existing facility), (vi) no Subsidiary of Borrower shall guaranty such Indebtedness unless such Subsidiary is also a Guarantor hereunder, and (vii) such Indebtedness shall not be secured by any Liens, except Liens on the Collateral. For the avoidance of doubt, the usual and customary terms of convertible or exchangeable debt instruments issued in a registered offering or under Rule 144A of the Securities Act and the terms of the Wynn Resorts Finance Notes shall be deemed to be no more restrictive in any material respect to Borrower and its Restricted Subsidiaries than the terms set forth in this Agreement.

"**Credit Documents**" shall mean (a) this Agreement, (b) the Notes, (c) the L/C Documents, (d) the Security Documents, (e) any Pari Passu Intercreditor Agreement, (f) any Second Lien Intercreditor Agreement, (g) any Extension Amendment, any Refinancing Amendment, and any Incremental Joinder Agreement, (h) any Subordination Agreement, and (i) each other agreement entered into by any Credit Party with Administrative Agent, Collateral Agent and/or any Lender, in connection herewith or therewith evidencing or governing the Obligations (other than the Commitment Letter), all as amended from time to time, but shall not include a Swap Contract or Cash Management Agreement.

"**Credit Parties**" shall mean Borrower and the Guarantors.

"**Credit Swap Contracts**" shall mean any Swap Contract between Borrower and/or any or all of its Restricted Subsidiaries and a Swap Provider (excluding any Swap Contract of the type described in the last sentence of the definition of Swap Contract).

"**Creditor**" shall mean each of (a) each Agent, (b) each L/C Lender, and (c) each Lender.

"**Cure Expiration Date**" has the meaning assigned to such term in Section 11.03.

"**DB**" shall mean Deutsche Bank AG New York Branch.

"**Debt Fund Affiliate Lender**" shall mean (i) a Lender that is an Affiliate of Borrower and that is a bona fide debt Fund or managed account or financial institution that is engaged in making, purchasing, holding, or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business or (ii) a Lender that is an Affiliate of Borrower that is primarily engaged in, or advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course and for which neither Wynn Resorts nor its Subsidiaries, directly or indirectly, possesses the power to direct or cause the direction of the investment policies of such entity.

"**Debt Issuance**" shall mean the incurrence by Borrower or any Restricted Subsidiary of any Indebtedness after the Closing Date (other than as permitted by Section 10.01). The issuance or sale of any debt instrument convertible into or exchangeable or exercisable for any Equity Interests shall be deemed a Debt Issuance for purposes of Section 2.10(a).

"**Debtor Relief Laws**" shall mean the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdiction from time to time in effect.

"**Declined Amounts**" shall have the meaning given to such term in Section 2.10(b).

"**Default**" shall mean any event or condition that constitutes an Event of Default or that would become, with notice or lapse of time or both, an Event of Default.

"**Default Rate**" shall mean a *per annum* rate equal to, (i) in the case of principal on any Loan, the rate which is 2% in excess of the rate borne by such Loan immediately prior to the respective payment default or other Event of Default, and (ii) in the case of any other Obligations, the rate which is 2% in excess of the rate otherwise applicable to ABR Loans which are Revolving Loans from time to time (determined based on a weighted average if multiple Tranches of Revolving Commitments are then outstanding).

"**Default Right**" shall have the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"**Defaulting Lender**" shall mean, subject to Section 2.14(b), any Lender that (i) has failed to (A) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender has notified Administrative Agent and Borrower in writing that such failure is the result of such Lender's good faith determination that one or more conditions precedent to funding has not been satisfied (which

conditions precedent, together with the applicable default, if any, will be specifically identified in such writing), or (B) comply with its obligations under this Agreement to make a payment to the L/C Lender in respect of a L/C Liability, and/or make a payment to a Lender of any amount required to be paid to it hereunder, in each case within two (2) Business Days of the date when due, (ii) has notified Borrower, Administrative Agent or an L/C Lender in writing, or has stated publicly, that it will not comply with any such funding obligation hereunder, unless such writing or statement states that such position is based on such Lender's good faith determination that one or more conditions precedent to funding cannot be satisfied (which conditions precedent, together with the applicable default, if any, will be specifically identified in such writing or public statement), or has defaulted generally (excluding bona fide disputes) on its funding obligations under other loan agreements or credit agreements or other similar agreements, (iii) a Lender Insolvency Event has occurred and is continuing with respect to such Lender or its Parent Company, (iv) any Lender that has, for three or more Business Days after written request of Administrative Agent or Borrower, failed to confirm in writing to Administrative Agent and Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender will cease to be a Defaulting Lender pursuant to this clause (iv) upon Administrative Agent's and Borrower's receipt of such written confirmation), or (v) has become the subject of a Bail-In Action. Any determination of a Defaulting Lender under clauses (i) through (v) above will be conclusive and binding absent manifest error.

"**Designated Jurisdiction**" shall mean any country or territory to the extent that such country or territory is, or whose government is, the subject of any Sanction broadly prohibiting dealings with such government, country, or territory, including, without limitation, currently, Cuba, Iran, Crimea, North Korea, Sudan, and Syria.

"**Designated Non-Cash Consideration**" shall mean the fair market value of non-cash consideration received by Borrower or any of its Restricted Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to an Officers' Certificate setting forth the basis of such valuation, executed by a financial officer of Borrower, *minus* the amount of cash or Cash Equivalents received in connection with a subsequent sale of or collection on such Designated Non-Cash Consideration.

"**Designation**" has the meaning set forth in Section 9.12(a).

"**Designation Amount**" has the meaning set forth in Section 9.12(a)(ii).

"**Development Expenses**" shall mean, without duplication, the aggregate principal amount (not to exceed $500.0 million at any time), of (a) outstanding Indebtedness (including Indebtedness hereunder), the proceeds of which, at the time of determination, as certified by a Responsible Officer of Borrower, are pending application and are intended to be used to fund and (b) amounts spent after the Closing Date (whether funded with the proceeds of Indebtedness, cash flow or otherwise) to fund, in each case, (i) Expansion Capital Expenditures of Borrower or any Restricted Subsidiary, (ii) Investments in or Capital Expenditures or other expenditures with respect to a Development Project, or (iii) interest, fees, or related charges with respect to such Indebtedness; *provided* that (A) Borrower or the Restricted Subsidiary or other Person that owns assets subject to the Expansion Capital Expenditure or Development Project, as applicable, is diligently pursuing the completion thereof and has not at any time abandoned development efforts with respect to such Expansion Capital Expenditure or Development Project, as applicable, for a period in excess of 90 consecutive days (other than as a result of a force majeure event or inability to obtain requisite Gaming Approvals or other governmental authorizations, so long as, in the case of any such Gaming Approvals or other governmental authorizations, Borrower or a Restricted Subsidiary or other applicable Person is diligently pursuing such Gaming Approvals or governmental authorizations), and (B) no such Indebtedness or funded costs shall constitute Development Expenses with respect to an Expansion Capital Expenditure or a Development Project from and after the second full fiscal quarter following the fiscal quarter in which occurs the earlier of (x) opening of the applicable Expansion Capital Expenditures (or the business represented thereby) or Development Project to the general public for business and (y) completion of construction of the applicable Expansion Capital Expenditures or Development Project (such second full fiscal quarter, the "**Development Expenses Initial Fiscal Quarter**"), and (C) in order to avoid duplication, it is acknowledged that to the extent that the proceeds of any Indebtedness referred to in clause (a) above have been applied (whether for the purposes described in clauses (i), (ii), or (iii) above or any other purpose), such Indebtedness shall no longer constitute Development Expenses under clause (a) above (it being understood, however, that any such application in accordance with clauses (i), (ii), or (iii) above shall, subject to the other requirements and limitations of this definition, constitute Development Expenses under clause (b) above).

"**Development Expenses Initial Fiscal Quarter**" shall have the meaning assigned to such term in the definition of "Development Expenses."

"**Development Project**" shall mean Investments, Capital Expenditures and other expenditures, directly or indirectly, (a) in any joint ventures or Unrestricted Subsidiaries in which Borrower or any of its Restricted Subsidiaries, directly or indirectly, has control or with whom it has a management, development or similar contract and, in the case of a joint venture, in which Borrower or any of its Restricted Subsidiaries owns (directly or indirectly) at least 25% of the Equity Interest in such joint venture, or (b) in, or expenditures with respect to, casinos, casino resorts, "racinos," racetracks, non-gaming resorts, hotels, distributed gaming applications, entertainment developments, restaurants, retail developments or taverns or persons that own casinos, casino resorts, "racinos," racetracks, non-gaming resorts, hotels, distributed gaming applications, entertainment developments, restaurants, retail developments or taverns (including casinos, casino resorts, "racinos," racetracks, non-gaming resorts, hotels, distributed gaming applications, entertainment developments, restaurants, retail developments or taverns in development or under construction that are not presently open or operating with respect to which Borrower or any of its Restricted Subsidiaries has (directly or indirectly through subsidiaries) entered into a management, development or similar contract (or an agreement to enter into such a management, development or similar contract) and such contract remains in full force and effect at the time of such Investment, though it may be subject to regulatory approvals), in each case, used to finance, or made for the purpose of allowing such joint ventures, Unrestricted Subsidiaries, casinos, casino resorts, "racinos," racetracks, non-gaming resorts, hotels, distributed gaming applications, entertainment developments, restaurants, retail developments or taverns, as the case may be, to finance, the purchase, development, construction or other acquisition of any fixed or capital assets or the refurbishment of existing assets or properties that develops, adds to or significantly improves the property of such joint ventures, Unrestricted Subsidiaries, casinos, casino resorts, "racinos," racetracks, non-gaming resorts, hotels, distributed gaming applications, entertainment developments, restaurants, retail developments or taverns and assets ancillary or related thereto (including, without limitation, hotels, restaurants, entertainment, retail and other similar projects), or the construction and development of casinos, casino resorts, "racinos," racetracks, non-gaming resorts, hotels, distributed gaming applications, entertainment developments, restaurants, retail developments or taverns or assets ancillary or related thereto (including, without limitation, hotels, restaurants, entertainment, retail and other similar projects) and including Pre-Opening Expenses with respect to such joint ventures, Unrestricted Subsidiaries, casinos, casino resorts, "racinos," racetracks, non-gaming resorts, hotels, distributed gaming applications, entertainment developments, restaurants, retail developments and taverns.

"**Discharged**" shall mean Indebtedness that has been defeased (pursuant to a contractual or legal defeasance) or discharged pursuant to the prepayment or deposit of amounts sufficient to satisfy such Indebtedness as it becomes due or irrevocably called for redemption (and regardless of whether such Indebtedness constitutes a liability on the balance sheet of the obligors thereof); *provided*, *however*, that the Indebtedness shall be deemed Discharged if the payment or deposit of all amounts required for defeasance or discharge or redemption thereof have been made even if certain conditions thereto have not been satisfied, so long as such conditions are reasonably expected to be satisfied within 95 days after such prepayment or deposit.

"**Discount Range**" shall have the meaning provided in Exhibit N hereto.

"**Disinterested Director**" shall mean, with respect to any person and transaction, a member of the Board of Directors of such person who does not have any material direct or indirect financial interest in or with respect to such transaction.

"**Disqualification**" shall mean, with respect to any Person: (a) the failure of such Person to timely file or provide pursuant to applicable Gaming Laws (i) any application requested of such Person by any Gaming Authorities in connection with any licensing required of such Person as a lender to Borrower pursuant to applicable Gaming Laws or (ii) any application or other documents or information requested by any Gaming Authority in connection with a determination by such Gaming Authority of the suitability of such Person as a lender to Borrower; (b) the withdrawal by such Person of any such application; (c) any finding by a Gaming Authority that there is reasonable cause to believe that such Person may not be qualified or may be found unsuitable; or (d) any final determination by a Gaming Authority pursuant to applicable Gaming Laws (i) that such Person is "unsuitable" as a lender to Borrower, (ii) that such Person

is "disqualified" as a lender to Borrower, or (iii) denying the issuance to such Person of a license or finding of suitability or other approval.

"**Disqualified Capital Stock**" shall mean, with respect to any Person, any Equity Interest of such Person that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable or redeemable at the sole option of the holder thereof (other than solely (w) with respect to Equity Interests issued to any plan for the benefit of, or to, present or former directors, officers, consultants or employees that is required to be repurchased by the issuer thereof in order to satisfy applicable statutory or regulatory obligations as a result of such director's, officer's, consultant's, or employee's termination, resignation, retirement, death or disability, (x) for Qualified Capital Stock or upon a sale of assets, casualty event or a change of control, in each case, subject to the prior payment in full of the Obligations, (y) as a result of a redemption required by Gaming Law or (z) as a result of a redemption that by the terms of such Equity Interest is contingent upon such redemption not being prohibited by this Agreement), pursuant to a sinking fund obligation or otherwise (other than solely for Qualified Capital Stock) or exchangeable or convertible into debt securities of the issuer thereof at the sole option of the holder thereof, in whole or in part, on or prior to the date that is 181 days after the Final Maturity Date then in effect at the time of issuance thereof.

"**Disqualified Lenders**" shall mean (a) banks, financial institutions, other institutions or Persons identified in writing to the Lead Arrangers by Borrower on or prior to August 23, 2019 as a disqualified lender, (b) competitors or material suppliers of Borrower or its Subsidiaries identified in writing to the Lead Arrangers (or after the Closing Date, Administrative Agent) by Borrower from time to time (a "**Competitor**"), or (c) any Affiliate of such person identified pursuant to clauses (a) or (b) that is clearly identifiable solely on the basis of the similarity of its name or identified in writing to the Lead Arrangers (or after the Closing Date, Administrative Agent) by Borrower from time to time (other than, in the case of Affiliates of Competitors, any bona fide debt fund, investment vehicle, regulated bank entity or unregulated lending entity that is (x) engaged in making, purchasing, holding or otherwise investing in commercial loans or similar extensions of credit in the ordinary course of business and (y) managed, sponsored or advised by any person controlling, controlled by or under common control with a Competitor or Affiliate thereof, as applicable, but only to the extent that no personnel involved with the investment in such Competitor or Affiliate thereof, as applicable, makes (or has the right to make or participate with others in making) investment decisions on behalf of such debt fund, investment vehicle, regulated bank entity or unregulated lending entity); *provided*, that (i) any subsequent designation of a Disqualified Lender will not become effective until three (3) Business Days after such designation is delivered pursuant to the terms of this definition, it being understood that no such subsequent designation shall apply to any entity that is currently a Lender or party to a pending trade and (ii) the foregoing shall not apply retroactively to disqualify any parties that have previously been allocated a portion of the facilities hereunder or acquired an assignment or participation interest in the facilities hereunder to the extent such party was not a Disqualified Lender at the time of the applicable allocation, assignment or participation, as the case may be)).

"**Dollar Equivalent**" shall mean, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternate Currency, the equivalent amount thereof in Dollars as determined by Administrative Agent or the applicable L/C Lender, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternate Currency.

"**Dollars**" and "**$**" shall mean the lawful money of the United States.

"**EEA Financial Institution**" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Assignee**" shall mean and include (i) a commercial bank, an insurance company, a finance company, a financial institution, any fund that invests in loans or any other "accredited investor" (as defined in Regulation D), (ii) solely for purposes of Borrower Loan Purchases, Borrower and its Restricted Subsidiaries, and (iii) so long as in compliance with Sections 13.05(e) and (f), as applicable, Affiliate Lenders and Debt Fund Affiliate Lenders; *provided* that (x) other than as set forth in clause (ii) of this definition, neither Borrower nor any of Borrower's Affiliates or Subsidiaries shall be an Eligible Assignee and (y) Eligible Assignee shall not include any Person who is a Defaulting Lender or is subject to a Disqualification.

"**Employee Benefit Plan**" shall mean an employee benefit plan (as defined in Section 3(3) of ERISA) that is maintained or contributed to by Borrower or any of its Restricted Subsidiaries.

"**Encore at Wynn Las Vegas**" means the hotel tower, casino facility and retail and convention space that is part of Wynn Las Vegas and called "Encore at Wynn Las Vegas."

"**Environment**" shall mean ambient air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources, the workplace or as otherwise defined in any Environmental Law.

"**Environmental Action**" shall mean (a) any notice, claim, demand or other written or, to the knowledge of any Responsible Officer of Borrower, oral communication alleging liability of Borrower or any of its Restricted Subsidiaries for investigation, remediation, removal, cleanup, response, corrective action or other costs, damages to natural resources, personal injury, property damage, fines or penalties resulting from, related to or arising out of (i) the presence, Release or threatened Release in or into the Environment of Hazardous Material at any location or (ii) any violation of Environmental Law, and shall include, without limitation, any claim seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from, related to or arising out of the presence, Release or threatened Release of Hazardous Material or alleged injury or threat of injury to human health, safety or the Environment arising under Environmental Law and (b) any investigation, monitoring, removal or remedial activities undertaken by or on behalf of Borrower or any of its Restricted Subsidiaries, arising under Environmental Law whether or not such activities are carried out voluntarily.

"**Environmental Law**" shall mean any and all applicable treaties, laws, statutes, ordinances, regulations, rules, decrees, judgments, orders, consent orders, consent decrees and other binding legal requirements, and the common law, relating to protection of public health or the Environment, the Release or threatened Release of Hazardous Material, natural resources or natural resource damages, or occupational safety or health.

"**Equity Interests**" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership or member's interests (however designated, whether voting or non-voting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership, whether outstanding on the Closing Date or issued after the Closing Date; *provided*, *however*, that a debt instrument convertible into or exchangeable or exercisable for any Equity Interests or Swap Contracts entered into as a part of, or in connection with, an issuance of such debt instrument shall not be deemed an Equity Interest.

"**Equity Issuance**" shall mean (a) any issuance or sale after the Closing Date by Borrower of any Equity Interests (including any Equity Interests issued upon exercise of any Equity Rights) or any Equity Rights, or (b) the receipt by Borrower after the Closing Date of any capital contribution (whether or not evidenced by any Equity Interest issued by the recipient of such contribution). The issuance or sale of any debt instrument convertible into or exchangeable or exercisable for any Equity Interests shall be deemed a Debt Issuance and not an Equity Issuance for purposes of the

definition of Equity Issuance Proceeds; *provided*, *however*, that such issuance or sale shall be deemed an Equity Issuance upon the conversion or exchange of such debt instrument into Equity Interests.

"**Equity Issuance Proceeds**" shall mean, with respect to any Equity Issuance, the aggregate amount of all cash received in respect thereof by the Person consummating such Equity Issuance net of all investment banking fees, discounts and commissions, legal fees, consulting fees, accountants' fees, underwriting discounts and commissions and other fees and expenses actually incurred in connection therewith.

"**Equity Rights**" shall mean, with respect to any Person, any then-outstanding subscriptions, options, warrants, commitments, preemptive rights or agreements of any kind (including any stockholders' or voting trust agreements) for the issuance, sale, registration or voting of any additional Equity Interests of any class, or partnership or other ownership interests of any type in, such Person; *provided*, *however*, that a debt instrument convertible into or exchangeable or exercisable for any Equity Interests shall not be deemed an Equity Right.

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"**ERISA Entity**" shall mean Borrower, any of its Restricted Subsidiaries, and any other trade or business under common control with Borrower and/or any of its Restricted Subsidiaries within the meaning of Section 414(b) or (c) of the Code.

"**ERISA Event**" shall mean (a) any "reportable event," as defined in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Pension Plan (other than an event for which the 30-day notice requirement is waived); (b) with respect to any Pension Plan, the failure by any ERISA Entity to satisfy the minimum funding standard under Section 412 of the Code and Section 302 of ERISA, whether or not waived, the failure by any ERISA Entity to make by its due date a required installment under Section 430(j) of the Code with respect to any Pension Plan or the failure by any ERISA Entity to make any required contribution to a Multiemployer Plan; (c) the occurrence of any event of condition that constitutes grounds under Section 4042 of ERISA for the termination of. or the appointment of a trustee to administer, any Pension Plan; (d) the incurrence by any ERISA Entity of any liability under Title IV of ERISA with respect to the termination of any Pension Plan; (e) the receipt by any ERISA Entity from the PBGC or a plan administrator of any notice of intent to terminate any Pension Plan under Section 4041 or 4041A of ERISA or to appoint a trustee to administer any Pension Plan under Section 4042 of ERISA; (f) the incurrence by any ERISA Entity of any liability with respect to the complete withdrawal or partial withdrawal (within the meanings of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan; (g) the receipt by an ERISA Entity of any notice concerning the imposition of Withdrawal Liability on any ERISA Entity or a determination that a Multiemployer Plan is insolvent or in reorganization, within the meaning of Sections 4241 and 4245 of ERISA, or in "endangered" or "critical" status, within the meaning of Section 432 of the Code or Section 305 of ERISA; (h) a failure by any ERISA Entity to pay when due (after expiration of any applicable grace period) any installment payment with respect to Withdrawal Liability under Section 4201 of ERISA; (i) the withdrawal of any ERISA Entity from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such ERISA Entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; or (j) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which would reasonably be expected to result in liability to Borrower or any of its Restricted Subsidiaries.

"**Escrowed Indebtedness**" shall mean Indebtedness issued in escrow pursuant to customary escrow arrangements pending the release thereof.

"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

"**Events of Default**" has the meaning set forth in Section 11.01.

"**Excess Cash Flow**" shall mean, for any fiscal year of Borrower, an amount, if positive, equal to (without duplication):

(a) Consolidated Net Income; *plus*

(b) an amount equal to the amount of all non-cash charges or losses (including write-offs or write-downs, depreciation expense and amortization expense including amortization of goodwill and other intangibles) to the extent deducted in arriving at such Consolidated Net Income (excluding any such non-cash expense to the extent that it represents an accrual or reserve for potential cash charge in any future period or amortization of a prepaid cash charge that was paid in a prior period and that did not reduce Excess Cash Flow at the time paid); *plus*

(c) the decrease, if any, in Working Capital from the beginning of such period to the end of such period (for the avoidance of doubt, an increase in negative Working Capital is a decrease in Working Capital); *plus*

(d) any amounts received from the early extinguishment of Swap Contracts that are not included in Consolidated Net Income;*minus*

(e) the increase, if any, of Working Capital from the beginning of such period to the end of such period;*minus*

(f) any amounts paid in connection with the early extinguishment of Swap Contracts that are not included in Consolidated Net Income; *minus*

(g) the amount of Capital Expenditures made in cash during such period, except to the extent financed with the proceeds of Indebtedness (other than revolving Indebtedness), Asset Sales or Casualty Events (to the extent such proceeds did not increase Consolidated Net Income) of Borrower or its Restricted Subsidiaries; *minus*

(h) the amount of principal payments of the Loans, Other Applicable Indebtedness and Other First Lien Indebtedness of Borrower and its Restricted Subsidiaries (excluding repayments of Revolving Loans or other revolving indebtedness, except to the extent the Revolving Commitments or commitments in respect of such other revolving debt, as applicable, are permanently reduced in connection with such repayments), in each case, except to the extent financed with the proceeds of Indebtedness (other than revolving Indebtedness), Asset Sales or Casualty Events (to the extent such proceeds did not increase Consolidated Net Income) of Borrower or its Restricted Subsidiaries; *minus*

(i) the amount of Investments made during such period pursuant to Section 10.04 (other than Sections 10.04(a), (b), (c), (d), (e), (f) (except to the extent such amount increased Consolidated Net Income), (g), (h) (to the extent not taken into account in arriving at Consolidated Net Income),(j), (k), (l), (o), (p), (r), (s), (x), and (y)), except to the extent financed with the proceeds of Indebtedness (other than Revolving Loans), Asset Sales or Casualty Events (to the extent such proceeds did not increase Consolidated Net Income) of Borrower or its Restricted Subsidiaries; *minus*

(j) the amount of all non-cash gains to the extent included in arriving at such Consolidated Net Income (excluding any such non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash loss in any prior period); *minus*

(k) to the extent included in Consolidated Net Income, Specified 10.04(s) Investment Returns received during such fiscal year;*minus*

(l) any expenses or reserves for liabilities to the extent that Borrower or any Restricted Subsidiary is entitled to indemnification or reimbursement therefor under binding agreements or insurance claims therefor to the extent Borrower has not received such indemnity or reimbursement payment, in each case, to the extent not taken into account in arriving at Consolidated Net Income.

"**Excess Dividend Amount**" shall mean, as of any date of determination, (a) the aggregate cumulative amount for each Test Period set forth in the definition of "Recurring Dividend Amount" of dividends and distributions paid, or, at Borrower's election, declared (but not yet paid) to Wynn Group Asia from its direct and indirect Subsidiaries

during such Test Period in excess of the Recurring Dividend Amount for such Test Period (which in the case of any Test Period shall never be less than zero) minus (b) the cumulative amount of Restricted Payments made pursuant to Section 10.06(s).

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Excluded Designation**" has the meaning set forth in Section 9.13(a).

"**Excluded Immaterial Subsidiaries**" has the meaning set forth in Section 9.13(a).

"**Excluded Information**" shall have the meaning provided in Section 12.07(b).

"**Excluded Subsidiary**" shall mean (a) any Unrestricted Subsidiary, (b) any Immaterial Subsidiary, (c) any Foreign Subsidiary or CFC Holdco, (d) any Subsidiary that is prohibited or restricted by applicable law, rule or regulation (including, without limitation, any Gaming Laws) from guaranteeing the Obligations, (e) any Subsidiary that is prohibited or restricted by any agreement, instrument, or other undertaking to which such Subsidiary is a party or by which it or any of its property or assets is bound from guaranteeing the Obligations; *provided* that any such agreement, instrument or other undertaking (i) is in existence on the Closing Date and listed on Schedule 1.01(b) (or, with respect to a Subsidiary acquired after the Closing Date, as of the date of such acquisition) (or replaces or refinances any such agreement, instrument, or other undertaking that was in effect at such time) and (ii) in the case of a Subsidiary acquired after the Closing Date, was not entered into in connection with or anticipation of such acquisition, (f) any Subsidiary with respect to which guaranteeing the Obligations would require consent, approval, license or authorization from any Governmental Authority (including, without limitation, any Gaming Authority), unless such consent, approval, license or authorization has been received and is in effect, (g) each Subsidiary that is not a Wholly Owned Subsidiary of Borrower (for so long as such Subsidiary remains a non-Wholly Owned Subsidiary) other than any Wholly Owned Subsidiary that subsequently becomes a non-Wholly Owned Subsidiary as a result of the sale, disposition, or other transfer of Equity Interests by Borrower or any of its Subsidiaries to Wynn Resorts or an Affiliate of Wynn Resorts, (h) any special purpose subsidiary, not for profit subsidiary or captive insurance subsidiary (in each case designated by Borrower in good faith), and (i) any other Subsidiary with respect to which, in the reasonable judgment of Administrative Agent (which shall be confirmed in writing by notice to Borrower), the cost or other consequences (including any adverse tax consequences) of providing a guarantee shall be excessive in view of the benefits to be obtained by the Lenders therefrom.

"**Excluded Swap Obligation**" shall mean, with respect to any Guarantor, (x) as it relates to all or a portion of the Guarantee of such Guarantor, any Swap Obligation if, and to the extent that, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor becomes effective with respect to such Swap Obligation or (y) as it relates to all or a portion of the grant by such Guarantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Guarantor becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"**Excluded Taxes**" shall mean all of the following Taxes imposed on or with respect to any Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of any Credit Party or required to be deducted from any payment to such recipient, in each case, under any Credit Document, (a) income or franchise Taxes imposed on (or measured by) such recipient's net income or net profits (however denominated) and branch profits

Taxes, in each case, (i) imposed by a jurisdiction as a result of such recipient being organized under the Laws of, or having its principal office or, in the case of any Lender, its Applicable Lending Office located in such jurisdiction or (ii) that are Other Connection Taxes, (b) in the case of any Lender, any U.S. federal withholding tax that is imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date on which (i) such Lender acquires such interest in the applicable Commitment (or, to the extent a Lender acquires an interest in a Loan not funded pursuant to a prior Commitment, acquires such interest in such Loan), in each case, other than pursuant to an assignment requested by Borrower under Section 2.11(a) or (ii) such Lender designates a new Applicable Lending Office, except in each case of clause (i) and (ii), to the extent that additional amounts with respect to such withholding Tax were payable pursuant to Section 5.06(a) either to such Lender's assignor immediately before such Lender acquired the applicable interest in the applicable Loan or Commitment or to such Lender immediately before it designated the new applicable lending office, (c) Taxes attributable to such recipient's failure to comply with Section 5.06(c) or (d), and (d) any withholding Tax imposed under FATCA. For purposes of subclause (b) of this definition, a Lender that acquires a participation pursuant to Section 4.07(b) shall be treated as having acquired such participation on the earlier date(s) on which such Lender acquired the applicable interest(s) in the Commitment(s) and/or Loan(s) to which such participation relates.

"**Executive Order**" has the meaning set forth in Section 8.22(a).

"**Existing Credit Agreements**" shall mean, collectively, (i) that certain Credit Agreement, dated as of November 20, 2014 (as amended or otherwise modified prior to the date hereof), by and among Borrower, the guarantors party thereto, DB, as administrative agent and collateral agent, and the lenders party thereto, and (ii) that certain Credit Agreement, dated as of October 30, 2018 (as amended or otherwise modified prior to the date hereof), by and among Wynn Resorts, Limited, the guarantors party thereto, DB, as administrative agent and collateral agent, and the lenders party thereto.

"**Existing Letter of Credit**" has the meaning set forth in Section 2.03(s).

"**Existing Revolving Loans**" shall have the meaning provided in Section 2.13(b).

"**Existing Revolving Tranche**" shall have the meaning provided in Section 2.13(b).

"**Existing Term Loan Tranche**" shall have the meaning provided in Section 2.13(a)

"**Existing Tranche**" shall mean any Existing Term Loan Tranche or Existing Revolving Tranche.

"**Expansion Capital Expenditures**" shall mean any capital expenditure by Borrower or any of its Restricted Subsidiaries in respect of the purchase, construction, or other acquisition of any fixed or capital assets or the refurbishment of existing assets or properties that, in Borrower's reasonable determination, adds to or improves (or is reasonably expected to add to or improve) the property of Borrower and its Restricted Subsidiaries, excluding any such capital expenditures fully financed with Net Available Proceeds of an Asset Sale or Casualty Event and excluding capital expenditures made in the ordinary course made to maintain, repair, restore or refurbish the property of Borrower and its Restricted Subsidiaries in its then existing state or to support the continuation of such Person's day to day operations as then conducted.

"**Extended Revolving Commitments**" shall have the meaning provided in Section 2.13(b).

"**Extended Revolving Loans**" shall have the meaning provided in Section 2.13(b).

"**Extended Term Loans**" shall have the meaning provided in Section 2.13(a).

"**Extending Lender**" shall have the meaning provided in Section 2.13(c).

"**Extension Amendment**" shall have the meaning provided in Section 2.13(d).

"**Extension Date**" shall mean any date on which any Existing Term Loan Tranche or Existing Revolving Tranche is modified to extend the related scheduled maturity date(s) in accordance with Section 2.13 (with respect to the Lenders under such Existing Term Loan Tranche or Existing Revolving Tranche which agree to such modification).

"**Extension Election**" shall have the meaning provided in Section 2.13(c).

"**Extension Request**" shall mean any Term Loan Extension Request or Revolving Extension Request.

"**Extension Tranche**" shall mean all Extended Term Loans of the same tranche or Extended Revolving Commitments of the same tranche that are established pursuant to the same Extension Amendment (or any subsequent Extension Amendment to the extent such Extension Amendment expressly provides that the Extended Term Loans or Extended Revolving Commitments, as applicable, provided for therein are intended to be a part of any previously established Extension Tranche).

"**Facility**" shall mean any establishment, facility and other property or assets ancillary or related thereto or used in connection therewith, the primary focus of which is, or when completed will be, the hospitality, gaming, leisure and/or consumer industries (including, without limitation, any Gaming Facility).

"**fair market value**" shall mean, with respect to any Property, a price (after taking into account any liabilities relating to such Property), as determined in good faith by Borrower, that could be negotiated in an arm's-length free market transaction, for cash, between a willing seller and a willing and able buyer, neither of which is under any compulsion to complete the transaction.

"**Fair Share**" has the meaning set forth in Section 6.10."**FASB ASC**" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"**FATCA**" shall mean Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to current Section 1471(b) of the Code (or any amended or successor version described above) and any fiscal or regulatory legislation, rules, or official administrative practices adopted pursuant to any intergovernmental agreements, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"**Federal Funds Effective Rate**" shall mean, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions, as determined in such manner as the NYFRB shall set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as the federal funds effective rate; *provided*, *further*, that if the aforesaid rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"**Final Maturity Date**" shall mean the latest of the latest R/C Maturity Date, the Term A Facility Maturity Date, the latest New Term Loan Maturity Date, the latest final maturity date applicable to any Extended Term Loans, the latest final maturity date applicable to any Extended Revolving Commitments, the latest final maturity date applicable to any Other Term Loans, and the latest final maturity date applicable to any Other Revolving Loans.

"**Financial Maintenance Covenant**" shall mean the covenant set forth in Section 10.08.

"**Fitch**" shall mean Fitch Ratings Inc., or any successor entity thereto.

"**Fixed Amounts**" has the meaning set forth in Section 1.09(a).

"**Flood Insurance Laws**" shall mean, collectively, (a) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (b) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statue thereto, (c) the National Flood Insurance Reform Act of 1994 as now or hereafter in

effect or any successor statute thereto, and (d) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.

"**Foreign Lender**" shall mean a Lender that is not a U.S. Person.

"**Foreign Subsidiary**" shall mean any Subsidiary that is organized under the laws of a jurisdiction other than the United States, any state thereof, or the District of Columbia.

"**Fund**" shall mean any Person (other than a natural person) that is engaged in making, purchasing, holding, or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

"**Funding Credit Party**" has the meaning set forth in Section 6.10.

"**Funding Date**" shall mean the date of the making of any extension of credit (whether the making of a Loan or the issuance of a Letter of Credit) hereunder (including the Closing Date).

"**GAAP**" shall mean generally accepted accounting principles set forth as of the relevant date in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), including, without limitation, any Accounting Standards Codifications, which are applicable to the circumstances as of the date of determination.

"**Gaming Approval**" shall mean any and all approvals, authorizations, permits, consents, rulings, orders or directives of any Governmental Authority (including, without limitation, any Gaming Authority) (a) necessary to enable Borrower or any of its Restricted Subsidiaries to engage in, operate or manage the casino, gambling or gaming business or otherwise continue to conduct, operate or manage such business substantially as is presently conducted, operated or managed or contemplated to be conducted, operated or managed following the Closing Date (after giving effect to the Transactions), (b) required by any Gaming Law or (c) necessary as is contemplated on the Closing Date (after giving effect to the Transactions), to accomplish the financing and other transactions contemplated hereby after giving effect to the Transactions.

"**Gaming Authority**" shall mean any Governmental Authority with regulatory, licensing or permitting authority or jurisdiction over any gaming business or enterprise or any Gaming Facility or with regulatory, licensing or permitting authority or jurisdiction over any gaming operation (or proposed gaming operation) owned, managed, leased or operated by Borrower or any of its Restricted Subsidiaries.

"**Gaming Facility**" shall mean any gaming establishment, facility and other property or assets ancillary or related thereto or used in connection therewith, including, without limitation, any casinos, hotels, resorts, theaters, parking facilities, timeshare operations, retail shops, restaurants, other buildings, land, golf courses and other recreation and entertainment facilities, marinas, vessels and related equipment.

"**Gaming Laws**" shall mean all applicable provisions of all: (a) constitutions, treaties, statutes or laws governing Gaming Facilities (including, without limitation, card club casinos) and rules, regulations, codes and ordinances of, and all administrative or judicial orders or decrees or other laws pursuant to which, any Gaming Authority possesses regulatory, licensing, investigatory or permit authority over gambling, gaming or Gaming Facility activities conducted, operated or managed by Borrower or any of its Restricted Subsidiaries within its jurisdiction; (b) Gaming Approvals; and (c) orders, decisions, determinations, judgments, awards and decrees of any Gaming Authority.

"**Gaming License**" shall mean any Gaming Approval or other casino, gambling or gaming license issued by any Gaming Authority covering any Gaming Facility that permits the licensee to operate a gaming establishment.

"**Governmental Authority**" shall mean any government or political subdivision of the United States or any other country, whether federal, state, provincial, local or otherwise, or any agency, authority, board, bureau, central bank, commission, office, division, department or instrumentality thereof or therein, including, without limitation, any

court, tribunal, grand jury or arbitrator, in each case whether foreign or domestic, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to such government or political subdivision including, without limitation, any Gaming Authority.

"**Guarantee**" shall mean the guarantee of each Guarantor pursuant to Article VI.

"**Guaranteed Obligations**" has the meaning set forth in Section 6.01.

"**Guarantors**" shall mean each of the Persons listed on Schedule 1.01(a) attached hereto and each Wholly Owned Restricted Subsidiary that may hereafter execute a Joinder Agreement pursuant to Section 9.11, together with their successors and permitted assigns, and "**Guarantor**" shall mean any one of them; *provided*, *however*, that notwithstanding the foregoing, Guarantors shall not include any Subsidiary of Borrower that is an Excluded Subsidiary or any Person that has been released as a Guarantor in accordance with the terms of the Credit Documents.

"**Hazardous Material**" shall mean any material, substance, waste, constituent, compound, pollutant or contaminant including, without limitation, petroleum (including, without limitation, crude oil or any fraction thereof or any petroleum product or waste) subject to regulation or which could reasonably be expected to give rise to liability under Environmental Law.

"**Immaterial Subsidiary**" shall mean, at any time, any Restricted Subsidiary of Borrower having, together with all other Immaterial Subsidiaries, tangible assets with an aggregate fair market value of less than the Immaterial Subsidiary Threshold Amount as of the most recent Calculation Date.

"**Immaterial Subsidiary Threshold Amount**" shall mean $150.0 million.

"**Impacted Loans**" has the meaning set forth in Section 5.02.

"**Increased Amount**" of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness or in the form of common stock of Borrower, the accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies.

"**Incremental Commitments**" shall mean the Incremental Revolving Commitments and the Incremental Term Loan Commitments.

"**Incremental Effective Date**" has the meaning set forth in Section 2.12(b).

"**Incremental Existing Tranche Revolving Commitments**" shall have the meaning set forth in Section 2.12(a).

"**Incremental Incurrence-Based Amount**" has the meaning set forth in the definition of "Incremental Loan Amount".

"**Incremental Joinder Agreement**" has the meaning set forth in Section 2.12(b).

"**Incremental Loan Amount**" shall mean, as of any date of determination:

(a) the Shared Fixed Incremental Amount; *plus*

(b) (x) in the case of an Incremental Commitment or Ratio Debt that serves to effectively extend the maturity of the Term Loans, the Revolving Commitments, Permitted First Priority Refinancing Debt, and/or any Ratio Debt that is secured on a *pari passu* basis with the Obligations, an amount equal to the reductions in the Term Loans, the Revolving Commitments, the Permitted First Priority Refinancing Debt, and/or such *pari passu*

Ratio Debt to be replaced with such Incremental Commitment or Ratio Debt and (y) in the case of any Incremental Commitment or Ratio Debt that effectively replaces any commitment under the Revolving Facility terminated, or any Term Loan repaid, under Section 2.11, 13.04(b), 13.04(h), or 13.05(g), an amount equal to the portion of the relevant terminated commitments under the Revolving Facility or repaid Term Loans; *plus*

(c) the aggregate amount of (i) any voluntary prepayment or repurchase of Term Loans, Permitted First Priority Refinancing Debt, or Ratio Debt that is secured on a *pari passu* basis with the Obligations and (ii) any permanent reduction of Revolving Commitments, revolving commitments constituting Permitted First Priority Refinancing Debt, and revolving commitments constituting Ratio Debt that are secured on a *pari passu* basis with the Obligations, in each case to the extent that the relevant prepayment is not funded or effected with any long term Indebtedness (the amounts under clauses (b) and (c) together, the "**Incremental Prepayment Amount**"); *minus* the aggregate principal amount of all Indebtedness incurred or issued in reliance on the Ratio Prepayment Amount; *plus*

(d) an unlimited amount so long as, in the case of this clause (d), (A)(i) for any Incremental Commitment or Incremental Term Loan incurred in reliance on this clause (d) that is secured by the Collateral on a *pari passu* basis with the Senior Facilities, the Consolidated First Lien Net Leverage Ratio would not exceed 3.25:1.00, (ii) for any Incremental Commitment or Incremental Term Loan incurred in reliance on this clause (d) that is secured by the Collateral on a junior lien basis to the Senior Facilities, the Consolidated Senior Secured Net Leverage Ratio would not exceed 3.75:1.00, and (iii) for any Incremental Commitment or Incremental Term Loan incurred in reliance on this clause (d) that is unsecured or not secured by the Collateral, the Consolidated Fixed Charge Coverage Ratio shall not exceed 2.00:1.00, in each case, calculated on a Pro Forma Basis after giving effect thereto, including the application of proceeds thereof, as of the last day of the most recently ended Test Period; *provided* that, for such purpose, (1) in the case of any Incremental Revolving Commitment, such calculation shall be made assuming a full drawing of such Incremental Revolving Commitment and (2) such calculation shall be made without netting the cash proceeds of any Borrowing under such Incremental Commitment (this clause (d), the "**Incremental Incurrence-Based Amount**").

It is understood and agreed that (I) Borrower may elect to use the Incremental Incurrence-Based Amount prior to the Shared Fixed Incremental Amount or the Incremental Prepayment Amount and regardless of whether there is capacity under the Shared Fixed Incremental Amount or the Incremental Prepayment Amount, and if the Shared Fixed Incremental Amount, the Incremental Prepayment Amount, and the Incremental Incurrence-Based Amount are each available and Borrower does not make an election, Borrower will be deemed to have elected to use the Incremental Incurrence-Based Amount, and (II) any portion of any Incremental Term Loan, Incremental Term Loan Commitment, Incremental Revolving Commitment, or Ratio Debt incurred in reliance on the Shared Fixed Incremental Amount or the Incremental Prepayment Amount shall be reclassified as incurred under the Incremental Incurrence-Based Amount as Borrower may elect from time to time if Borrower meets the applicable Consolidated First Lien Net Leverage Ratio, Consolidated Senior Secured Net Leverage Ratio, or Consolidated Fixed Charge Coverage Ratio, as applicable, under the Incremental Incurrence-Based Amount at such time on a Pro Forma Basis.

"**Incremental Prepayment Amount**" has the meaning set forth in the definition of "Incremental Loan Amount".

"**Incremental Revolving Commitments**" shall mean Incremental Existing Tranche Revolving Commitments and New Revolving Commitments.

"**Incremental Revolving Loans**" shall mean any Revolving Loans made pursuant to Incremental Revolving Commitments.

"**Incremental Term A Loan Commitments**" shall have the meaning provided in Section 2.12(a).

"**Incremental Term A Loans**" shall have the meaning provided in Section 2.12(a).

"**Incremental Term Loan Commitments**" shall mean the Incremental Term A Loan Commitments and the New Term Loan Commitments.

"**Incremental Term Loans**" shall mean the Incremental Term A Loans and any New Term Loans.

"**incur**" shall mean, with respect to any Indebtedness or other obligation of any Person, to create, issue, incur (including by conversion, exchange or otherwise), permit to exist, assume, guarantee or otherwise become liable in respect of such Indebtedness or other obligation (and "**incurrence**," "**incurred**" and "**incurring**" shall have meanings correlative to the foregoing).

"**Incurrence-Based Amounts**" has the meaning set forth in Section 1.09(a).

"**Indebtedness**" of any Person shall mean, without duplication, (a) all obligations of such Person for borrowed money; (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person; (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding (i) trade accounts payable and accrued obligations incurred in the ordinary course of business, (ii) the financing of insurance premiums, (iii) any such obligations payable solely through the issuance of Equity Interests and (iv) any earn-out obligation until such obligation appears in the liabilities section of the balance sheet of such Person in accordance with GAAP (excluding disclosure on the notes and footnotes thereto); *provided* that any earn-out obligation that appears in the liabilities section of the balance sheet of such Person shall be excluded, to the extent (x) such Person is indemnified for the payment thereof or (y) amounts to be applied to the payment therefor are in escrow); (e) all Indebtedness (excluding prepaid interest thereon) of others secured by any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed; *provided*, *however*, that if such obligations have not been assumed, the amount of such Indebtedness included for the purposes of this definition will be the amount equal to the lesser of the fair market value of such property and the amount of the Indebtedness secured; (f) with respect to any Capital Lease Obligations of such Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP; (g) all net obligations of such Person in respect of Swap Contracts; (h) all obligations of such Person as an account party in respect of letters of credit and bankers' acceptances, except obligations in respect of letters of credit issued in support of obligations not otherwise constituting Indebtedness shall not constitute Indebtedness except to the extent such letter of credit is drawn and not reimbursed within five (5) Business Days of such drawing; (i) all obligations of such Person in respect of Disqualified Capital Stock; and (j) all Contingent Obligations of such Person in respect of Indebtedness of others of the kinds referred to in clauses (a) through (i) above. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner unless recourse is limited, in which case the amount of such Indebtedness shall be the amount such Person is liable therefor (except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor). The amount of Indebtedness of the type described in clause (d) shall be calculated based on the net present value thereof. The amount of Indebtedness of the type referred to in clause (g) above of any Person shall be zero unless and until such Indebtedness shall be terminated, in which case the amount of such Indebtedness shall be the then termination payment due thereunder by such Person. For the avoidance of doubt, it is understood and agreed that (w) obligations of an Unrestricted Subsidiary secured by a Lien on the Equity Interests of such Unrestricted Subsidiary, (x) casino "chips" and gaming winnings of customers, (y) any obligations of such Person in respect of Cash Management Agreements, and (z) any obligations of such Person in respect of employee, consultant or contractor deferred compensation and benefit plans shall not constitute Indebtedness.

"**Indemnitee**" has the meaning set forth in Section 13.03(b).

"**Initial Base Restricted Payments Amount**" shall mean, as of any date of determination, (i) the greater of (A) $350.0 million and (B) 35% of Consolidated EBITDA calculated on a Pro Forma Basis as of the most recently ended Test Period, minus the aggregate amount of Restricted Payments made pursuant to Section 10.06(i)(i), Junior Prepayments made pursuant to Section 10.09(a)(i), and the aggregate amount of Investments made (and as calculated) pursuant to Section 10.04(x).

"**Initial Base Junior Financing Prepayments Amount**" shall mean, as of any date of determination, $250.0 million minus the aggregate amount of Restricted Payments made pursuant to Section 10.06(l), Junior Prepayments made pursuant to Section 10.09(j), and the aggregate amount of Investments made (and as calculated) pursuant to Section 10.04(z).

"**Initial Perfection Certificate**" has the meaning set forth in the definition of "Perfection Certificate."

"**Intellectual Property**" has the meaning set forth in Section 8.18.

"**Intercompany Contribution Indebtedness**" shall mean unsecured Indebtedness (including unsecured Indebtedness convertible into or exchangeable or exercisable for any Equity Interests) of Borrower or all or any Restricted Subsidiaries that are Credit Parties owed to Wynn Resorts or any other Affiliate of Borrower (other than Borrower or a Subsidiary of Borrower that is a Credit Party) that (a) is subject to a Subordination Agreement or otherwise contains subordination provisions reasonably satisfactory to Administrative Agent and (b) shall not have a scheduled maturity date or any scheduled principal payments or be subject to any mandatory redemption, prepayment, or sinking fund or interest payment, fee payment or similar payment due prior to the date that is 91 days after the Final Maturity Date then in effect at the time of issuance.

"**Interest Period**" shall mean, as to each LIBOR Loan, the period commencing on the date such LIBOR Loan is disbursed or converted to or continued as a LIBOR Loan and ending on the date one, two, three or six months thereafter, as selected by Borrower in its Notice of Borrowing or Notice of Continuation/Conversion, as applicable, or such other period that is twelve months or less requested by Borrower and consented to by, in the case of a period that is one month or less, Administrative Agent and, in all cases of a period that is twelve months or less but greater than one month, all the applicable Lenders; *provided* that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a LIBOR Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period pertaining to LIBOR Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period for a Class shall extend beyond the maturity date for such Class.

Notwithstanding the foregoing, as to any LIBOR Loan made on a day that is not the last Business Day of a calendar month, Borrower may select an Interest Period that shall commence on the date on which such Loan is made and expire on the last Business Day of such calendar month and thereafter revert to the Interest Period selected in compliance with the foregoing.

"**Interest Rate Protection Agreement**" shall mean, for any Person, an interest rate swap, cap or collar agreement or similar arrangement between such Person and one or more financial institutions providing for the transfer or mitigation of interest risks either generally or under specific contingencies.

"**Interpolated Rate**" means, at any time, for any Interest Period, the rate *per annum* (rounded to the same number of decimal places as the LIBO Screen Rate) determined by Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available for the applicable currency that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period for which that LIBO Screen Rate is available for the applicable currency that exceeds the Impacted Interest Period, in each case, at such time.

"**Investments**" of any Person shall mean (a) any loan or advance of funds or credit by such Person to any other Person, (b) any Contingent Obligation by such Person in respect of the Indebtedness of any other Person (*provided* that upon termination of any such Contingent Obligation, no Investment in respect thereof shall be deemed outstanding, except as contemplated in clause (e) below), (c) any purchase or other acquisition of any Equity Interests or indebtedness or other securities of any other Person, (d) any capital contribution by such Person to any other Person, (e) without duplication of any amounts included under clause (b) above, any payment under any Contingent Obligation by such Person in respect of the Indebtedness or other obligation of any other Person or (f) the purchase or other acquisition (in one transaction or a series of transaction) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of the definition of "Unrestricted Subsidiary" and Section 10.04, "Investment" shall include the portion (proportionate to Borrower's Equity Interest in such Subsidiary) of the fair market value of the net assets of any Subsidiary of Borrower at the time of Designation of such Subsidiary as an Unrestricted Subsidiary pursuant to Section 9.12 (excluding any Subsidiaries designated as Unrestricted Subsidiaries on the Closing Date and set forth on Schedule 8.12(c)); *provided*, *however*, that upon the Revocation of a Subsidiary that was designated as an Unrestricted Subsidiary after the Closing Date, the amount of outstanding Investments in Unrestricted Subsidiaries shall be deemed to be reduced by the lesser of (x) the fair market value of such Subsidiary at the time of such Revocation and (y) the amount of Investments in such Subsidiary deemed to have been made (directly or indirectly) at the time of, and made (directly or indirectly) since, the Designation of such Subsidiary as an Unrestricted Subsidiary, to the extent that such amount constitutes an outstanding Investment under Section 10.04 at the time of such Revocation.

"**IP Licensing Fees**" shall mean any fees payable by Borrower or a Restricted Subsidiary to any Affiliate (other than Borrower or a Restricted Subsidiary) pursuant to (a) (i) that certain 2014 Intellectual Property Licensing Agreement, dated as of November 20, 2014, among Wynn Resorts Holdings, LLC, Wynn Resorts, and Wynn Massachusetts, (ii) that certain Intellectual Property Licensing Agreement, dated as of February 26, 2015, among Wynn Resorts, Wynn Resorts Holdings, LLC, and Wynn Las Vegas, (iii) that certain Intellectual Property License Agreement, dated as of September 19, 2009, among Wynn Resorts Holdings, LLC, Wynn Resorts, and Wynn Macau, Limited, and (iv) that certain Amended and Restated Intellectual Property License Agreement, dated as of September 19, 2009, by and among Wynn Resorts Holdings, LLC, Wynn Resorts, and Wynn Resorts (Macau), S.A. and (b) without duplication to any fees paid under any agreement described in clause (a), licensing agreements in form and substance substantially similar to any agreement described in clause (a).

"**ISDA CDS Definitions**" has the meaning set forth in Section 13.04(i).

"**ISP**" shall mean, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

"**Joinder Agreements**" shall mean each Joinder Agreement substantially in the form of Exhibit L attached hereto or such other form as is reasonably acceptable to Administrative Agent and each Joinder Agreement to be entered into pursuant to the Security Agreement.

"**Joint Venture**" shall mean any Person, other than an individual or a Wholly Owned Subsidiary of Borrower, in which Borrower or a Restricted Subsidiary of Borrower (directly or indirectly) holds or acquires an ownership interest (whether by way of capital stock, partnership or limited liability company interest, or other evidence of ownership).

"**Judgment Currency Conversion Date**" has the meaning set forth in Section 13.15(a).

"**Junior Financing**" shall mean unsecured Indebtedness (including unsecured Indebtedness convertible into or exchangeable or exercisable for any Equity Interests) of Borrower or all or any Restricted Subsidiaries (a) (i) that is subordinated in right of payment to the Loans and contains subordination provisions that are customary in the good faith determination of Borrower for senior subordinated notes or subordinated notes issued under Rule 144A of the Securities Act (or other corporate issuers in private placements or public offerings of securities) or (ii) that contains subordination provisions reasonably satisfactory to Administrative Agent and (b) that shall not have a scheduled maturity date or any scheduled principal payments or be subject to any mandatory redemption, prepayment, or sinking fund

(except for customary change of control provisions and, in the case of bridge facilities, customary mandatory redemptions or prepayments with proceeds of Permitted Refinancings thereof (which Permitted Refinancings would constitute Junior Financing) or Equity Issuances, and customary asset sale provisions that permit application of the applicable proceeds to the payment of the Obligations prior to application to such Junior Financing) due prior to the date that is 91 days after the Final Maturity Date then in effect at the time of issuance (excluding bridge facilities providing for extensions on customary terms to at least 91 days after such Final Maturity Date).

"**Junior Prepayments**" shall have the meaning provided in Section 10.09.

"**L/C Commitments**" shall mean the commitments of each L/C Lender to issue Letters of Credit pursuant to Section 2.03. The L/C Commitments are part of, and not in addition to, the Revolving Commitments.

"**L/C Disbursements**" shall mean a payment or disbursement made by any L/C Lender pursuant to a Letter of Credit.

"**L/C Documents**" shall mean, with respect to any Letter of Credit, collectively, any other agreements, instruments, guarantees or other documents (whether general in application or applicable only to such Letter of Credit) governing or providing for (a) the rights and obligations of the parties concerned or at risk with respect to such Letter of Credit or (b) any collateral security for any of such obligations, each as the same may be amended or modified and in effect from time to time.

"**L/C Interest**" shall mean, for each Revolving Lender, such Lender's participation interest (or, in the case of each L/C Lender, such L/C Lender's retained interest) in each L/C Lender's liability under Letters of Credit and such Lender's rights and interests in Reimbursement Obligations and fees, interest and other amounts payable in connection with Letters of Credit and Reimbursement Obligations.

"**L/C Lender**" shall mean, as the context may require: (a) with respect to each Existing Letter of Credit, any person listed on Schedule 2.03(s) as an L/C Lender, in its capacity as issuer of such Existing Letter of Credit), (b) each of DB (solely in respect of standby Letters of Credit), Goldman Sachs Bank USA, and The Bank of Nova Scotia or any of their respective Affiliates, in its capacity as issuer of Letters of Credit issued by it hereunder, together with its successors and assigns in such capacity; and/or (c) any other Revolving Lender or Revolving Lenders selected by Borrower and reasonably acceptable to Administrative Agent (such approval not to be unreasonably withheld or delayed) that agrees to become an L/C Lender, in each case under this clause (c) in its capacity as issuer of Letters of Credit issued by such Lender hereunder, together with its successors and assigns in such capacity.

"**L/C Liability**" shall mean, at any time, without duplication, the sum of (a) the Dollar Equivalent of the Stated Amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all L/C Disbursements that have not yet been reimbursed at such time (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of any Letter of Credit denominated in an Alternate Currency) in respect of all Letters of Credit. The L/C Liability of any Revolving Lender at any time shall mean such Revolving Lender's participations and obligations in respect of outstanding Letters of Credit at such time.

"**L/C Payment Notice**" has the meaning provided in Section 2.03(d).

"**L/C Sublimit**" shall mean an amount equal to the lesser of (a) $75.0 million and (b) the Total Revolving Commitments then in effect. With respect to each of DB, Goldman Sachs Bank USA, and The Bank of Nova Scotia (or any of their respective Affiliates), such L/C Lender's L/C Sublimit shall be $25.0 million (in each case as the same may be changed from time to time with the prior written consent of Borrower and the applicable L/C Lender). The L/C Sublimit is part of, and not in addition to, the Total Revolving Commitments.

"**Laws**" shall mean, collectively, all common law and all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents, including without limitation the interpretation thereof by any Governmental Authority charged with the enforcement thereof.

"**LCT Election**" shall have the meaning provided in Section 1.08.

"**LCT Test Date**" shall have the meaning provided in Section 1.08.

"**Lead Arrangers**" shall mean, collectively, Deutsche Bank Securities, Inc., Goldman Sachs Bank USA, The Bank of Nova Scotia, BofA Securities, Inc., BNP Paribas Securities Corp., Fifth Third Bank, JPMorgan Chase Bank, N.A., Mizuho Bank, Ltd., Sumitomo Mitsui Banking Corporation, Credit Agricole Corporate and Investment Bank, SunTrust Robinson Humphrey, Inc., and Citizens Bank, National Association, in their capacities as joint lead arrangers and joint bookrunners hereunder.

"**Lease**" shall mean any lease, sublease, franchise agreement, license, occupancy or concession agreement.

"**Lender Insolvency Event**" shall mean that (i) a Lender or its Parent Company is insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors, or (ii) such Lender or its Parent Company is the subject of a proceeding under any Debtor Relief Law, or a receiver, trustee, conservator, intervenor, administrator, sequestrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets (including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority) has been appointed for such Lender or its Parent Company, or such Lender or its Parent Company has taken any action authorizing or indicating its consent to or acquiescence in any such proceeding or appointment; *provided*, *however*, that a Lender Insolvency Event shall not be deemed to exist solely as the result of the acquisition or maintenance of an ownership interest in such Lender or its Parent Company by a Governmental Authority or an instrumentality thereof so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

"**Lenders**" shall mean (a) each Person listed on Annexes A-1 and A-2, (b) any Person that becomes a Lender from time to time party hereto pursuant to Section 2.15 and (c) any Person that becomes a "Lender" hereunder pursuant to an Assignment Agreement, in each case, other than any such Person that ceases to be a Lender pursuant to an Assignment Agreement or a Borrower Assignment Agreement. Unless the context requires otherwise, the term "Lenders" shall include the L/C Lender.

"**Letter of Credit Request**" has the meaning set forth in Section 2.03(b).

"**Letters of Credit**" shall have the meaning set forth in Section 2.03(a) and shall include each Existing Letter of Credit.

"**LIBO Base Rate**" shall mean, with respect to any LIBOR Loan for any Interest Period therefor, the London interbank offered rate ("**LIBOR**") as administered by ICE Benchmark Administration Limited (or any other Person that takes over the administration of such rate for Dollars for a period equal in length to such Interest Period) as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by Administrative Agent in its reasonable discretion (in each case the "**LIBO Screen Rate**") at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period (for delivery on the first day of such Interest Period); *provided* that, if the LIBO Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement and *provided*, *further*, if the LIBO Screen Rate shall not be available at such time for such Interest Period (an "**Impacted Interest Period**"), then the LIBO Base Rate shall be the Interpolated Rate, *provided*, that, if any Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement; *provided* that to the extent a comparable or successor rate is approved by Administrative Agent in connection herewith, the approved rate shall be consistent with market practice for LIBOR-based loans (and the application of such rate shall also be in accordance with market practice); *provided*, *further* that to the extent such market practice is not administratively feasible for Administrative Agent, such approved rate shall be applied in a manner as otherwise

reasonably determined by Administrative Agent. Notwithstanding the foregoing, the LIBO Base Rate shall not be less than 0.00%.

"**LIBO Rate**" shall mean, for any LIBOR Loan for any Interest Period therefor, a rate *per annum* (rounded upwards, if necessary, to the nearest 1/100th of 1%) determined by Administrative Agent to be equal to the LIBO Base Rate for such Loan for such Interest Period multiplied by the Statutory Reserve Rate for such Loan for such Interest Period; *provided* that the LIBO Rate shall not be less than 0%. Notwithstanding the foregoing, for purposes of clause (c) of the definition of Alternate Base Rate, the rates referred to above shall be the rates as of 11:00 a.m., London, England time, on the date of determination (rather than the second Business Day preceding the date of determination).

"**LIBOR Loans**" shall mean Loans that bear interest at rates based on rates referred to in the definition of "LIBO Rate."

"**License Revocation**" shall mean the revocation, failure to renew or suspension of, or the appointment of a receiver, supervisor or similar official with respect to, any Gaming License covering any Gaming Facility owned, leased, operated or used by Borrower or any of its Restricted Subsidiaries.

"**Lien**" shall mean, with respect to any Property, any mortgage, deed of trust, lien, pledge, security interest, or assignment, hypothecation or encumbrance for security of any kind, or any filing of any financing statement under the UCC or any other similar notice of lien under any similar notice or recording statute of any Governmental Authority (other than such financing statement or similar notices filed for informational or precautionary purposes only), or any conditional sale or other title retention agreement or any lease in the nature thereof.

"**Limited Condition Transaction**" shall mean any transaction whose consummation is not conditioned on the availability of, or on obtaining, third party financing (or if such condition does exist, Borrower or any of its Subsidiaries would be required to pay any fee, liquidated damages or other amount or be subject to any indemnity, claim or other liability as a result of such third party financing not having been available or obtained), including, without limitation, any Permitted Acquisition or other acquisition not prohibited hereunder (including repayment of Indebtedness of the Person acquired, or that is secured by the assets acquired, in such Permitted Acquisition or other acquisition), any permitted Investment or any unconditional repayment or redemption of, or offer to purchase, any Indebtedness (and, in each case, the incurrence of Indebtedness and/or Liens, the making of dispositions or Restricted Payments or the consummation of any other transactions in connection therewith).

"**Liquor Authority**" has the meaning set forth in Section 13.13(a).

"**Liquor Laws**" has the meaning set forth in Section 13.13(a).

"**Loans**" shall mean the Revolving Loans and the Term Loans.

"**Losses**" of any Person shall mean the losses, liabilities, claims (including those based upon negligence, strict or absolute liability and liability in tort), damages, reasonable expenses, obligations, penalties, actions, judgments, penalties, fines, suits, reasonable and documented costs or disbursements (including, but limited to in the case of counsel, reasonable fees and expenses of one primary counsel for the Secured Parties and Indemnitees collectively, and any local counsel reasonably required in any applicable jurisdiction (and solely in the case of an actual or perceived conflict of interest, where the Persons affected by such conflict inform Borrower in writing of the existence of an actual or perceived conflict of interest prior to retaining additional counsel, one additional of each such counsel for each group of similarly situated Secured Parties and Indemnitees), in connection with any Proceeding commenced or threatened in writing, whether or not such Person shall be designated a party thereto) at any time (including following the payment of the Obligations) incurred by, imposed on or asserted against such Person.

"**Macau Resort**" shall mean the hotel towers, casino facilities and retail and convention spaces that are owned and/or operated by Affiliates of Wynn Resorts, in the Macau Special Administrative Region of the People's Republic of China, which include Wynn Macau, Wynn Encore and Wynn Palace hotel towers, casino facilities and retail and convention spaces adjacent thereto.

"**Management Fees**" shall mean (a) any fees, costs, expenses or reimbursements payable by Borrower or a Restricted Subsidiary to any Affiliate (other than Borrower or a Restricted Subsidiary) pursuant to (i) that certain Management Fee and Corporate Allocation Agreement, dated as of November 20, 2014, between Wynn Massachusetts and Wynn Resorts and (ii) that certain Management Agreement, dated February 26, 2015, between Wynn Las Vegas and Wynn Resorts and (b) without duplication to any fees, costs, expenses or reimbursements paid or made under any agreement described in clause (a), management agreements in form and substance substantially similar to any agreement described in clause (a).

"**Margin Stock**" shall mean margin stock within the meaning of Regulation T, Regulation U, and Regulation X.

"**Material Adverse Effect**" shall mean (a) a material adverse effect on the business, assets, financial condition or results of operations of Borrower and its Restricted Subsidiaries, taken as a whole and after giving effect to the Transactions, (b) a material adverse effect on the ability of the Credit Parties (taken as a whole) to satisfy their material payment Obligations under the Credit Documents or (c) a material adverse effect on the legality, binding effect or enforceability against any material Credit Party, of the Credit Documents to which it is a party or any of the material rights and remedies of any Secured Party thereunder or the legality, priority or enforceability of the Liens on a material portion of the Collateral; *provided*, that no litigation challenging the issuance of a Gaming License or any matters arising therefrom, related thereto or in connection therewith shall constitute, result or otherwise have (or reasonably be expected to constitute, result or otherwise have) a Material Adverse Effect.

"**Maximum Rate**" has the meaning set forth in Section 13.19.

"**Minimum Cage Cash Amount**" shall mean, as of any date of determination, an amount equal to $15.0 million multiplied by the number of material Gaming Facilities (as determined by Borrower in good faith) owned and operated by Borrower and its Restricted Subsidiaries. For purposes of this definition, as of the Closing Date each of (a) the Wynn Las Vegas Resort and Encore at Wynn Las Vegas (taken as a whole) and (b) the Wynn Massachusetts Resort shall count as material Gaming Facilities such that as of the Closing Date the Minimum Cage Cash Amount shall be $30.0 million.

"**Minimum Collateral Amount**" shall mean, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate un-reallocated portions of L/C Liabilities during the existence of a Defaulting Lender, an amount equal to 103% of the un-reallocated L/C Liabilities at such time, (ii) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Sections 2.03, 2.10(c), 2.10(d), 2.16(a)(i), 2.16(a)(ii), or 11.01, an amount equal to 103% of the aggregate L/C Liability, and (iii) otherwise, an amount determined by Administrative Agent and the L/C Lenders in their reasonable discretion.

"**Moody's**" shall mean Moody's Investors Service, Inc., or any successor entity thereto.

"**Mortgage**" shall mean an agreement, including, but not limited to, a mortgage, deed of trust or any other document, creating and evidencing a first Lien (subject only to Permitted Liens) in favor of Collateral Agent on behalf of the Secured Parties on each Mortgaged Real Property, which shall be in substantially the form of Exhibit I-1, Exhibit I-2, or such other form as is reasonably acceptable to Administrative Agent, with such schedules and including such provisions as shall be necessary to conform such document to applicable or local law or as shall be customary under local law, as the same may at any time be amended in accordance with the terms thereof and hereof and such changes thereto as shall be reasonably acceptable to Administrative Agent.

"**Mortgaged Real Property**" shall mean (a) each Closing Date Mortgaged Real Property listed on Schedule 1.01(c) and (b) each Real Property, if any, which shall be subject to a Mortgage delivered after the Closing Date pursuant to Section 9.08, 9.11, or 9.16 (in each case, unless and until such Real Property is no longer subject to a Mortgage).

"**Multiemployer Plan**" shall mean a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA (a) to which any ERISA Entity is then making or obligated to make contributions, (b) to which any ERISA Entity

(including any Person which ceased to be an ERISA Entity during such five year period) has within the preceding five plan years made contributions, or (c) with respect to which Borrower or any Restricted Subsidiary would reasonably be expected to incur liability under Title IV of ERISA.

"**NAIC**" shall mean the National Association of Insurance Commissioners.

"**Net Available Proceeds**" shall mean:

(i) in the case of any Asset Sale by Borrower or any Restricted Subsidiary pursuant to Section 10.05(c), 100% of the aggregate amount of all cash payments (including any cash payments received by way of deferred payment of principal pursuant to a note or otherwise, but only as and when received) received by Borrower or any Restricted Subsidiary directly or indirectly in connection with such Asset Sale, net (without duplication) of (A) the amount of all reasonable fees and expenses and transaction costs paid by or on behalf of Borrower or any Restricted Subsidiary in connection with such Asset Sale (including, without limitation, any underwriting, brokerage or other customary selling commissions and legal, advisory and other fees and expenses, including survey, title and recording expenses, transfer taxes and expenses incurred for preparing such assets for sale, associated therewith); (B) any Taxes paid or estimated in good faith to be payable by or on behalf of any Company as a result of such Asset Sale (after application of all credits and other offsets that arise from such Asset Sale); (C) any repayments by or on behalf of any Company of Indebtedness (other than the Obligations) to the extent that such Indebtedness is secured by a Permitted Lien on the subject Property required to be repaid as a condition to the purchase or sale of such Property; (D) amounts required to be paid to any Person (other than any Company) owning a beneficial interest in the subject Property; and (E) amounts reserved, in accordance with GAAP, against any liabilities associated with such Asset Sale and retained by Borrower or any of its Subsidiaries after such Asset Sale and related thereto, including pension and other post-employment benefit liabilities, purchase price adjustments, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, all as reflected in an Officer's Certificate delivered to Administrative Agent; *provided*, that Net Available Proceeds shall include any cash payments received upon the reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any reserve described in clause (E) of this clause (i) or, if such liabilities have not been satisfied in cash and such reserve is not reversed within eighteen (18) months after such Asset Sale, the amount of such reserve; *provided further* that if at the time of receipt of such net cash proceeds or at any time during the reinvestment period contemplated by Section 2.10(a)(iii), if Borrower shall deliver a certificate of a Responsible Officer of Borrower to Administrative Agent certifying that on a Pro Forma Basis immediately after giving effect to the Asset Sale and the application of the proceeds thereof or at the relevant time during such reinvestment period, (I) the Consolidated First Lien Net Leverage Ratio is less than 1.00 to 1.00, 50% of such net cash proceeds that would otherwise constitute Net Available Proceeds shall constitute Net Available Proceeds or (II) the Consolidated First Lien Net Leverage Ratio is less than 0.50 to 1.00, none of such net cash proceeds that would otherwise constitute Net Available Proceeds shall constitute Net Available Proceeds;

(ii) in the case of any Casualty Event of Borrower or any Restricted Subsidiary, the aggregate amount of cash proceeds of insurance, condemnation awards and other compensation (excluding proceeds constituting business interruption insurance or other similar compensation for loss of revenue, but including the proceeds of any disposition of Property pursuant to Section 10.05(l)) received by the Person whose Property was subject to such Casualty Event in respect of such Casualty Event net of (A) fees and expenses incurred by or on behalf of Borrower or any Restricted Subsidiary in connection with recovery thereof, (B) repayments of Indebtedness (other than Indebtedness hereunder) to the extent secured by a Lien on such Property that is permitted by the Credit Documents and that is not junior to the Lien thereon securing the Obligations, (C) any Taxes paid or payable by or on behalf of Borrower or any Restricted Subsidiary in respect of the amount so recovered (after application of all credits and other offsets arising from such Casualty Event), and (D) amounts required to be paid to any Person (other than any Company) owning a beneficial interest in the subject Property; *provided* that, in the case of a Casualty Event with respect to property that is subject to a lease entered into for the purpose of, or with respect to, operating or managing a Facility, such cash proceeds shall not constitute Net Available Proceeds to the extent, and for so long as, such cash proceeds are required, by the terms of such lease, (x) to be paid to the holder of any mortgage, deed of trust or other security agreement securing

indebtedness of the lessor or (y) to be paid to, or for the account of, the lessor or deposited in an escrow account to fund rent and other amounts due with respect to such property and costs to preserve, stabilize, repair, replace or restore such property (in accordance with the provisions of the applicable lease); *provided further* that if at the time of receipt of such amounts or at any time during the reinvestment period contemplated by Section 2.10(a)(i), if Borrower shall deliver a certificate of a Responsible Officer of Borrower to Administrative Agent certifying that on a Pro Forma Basis immediately after giving effect to the Asset Sale and the application of the proceeds thereof or at the relevant time during such reinvestment period, (I) the Consolidated First Lien Net Leverage Ratio is less than 1.00 to 1.00, 50% of such amounts that would otherwise constitute Net Available Proceeds shall constitute Net Available Proceeds or (II) the Consolidated First Lien Net Leverage Ratio is less than 0.50 to 1.00, none of such amounts that would otherwise constitute Net Available Proceeds shall constitute Net Available Proceeds; and

(iii) in the case of any Debt Issuance, the aggregate amount of all cash received in respect thereof by the Person consummating such Debt Issuance in respect thereof net of all investment banking fees, discounts and commissions, legal fees, consulting fees, accountants' fees, underwriting discounts and commissions and other fees and expenses, actually incurred in connection therewith.

"**Net Short Lender**" has the meaning assigned to such term in Section 13.04(i).

"**New Revolving Commitments**" shall have the meaning set forth in Section 2.12(a).

"**New Revolving Loans**" shall have the meaning set forth in Section 2.12(a).

"**New Term Loan Commitments**" has the meaning set forth in Section 2.12(a).

"**New Term Loan Maturity Date**" shall mean, with respect to any New Term Loans to be made pursuant to the related Incremental Joinder Agreement, the maturity date thereof as determined in accordance with Section 2.12(b).

"**New Term Loan Notes**" shall mean the promissory notes executed and delivered in connection with any New Term Loan Commitments and the related New Term Loans.

"**New Term Loans**" has the meaning set forth in Section 2.12(a).

"**Non-Defaulting Lender**" shall mean each Lender other than a Defaulting Lender.

"**Non-Extension Notice Date**" shall have the meaning provided by Section 2.03(b).

"**Non-U.S. Lender**" shall have the meaning provided by Section 5.06(c)(ii).

"**Notes**" shall mean the Revolving Notes and the Term Loan Notes.

"**Notice of Borrowing**" shall mean a notice of borrowing substantially in the form of Exhibit B or such other form as is reasonably acceptable to Administrative Agent.

"**Notice of Continuation/Conversion**" shall mean a notice of continuation/conversion substantially in the form of Exhibit C or such other form as is reasonably acceptable to Administrative Agent.

"**Notice of Intent to Cure**" has the meaning specified in Section 9.04(c).

"**NYFRB**" shall mean the Federal Reserve Bank of New York.

"**NYFRB Rate**" shall mean, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); *provided* that if none of such rates are published for any day that is a Business

Day, the term "NYFRB Rate" shall mean the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by Administrative Agent from a Federal funds broker of recognized standing selected by it; *provided*, *further*, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"**Obligation Currency**" has the meaning set forth in Section 13.15(a).

"**Obligations**" shall mean all amounts, liabilities and obligations, direct or indirect, contingent or absolute, of every type or description, and at any time existing, owing by any Credit Party to any Secured Party or any of its Agent Related Parties or their respective successors, transferees or assignees pursuant to the terms of any Credit Document, any Credit Swap Contract or, with the prior written approval of Borrower, any Secured Cash Management Agreement (including in each case interest, fees, costs or charges accruing or obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), whether or not the right of such Person to payment in respect of such obligations and liabilities is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured and whether or not such claim is discharged, stayed or otherwise affected by any bankruptcy case or insolvency or liquidation proceeding.

"**OFAC**" has the meaning set forth in Section 8.22(b)(v).

"**Officer's Certificate**" shall mean, as applied to any entity, a certificate executed on behalf of such entity (or such entity's manager or member or general partner, as applicable) by its chairman of the Board of Directors (or functional equivalent) (if an officer), its chief executive officer, its president, any of its vice presidents, its chief financial officer, its chief accounting officer or its treasurer or controller (in each case, or an equivalent officer) in their official (and not individual) capacities.

"**Open Market Assignment and Assumption Agreement**" shall mean an Open Market Assignment and Assumption Agreement substantially in the form attached as Exhibit O hereto or such other form as is reasonably acceptable to Administrative Agent.

"**Organizational Document**" shall mean, relative to any Person, its certificate of incorporation, its certificate of formation or articles of organization, its certificate of partnership, its by-laws, its partnership agreement, its limited liability company or operating agreement, its memorandum or articles of association, share designations or similar organization documents and all shareholder agreements, voting trusts and similar arrangements applicable to any of its authorized Equity Interests.

"**Other Applicable Indebtedness**" shall mean Indebtedness incurred pursuant to Section 10.01(c), (e), (h), (k), (n), (p), (q), (u) and (y).

"**Other Commitments**" shall mean the Other Term Loan Commitments and Other Revolving Commitments.

"**Other Connection Taxes**" shall mean, with respect to any Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Credit Party under any Credit Document, Taxes imposed as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than connections arising from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Credit Document, or sold or assigned an interest in any Loan or Credit Document).

"**Other First Lien Indebtedness**" shall mean outstanding Indebtedness that is not incurred under this Agreement and that (a) is secured by the Collateral on a *pari passu* basis with the Obligations and (b) is Permitted First Priority Refinancing Debt or Ratio Debt.

"**Other Junior Indebtedness**" shall mean Permitted Unsecured Refinancing Debt, Permitted Second Priority Refinancing Debt, or Ratio Debt, in each case, that is secured by a Lien on Collateral junior to the Liens securing the

Obligations or that is unsecured. For the avoidance of doubt, Indebtedness incurred pursuant to Section 10.01(e) shall in no event constitute Other Junior Indebtedness.

"**Other Revolving Commitments**" shall mean one or more Tranches of revolving credit commitments hereunder that result from a Refinancing Amendment.

"**Other Revolving Loans**" shall mean one or more Tranches of Revolving Loans that result from a Refinancing Amendment.

"**Other Taxes**" has the meaning set forth in Section 5.06(b).

"**Other Term Loan Commitments**" shall mean one or more Tranches of term loan commitments hereunder that result from a Refinancing Amendment.

"**Other Term Loans**" shall mean one or more Tranches of Term Loans that result from a Refinancing Amendment.

"**Overdraft Line**" has the meaning set forth in Section 10.02(cc).

"**Overnight Bank Funding Rate**" shall mean, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S.-managed banking offices of depository institutions (as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time), and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate (from and after such date as the NYFRB shall commence to publish such composite rate).

"**Paid in Full**" or "**Payment in Full**" and any other similar terms, expressions or phrases shall mean, at any time, (a) with respect to obligations other than the Obligations or the Secured Obligations (as defined in the Security Agreement), the payment in full of all of such obligations and (b) with respect to the Obligations or the Secured Obligations (as defined in the Security Agreement), the irrevocable termination of all Commitments, the payment in full in cash of all Obligations (except undrawn Letters of Credit and Unasserted Obligations), including principal, interest, fees, costs (including post-petition interest, fees, costs and charges even if such interest, fees costs and charges are not an allowed claim enforceable against any Credit Party in a bankruptcy case under applicable law) and premium (if any), and the discharge or Cash Collateralization of all Letters of Credit outstanding in an amount equal to 103% of the greatest amount for which such Letters of Credit may be drawn (or receipt of backstop letters of credit reasonably satisfactory to the applicable L/C Lender and Administrative Agent). For purposes of this definition, "**Unasserted Obligations**" shall mean, at any time, contingent indemnity obligations in respect of which no claim or demand for payment has been made at such time.

"**Parent Company**" shall mean, with respect to a Lender, the bank holding company (as defined in Federal Reserve Board Regulation Y), if any, of such Lender, and/or any Person owning, beneficially or of record, directly or indirectly, a majority of the shares of such Lender.

"***Pari Passu* Intercreditor Agreement**" shall mean an intercreditor agreement substantially in the form of Exhibit R hereto or such other form as is reasonably acceptable to Administrative Agent.

"Participant Register" has the meaning set forth in Section 13.05(a).

"**Patriot Act**" has the meaning set forth in Section 8.22(a).

"**PBGC**" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA, or any successor thereto.

"**Pension Plan**" shall mean an employee pension benefit plan (other than a Multiemployer Plan) that is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code or Section 302 of

ERISA and is or was, within the past six years, maintained or contributed to by any ERISA Entity, or with respect to which Borrower or any Restricted Subsidiary would reasonably be expected to incur liability under Title IV of ERISA.

"**Perfection Certificate**" shall mean that certain Perfection Certificate, dated as of the Closing Date (the "**Initial Perfection Certificate**"), executed and delivered by Borrower on behalf of Borrower and each of the Guarantors existing on the initial Funding Date, and each other Perfection Certificate (which shall be substantially in the form of Exhibit M or such other form as is reasonably acceptable to Administrative Agent) executed and delivered by the applicable Credit Party from time to time, in each case, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with Section 9.04(h)(ii).

"**Permits**" has the meaning set forth in Section 8.15.

"**Permitted Acquisition**" shall mean any acquisition, whether by purchase, merger, consolidation or otherwise, by Borrower or any of its Restricted Subsidiaries of all or substantially all of the business, property or assets of, or Equity Interests in, a Person or any unit, division or line of business of a Person so long as (a) immediately after a binding contract with respect thereto is entered into between Borrower or one of its Restricted Subsidiaries and the seller with respect thereto and after giving pro forma effect to such acquisition and related transactions, no Event of Default has occurred and is continuing or would result therefrom and immediately after giving effect thereto Borrower shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenant as of the most recent Calculation Date (whether or not then in effect), (b) immediately after giving effect thereto, Borrower shall be in compliance with Section 10.11, and (c) with respect to a Permitted Acquisition in excess of $100.0 million, Borrower has delivered to Administrative Agent an Officer's Certificate to the effect set forth in clauses (a) and (b) above, together with all relevant financial information for the Person or assets to be acquired.

"**Permitted Business**" shall mean any business of the type in which Borrower and its Restricted Subsidiaries are engaged or proposed to be engaged on the date of this Agreement, including any business, the primary focus of which, is in the hospitality, gaming, leisure or consumer industries, or any business reasonably related, incidental or ancillary thereto (including assets or businesses complementary thereto).

"**Permitted Business Assets**" shall mean (a) one or more Permitted Businesses, (b) a controlling equity interest in any Person whose assets consist primarily of one or more Permitted Businesses, (c) assets that are used or useful in a Permitted Business or (d) any combination of the preceding clauses (a), (b) and (c), in each case, as determined by Borrower's Board of Directors or a Responsible Officer or other management of Borrower or the Restricted Subsidiary acquiring such assets, in each case, in its good faith judgment.

"**Permitted First Priority Refinancing Debt**" shall mean any secured Indebtedness incurred by any Credit Party (and Contingent Obligations of any other Credit Party in respect thereof) in the form of one or more series of senior secured notes or loans; *provided* that (a) such Indebtedness is secured by the Collateral on a *pari passu* basis (but without regard to the control of remedies) with the Obligations and is not secured by any property or assets of Borrower or any Restricted Subsidiary other than the Collateral, (b) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness, (c) such Indebtedness is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors, and (d) the holders of such Indebtedness (or their representative) and Administrative Agent shall be party to the *Pari Passu* Intercreditor Agreement.

"**Permitted Junior Debt Conditions**" shall mean that such applicable debt (i) does not have a scheduled maturity date prior to the date that is 91 days after the Final Maturity Date then in effect at the time of issuance (excluding bridge facilities providing for extensions on customary terms to at least 91 days after such Final Maturity Date), (ii) does not have a Weighted Average Life to Maturity (excluding the effects of any prepayments of Term Loans reducing amortization) that is shorter than that of any outstanding Term Loans (excluding bridge facilities providing for extensions on customary terms to at least ninety-one (91) days after the Final Maturity Date), (iii) shall not have any scheduled principal payments or be subject to any mandatory redemption, prepayment, or sinking fund (except for customary change of control (and, in the case of convertible or exchangeable debt instruments, delisting) provisions and, in the case of bridge facilities, customary mandatory redemptions or prepayments with proceeds of Permitted Refinancings thereof (which Permitted Refinancings would satisfy the Permitted Junior Debt Conditions) or Equity Issuances, and

customary asset sale and excess cash flow provisions that permit application of the applicable proceeds to the payment of the Obligations prior to application to such Junior Financing) due prior to the date that is ninety-one (91) days after the Final Maturity Date then in effect at the time of issuance (excluding bridge facilities providing for extensions on customary terms to at least ninety-one (91) days after such Final Maturity Date) and (iv) is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors.

"**Permitted Liens**" has the meaning set forth in Section 10.02.

"**Permitted Refinancing**" shall mean, with respect to any Indebtedness, any refinancing thereof; *provided* that: (a) no Default or Event of Default shall have occurred and be continuing or would arise therefrom; (b) any such refinancing Indebtedness shall (i) not have a stated maturity or, other than in the case of a revolving credit facility, a Weighted Average Life to Maturity (without giving effect to any prepayments that reduce scheduled amortization) that is shorter than that of the Indebtedness being refinanced (*provided* that (A) this clause (a) shall not apply to unsecured bridge facilities allowing extensions on customary terms to a date that is no earlier than the applicable maturity date, (B) the stated maturity may be earlier if the stated maturity is not earlier than the earlier of (1) the stated maturity of such Indebtedness in effect prior to such refinancing or (2) 91 days after the Final Maturity Date in effect at the time of issuance, and (C) the Weighted Average Life to Maturity may be shorter if the Weighted Average Life to Maturity is not shorter than the Weighted Average Life to Maturity of such Indebtedness that would result if all payments of principal on such Indebtedness that were due on or after the date that is 91 days after the Final Maturity Date in effect at the time of issuance were instead due on the date that is 91 days after the Final Maturity Date in effect at the time of issuance), (ii) if the Indebtedness being refinanced is subordinated to the Obligations by its terms or by the terms of any agreement or instrument relating to such Indebtedness, be at least as subordinate to the Obligations as the Indebtedness being refinanced (and unsecured if the refinanced Indebtedness is unsecured), and (iii) be in a principal amount that does not exceed the principal amount so refinanced, *plus*, accrued interest, *plus*, any premium or other payment required to be paid in connection with such refinancing, *plus*, the amount of fees and expenses of Borrower or any of its Restricted Subsidiaries incurred in connection with such refinancing, *plus*, any unutilized commitments thereunder; and (c) the obligors on such refinancing Indebtedness shall be the obligors on such Indebtedness being refinanced (other than in the case of a refinancing of the Wynn Las Vegas Notes, in which case the obligors may be Borrower, any of the Guarantors, or any obligors with respect to Indebtedness incurred under Section 10.01(v)); *provided*, *however*, that any Credit Party shall be permitted to guarantee any such refinancing Indebtedness of any other Credit Party.

"**Permitted Second Priority Refinancing Debt**" shall mean secured Indebtedness incurred by any Credit Party (and Contingent Obligations of any other Credit Parties in respect thereof) in the form of one or more series of second lien (or other junior lien) secured notes or second lien (or other junior lien) secured loans; *provided* that (a) such Indebtedness is secured by the Collateral on a second priority (or other junior priority) basis to the liens securing the Obligations and the obligations in respect of any Permitted First Priority Refinancing Debt and is not secured by any property or assets of Borrower or any Restricted Subsidiary other than the Collateral, (b) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness (*provided*, that such Indebtedness may be secured by a Lien on the Collateral that is junior to the Liens securing the Obligations and the obligations in respect of any Permitted First Priority Refinancing Debt, notwithstanding any provision to the contrary contained in the definition of "Credit Agreement Refinancing Indebtedness"), (c) the holders of such Indebtedness (or their representative) shall be party to the Second Lien Intercreditor Agreement (as "Second Priority Debt Parties") with Administrative Agent, and (d) such Indebtedness meets the Permitted Junior Debt Conditions.

"**Permitted Unsecured Refinancing Debt**" shall mean unsecured Indebtedness incurred by Borrower or its Restricted Subsidiaries in the form of one or more series of senior unsecured notes or loans; *provided* that (a) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness and (b) meets the Permitted Junior Debt Conditions.

"**Person**" shall mean any individual, corporation, company, association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Authority or any other entity.

"**Pledged Collateral**" has the meaning set forth in the Security Agreement.

"**Post-Increase Revolving Lenders**" has the meaning set forth in Section 2.12(d).

"**Pre-Increase Revolving Lenders**" has the meaning set forth in Section 2.12(d).

"**Pre-Opening Expenses**" shall mean, with respect to any fiscal period, the amount of expenses (including Consolidated Interest Expense) incurred with respect to capital projects which are appropriately classified as "pre-opening expenses" on the applicable financial statements of Borrower and its Restricted Subsidiaries for such period.

"**Principal Asset**" shall mean each of the Wynn Massachusetts Resort and the Wynn Las Vegas Resort and the Encore at Wynn Las Vegas.

"**Principal Office**" shall mean the principal office of Administrative Agent, located on the Closing Date at 60 Wall Street, New York, NY 10005, or such other office as may be designated in writing by Administrative Agent.

"**Prior Mortgage Liens**" shall mean, with respect to each Mortgaged Real Property, the Liens identified in Schedule B annexed to the applicable Mortgage as such Schedule B may be amended from time to time to the reasonable satisfaction of Administrative Agent.

"**Pro Forma Basis**" shall mean, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.06.

"**Proceeding**" shall mean any claim, counterclaim, action, judgment, suit, hearing, governmental investigation, arbitration or proceeding, including by or before any Governmental Authority and whether judicial or administrative.

"**Property**" shall mean any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including all contract rights, income or revenue rights, real property interests, trademarks, trade names, equipment and proceeds of the foregoing and, with respect to any Person, Equity Interests or other ownership interests of any other Person.

"**Prime Rate**" shall mean the rate of interest per annum publicly announced from time to time by DB as its prime rate in effect at its Principal Office; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective. The parties hereto acknowledge that the rate announced publicly by Administrative Agent as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

"**PTE**" shall mean a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"**Public Lender**" has the meaning set forth in Section 9.04.

"**Purchase Money Obligation**" shall mean, for any Person, the obligations of such Person in respect of Indebtedness incurred for the purpose of financing all or any part of the purchase price of any Property (including Equity Interests of any Person) or the cost of installation, construction or improvement of any property or assets and any refinancing thereof; *provided*, *however*, that such Indebtedness is incurred (except in the case of a refinancing) within 270 days after such acquisition of such Property or the incurrence of such costs by such Person.

"**QFC**" shall have the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"**QFC Credit Support**" shall have the meaning assigned thereto in Section 13.22.

"**Qualified Capital Stock**" shall mean, with respect to any Person, any Equity Interests of such Person which is not Disqualified Capital Stock.

"**Qualified Contingent Obligation**" shall mean Contingent Obligations permitted by Section 10.04 in respect of (a) Indebtedness of any Joint Venture in which Borrower or any of its Restricted Subsidiaries owns (directly or indirectly) at least 25% of the Equity Interest of such Joint Venture or (b) Indebtedness of casinos, "racinos", full-service casino resorts, non-gaming resorts, distributed gaming applications or taverns or other Facilities (and properties ancillary or related thereto (or owners of casinos, "racinos", full-service casino resorts, non-gaming resorts, distributed gaming applications or taverns or other Facilities) with respect to which Borrower or any of its Restricted Subsidiaries has (directly or indirectly through Subsidiaries) entered into a management, development, or similar contract and such contract remains in full force and effect at the time such Contingent Obligations are incurred.

"**Qualified ECP Guarantor**" shall mean, in respect of any Swap Obligations, each Credit Party that has total assets exceeding $10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"**Qualifying Act of Terrorism**" shall mean (a) any Act of Terrorism which occurs on any property of Borrower or its Affiliates or in which Borrower or any of its Affiliates, or any property of any of them, is the target or (b) any Act of Terrorism which occurs at any gaming facility or material hospitality or entertainment establishment in any market in which Borrower or any of its Affiliates operates a Facility.

"**Qualifying Project**" shall mean the Facilities of Wynn Resorts and its Subsidiaries which are operating or for which the financing for the development, construction and opening thereof has been obtained. For purposes of this definition, each of the Wynn Las Vegas Resort, Encore at Wynn Las Vegas, the Macau Resort and the Wynn Massachusetts Resort shall count as separate projects.

"**Quarter**" shall mean each three month period ending on March 31, June 30, September 30, and December 31.

"**Quarterly Dates**" shall mean the last Business Day of each Quarter in each year, commencing with the last Business Day of the first full Quarter after the Closing Date.

"**R/C Maturity Date**" shall mean, (a) with respect to the Closing Date Revolving Commitments and any Incremental Existing Tranche Revolving Commitments of the same Tranche and any Revolving Loans thereunder, the date that is the fifth anniversary of the Closing Date and (b) with respect to any other Tranche of Revolving Commitments and Revolving Loans, the maturity date set forth therefor in the applicable Extension Amendment, Refinancing Amendment, or Incremental Joinder Agreement.

"**R/C Percentage**" of any Revolving Lender at any time shall mean a fraction (expressed as a percentage) the numerator of which is the Revolving Commitment of such Revolving Lender at such time and the denominator of which is the Total Revolving Commitments at such time; *provided*, *however*, that if the R/C Percentage of any Revolving Lender is to be determined after the Total Revolving Commitments have been terminated, then the R/C Percentage of such Revolving Lender shall be determined immediately prior (and without giving effect) to such termination but after giving effect to any assignments after termination of the Revolving Commitments.

"**Ratio Debt**" has the meaning set forth in Section 10.01(t).

"**Ratio Debt Amount**" shall mean, as of any date of determination:

(a) the Shared Fixed Incremental Amount; *plus*

(b) (x) in the case of an Incremental Commitment or any Ratio Debt that serves to effectively extend the maturity of the Term Loans, the Revolving Commitments, Permitted First Priority Refinancing Debt, and/or any Ratio Debt that is secured on a *pari passu* basis with the Obligations, an amount equal to the reductions in the Term Loans, the Revolving Commitments, the Permitted First Priority Refinancing Debt,

and/or such *pari passu* Ratio Debt to be replaced with such Indebtedness and (y) in the case of any Incremental Commitment or Ratio Debt that effectively replaces any commitment under the Revolving Facility terminated, or any Term Loan repaid, under Section 2.11, 13.04(b), 13.04(h), or 13.05(g), an amount equal to the portion of the relevant terminated commitments under the Revolving Facility or repaid Term Loans; *plus*

(c) the aggregate amount of (i) any voluntary prepayment or repurchase of Term Loans, Permitted First Priority Refinancing Debt or Ratio Debt that is secured on a *pari passu* basis with the Obligations and (ii) any permanent reduction of Revolving Commitments, revolving commitments constituting Permitted First Priority Refinancing Debt and revolving commitments constituting Ratio Debt that are secured on a *pari passu* basis with the Obligations, in each case to the extent the relevant prepayment or reduction is not funded or effected with any long term Indebtedness (the amounts under clauses (b) and (c) together, the "**Ratio Prepayment Amount**"); *minus* the aggregate principal amount of all Incremental Commitments incurred or issued in reliance on the Incremental Prepayment Amount; *plus*

(d) an unlimited amount so long as, in the case of this clause (d), (i) if such Ratio Debt is secured by the Collateral on a *pari passu* basis with the Senior Facilities, the Consolidated First Lien Net Leverage Ratio would not exceed 3.25:1.00, (ii) if such Indebtedness is secured by the Collateral on a junior lien basis to the Senior Facilities, the Consolidated Senior Secured Net Leverage Ratio would not exceed 3.75:1.00, and (iii) if such Indebtedness is unsecured or not secured by the Collateral, the Consolidated Fixed Charge Coverage Ratio shall not exceed 2.00:1.00, in each case, calculated on a Pro Forma Basis after giving effect thereto, including the application of proceeds thereof, as of the last day of the most recently ended Test Period; *provided* that, for such purpose, (1) in the case of any revolving Indebtedness incurred in reliance on this clause (d), such calculation shall be made assuming a full drawing of such revolving Indebtedness and (2) such calculation shall be made without netting the cash proceeds of any such Indebtedness (this clause (d), the "**Ratio Incurrence-Based Amount**").

It is understood and agreed that (I) Borrower may elect to use the Ratio Incurrence-Based Amount prior to the Shared Fixed Incremental Amount or the Ratio Prepayment Amount and regardless of whether there is capacity under the Shared Fixed Incremental Amount or the Ratio Prepayment Amount, and if the Shared Fixed Incremental Amount, the Ratio Prepayment Amount and the Ratio Incurrence-Based Amount are each available and Borrower does not make an election, Borrower will be deemed to have elected to use the Ratio Incurrence-Based Amount, and (II) any portion of any Indebtedness incurred in reliance on the Shared Fixed Incremental Amount or the Ratio Prepayment Amount shall be reclassified as incurred under the Ratio Incurrence-Based Amount as Borrower may elect from time to time if Borrower meets the applicable Consolidated First Lien Net Leverage Ratio, Consolidated Senior Secured Net Leverage Ratio, or Consolidated Fixed Charge Coverage Ratio, as applicable, under the Ratio Incurrence-Based Amount at such time on a pro forma basis.

"**Ratio Incurrence-Based Amount**" has the meaning set forth in the definition of "Ratio Debt Amount".

"**Ratio Prepayment Amount**" has the meaning set forth in the definition of "Ratio Debt Amount".

"**Real Property**" shall mean, as to any Person, all the right, title and interest of such Person in and to land, improvements and appurtenant fixtures, including leaseholds.

"**Recurring Dividend Amount**" shall mean, the amount of dividends paid to (or, at Borrower's option, declared to be paid to) Wynn Group Asia by its direct and indirect Subsidiaries during the applicable Test Period in the amounts set forth below:

Test Period Ending	Recurring Dividend Amount (millions)
September 30, 2019	$432.0
September 30, 2020	$475.0
September 30, 2021	$532.0
September 30, 2022	$575.0
September 30, 2023	$632.0
September 30, 2024 and thereafter	$695.0

"**redeem**" shall mean redeem, repurchase, repay, defease (covenant or legal), Discharge or otherwise acquire or retire for value; and "**redemption**" and "**redeemed**" have correlative meanings.

"**Redesignation**" has the meaning set forth in Section 9.13(a).

"**refinance**" shall mean refinance, renew, extend, exchange, replace, defease (covenant or legal) (with proceeds of Indebtedness), Discharge (with proceeds of Indebtedness) or refund (with proceeds of Indebtedness), in whole or in part, including successively; and "**refinancing**" and "**refinanced**" have correlative meanings.

"**Refinancing Amendment**" shall mean an amendment to this Agreement in form and substance reasonably satisfactory to Administrative Agent and Borrower executed by each of (a) Borrower and (b) each additional Lender and each existing Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto, and delivered to Administrative Agent in accordance with Section 2.15.

"**Register**" has the meaning set forth in Section 2.08(c).

"**Regulated Bank**" means an Approved Commercial Bank that is (i) a U.S. depository institution the deposits of which are insured by the Federal Deposit Insurance Corporation; (ii) a corporation organized under section 25A of the U.S. Federal Reserve Act of 1913; (iii) a branch, agency or commercial lending company of a foreign bank operating pursuant to approval by and under the supervision of the Board of Governors of the Federal Reserve System of the United States under 12 CFR part 211; (iv) a non-U.S. branch of a foreign bank managed and controlled by a U.S. branch referred to in clause (iii); or (v) any other U.S. or non-U.S. depository institution or any branch, agency or similar office thereof supervised by a bank regulatory authority in any jurisdiction.

"**Regulation D**" shall mean Regulation D (12 C.F.R. Part 204) of the Board of Governors of the Federal Reserve System of the United States (or any successor), as the same may be amended, modified or supplemented and in effect from time to time and all official rulings and interpretations thereunder or thereof.

"**Regulation T**" shall mean Regulation T (12 C.F.R. Part 220) of the Board of Governors of the Federal Reserve System of the United States (or any successor), as the same may be amended, modified or supplemented and in effect from time to time and all official rulings and interpretations thereunder or thereof.

"**Regulation U**" shall mean Regulation U (12 C.F.R. Part 221) of the Board of Governors of the Federal Reserve System of the United States (or any successor), as the same may be amended, modified or supplemented and in effect from time to time and all official rulings and interpretations thereunder or thereof.

"**Regulation X**" shall mean Regulation X (12 C.F.R. Part 224) of the Board of Governors of the Federal Reserve System of the United States (or any successor), as the same may be amended, modified or supplemented and in effect from time to time and all official rulings and interpretations thereunder or thereof.

"**Reimbursement Obligations**" shall mean the obligations of Borrower to reimburse L/C Disbursements in respect of any Letter of Credit.

"**Related Indemnified Person**" has the meaning set forth in Section 13.03(b).

"**Related Parties**" shall mean, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"**Release**" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating of any Hazardous Material in, into, onto or through the Environment.

"**Relevant Four Fiscal Quarter Period**" means, with respect to any requested Specified Equity Contribution, the four-fiscal quarter period ending on (and including) the fiscal quarter in which Consolidated EBITDA will be increased as a result of such Specified Equity Contribution.

"**Removal Effective Date**" has the meaning set forth in Section 12.06(b).

"**Replaced Lender**" has the meaning set forth in Section 2.11(a).

"**Replacement Lender**" has the meaning set forth in Section 2.11(a).

"**Required Lenders**" shall mean, as of any date of determination: (a) prior to the Closing Date, Lenders holding more than 50% of the aggregate amount of the Commitments; and (b) thereafter, Non-Defaulting Lenders the sum of whose outstanding Term Loans, unutilized Term Loan Commitments, Revolving Loans, Unutilized R/C Commitments and L/C Liabilities then outstanding represents more than 50% of the aggregate sum (without duplication) of (i) all outstanding Term Loans of all Non-Defaulting Lenders and all unutilized Term Loan Commitments of all Non-Defaulting Lenders, (ii) all outstanding Revolving Loans of all Non-Defaulting Lenders, (iii) the aggregate Unutilized R/C Commitments of all Non-Defaulting Lenders and (iv) the L/C Liabilities of all Non-Defaulting Lenders.

"**Required Revolving Lenders**" shall mean, as of any date of determination: (a) at any time prior to the Closing Date, Lenders holding more than 50% of the aggregate amount of the Revolving Commitments and (b) thereafter, Non-Defaulting Lenders holding more than 50% of the aggregate sum of (without duplication) (i) the aggregate principal amount of outstanding Revolving Loans of all Non-Defaulting Lenders, (ii) the aggregate Unutilized R/C Commitments of all Non-Defaulting Lenders and (iii) the L/C Liabilities of all Non-Defaulting Lenders.

"**Required Tranche Lenders**" shall mean: (a) with respect to Revolving Commitments or Revolving Loans of any particular Tranche, Non-Defaulting Lenders having more than 50% of the aggregate sum of the Unutilized R/C Commitments, Revolving Loans and L/C Liabilities of all Non-Defaulting Lenders, in each case, in respect of such Tranche and then outstanding; (b) with respect to Term A Facility Loans, Non-Defaulting Lenders having more than 50% of the aggregate sum of the Term A Facility Loans and unutilized Term A Facility Commitments of all Non-Defaulting Lenders then outstanding; (c) for each Extension Tranche, if applicable, with respect to Lenders having Extended Revolving Loans or Extended Revolving Commitments or Extended Term Loans or commitments in respect of Extended Term Loans, in each case, in respect of such Extension Tranche, Non-Defaulting Lenders having more than 50% of the aggregate sum of such Extended Revolving Loans and Extended Revolving Commitments or Extended Term Loans and commitments of all Non-Defaulting Lenders in respect thereof, as applicable, then outstanding; (d) for each Tranche of Other Term Loans, Non-Defaulting Lenders having more than 50% of the aggregate sum of such Other Term Loans and unutilized Other Term Loan Commitments of all Non-Defaulting Lenders then outstanding; and (e) for each Tranche of New Term Loans, Non-Defaulting Lenders having more than 50% of the aggregate sum of such New Term Loans and unutilized New Term Loan Commitments of all Non-Defaulting Lenders then outstanding.

"**Requirement of Law**" shall mean, as to any Person, any Law or determination of an arbitrator or any Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"**Resignation Effective Date**" has the meaning set forth in Section 12.06(a).

"**Responsible Officer**" shall mean, including when used with respect to any Person (whether Borrower or otherwise), the chief executive officer of Borrower, the president of Borrower (if not the chief executive officer), any senior or executive vice president of Borrower, the chief financial officer, the chief accounting officer or treasurer of Borrower or, with respect to financial matters, the chief financial officer, chief accounting officer, senior financial officer or treasurer of Borrower or the chief executive officer of Wynn Resorts, the president of Wynn Resorts (if not the chief executive officer), any senior or executive vice president of Wynn Resorts, the chief financial officer, the chief accounting officer or treasurer of Wynn Resorts or, with respect to financial matters, the chief financial officer, chief accounting officer, senior financial officer or treasurer of Wynn Resorts.

"**Restricted Amount**" has the meaning set forth in Section 2.10(a).

"**Restricted Payment**" shall mean dividends (in cash, Property or obligations) on, or other payments or distributions (including return of capital) on account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement, defeasance, termination, repurchase or other acquisition of, any Equity Interests or Equity Rights (other than any payment made relating to any Transfer Agreement) in Borrower or any of its Restricted Subsidiaries, but excluding dividends, payments or distributions paid through the issuance of additional shares of Qualified Capital Stock and any redemption, retirement or exchange of any Qualified Capital Stock in Borrower or such Restricted Subsidiary through, or with the proceeds of, the issuance of Qualified Capital Stock in Borrower or any of its Restricted Subsidiaries.

"**Restricted Subsidiaries**" shall mean all existing and future Subsidiaries of Borrower other than the Unrestricted Subsidiaries.

"**Revaluation Date**" shall mean, with respect to any Letter of Credit, each of the following: (i) each date of issuance of a Letter of Credit denominated in an Alternate Currency, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof, (iii) each date of any payment by an L/C Lender under any Letter of Credit denominated in an Alternate Currency, and (iv) such additional dates as Administrative Agent or the applicable L/C Lender shall reasonably determine or the Required Lenders shall require.

"**Reverse Trigger Event**" shall mean the transfer of Equity Interests of any Restricted Subsidiary or any Gaming Facility from trust or other similar arrangement to Borrower or any of its Restricted Subsidiaries from time to time.

"**Revocation**" has the meaning set forth in Section 9.12(b).

"**Revolving Availability Period**" shall mean, (i) with respect to the Revolving Commitments under the Closing Date Revolving Facility, the period from and including the Closing Date to but excluding the earlier of the applicable R/C Maturity Date and the date of termination of such Revolving Commitments, and (ii) with respect to any other Tranche of Revolving Commitments, the period from and including the date such Tranche of Revolving Commitments is established to but excluding the earlier of the applicable R/C Maturity Date and the date of termination of such Tranche of Revolving Commitments. Unless the context otherwise requires, references in this Agreement to the Revolving Availability Period shall mean with respect to each Tranche of Revolving Commitments, the Revolving Availability Period applicable to such Tranche.

"**Revolving Commitment**" shall mean, for each Revolving Lender, the obligation of such Lender to make Revolving Loans in an aggregate principal amount at any one time outstanding up to but not exceeding the amount set forth opposite the name of such Lender on Annex A-1 under the caption "Revolving Commitment," or in the Assignment Agreement pursuant to which such Lender assumed its Revolving Commitment or in any Refinancing Amendment or

Incremental Joinder Agreement, as applicable, as the same may be (a) changed pursuant to Section 13.05(b), (b) reduced or terminated from time to time pursuant to Sections 2.04 and/or 11.01, as applicable, or (c) increased or otherwise adjusted from time to time in accordance with this Agreement, including pursuant to Sections 2.12 and 2.15; it being understood that a Revolving Lender's Revolving Commitment shall include any Extended Revolving Commitments, Incremental Revolving Commitments, and Other Revolving Commitments of such Revolving Lender.

"**Revolving Exposure**" shall mean, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Revolving Loans of such Lender, *plus* the aggregate amount at such time of such Lender's L/C Liability.

"**Revolving Extension Request**" shall have the meaning provided in Section 2.13(b).

"**Revolving Facility**" shall mean each credit facility comprising Revolving Commitments of a particular Tranche.

"**Revolving Lenders**" shall mean (a) on the Closing Date, the Lenders having a Revolving Commitment on Annex A-1 hereof and (b) thereafter, the Lenders from time to time holding Revolving Loans and/or a Revolving Commitment as in effect from time to time.

"**Revolving Loans**" has the meaning set forth in Section 2.01(a).

"**Revolving Notes**" shall mean the promissory notes substantially in the form of Exhibit A-1.

"**Revolving Tranche Exposure**" shall mean with respect to any Lender and Tranche of Revolving Commitments at any time, the aggregate principal amount at such time of all outstanding Revolving Loans of such Tranche of such Lender, *plus* the aggregate amount at such time of such Lender's L/C Liability under its Revolving Commitment of such Tranche.

"**S&P**" shall mean Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, or any successor thereto.

"**Sanction(s)**" shall mean any economic or trade or financial sanction or restrictive measures or trade embargo enacted, administered, imposed or enforced by the United States Government (including, without limitation, OFAC and the U.S. Department of State), the United Nations Security Council, the European Union or any member state thereof, Her Majesty's Treasury or other relevant sanctions authority.

"**SEC**" shall mean the Securities and Exchange Commission of the United States or any successor thereto.

"**Second Lien Intercreditor Agreement**" shall mean an intercreditor agreement substantially in the form of Exhibit S hereto or such other form as is reasonably acceptable to Administrative Agent.

"**Section 9.04 Financials**" shall mean the financial statements delivered, or required to be delivered, pursuant to Section 9.04(a) or (b), together with the accompanying certificate of a Responsible Officer of Borrower delivered, or required to be delivered, pursuant to Section 9.04(c).

"**Secured Cash Management Agreement**" shall mean any Cash Management Agreement that is entered into by and between Borrower and/or any or all of its Restricted Subsidiaries and any Cash Management Bank.

"**Secured Parties**" shall mean the Agents, the Lenders, any Swap Provider that is party to a Credit Swap Contract and any Cash Management Bank that is a party to a Secured Cash Management Agreement.

"**Securities Act**" shall mean the Securities Act of 1933, as amended, and all rules and regulations of the SEC promulgated thereunder.

"**Security Agreement**" shall mean a security agreement substantially in the form of Exhibit H among the Credit Parties and Collateral Agent, as the same may be amended in accordance with the terms thereof and hereof.

"**Security Documents**" shall mean the Security Agreement, the Mortgages, the Collateral Agency Agreement (from and after such time as Collateral Agent becomes a funding agent thereunder), the Collateral Agency Intercreditor Agreement (from and after such time as Collateral Agent becomes a party thereto), and each other security document or pledge agreement, instrument or other document required by applicable local law or otherwise executed and delivered by a Credit Party to grant or perfect a security interest in any Property acquired or developed that is of the kind and nature that would constitute Collateral on the Closing Date, and any other document, agreement or instrument utilized to pledge or grant as collateral for the Obligations any Property of whatever kind or nature.

"**Senior Facilities**" shall mean the Closing Date Revolving Facility and the Term A Facility.

"**Shared Fixed Incremental Amount**" shall mean, as of any date of determination, (a) the greater of (i) $500.0 million and (ii) 50% of Consolidated EBITDA calculated on a Pro Forma Basis as of the most recently ended Test Period *minus* (b)(i) the aggregate outstanding principal amount of all Incremental Commitments incurred or issued in reliance on the Shared Fixed Incremental Amount and (ii) the aggregate outstanding principal amount of all Indebtedness incurred or issued in reliance on Section 10.01(t) in reliance on the Shared Fixed Incremental Amount.

"**Solvent**" and "**Solvency**" shall mean, for any Person on a particular date, that on such date (a) the fair value of the Property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts and liabilities beyond such Person's ability to pay as such debts and liabilities mature, (d) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person's Property would constitute an unreasonably small capital and (e) such Person is able to pay its debts as they become due and payable. For purposes of this definition, the amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability, without duplication.

"**Specified 10.04(s) Investment Returns**" shall mean the amounts received by Borrower and its Restricted Subsidiaries with respect to Investments made pursuant to Section 10.04(s) (including with respect to contracts related to such Investments and including principal, dividends, interest, distributions, sale proceeds, payments under contracts relating to such Investments, repayments or other amounts) that are designated by Borrower as Specified 10.04(s) Investment Returns in the compliance certificate delivered to Administrative Agent in respect of the fiscal quarter (or fiscal year) in which such amounts were received.

"**Specified Equity Contribution**" has the meaning specified in Section 11.03.

"**Specified Representations**" mean the representations and warranties of the Credit Parties set forth in Sections 8.01(a)(i) (but only with respect to Credit Parties), 8.01(a)(ii) (but only with respect to Credit Parties), 8.04(a)(i)(x), 8.04(a)(ii) (solely with respect to the Wynn Las Vegas Notes and the Wynn Resorts Finance Notes), 8.05 (but only as it relates to the Credit Documents), 8.09, 8.11(b), 8.14 (but only as it relates to security interests that may be perfected through the filing of UCC financing statements, filing of intellectual property security agreements with the United States Patent and Trademark Office or United States Copyright Office or delivery of stock or equivalent certificates representing Equity Interests in material Subsidiaries that are not Foreign Subsidiaries (other than Equity Interests in any such Subsidiaries for which prior approval of Liens is required under applicable Gaming Laws but has not been obtained)), 8.17, 8.22 (solely as it relates to the use of proceeds of the Loans (other than with respect to the Patriot Act)), and 8.23 (as it relates to the use of proceeds of the Loans).

"**Specified Transaction**" shall mean any (a) incurrence or repayment of Indebtedness (other than for working capital purposes or under a Revolving Facility), (b) Investment that results in a Person becoming a Restricted Subsidiary or an Unrestricted Subsidiary, (c) Permitted Acquisition or other Acquisition, (d) Asset Sale or designation of a Restricted

Subsidiary that results in a Restricted Subsidiary ceasing to be a Restricted Subsidiary of Borrower or redesignation of an Unrestricted Subsidiary that results in an Unrestricted Subsidiary becoming a Restricted Subsidiary, and (e) Acquisition or Investment constituting an acquisition of assets constituting a business unit, line of business or division of another Person. For the avoidance of doubt, the Transactions shall constitute a Specified Transaction.

"**Spot Rate**" for a currency shall mean the rate determined by Administrative Agent or the applicable L/C Lender, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; *provided* that Administrative Agent or such L/C Lender may obtain such spot rate from another financial institution designated by Administrative Agent or such L/C Lender if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and *provided further* that such L/C Lender may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternate Currency.

"**Stated Amount**" of each Letter of Credit shall mean, at any time, the maximum amount available to be drawn thereunder (in each case determined without regard to whether any conditions to drawing could then be met).

"**Statutory Reserve Rate**" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board of Governors of the Federal Reserve System of the United States (or any successor) to which Administrative Agent is subject with respect to the LIBO Base Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D). Such reserve percentage shall include those imposed pursuant to such Regulation D. LIBOR Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"**Subordination Agreement**" shall mean each Subordination Agreement, substantially in the form of Exhibit F, among Administrative Agent, the applicable Credit Parties and the providers of any Intercompany Contribution Indebtedness.

"**Subsidiary**" shall mean, as to any Person, (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more Subsidiaries of such Person and (ii) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a 50% equity interest at the time. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of Borrower.

"**Substituted Consolidated EBITDA**" shall mean with respect to any fiscal quarter, the greater of Consolidated EBITDA for the fiscal quarter (a) during the immediately preceding fiscal year corresponding to such fiscal quarter and (b) immediately preceding the fiscal quarter in which the applicable Qualifying Act of Terrorism shall have occurred, in each case subject to customary seasonal adjustments (as determined in good faith by Borrower).

"**Supported QFC**" shall have the meaning assigned thereto in Section 13.22.

"**Swap Contract**" shall mean any agreement entered into in the ordinary course of business (as a bona fide hedge and not for speculative purposes) (including any master agreement and any schedule or agreement, whether or not in writing, relating to any single transaction) that is an interest rate swap agreement, basis swap, forward rate agreement, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, foreign exchange agreement, rate cap, collar or floor agreement, currency swap agreement, cross-currency rate

swap agreement, swap option, currency option or any other similar agreement (including any option to enter into any of the foregoing) and is designed to protect any Company against fluctuations in interest rates, currency exchange rates, commodity prices, or similar risks (including any Interest Rate Protection Agreement). For the avoidance of doubt, the term "Swap Contract" includes, without limitation, any call options, warrants and capped calls entered into as part of, or in connection with, an issuance of convertible or exchangeable debt by Borrower or its Restricted Subsidiaries.

"**Swap Obligation**" shall mean, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"**Swap Provider**" shall mean any Person that is a party to a Swap Contract with Borrower and/or any of its Restricted Subsidiaries if such Person was, at the date of entering into such Swap Contract, a Lender or Agent or Affiliate of a Lender or Agent, and such Person executes and delivers to Administrative Agent a letter agreement in form and substance reasonably acceptable to Administrative Agent pursuant to which such Person (a) appoints Collateral Agent as its agent under the applicable Credit Documents and (b) agrees to be bound by the provisions of Section 12.03.

"**Taking**" shall mean a taking or voluntary conveyance during the term of this Agreement of all or part of any Mortgaged Real Property, or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any condemnation or other eminent domain proceeding by any Governmental Authority affecting any Mortgaged Real Property or any portion thereof, whether or not the same shall have actually been commenced.

"**Tax Payments**" shall mean, with respect to any taxable period (i) for which Borrower and/or any of its Subsidiaries are members of a consolidated, combined or similar income tax group for applicable federal, state and/or local income tax purposes of which a direct or indirect parent of Borrower is the common parent (a "**Tax Group**") or (ii) for which Borrower is a disregarded entity or a partnership with a direct or indirect corporate parent (a "**Corporate Parent**"), (a) payments equal to the portion of any consolidated, combined or similar federal, state and/or local income taxes (as applicable) of such Tax Group, or the portion of the federal, state and/or local income taxes of such Corporate Parent (or, where such Corporate Parent owns some of its equity interest in Borrower indirectly through one or more corporate subsidiaries, such corporate subsidiaries (the "**Corporate Parent Subsidiaries**"), for such taxable period, that, in each case, is attributable to the income of Borrower, the applicable Restricted Subsidiaries or, to the extent of the amount actually received from its applicable Unrestricted Subsidiaries, such Unrestricted Subsidiaries, *provided* that in each case the amount of such payments with respect to any taxable period does not exceed the amount that Borrower, the applicable Restricted Subsidiaries and (to the extent described above) the applicable Unrestricted Subsidiaries would have been required to pay in respect of such federal, state and local income taxes for such taxable period had Borrower, the applicable Restricted Subsidiaries and (to the extent described above) the applicable Unrestricted Subsidiaries been a stand-alone corporate taxpayer or stand-alone corporate tax group for all taxable periods ending after the Closing Date and (b) for any such taxable period with respect to which the portion of the actual Massachusetts income tax liability of the Tax Group or Corporate Parent (or any applicable Corporate Parent Subsidiaries) that is attributable to Borrower or its applicable Restricted Subsidiaries (or, to the extent of the amount actually received from any applicable Unrestricted Subsidiaries in respect thereof, such Unrestricted Subsidiaries) exceeds the maximum payment permitted under clause (a) for such taxable period in respect of Massachusetts income tax, a payment equal to the amount of such excess (reduced, to the extent such excess is not deducted under clause (a) in computing the permitted distribution under clause (a) for federal income taxes for such period, by any actual federal income tax benefit derived by the Tax Group or Corporate Parent (or any applicable Corporate Parent Subsidiaries) in respect of the deduction of such excess).

"**Taxes**" shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Term A Facility**" shall mean the credit facility comprising the Term A Facility Commitments, any Incremental Term A Loan Commitments, and the Term A Facility Loans.

"**Term A Facility Commitment**" shall mean, for each Term A Facility Lender, the obligation of such Lender, if any, to make a Term A Facility Loan to Borrower on the Closing Date, in a principal amount not to exceed the amount set forth opposite such Lender's name under the heading "Term A Facility Commitment" on Annex A-2, or in the Assignment Agreement pursuant to which such Lender assumed its Term A Facility Commitment, as applicable, as the same may be (i) changed pursuant to Section 13.05(b) or (ii) reduced or terminated from time to time pursuant to Section 2.04 or 11.01. The aggregate principal amount of the Term A Facility Commitments of all Term A Facility Lenders on the Closing Date is $1,000.0 million.

"**Term A Facility Lender**" shall mean (a) on the Closing Date, the Lenders having Term A Facility Commitments on Annex A-2 hereof and (b) thereafter, the Lenders from time to time holding any Incremental Term A Loan Commitments and/or Term A Facility Loans, as the case may be, after giving effect to any assignments thereof permitted by Section 13.05(b).

"**Term A Facility Loans**" shall mean (a) the term loans made pursuant to Section 2.01(b) and (b) term loans made pursuant to any Incremental Term A Loan Commitments.

"**Term A Facility Maturity Date**" shall mean the date that is the fifth anniversary of the Closing Date.

"**Term A Facility Notes**" shall mean the promissory notes substantially in the form of Exhibit A-2.

"**Term Loan Commitments**" shall mean, collectively, (a) the Term A Facility Commitments, (b) any Incremental Term Loan Commitments, and (c) any Other Term Loan Commitments.

"**Term Loan Extension Request**" shall have the meaning provided in Section 2.13(a).

"**Term Loan Notes**" shall mean, collectively, the Term A Facility Notes, any New Term Loan Notes, and any promissory notes evidencing Extended Term Loans or Other Term Loans.

"**Term Loans**" shall mean, collectively, the Term A Facility Loans, any Extended Term Loans, any Other Term Loans, and any New Term Loans.

"**Test Period**" shall mean, for any date of determination, the period of the four most recently ended consecutive fiscal quarters of Borrower and its Restricted Subsidiaries for which quarterly or annual financial statements have been delivered or are required to have been delivered to Administrative Agent or have been filed with the SEC; *provided* that, solely for purposes of determining (x) adjustments to Consolidated EBITDA for purposes of clause (F) of the definition thereof, (y) Consolidated Net Income related to dividends and distributions paid or declared to Wynn Group Asia by its direct or indirect Subsidiaries for purposes of clause (c) of the definition thereof, and (z) the Recurring Dividend Amount, "Test Period" shall be deemed the period of the four most recently ended consecutive fiscal quarters of Borrower and its Restricted Subsidiaries ending September 30 for which quarterly or annual financial statements have been delivered or are required to have been delivered to Administrative Agent or have been filed with the SEC.

"**Title Insurance Threshold Amount**" shall mean Real Property (or, in the case of a leasehold, such leasehold interest or estate) other than the Wynn Las Vegas Convention Center in the event of the occurrence of the Wynn Las Vegas Convention Center Acquisition that (a) has a fair market value in excess of $300.0 million or (b) upon which a Credit Party develops a Facility with a fair market value in excess of $300.0 million; *provided* that in all cases each of the Closing Date Mortgaged Real Properties shall be deemed to exceed the Title Insurance Threshold Amount.

"**Total Revolving Commitments**" shall mean, at any time, the Revolving Commitments of all the Revolving Lenders at such time. The Total Revolving Commitments on the Closing Date are $850.0 million.

"**Tranche**" shall mean (i) when used with respect to the Lenders, each of the following classes of Lenders: (a) Lenders having Revolving Loans incurred pursuant to the Closing Date Revolving Commitment or any Incremental Existing Tranche Revolving Commitments of the same Tranche or Closing Date Revolving Commitments and any Incremental Existing Tranche Revolving Commitments of the same Tranche, (b) Lenders having such other Tranche

of Revolving Loans or Revolving Commitments created pursuant to an Extension Amendment, Incremental Joinder Agreement, or Refinancing Amendment, (c) Lenders having Term A Facility Loans or Term A Facility Commitments and Incremental Term A Loan Commitments, and (d) Lenders having such other Tranche of Term Loans or Term Loan Commitments created pursuant to an Extension Amendment, Incremental Joinder Agreement, or Refinancing Amendment, and (ii) when used with respect to Loans or Commitments, each of the following classes of Loans or Commitments: (a) Revolving Loans incurred pursuant to the Closing Date Revolving Commitment or any Incremental Existing Tranche Revolving Commitments of the same Tranche or Closing Date Revolving Commitments and any Incremental Existing Tranche Revolving Commitments of the same Tranche, (b) such other Tranche of Revolving Loans or Revolving Commitments created pursuant to an Extension Amendment, Incremental Joinder Agreement, or Refinancing Amendment, (c) Term A Facility Loans or Term A Facility Commitments and Incremental Term A Loan Commitments, and (d) such other Tranche of Term Loans or Term Loan Commitments created pursuant to an Extension Amendment, Incremental Joinder Agreement, or Refinancing Amendment.

"**Transactions**" shall mean, collectively, (a) the entering into of this Agreement and the other Credit Documents and the borrowings hereunder on the Closing Date, (b) the Closing Date Refinancing, (c) the Wynn Group Reorganization, and (d) the payment of fees and expenses in connection with the foregoing.

"**Transfer Agreement**" shall mean any trust or similar arrangement required by any Gaming Authority from time to time with respect to the Equity Interests of any Restricted Subsidiary (or any Person that was a Restricted Subsidiary) or any Gaming Facility.

"**Trigger Event**" shall mean the transfer of shares of Equity Interests of any Restricted Subsidiary or any Gaming Facility into trust or other similar arrangement required by any Gaming Authority from time to time.

"**Type**" has the meaning set forth in Section 1.03.

"**UCC**" shall mean the Uniform Commercial Code as from time to time in effect in the applicable state or other jurisdiction.

"**UCP**" shall mean, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce ("**ICC**") Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

"**Unaffiliated Joint Ventures**" shall mean any joint venture of Borrower or any of its Subsidiaries; *provided*, *however*, that (i) all Investments in, and other transactions entered into with, such joint venture by Borrower or any of its Restricted Subsidiaries were made in compliance with this Agreement and (ii) no Affiliate (other than Borrower or any Subsidiary or any other Unaffiliated Joint Venture) or officer or director of Borrower or any of its Subsidiaries owns any Equity Interest, or has any material economic interest, in such joint venture (other than through Borrower (directly or indirectly through its Subsidiaries)). No Subsidiary of Borrower shall be an Unaffiliated Joint Venture.

"**United States**" shall mean the United States of America.

"**un-reallocated portion**" has the meaning set forth in Section 2.14(a).

"**Unreimbursed Amount**" has the meaning set forth in Section 2.03(e).

"**Unrestricted Operating Cash**" shall mean, as of any date of determination, cash and Cash Equivalents of Borrower and its Restricted Subsidiaries that would not appear as "restricted" on a combined or consolidated balance sheet of the Consolidated Companies in an amount in excess of the Minimum Cage Cash Amount and excluding cash and Cash Equivalents constituting dividends paid to Wynn Group Asia by its direct and indirect Subsidiaries.

"**Unrestricted Subsidiaries**" shall mean (a) as of the Closing Date, the Subsidiaries listed on Schedule 8.12(c), (b) any Subsidiary of Borrower designated as an "Unrestricted Subsidiary" pursuant to and in compliance with

Section 9.12 and (c) any Subsidiary of an Unrestricted Subsidiary (in each case, unless such Subsidiary is no longer a Subsidiary of Borrower or is subsequently designated as a Restricted Subsidiary pursuant to this Agreement).

"**Unutilized R/C Commitment**" shall mean, for any Revolving Lender, at any time, the excess of such Revolving Lender's Revolving Commitment at such time over the sum of (i) the aggregate outstanding principal amount of all Revolving Loans made by such Revolving Lender and (ii) such Revolving Lender's L/C Liability at such time.

"**U.S. Person**" shall mean any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"**U.S. Special Resolution Regimes**" shall have the meaning assigned thereto in Section 13.22.

"**U.S. Tax Compliance Certificate**" has the meaning set forth in Section 5.06(c)(ii).

"**Venue Documents**" has the meaning set forth in Section 10.05(p).

"**Venue Easements**" has the meaning set forth in Section 10.05(p).

"**Voting Stock**" shall mean, with respect to any Person, the Equity Interests, participations, rights in, or other equivalents of, such Equity Interests, and any and all rights, warrants or options exchangeable for or convertible into such Equity Interests of such Person, in each case, that ordinarily has voting power for the election of directors (or Persons performing similar functions) of such Person, whether at all times or only as long as no senior class of Equity Interests has such voting power by reason of any contingency.

"**Weighted Average Life to Maturity**" shall mean, on any date and with respect to the aggregate amount of the Term Loans (or any applicable portion thereof), an amount equal to (a) the scheduled repayments of such Term Loans to be made after such date, multiplied by the number of days from such date to the date of such scheduled repayments divided by (b) the aggregate principal amount of such Term Loans.

"**Wholly Owned Restricted Subsidiary**" shall mean, with respect to any Person, any Wholly Owned Subsidiary of such Person that is a Restricted Subsidiary. Unless the context clearly requires otherwise, all references to any Wholly Owned Restricted Subsidiary shall mean a Wholly Owned Restricted Subsidiary of Borrower.

"**Wholly Owned Subsidiary**" shall mean, with respect to any Person, any corporation, partnership, limited liability company or other entity of which all of the Equity Interests (other than, in the case of a corporation, directors' qualifying shares or nominee shares required under applicable law) are directly or indirectly owned or controlled by such Person and/or one or more Wholly Owned Subsidiaries of such Person. Unless the context clearly requires otherwise, all references to any Wholly Owned Subsidiary shall mean a Wholly Owned Subsidiary of Borrower.

"**Withdrawal Liability**" shall mean liability by an ERISA Entity to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part 1 of Subtitle E of Title IV of ERISA.

"**WLV**" shall mean Wynn Las Vegas and any of its Restricted Subsidiaries.

"**WLV Lien Limitation**" shall mean the limitation on the pledge of Collateral granted by WLV to the Principal Property Cap (as defined in the Security Agreement) pursuant to the penultimate paragraph in Section 2.1 of the Security Agreement.

"**Working Capital**" means, for any Person at any date, the amount (which may be a negative number) of the Consolidated Current Assets of such Person minus the Consolidated Current Liabilities of such Person at such date; *provided* that, for purposes of calculating Working Capital, increases or decreases in Working Capital shall be calculated without regard to any changes in Consolidated Current Assets or Consolidated Current Liabilities as a result of (a) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent, (b) the

effects of purchase accounting, or (c) the impact of non-cash items on Consolidated Current Assets and Consolidated Current Liabilities. For purposes of calculating Working Capital (i) for any period in which a Permitted Acquisition or other Acquisition occurs (other than with respect to any Unrestricted Subsidiary) or any Unrestricted Subsidiary is revoked and converted into a Restricted Subsidiary, the "consolidated current assets" and "consolidated current liabilities" of any Person, property, business or asset so acquired or Unrestricted Subsidiary so revoked, as the case may be (determined on a basis consistent with the corresponding definitions herein, with appropriate reference changes) shall be excluded and (ii) for any period in which any Person, property, business or asset (other than an Unrestricted Subsidiary) is sold, transferred or otherwise disposed of, closed or classified as discontinued operations by Borrower or any Restricted Subsidiary or any Restricted Subsidiary is designated as an Unrestricted Subsidiary, the "consolidated current assets" and "consolidated current liabilities" of any Person, property, business or asset so sold, transferred or otherwise disposed of, closed or classified as discontinued operations or Restricted Subsidiary so designated, as the case may be (determined on a basis consistent with the corresponding definitions herein, with appropriate reference changes) shall be excluded.

"**Write-Down and Conversion Powers**" shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

"**Wynn Group Asia**" shall mean Wynn Group Asia, Inc., a Nevada corporation.

"**Wynn Group Reorganization**" shall mean a series of corporate restructurings and related transactions pursuant to which (a) Wynn Group Asia becomes a Subsidiary of Borrower and (b) each of (x) Wynn Massachusetts and its Subsidiaries and (y) Everett Property, LLC become Subsidiaries of Wynn America Group, LLC, in each case on or prior to the Closing Date.

"**Wynn Las Vegas**" shall mean Wynn Las Vegas, LLC, a Nevada limited liability company.

"**Wynn Las Vegas 2023 Notes**" shall mean the 4.250% Senior Notes of Wynn Las Vegas due 2023 in the original aggregate principal amount of $500.0 million.

"**Wynn Las Vegas 2025 Notes**" shall mean the 5.500% Senior Notes of Wynn Las Vegas due 2025 in the original aggregate principal amount of $1,800.0 million.

"**Wynn Las Vegas 2027 Notes**" shall mean the 5.250% Senior Notes of Wynn Las Vegas due 2027 in the original aggregate principal amount of $900.0 million.

"**Wynn Las Vegas Convention Center**" shall mean an approximately 400,000 square foot convention and meeting center and related amenities (including related Real Property and improvements thereon) located adjacent to the Wynn Las Vegas Resort.

"**Wynn Las Vegas Convention Center Acquisition**" shall mean the acquisition (whether by fee or absolute assignment, leasehold or lease or otherwise) by Borrower and/or its Restricted Subsidiaries of the Wynn Las Vegas Convention Center from Affiliates of Borrower.

"**Wynn Las Vegas Notes**" shall mean each of the Wynn Las Vegas 2023 Notes, the Wynn Las Vegas 2025 Notes, and the Wynn Las Vegas 2027 Notes, together with, without duplication, any other Indebtedness permitted to be incurred under Section 10.01(e).

"**Wynn Las Vegas Pledge**" shall mean the direct pledge of the Equity Interests in Wynn Las Vegas and related ancillary rights as collateral security in favor of the holders of Wynn Las Vegas Notes.

"**Wynn Las Vegas Resort**" means the Wynn Las Vegas hotel and casino resort.

"**Wynn Macau**" shall mean Wynn Resorts (Macau), S.A., a company incorporated under the laws of Macau.

"**Wynn Massachusetts**" shall mean Wynn MA, LLC, a Nevada limited liability company.

"**Wynn Massachusetts Resort**" shall mean the casino resort and related amenities owned and/or operated by Borrower and its Subsidiaries in Everett, Massachusetts.

"**Wynn Resorts**" shall mean Wynn Resorts, Limited, a Nevada corporation.

"**Wynn Resorts Finance Notes**" shall mean the 5.125% Senior Notes of Borrower due 2029 in the original aggregate principal amount of $750,000,000.

SECTION 1.02. Accounting Terms and Determinations. Except as otherwise provided in this Agreement, all computations and determinations as to accounting or financial matters (including financial covenants) shall be made in accordance with GAAP as in effect on the Closing Date consistently applied for all applicable periods, and all accounting or financial terms shall have the meanings ascribed to such terms by GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Credit Document, and Borrower notifies Administrative Agent that Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if Administrative Agent notifies Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Credit Document, and Borrower, Administrative Agent or the Required Lenders shall so request, Administrative Agent, the Lenders and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders, not to be unreasonably withheld).

SECTION 1.03. Classes and Types of Loans. Loans hereunder are distinguished by "Class" and by "Type." The "Class" of a Loan (or of a Commitment to make a Loan) refers to whether such Loan is a Revolving Loan of any particular Tranche, a Term A Facility Loan, a New Term Loan of any particular Tranche, or a Term Loan of any particular Tranche of Term Loans created pursuant to an Extension Amendment or a Refinancing Amendment, each of which constitutes a Class. The "Type" of a Loan refers to whether such Loan is an ABR Loan or a LIBOR Loan, each of which constitutes a Type. Loans may be identified by both Class and Type.

SECTION 1.04. Rules of Construction.

(a) In each Credit Document, unless the context clearly requires otherwise (or such other Credit Document clearly provides otherwise), references to (i) the plural include the singular, the singular include the plural and the part include the whole; (ii) Persons include their respective permitted successors and assigns or, in the case of governmental Persons, Persons succeeding to the relevant functions of such Persons; (iii) statutes and regulations include any amendments, supplements or modifications of the same from time to time and any successor statutes and regulations; (iv) unless otherwise expressly provided, any reference to any action of any Secured Party by way of consent, approval or waiver shall be deemed modified by the phrase "in its/their reasonable discretion"; (v) time shall be a reference to time of day in New York, New York; (vi) Obligations (other than L/C Liabilities) shall not be deemed "outstanding" if such Obligations have been Paid in Full; and (vii) except as expressly provided in any Credit Document any item required to be delivered or performed on a day that is not a Business Day shall not be required until the next succeeding Business Day.

(b) In each Credit Document, unless the context clearly requires otherwise (or such other Credit Document clearly provides otherwise), (i) "**amend**" shall mean "amend, restate, amend and restate, supplement or modify"; and "**amended**," "**amending**" and "**amendment**" shall have meanings correlative to the foregoing; (ii) in the computation of periods of time from a specified date to a later specified date, "**from**" shall mean "from and including"; "**to**" and

"**until**" shall mean "to but excluding"; and "**through**" shall mean "to and including"; (iii) "**hereof**," "**herein**" and "**hereunder**" (and similar terms) in any Credit Document refer to such Credit Document as a whole and not to any particular provision of such Credit Document; (iv) "**including**" (and similar terms) shall mean "including without limitation" (and similarly for similar terms); (v) "**or**" has the inclusive meaning represented by the phrase "and/or"; (vi) references to "**the date hereof**" shall mean the date first set forth above; (vii) "**asset**" and "**property**" shall have the same meaning and effect and refer to all Property; and (viii) a "**fiscal year**" or a "**fiscal quarter**" is a reference to a fiscal year or fiscal quarter of Borrower.

(c) In this Agreement unless the context clearly requires otherwise, any reference to (i) an Annex, Exhibit or Schedule is to an Annex, Exhibit or Schedule, as the case may be, attached to this Agreement and constituting a part hereof, and (ii) a Section or other subdivision is to a Section or such other subdivision of this Agreement.

(d) Unless otherwise expressly provided herein, (i) references to Organizational Documents, agreements (including the Credit Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, amendments and restatements, extensions, supplements, reaffirmations, replacements and other modifications thereto, but only to the extent that such amendments, restatements, amendments and restatements, extensions, supplements, reaffirmations, replacements and other modifications are permitted by the Credit Documents; (ii) references to any Requirement of Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Requirement of Law, and (iii) for the avoidance of doubt, any reference herein to "the date hereof" or words of similar import shall refer to the date that this Agreement was initially entered into (September 20, 2019).

(e) This Agreement and the other Credit Documents are the result of negotiations among and have been reviewed by counsel to Agents, Borrower and the other parties, and are the products of all parties. Accordingly, they shall not be construed against the Lenders or Agents merely because of Agents' or the Lenders' involvement in their preparation.

SECTION 1.05. Exchange Rates; Currency Equivalents.

(a) Administrative Agent or the applicable L/C Lender, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of extensions of credit hereunder and Obligations denominated in Alternate Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Credit Parties hereunder or calculating financial covenants or financial ratios hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of calculating the Dollar Equivalent of the amount of extensions of credit hereunder and of Obligations denominated in an Alternate Currency under the Credit Documents shall be such Dollar Equivalent amount as so determined by Administrative Agent or the applicable L/C Lender, as applicable.

(b) Wherever in this Agreement in connection with the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Borrowing, LIBOR Loan or Letter of Credit is denominated in an Alternate Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternate Currency, with 0.5 of a unit being rounded upward), as determined by Administrative Agent or the applicable L/C Lender, as the case may be.

(c) Administrative Agent does not warrant, nor accept responsibility, nor shall Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "LIBO Rate" or any rate that is an alternative or replacement for or successor to any of such rate or the effect of the foregoing.

SECTION 1.06. Pro Forma Calculations.

(a) Notwithstanding anything to the contrary herein, Consolidated EBITDA, total assets, the Consolidated First Lien Net Leverage Ratio, Consolidated Senior Secured Net Leverage Ratio, Consolidated Total Net

Leverage Ratio, and Consolidated Fixed Charge Coverage Ratio shall be calculated in the manner prescribed by this Section 1.06; *provided* that notwithstanding anything to the contrary in clauses (b), (c), or (d) of this Section 1.06, when calculating Consolidated EBITDA and the Consolidated First Lien Net Leverage Ratio for purposes of determining actual compliance (and not compliance on a Pro Forma Basis) with the Financial Maintenance Covenant, the events described in this Section 1.06 that occurred subsequent to the end of the applicable Test Period shall not be given *pro forma* effect.

(b) For purposes of calculating Consolidated EBITDA, total assets, the Consolidated First Lien Net Leverage Ratio, Consolidated Senior Secured Net Leverage Ratio, Consolidated Total Net Leverage Ratio, and Consolidated Fixed Charge Coverage Ratio, Specified Transactions (and the incurrence or repayment of any Indebtedness in connection therewith) that have been made (i) during the applicable Test Period and (ii) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If, since the beginning of any applicable Test Period, any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.06, then Consolidated EBITDA, total assets, the Consolidated First Lien Net Leverage Ratio, Consolidated Senior Secured Net Leverage Ratio, Consolidated Total Net Leverage Ratio, and the Consolidated Fixed Charge Coverage Ratio shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.06.

(c) Whenever *pro forma* effect is to be given to a Specified Transaction, the pro forma calculations shall be made in good faith by a Responsible Officer of Borrower and include, for the avoidance of doubt, the amount of cost savings, operating expense reductions, other operating improvements, and synergies projected by Borrower in good faith to be realized as a result of specified actions taken or with respect to which steps have been initiated, or are reasonably expected to be initiated, within eighteen (18) months of the closing date of such Specified Transaction (in the good faith determination of Borrower) (calculated on a *pro forma* basis as though such cost savings, operating expense reductions, other operating improvements, and synergies had been realized during the entirety of the applicable period), net of the amount of actual benefits realized during such period from such actions; *provided* that, with respect to any such cost savings, operating expense reductions, other operating improvements, and synergies, the limitations and requirements set forth in clause (c) of the definition of Consolidated EBITDA (other than the requirement set forth in clause (c) of Consolidated EBITDA that steps have been initiated or taken) shall apply; *provided, further,* that the aggregate amount of additions made to Consolidated EBITDA for any Test Period pursuant to this clause (c) and clause (c) of the definition of "Consolidated EBITDA" shall not (i) exceed 20.0% of Consolidated EBITDA for such Test Period (after giving effect to this clause (c) and clause (c) of the definition of "Consolidated EBITDA") or (ii) duplicative of one another.

(d) In the event that Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, prepayment, retirement, exchange or extinguishment) any Indebtedness included in the calculations of Consolidated EBITDA, total assets, the Consolidated First Lien Net Leverage Ratio, Consolidated Senior Secured Net Leverage Ratio, Consolidated Total Net Leverage Ratio, and Consolidated Fixed Charge Coverage Ratio, as the case may be (in each case, other than Indebtedness incurred or repaid under any revolving credit facility without a corresponding permanent reduction in the commitments with respect thereto), (i) during the applicable Test Period and/or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then Consolidated EBITDA, total assets, the Consolidated First Lien Net Leverage Ratio, Consolidated Senior Secured Net Leverage Ratio, Consolidated Total Net Leverage Ratio, and the Consolidated Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Test Period in the case of Consolidated EBITDA, total assets, the Consolidated First Lien Net Leverage Ratio, Consolidated Senior Secured Net Leverage Ratio, Consolidated Total Net Leverage Ratio and on the first day of the applicable Test Period in the case of the Consolidated Fixed Charge Coverage Ratio. Interest on a Capital Lease shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of Borrower to be the rate of interest implicit in such Capital Lease in accordance with GAAP. Interest on Indebtedness

that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a London interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as Borrower may designate.

SECTION 1.07. Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; *provided*, *however*, that with respect to any Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

SECTION 1.08. Limited Condition Transactions. For purposes of (i) determining compliance with any provision of this Agreement or any other Credit Document which requires the calculation of Consolidated EBITDA, total assets, the Consolidated First Lien Net Leverage Ratio, Consolidated Senior Secured Net Leverage Ratio, Consolidated Total Net Leverage Ratio, or the Consolidated Fixed Charge Coverage Ratio, (ii) determining compliance with representations, warranties, Defaults or Events of Default, or (iii) testing availability under baskets set forth in this Agreement or any other Credit Document (including baskets measured as a percentage of Consolidated EBITDA), in each case, in connection with a Limited Condition Transaction, at the option of Borrower (Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "**LCT Election**"), the date of determination of whether any such action is permitted under this Agreement and the other Credit Documents shall be deemed to be the date the definitive agreements for such Limited Condition Transaction are entered into (or, with respect to the incurrence of Indebtedness and Liens, the Limited Condition Transaction for which the proceeds will be used) (the "**LCT Test Date**"), and if, after giving effect on a Pro Forma Basis to the Limited Condition Transaction and the other transactions to be entered into in connection therewith as if they had occurred at the beginning of the most recent Test Period ending prior to the LCT Test Date, Borrower could have taken such action on the relevant LCT Test Date in compliance with such representation, warranty, absence of Default or Event of Default, ratio or basket, such representation, warranty, absence of Default or Event of Default, ratio or basket shall be deemed to have been complied with. For the avoidance of doubt, if Borrower has made an LCT Election and any of the ratios or baskets for which compliance was determined or tested as of the LCT Test Date are exceeded as a result of fluctuations in any such ratio or basket (including due to fluctuations in Consolidated EBITDA of Borrower or the Person subject to such Limited Condition Transaction) at or prior to the consummation of the relevant transaction or action, such baskets or ratios will not be deemed to have been exceeded as a result of such fluctuations. If Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any subsequent calculation of ratios or baskets on or following the relevant LCT Test Date and prior to the earlier of (i) the date on which such Limited Condition Transaction is consummated or (ii) the date that the definitive agreement for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, any such ratio or basket shall be calculated on a Pro Forma Basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated. Notwithstanding the foregoing, the amount of (i) any Incremental Commitments that may be incurred under the Incremental Incurrence-Based Amount and (ii) any Indebtedness that may be incurred under the Ratio Incurrence-Based Amount, in each case, determined at the time of signing of definitive documentation with respect to, or giving of notice with respect to, a Limited Condition Transaction may be recalculated, at the option of Borrower, at the time of funding.

SECTION 1.09. Ratio Calculations; Negative Covenant Reclassification.

(a) With respect to any amounts incurred or transactions entered into (or consummated) in reliance on a provision of any Credit Document that does not require compliance with a financial ratio or test (including the Consolidated First Lien Net Leverage Ratio, Consolidated Senior Secured Net Leverage Ratio, Consolidated Total Net Leverage Ratio, and/or Consolidated Fixed Charge Coverage Ratio, whether or not specifically required to be determined on a Pro Forma Basis) (any such amounts (which will include any related "grower" component), the "**Fixed Amounts**") substantially concurrently with any amounts incurred or transactions entered into (or consummated) in reliance on a provision of such Credit Document that requires compliance with a financial ratio or test (including the Consolidated First Lien Net Leverage Ratio, Consolidated Senior Secured Net Leverage Ratio, Consolidated Total Net Leverage Ratio, and/or Consolidated Fixed Charge Coverage Ratio, whether or not specifically required to be determined on a

Pro Forma Basis) which may include any "builder" or "grower" amount (any such amounts, the "**Incurrence-Based Amounts**"), it is understood and agreed that the Fixed Amounts shall be disregarded in the calculation of the financial ratio or test applicable to such Incurrence-Based Amounts. For example, if Borrower incurs Indebtedness under clause (a), (b), or (c) of the definition of "Incremental Loan Amount" on the same date that it incurs Indebtedness under clause (d) of the definition of "Incremental Loan Amount", then the Consolidated First Lien Net Leverage Ratio and any other applicable ratio will be calculated with respect to such incurrence under clause (d) of the definition of "Incremental Loan Amount" without regard to any incurrence of Indebtedness under clause (a), (b), or (c) of the definition of "Incremental Loan Amount". If Borrower or its Restricted Subsidiaries enters into any revolving, delayed draw, or other committed debt facility, Borrower may elect to determine compliance of such debt facility (including the incurrence of Indebtedness and Liens from time to time in connection therewith) with this Agreement and each other Credit Document on the date definitive loan documents with respect thereto are executed by all parties thereto, assuming the full amount of such facility is incurred (and any applicable Liens are granted) on such date, in lieu of determining such compliance on any subsequent date (including any date on which Indebtedness is incurred pursuant to such facility).

(b) Notwithstanding anything in this Agreement or any other Credit Document to the contrary, (i) unless specifically stated otherwise herein, any carve-out, basket, exclusion or exception to any affirmative, negative or other covenant in this Agreement or the other Credit Documents may be used together by any Credit Party and its Subsidiaries without limitation for any purpose not prohibited hereby, and (ii) any action or event permitted by this Agreement or the other Credit Documents need not be permitted solely by reference to one provision permitting such action or event but may be permitted in part by one such provision and in part by one or more other provisions of this Agreement and the other Credit Documents. For purposes of determining compliance with Article X, in the event that any Lien, Investment, Indebtedness (whether at the time of incurrence or upon application of all or a portion of the proceeds thereof), Asset Sale, disposition, fundamental change, Restricted Payment, Affiliate transaction, contractual requirement or payment or prepayment of Indebtedness meets the criteria of one, or more than one, of the "baskets" or categories of transactions then permitted pursuant to any clause or subsection of (i) Section 10.01 (solely in the case of Indebtedness), (ii) Section 10.02 (solely in the case of Liens), (iii)Section 10.04 (solely in the case of Investments), (iv)Section 10.05 (solely in the case of Asset Sales and other dispositions), (v) Section 10.06 (solely in the case of Restricted Payments), (vi)Section 10.07 (solely in the case of Affiliate transactions), or (vii) Section 10.09 (solely in the case of payment or prepayment of Indebtedness), such transaction (or any portion thereof) at any time shall be permitted under one or more of such "baskets" or categories of such Section at the time of such transaction or any later time from time to time, in each case, as determined by Borrower in its sole discretion at such time and thereafter may be reclassified or divided (as if incurred at such later time) by Borrower in any manner not expressly prohibited by this Agreement, and such Lien, Investment, Indebtedness, Asset Sale, disposition, fundamental change, Restricted Payment, Affiliate transaction, contractual requirement or payment or prepayment of Indebtedness (or any portion thereof) shall be treated as having been incurred or existing pursuant to only such "basket" or category of transactions or "baskets" or categories of transactions (or any portion thereof) of such Section without giving pro forma effect to such item (or portion thereof) when calculating the amount of Liens, Investments, Indebtedness, Asset Sales, dispositions, fundamental changes, Restricted Payments, Affiliate transactions, contractual requirements or payments or prepayments of Indebtedness, as applicable, that may be incurred pursuant to any other "basket" or category of transactions; *provided* that (A) all Indebtedness under this Agreement outstanding on the Closing Date shall at all times be deemed to have been incurred pursuant to clause (a) of Section 10.01 and may not be reclassified, (B) all Indebtedness outstanding on the Closing Date under the Wynn Las Vegas Notes shall be deemed to have been incurred pursuant to clause (e) of Section 10.01 and may not be reclassified and (C) all Indebtedness incurred on the Closing Date under the Wynn Resorts Finance Notes shall be deemed to have been incurred pursuant to clause (v) of Section 10.01 and may not be reclassified. For the avoidance of doubt, this Section 1.09(b) shall only permit redesignation and reclassification of "baskets" or categories within the same Section of Article X.

SECTION 1.10. Divisions. Any reference in this Agreement or any other Credit Document to a merger, transfer, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, limited partnership or trust, or an allocation of assets to a series of a limited liability company, limited partnership or trust (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, assignment, sale or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company, limited partnership or trust shall constitute a separate Person under this Agreement and

the other Credit Documents (and each division of any limited liability company, limited partnership or trust that is a Restricted Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

ARTICLE II.

CREDITS

SECTION 2.01. Loans.

(a) **Revolving Loans**. Each Revolving Lender agrees, severally and not jointly, on the terms and conditions of this Agreement, to make revolving loans (the "**Revolving Loans**") to Borrower in Dollars from time to time, on any Business Day during, with respect to any Revolving Commitment of such Revolving Lender, the Revolving Availability Period applicable to such Revolving Commitment, in an aggregate principal amount at any one time outstanding not exceeding the amount of the Revolving Commitment of such Revolving Lender as in effect from time to time; *provided*, *however*, that, after giving effect to any Borrowing of Revolving Loans, (i) the sum of the aggregate principal amount of (without duplication) all Revolving Loans then outstanding plus the aggregate amount of all L/C Liabilities shall not exceed the Total Revolving Commitments as in effect at such time, (ii) the Revolving Exposure of such Revolving Lender shall not exceed such Revolving Lender's Revolving Commitments in effect at such time, (iii) the Revolving Tranche Exposure of such Revolving Lender in respect of any Tranche of Revolving Commitments shall not exceed such Revolving Lender's Revolving Commitment of such Tranche in effect at such time, and (iv) the Revolving Tranche Exposure of all Revolving Lenders in respect of any Tranche of Revolving Commitments shall not exceed the aggregate Revolving Commitments of such Tranche in effect at such time. Subject to the terms and conditions of this Agreement, during the applicable Revolving Availability Period, Borrower may borrow, repay and re-borrow the amount of the Revolving Commitments by means of ABR Loans and LIBOR Loans.

(b) **Term A Facility Loans**. Each Lender with a Term A Facility Commitment agrees, severally and not jointly, on the terms and conditions of this Agreement, to make a Term A Facility Loan to Borrower in Dollars on the Closing Date in an aggregate principal amount equal to the Term A Facility Commitment of such Lender. Term A Facility Loans that are repaid or prepaid may not be reborrowed.

(c) **LIBOR Loans**. No more than twenty (20) separate Interest Periods in respect of LIBOR Loans may be outstanding at any one time in the aggregate under all of the facilities.

SECTION 2.02. Borrowings. Borrower shall give Administrative Agent notice of each borrowing hereunder as provided in Section 4.05 in the form of a Notice of Borrowing; *provided* that, in the case of a borrowing of ABR Loans requested to be made on a same day basis, Borrower shall deliver the Notice of Borrowing no later than 1:00 p.m., New York time, on the day of such proposed ABR Loan (which day shall be a Business Day). Unless otherwise agreed to by Administrative Agent in its sole discretion, not later than 12:00 p.m. (Noon) (or, in the case of a borrowing of ABR Loans requested to be made on a same day basis, 4:00 p.m.), New York time, on the date specified for each borrowing in Section 4.05, each Lender shall make available the amount of the Loan or Loans to be made by it on such date to Administrative Agent, at an account specified by Administrative Agent maintained at the Principal Office, in immediately available funds, for the account of Borrower. Each borrowing of Revolving Loans shall be made by each Revolving Lender *pro rata* based on its R/C Percentage. The amounts so received by Administrative Agent shall, subject to the terms and conditions of this Agreement, be made available to Borrower not later than 4:00 p.m., New York time, on the actual applicable Funding Date, by depositing the same by wire transfer of immediately available funds in (or, in the case of an account of Borrower maintained with Administrative Agent at the Principal Office, by crediting the same to) the account or accounts of Borrower or any other account or accounts in each case as directed by Borrower in the applicable Notice of Borrowing.

SECTION 2.03. Letters of Credit.

(a) Subject to the terms and conditions hereof, the Revolving Commitments may be utilized, upon the request of Borrower, in addition to the Revolving Loans provided for by Section 2.01(a), for standby and commercial documentary letters of credit (herein collectively called "**Letters of Credit**") issued by the applicable L/C Lender

(which L/C Lenders agree to the terms and provisions of this Section 2.03 in reliance upon the agreements of the other Lenders set forth herein) for the account of Borrower or its Subsidiaries; *provided*, *however*, that in no event shall

(i) the aggregate amount of all L/C Liabilities, *plus* the aggregate principal amount of all the Revolving Loans then outstanding, exceed at any time the Total Revolving Commitments as in effect at such time,

(ii) the sum of the aggregate principal amount of all Revolving Loans of any Revolving Lender then outstanding, *plus* such Revolving Lender's L/C Liability exceed at any time such Revolving Lender's Revolving Commitment as in effect at such time,

(iii) the outstanding aggregate amount of all L/C Liabilities exceed the L/C Sublimit and, in respect of each L/C Lender, the outstanding aggregate amount of L/C Liabilities in respect of such L/C Lender exceed its L/C Sublimit,

(iv) the Dollar Equivalent of the Stated Amount of any Letter of Credit be less than $100,000 or such lesser amount as is acceptable to the L/C Lender,

(v) the expiration date of any Letter of Credit extend beyond the earlier of (x) the third Business Day preceding the latest R/C Maturity Date then in effect and (y) the date twelve (12) months following the date of such issuance, unless in the case of this clause (y) the Required Revolving Lenders have approved such expiry date in writing (but never beyond the third Business Day prior to the latest R/C Maturity Date then in effect), except for any Letter of Credit that Borrower has agreed to Cash Collateralize in an amount equal to the Minimum Collateral Amount or otherwise backstop (with a letter of credit on customary terms) to the applicable L/C Lender's and Administrative Agent's reasonable satisfaction, on or prior to the third Business Day preceding the latest R/C Maturity Date then in effect, subject to the ability of Borrower to request Auto-Extension Letters of Credit in accordance with Section 2.03(b),

(vi) any L/C Lender issue any Letter of Credit after it has received notice from Borrower or the Required Revolving Lenders stating that a Default exists until such time as such L/C Lender shall have received written notice of (x) rescission of such notice from the Required Revolving Lenders, (y) waiver or cure of such Default in accordance with this Agreement or (z) Administrative Agent's good faith determination that such Default has ceased to exist,

(vii) any Letter of Credit be issued in a currency other than Dollars or an Alternate Currency nor at a tenor other than sight, or

(viii) the L/C Lender be obligated to issue any Letter of Credit, amend or modify any outstanding Letter of Credit or extend the expiry date of any outstanding Letter of Credit at any time when a Revolving Lender is a Defaulting Lender if such Defaulting Lender's L/C Liability cannot be reallocated to Non-Defaulting Lenders pursuant to Section 2.14(a) unless arrangements reasonably satisfactory to the L/C Lender and Borrower have been made to eliminate the L/C Lender's risk with respect to the participation in Letters of Credit by all such Defaulting Lenders, including by Cash Collateralizing in an amount equal to the Minimum Collateral Amount, or obtaining a backstop letter of credit from an issuer reasonably satisfactory to the L/C Lender to support, each such Defaulting Lender's L/C Liability.

(b) Whenever Borrower requires the issuance of a Letter of Credit it shall give the applicable L/C Lender and Administrative Agent at least three (3) Business Days written notice (or such shorter period of notice acceptable to the L/C Lender). Such Letter of Credit application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system agreed to by the applicable L/C Lender, by personal delivery or by any other means acceptable to the applicable L/C Lender. Each notice shall be in the form of Exhibit K or such other form as is reasonably acceptable to the applicable L/C Lender appropriately completed (each a "**Letter of Credit Request**") and shall specify a date of issuance not beyond the fifth Business Day prior to the latest R/C Maturity Date then in effect. Each Letter of Credit Request must be accompanied by documentation describing in reasonable detail

the proposed terms, conditions and format of the Letter of Credit to be issued, and if so requested by any L/C Lender each Letter of Credit Request shall be accompanied by such L/C Lender's form of application but which application shall not contain any operating or financial covenants or any provisions inconsistent with this Agreement. If Borrower so requests in any applicable Letter of Credit Request, the applicable L/C Lender may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "**Auto-Extension Letter of Credit**"); *provided* that any such Auto-Extension Letter of Credit must permit the L/C Lender to decline any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "**Non-Extension Notice Date**") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Lender at the time of the original issuance or automatic extension of a Letter of Credit, Borrower shall not be required to make a specific request to the L/C Lender for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the L/C Lender to permit the extension of such Letter of Credit at any time to an expiry date not later than the third Business Day preceding the latest R/C Maturity Date then in effect (*provided*, that such three (3) Business Day limitation shall not apply to any Letter of Credit that Borrower has agreed to Cash Collateralize in an amount equal to the Minimum Collateral Amount or otherwise backstop (with a letter of credit on customary terms) to the applicable L/C Lender's and Administrative Agent's reasonable satisfaction prior to the extension thereof) ; *provided*, *however*, that the L/C Lender shall not permit any such extension if (A) the L/C Lender has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from Administrative Agent, any Lender or Borrower that one or more of the applicable conditions specified in Section 7.02 is not then satisfied, and in each such case directing the L/C Lender not to permit such extension. If there is any conflict between the terms and conditions of this Agreement and the terms and condition of any application, the terms and conditions of this Agreement shall govern. Each Lender hereby authorizes each L/C Lender to issue and perform its obligations with respect to Letters of Credit and each Letter of Credit shall be issued in accordance with the customary procedures of such L/C Lender. Borrower acknowledges and agrees that the failure of any L/C Lender to require an application at any time and from time to time shall not restrict or impair such L/C Lender's right to require such an application or agreement as a condition to the issuance of any subsequent Letter of Credit.

(c) On each day during the period commencing with the issuance by the applicable L/C Lender of any Letter of Credit and until such Letter of Credit shall have expired or been terminated, the Revolving Commitment of each Revolving Lender shall be deemed to be utilized for all purposes hereof in an amount equal to such Lender's R/C Percentage of the Dollar Equivalent of the then Stated Amount of such Letter of Credit plus the amount of any unreimbursed drawings thereunder (the amount of such unreimbursed drawings shall be expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternate Currency). Each Revolving Lender (other than the applicable L/C Lender) severally agrees that, upon the issuance of any Letter of Credit hereunder, it shall automatically acquire from the L/C Lender that issued such Letter of Credit, without recourse, a participation in such L/C Lender's obligation to fund drawings and rights under such Letter of Credit in an amount equal to such Lender's R/C Percentage of such obligation (such obligation to fund drawings shall be expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternate Currency) and rights, and each Revolving Lender (other than such L/C Lender) thereby shall absolutely, unconditionally and irrevocably assume, as primary obligor and not as surety, and shall be unconditionally obligated to such L/C Lender to pay and discharge when due, its R/C Percentage of such L/C Lender's obligation to fund drawings (such obligation to fund drawings shall be expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternate Currency) under such Letter of Credit. Such L/C Lender shall be deemed to hold an L/C Liability in an amount equal to its retained interest in the related Letter of Credit after giving effect to such acquisition by the Revolving Lenders other than such L/C Lender of their participation interests.

(d) In the event that any L/C Lender has determined to honor a drawing under a Letter of Credit, such L/C Lender shall promptly notify (the "**L/C Payment Notice**") Administrative Agent and Borrower of the amount paid by such L/C Lender and the date on which payment is to be made to such beneficiary. In the case of a Letter of Credit denominated in an Alternate Currency, Borrower shall reimburse the L/C Lender that issued such Letter of Credit in

Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternate Currency, the applicable L/C Lender shall notify Administrative Agent and Borrower of the Dollar Equivalent of the amount of the drawing following the determination thereof in accordance with Section 1.05. Borrower hereby unconditionally agrees to pay and reimburse such L/C Lender, through Administrative Agent, for the amount of payment under such Letter of Credit in Dollars, together with interest thereon at a rate *per annum* equal to the Alternate Base Rate in effect from time to time plus the Applicable Margin applicable to Revolving Loans that are maintained as ABR Loans as are in effect from time to time (determined based on a weighted average if multiple Tranches of Revolving Commitments are then outstanding) from the date payment was made to such beneficiary to the date on which payment is due, such payment to be made not later than the second Business Day after the date on which Borrower receives the applicable L/C Payment Notice (or the third Business Day thereafter if such L/C Payment Notice is received on a date that is not a Business Day or after 1:00 p.m., New York time, on a Business Day). Any such payment due from Borrower and not paid on the required date shall thereafter bear interest at rates specified in Section 3.02(b) until paid. Promptly upon receipt of the amount paid by Borrower pursuant to the immediately prior sentence, the applicable L/C Lender shall notify Administrative Agent of such payment and whether or not such payment constitutes payment in full of the Reimbursement Obligation under the applicable Letter of Credit.

(e) Promptly upon its receipt of a L/C Payment Notice referred to in Section 2.03(d), Borrower shall advise the applicable L/C Lender and Administrative Agent whether or not Borrower intends to borrow hereunder to finance its obligation to reimburse such L/C Lender for the amount of the related demand for payment under the applicable Letter of Credit and, if it does so intend, submit a Notice of Borrowing for such borrowing to Administrative Agent as provided in Section 4.05. In the event that Borrower fails to reimburse any L/C Lender, through Administrative Agent, for a demand for payment under a Letter of Credit by the second Business Day after the date of the applicable L/C Payment Notice (or the third Business Day thereafter if such L/C Payment Notice is received on a date that is not a Business Day or after 1:00 p.m., New York time on a Business Day), such L/C Lender shall promptly notify Administrative Agent of such failure by Borrower to so reimburse and of the amount of the demand for payment (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternate Currency). In the event that Borrower fails to either submit a Notice of Borrowing to Administrative Agent as provided above or reimburse such L/C Lender, through Administrative Agent, for a demand for payment under a Letter of Credit by the second Business Day after the date of the applicable L/C Payment Notice (or the third Business Day thereafter if such L/C Payment Notice is received on a date that is not a Business Day or after 1:00 p.m., New York time, on a Business Day), Administrative Agent shall give each Revolving Lender prompt notice of the amount of the demand for payment (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternate Currency) including the interest therein owed by Borrower (the "**Unreimbursed Amount**"), specifying such Lender's R/C Percentage thereof and requesting payment of such amount.

(f) Each Revolving Lender (other than the applicable L/C Lender) shall pay to Administrative Agent for account of the applicable L/C Lender at the Principal Office in Dollars and in immediately available funds, an amount equal to such Revolving Lender's R/C Percentage of the Unreimbursed Amount upon not less than one Business Day's actual notice by Administrative Agent as described in Section 2.03(e) to such Revolving Lender requesting such payment and specifying such amount. Administrative Agent will promptly remit the funds so received to the applicable L/C Lender in Dollars. Each such Revolving Lender's obligation to make such payments to Administrative Agent for the account of L/C Lender under this Section 2.03(f), and the applicable L/C Lender's right to receive the same, shall be absolute and unconditional and shall not be affected by any circumstance whatsoever, including (i) the failure of any other Revolving Lender to make its payment under this Section 2.03(f), (ii) the financial condition of Borrower or the existence of any Default or (iii) the termination of the Commitments. Each such payment to any L/C Lender shall be made without any offset, abatement, withholding or reduction whatsoever.

(g) Upon the making of each payment by a Revolving Lender, through Administrative Agent, to an L/C Lender pursuant to Section 2.03(f) in respect of any Letter of Credit, such Revolving Lender shall, automatically and without any further action on the part of Administrative Agent, such L/C Lender or such Revolving Lender, acquire (i) a participation in an amount equal to such payment in the Reimbursement Obligation owing to such L/C Lender by Borrower hereunder and under the L/C Documents relating to such Letter of Credit and (ii) a participation equal to such Revolving Lender's R/C Percentage in any interest or other amounts (such interest and other amounts expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternate

Currency) (other than cost reimbursements) payable by Borrower hereunder and under such L/C Documents in respect of such Reimbursement Obligation. If any L/C Lender receives directly from or for the account of Borrower any payment in respect of any Reimbursement Obligation or any such interest or other amounts (including by way of setoff or application of proceeds of any collateral security), such L/C Lender shall promptly pay to Administrative Agent for the account of each Revolving Lender which has satisfied its obligations under Section 2.03(f), such Revolving Lender's R/C Percentage of the Dollar Equivalent of such payment, each such payment by such L/C Lender to be made in Dollars. In the event any payment received by such L/C Lender and so paid to the Revolving Lenders hereunder is rescinded or must otherwise be returned by such L/C Lender, each Revolving Lender shall, upon the request of such L/C Lender (through Administrative Agent), repay to such L/C Lender (through Administrative Agent) the amount of such payment paid to such Revolving Lender, with interest at the rate specified in Section 2.03(j).

(h) Borrower shall pay to Administrative Agent, for the account of each Revolving Lender, and with respect to each Tranche of Revolving Commitments, in respect of each Letter of Credit and each Tranche of Revolving Commitments for which such Revolving Lender has a L/C Liability, a letter of credit commission equal to (x) the rate *per annum* equal to the Applicable Margin for Revolving Loans of such Tranche made by such Revolving Lender that are LIBOR Loans in effect from time to time, multiplied by (y) the daily Dollar Equivalent of the Stated Amount of such Letter of Credit allocable to such Revolving Lender's Revolving Commitments of such Tranche (such Dollar Equivalent to be determined in accordance with Section 1.05) for the period from and including the date of issuance of such Letter of Credit (i) in the case of a Letter of Credit which expires in accordance with its terms, to and including such expiration date and (ii) in the case of a Letter of Credit which is drawn in full or is otherwise terminated other than on the stated expiration date of such Letter of Credit, to and excluding the date such Letter of Credit is drawn in full or is terminated. Such commission will be non-refundable and is to be paid (1) quarterly in arrears on each Quarterly Date and (2) on each R/C Maturity Date. In addition, Borrower shall pay to each L/C Lender, for such L/C Lender's account a fronting fee with respect to each Letter of Credit (whether commercial or standby) at the rate of 0.125% per annum, computed on the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit, or increase thereof, on a quarterly basis in arrears. Such fronting fee shall be due and payable on each Quarterly Date in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the latest R/C Maturity Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. In addition Borrower agrees to pay to each L/C Lender all charges, costs and expenses in the amounts customarily charged by such L/C Lender, from time to time in like circumstances, with respect to the issuance, amendment, transfer, payment of drawings, and other transactions relating thereto.

(i) Upon the issuance of or amendment or modification to a Letter of Credit, the applicable L/C Lender shall promptly deliver to Administrative Agent and Borrower a written notice of such issuance, amendment or modification and such notice shall be accompanied by a copy of such Letter of Credit or the respective amendment or modification thereto, as the case may be. Promptly upon receipt of such notice, Administrative Agent shall deliver to each Revolving Lender a written notice regarding such issuance, amendment or modification, as the case may be, and, if so requested by a Revolving Lender, Administrative Agent shall deliver to such Revolving Lender a copy of such Letter of Credit or amendment or modification, as the case may be.

(j) If and to the extent that any Revolving Lender fails to pay an amount required to be paid pursuant to Section 2.03(f) or 2.03(g) on the due date therefor, such Revolving Lender shall pay to the applicable L/C Lender (through Administrative Agent) interest on such amount with respect to each Tranche of Revolving Commitments held by such Revolving Lender for each day from and including such due date to but excluding the date such payment is made at a rate *per annum* equal to the Federal Funds Effective Rate (as in effect from time to time) for the first three days and at the interest rate (in effect from time to time) applicable to Revolving Loans under such Tranche made by such Revolving Lender that are maintained as ABR Loans for each date thereafter. If any Revolving Lender holds Revolving Commitments of more than one Tranche and such Revolving Lender makes a partial payment of amounts due by it under Section 2.03(f) or 2.03(g), such partial payment shall be allocated pro rata to each Tranche based on the amount of Revolving Commitments of each Tranche held by such Revolving Lender.

(k) The issuance by any L/C Lender of any amendment or modification to any Letter of Credit hereunder that would extend the expiry date or increase the Stated Amount thereof shall be subject to the same conditions applicable under this Section 2.03 to the issuance of new Letters of Credit, and no such amendment or modification shall be issued hereunder (i) unless either (x) the respective Letter of Credit affected thereby would have complied with such conditions had it originally been issued hereunder in such amended or modified form or (y) the Required Revolving Lenders (or other specified Revolving Lenders to the extent required by Section 13.04) shall have consented thereto or (ii) if the beneficiary of the Letter of Credit does not accept the proposed terms of the Letter of Credit.

(l) Notwithstanding the foregoing, no L/C Lender shall be under any obligation to issue any Letter of Credit if at the time of such issuance, (i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Lender from issuing the Letter of Credit, or any Law applicable to such L/C Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Lender shall prohibit, or request that such L/C Lender refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such L/C Lender with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such L/C Lender is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Lender in good faith deems material to it or (ii) the issuance of the Letter of Credit would violate one or more policies of such L/C Lender applicable to letters of credit generally.

(m) The obligations of Borrower under this Agreement and any L/C Document to reimburse any L/C Lender for a drawing under a Letter of Credit, and to repay any drawing under a Letter of Credit converted into Revolving Loans, shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement and each such other L/C Document under all circumstances, including the following:

(i) any lack of validity or enforceability of this Agreement, any Credit Document or any L/C Document;

(ii) the existence of any claim, setoff, defense or other right that Borrower may have at any time against any beneficiary or any transferee of any Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any L/C Lender or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by the L/C Documents or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit; or any defense based upon the failure of any drawing under a Letter of Credit to conform to the terms of the Letter of Credit or any non-application or misapplication by the beneficiary of the proceeds of such drawing;

(iv) waiver by a L/C Lender of any requirement that exists for the L/C Lender's protection and not the protection of Borrower or any waiver by the L/C Lender which does not in fact materially prejudice Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by a L/C Lender in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by a L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by a L/C Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-

possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower or a Guarantor.

To the extent that any provision of any L/C Document is inconsistent with the provisions of this Section 2.03, the provisions of this Section 2.03 shall control.

(n) On the last Business Day of each month, Borrower and each L/C Lender shall provide to Administrative Agent such information regarding the outstanding Letters of Credit as Administrative Agent shall reasonably request, in form and substance reasonably satisfactory to Administrative Agent (and in such standard electronic format as Administrative Agent shall reasonably specify), for purposes of Administrative Agent's ongoing tracking and reporting of outstanding Letters of Credit. Administrative Agent shall maintain a record of all outstanding Letters of Credit based upon information provided by Borrower and the L/C Lenders pursuant to this Section 2.03(n), and such record of Administrative Agent shall, absent manifest error, be deemed a correct and conclusive record of all Letters of Credit outstanding from time to time hereunder. Notwithstanding the foregoing, if and to the extent Administrative Agent determines that there are one or more discrepancies between information provided by Borrower and any L/C Lender hereunder, Administrative Agent will notify Borrower and such L/C Lender thereof and Borrower and such L/C Lender shall endeavor to reconcile any such discrepancy. In addition to and without limiting the foregoing, with respect to commercial documentary Letters of Credit, on the first Business Day of each week the applicable L/C Lender shall deliver to Administrative Agent, by facsimile or electronic mail, a report detailing the daily outstanding commercial documentary Letters of Credit for the previous week for such Letters of Credit issued in Dollars and for such Letters of Credit issued in an Alternate Currency.

(o) Each Lender and Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Lender shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Lenders, Administrative Agent, any of their respective Affiliates, directors, officers, employees, agents and advisors nor any correspondent, participant or assignee of any L/C Lender shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence, bad faith or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided*, *however*, that this assumption is not intended to, and shall not, preclude Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Lenders, Administrative Agent, any of their respective Affiliates, directors, officers, employees, agents and advisors nor any correspondent, participant or assignee of the L/C Lenders shall be liable or responsible for any of the matters described in clauses (i) through (viii) of Section 2.03(m); *provided*, *however*, that anything in such clauses to the contrary notwithstanding, Borrower may have a claim against a L/C Lender, and a L/C Lender may be liable to Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were caused by such L/C Lender's willful misconduct, bad faith or gross negligence or such L/C Lender's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Lenders may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Lenders shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Lenders may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("**SWIFT**") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(p) Unless otherwise expressly agreed by the applicable L/C Lender and Borrower when a Letter of Credit is issued(including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, the L/C Lenders shall not be responsible to Borrower for, and the L/C Lenders' rights and remedies against Borrower shall not be impaired by, any action or inaction of the L/C Lenders required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law or any order of a jurisdiction where such L/C Lender or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(q) Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, Borrower shall be obligated to reimburse the applicable L/C Lender hereunder for any and all drawings under such Letter of Credit. Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of Borrower, and that Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

(r) A Revolving Lender may become an additional L/C Lender hereunder with the approval of Administrative Agent (such approval not to be unreasonably withheld or delayed), Borrower and such Revolving Lender, pursuant to an agreement with, and in form and substance reasonably satisfactory to, Administrative Agent, Borrower and such Revolving Lender. Administrative Agent shall notify the Revolving Lenders of any such additional L/C Lender.

(s) Borrower, Administrative Agent, and Revolving Lenders hereby agree that, as of the Closing Date, each letter of credit identified on Schedule 2.03(s) (each, an "**Existing Letter of Credit**") shall be a Letter of Credit as if originally issued under this Agreement by each relevant L/C Lender as set forth on Schedule 2.03(s), and that the fees and other provisions set forth in thisSection 2.03 shall be applicable to each Existing Letter of Credit as of the Closing Date.

SECTION 2.04. Termination and Reductions of Commitment.

(a) (i) In addition to any other mandatory commitment reductions pursuant to this Section 2.04, the aggregate amount of the Term A Facility Commitments shall be automatically and permanently reduced to zero at 5:00 p.m., New York City time, on the Closing Date (after giving effect to the making of the Term A Facility Loans on such date).

(ii) In addition to any other mandatory commitment reductions pursuant to this Section 2.04, the aggregate amount of any Incremental Term Loan Commitments of any Tranche shall be automatically and permanently reduced by the amount of Incremental Term Loans of such Tranche made in respect thereof from time to time.

(iii) The aggregate amount of the Revolving Commitments of any Tranche shall be automatically and permanently reduced to zero on the R/C Maturity Date applicable to such Tranche, and the L/C Commitments shall be automatically and permanently reduced to zero on the last R/C Maturity Date.

(b) Borrower shall have the right at any time or from time to time (without premium or penalty except breakage costs (if any) pursuant toSection 5.05) (i) so long as no Revolving Loans or L/C Liabilities will be outstanding as of the date specified for termination (after giving effect to all transactions occurring on such date), to terminate the Revolving Commitments in their entirety, (ii) to reduce the aggregate amount of the Unutilized R/C Commitments (which shall be pro rata among the Revolving Lenders), and (iii) so long as the remaining Total Revolving Commitments will equal or exceed the aggregate amount of outstanding Revolving Loans and L/C Liabilities, to reduce the aggregate amount of the Revolving Commitments (which shall be pro rata among the Revolving Lenders); provided, however, that (x) Borrower shall give notice of each such termination or reduction as provided in Section 4.05, and (y) each

partial reduction shall be in an aggregate amount at least equal to $5.0 million (or any whole multiple of $1.0 million in excess thereof) or, if less, the remaining Unutilized R/C Commitments.

(c) Any Commitment once terminated or reduced may not be reinstated.

(d) Each reduction or termination of any of the Commitments applicable to any Tranche pursuant to this Section 2.04 shall be applied ratably among the Lenders with such a Commitment, as the case may be, in accordance with their respective Commitment, as applicable.

SECTION 2.05. Fees.

(a) Borrower shall pay to Administrative Agent for the account of each Revolving Lender (other than a Defaulting Lender), with respect to such Revolving Lender's Revolving Commitments of each Tranche, a commitment fee for the period from and including the Closing Date (or following the conversion of any such Revolving Commitment into another Tranche, the applicable Extension Date) to but not including the earlier of (i) the date such Revolving Commitment is terminated or expires (or is modified to constitute another Tranche) and (ii) the R/C Maturity Date applicable to such Revolving Commitment, computed at a rate *per annum* equal to the Applicable Fee Percentage in respect of such Tranche in effect from time to time during such period on the actual daily amount of such Revolving Lender's Unutilized R/C Commitment in respect of such Tranche. Notwithstanding anything to the contrary in the definition of "Unutilized R/C Commitments," for purposes of determining Unutilized R/C Commitments in connection with computing commitment fees with respect to Revolving Commitments, a Revolving Commitment of a Revolving Lender shall be deemed to be used to the extent of the outstanding Revolving Loans and L/C Liability of such Revolving Lender. Any accrued commitment fee under this Section 2.05(a) in respect of any Revolving Commitment shall be payable in arrears on each Quarterly Date and on the earlier of (i) the date the applicable Revolving Commitment is modified to constitute another Tranche and (ii) the R/C Maturity Date applicable to such Revolving Commitment.

(b) Borrower shall pay to Administrative Agent for its own account the administrative fee separately agreed between Administrative Agent and Borrower.

(c) Borrower shall pay to Auction Manager for its own account, in connection with any Borrower Loan Purchase, such fees as may be agreed between Borrower and Auction Manager.

SECTION 2.06. Lending Offices. The Loans of each Type made by each Lender shall be made and maintained at such Lender's Applicable Lending Office for Loans of such Type. Each Lender may, at its option but subject to Section 5.06 as if such branch or Affiliate was deemed a "Lender" thereunder for purposes of documentation delivered to Administrative Agent and payments required to be made to Borrower thereunder, make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not affect in any manner the obligation of Borrower to repay such Loan in accordance with the terms of this Agreement.

SECTION 2.07. Several Obligations of Lenders. The failure of any Lender to make any Loan to be made by it on the date specified therefor shall not relieve any other Lender of its obligation to make its Loan on such date, but neither any Lender nor Administrative Agent shall be responsible for the failure of any other Lender to make a Loan to be made by such other Lender, and no Lender shall have any obligation to Administrative Agent or any other Lender for the failure by such Lender to make any Loan required to be made by such Lender. No Revolving Lender will be responsible for failure of any other Lender to fund its participation in Letters of Credit.

SECTION 2.08. Notes; Register.

(a) At the request of any Lender, its Loans of a particular Class shall be evidenced by a promissory note, payable to such Lender or its registered assigns and otherwise duly completed, substantially in the form of Exhibits A-1 and A-2 of such Lender's Revolving Loans and Term A Facility Loans, respectively; *provided* that any promissory notes issued in respect of New Term Loans, Other Term Loans, Extended Term Loans, New Revolving Loans, Other

Revolving Loans, or Extended Revolving Loans shall be in such form as mutually agreed by Borrower and Administrative Agent.

(b) The date, amount, Type, interest rate and duration of the Interest Period (if applicable) of each Loan of each Class made by each Lender to Borrower and each payment made on account of the principal thereof, shall be recorded by such Lender or its registered assigns on its books and, prior to any transfer of any Note evidencing the Loans of such Class held by it, endorsed by such Lender (or its nominee) on the schedule attached to such Note or any continuation thereof; *provided*, *however*, that the failure of such Lender (or its nominee) to make any such recordation or endorsement or any error in such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing hereunder or under such Note.

(c) Borrower hereby designates Administrative Agent to serve as its nonfiduciary agent, solely for purposes of this Section 2.08, to maintain a register (the "**Register**") on which it will record the name and address of each Lender, the Commitment from time to time of each of the Lenders, the principal and interest amounts of the Loans made by each of the Lenders and each repayment in respect of the principal amount of the Loans of each Lender. Failure to make any such recordation or any error in such recordation shall not affect Borrower's obligations in respect of such Loans. The entries in the Register shall be conclusive of the information noted therein (absent manifest error), and the parties hereto shall treat each Person whose name is recorded in the Register as the owner of a Loan or other obligation hereunder as the owner thereof for all purposes of the Credit Documents, notwithstanding any notice to the contrary. The Register shall be available for inspection by Borrower or any Lender (with respect to such Lender's interest only) at any reasonable time and from time to time upon reasonable prior notice. No assignment shall be effective unless recorded in the Register; *provided* that Administrative Agent agrees to record in the Register any assignment entered into pursuant to the term hereof promptly after the effectiveness of such assignment.

SECTION 2.09. Optional Prepayments and Conversions or Continuations of Loans.

(a) Subject to Section 4.04, Borrower shall have the right to prepay Loans (without premium or penalty), or to convert Loans of one Type into Loans of another Type or to continue Loans of one Type as Loans of the same Type, at any time or from time to time. Borrower shall give Administrative Agent notice of each such prepayment, conversion or continuation as provided in Section 4.05 (and, upon the date specified in any such notice of prepayment, the amount to be prepaid shall become due and payable hereunder; *provided* that Borrower may make any such notice conditional upon the occurrence of a Person's acquisition or sale or any incurrence of indebtedness or issuance of Equity Interests). Each Notice of Continuation/Conversion shall be substantially in the form of Exhibit C. If LIBOR Loans are prepaid or converted other than on the last day of an Interest Period therefor, Borrower shall at such time pay all expenses and costs required by Section 5.05. Notwithstanding the foregoing, and without limiting the rights and remedies of the Lenders under Article XI, in the event that any Event of Default shall have occurred and be continuing, Administrative Agent may (and, at the request of the Required Lenders, shall), upon written notice to Borrower, have the right to suspend the right of Borrower to convert any Loan into a LIBOR Loan, or to continue any Loan as a LIBOR Loan, in which event all Loans shall be converted (on the last day(s) of the respective Interest Periods therefor) or continued, as the case may be, as ABR Loans.

(b) **Application**.

(i) The amount of any optional prepayments described in Section 2.09(a) shall be applied to prepay Loans outstanding in order of amortization, in amounts and to Tranches, all as determined by Borrower.

(ii) In addition to the foregoing, *provided* that Borrower shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenant (whether or not then in effect) (calculated assuming all amounts offered pursuant to this clause (b)(ii) were accepted as prepayment for the Loans and applied thereto) as of the most recent Calculation Date, Borrower shall have the right to elect to offer to prepay at par the Loans *pro rata* to the Term A Facility Loans, the New Term Loans, the Extended Term Loans, and the Other Term Loans then outstanding and apply any amounts rejected for such prepayment to repurchase, prepay, redeem, retire, acquire, defease or cancel Indebtedness or make Restricted Payments notwithstanding any then applicable limitations set forth in Section 10.06 or 10.09, respectively. If Borrower makes such an election, it shall provide

notice thereof to Administrative Agent, who shall promptly, and in any event within one Business Day of receipt, provide such notice to the holders of the Term Loans. Any such notice shall specify the aggregate amount offered to prepay the Term Loans. Each holder of a Term A Facility Loan, a New Term Loan, an Other Term Loan, or an Extended Term Loan may elect, in its sole discretion, to reject such prepayment offer with respect to an amount equal to or less than (w) with respect to holders of Term A Facility Loans, an amount equal to the aggregate amount so offered to prepay Term A Facility Loans times a fraction, the numerator of which is the principal amount of Term A Facility Loans owed to such holder and the denominator of which is the principal amount of Term A Facility Loans outstanding, (w) with respect to holders of (x) New Term Loans, an amount equal to the aggregate amount so offered to prepay New Term Loans times a fraction, the numerator of which is the principal amount of New Term Loans owed to such holder and the denominator of which is the principal amount of New Term Loans outstanding, (y) Other Term Loans, an amount equal to the aggregate amount so offered to prepay Other Term Loans times a fraction, the numerator of which is the principal amount of Other Term Loans owed to such holder and the denominator of which is the principal amount of Other Term Loans outstanding, and (z) with respect to holders of Extended Term Loans, an amount equal to the aggregate amount so offered to prepay Extended Term Loans times a fraction, the numerator of which is the principal amount of Extended Term Loans owed to such holder and the denominator of which is the principal amount of Extended Term Loans outstanding. Any rejection of such offer must be evidenced by written notice delivered to Administrative Agent within five Business Days of receipt of the offer for prepayment, specifying an amount of such prepayment offer rejected by such holder, if any. Failure to give such notice will constitute an election to accept such offer. Any portion of such prepayment offer so accepted will be used to prepay the Term Loans held by the applicable holders within ten Business Days of the date of receipt of the offer to prepay. Any portion of such prepayment rejected may be used by Borrower and its Restricted Subsidiaries to repurchase, prepay, redeem, retire, acquire, defease or cancel Indebtedness or make Restricted Payments notwithstanding any then applicable limitations set forth in Section 10.06 or 10.09, respectively.

SECTION 2.10. Mandatory Prepayments.

(a) Borrower shall prepay the Loans as follows (each such prepayment to be effected in each case in the manner, order and to the extent specified in Section 2.10(b) below):

(i) **Casualty Events**. Within five (5) Business Days after Borrower or any Restricted Subsidiary receives any Net Available Proceeds from any Casualty Event or any disposition pursuant to Section 10.05(l) (or notice of collection by Administrative Agent of the same), in an aggregate principal amount equal to such Net Available Proceeds (it being understood that applications pursuant to this Section 2.10(a)(i) shall not be duplicative of Section 2.10(a)(iii) below); *provided*, *however*, that:

(x) if no Event of Default then exists or would arise therefrom, the Net Available Proceeds thereof shall not be required to be so applied on such date to the extent that Borrower delivers an Officer's Certificate to Administrative Agent stating that an amount equal to such proceeds is intended to be used to fund the acquisition of Property used or usable in the business of (A) if such Casualty Event relates to any Credit Party, any Credit Party or (B) if such Casualty Event relates to any other Company, any Company, or repair, replace, or restore the Property or other Property used or usable in the business (A) if such Casualty Event relates to any Credit Party, any Credit Party or (B) if such Casualty Event relates to any other Company, any Company (in accordance with the provisions of the applicable Security Document in respect of which such Casualty Event has occurred, to the extent applicable), in each case within (A) eighteen (18) months following receipt of such Net Available Proceeds or (B) if Borrower or the relevant Restricted Subsidiary enters into a legally binding commitment to reinvest such Net Available Proceeds within eighteen (18) months following receipt thereof, within the later of (1) six (6) months days following the date of such legally binding commitment and (2) eighteen (18) months following receipt of such Net Available Proceeds (*provided* that Borrower may elect to deem expenditures that otherwise would be permissible reinvestments that occur prior to receipt of the proceeds of a Casualty Event to have been reinvested in accordance with the provisions hereof, so long as such deemed expenditure shall have been made no earlier than the applicable Casualty Event), and

(y) if all or any portion of such Net Available Proceeds not required to be applied to the prepayment of Loans pursuant to this Section 2.10(a)(i) is not so used within the period specified by clause (x) above, such remaining portion shall be applied on the last day of such period as specified in Section 2.10(b).

Notwithstanding the foregoing provisions of this Section 2.10(a)(i) or otherwise, no mandatory prepayment shall be required pursuant to this Section 2.10(a)(i) in any fiscal year until the date on which the Net Available Proceeds required to be applied as mandatory prepayments pursuant to this Section 2.10(a)(i) in such fiscal year shall exceed $15.0 million (and thereafter only Net Available Proceeds in excess of such amount shall be required to be applied as mandatory prepayments pursuant to this Section 2.10(a)(i)).

(ii) **Debt Issuance**. Within five (5) Business Days after any Debt Issuance on or after the Closing Date, in an aggregate principal amount equal to 100% of the Net Available Proceeds of such Debt Issuance.

(iii) **Asset Sales**. Within five (5) Business Days after receipt by Borrower or any of its Restricted Subsidiaries of any Net Available Proceeds from any Asset Sale pursuant to Section 10.05(c), in an aggregate principal amount equal to the Net Available Proceeds from such Asset Sale (it being understood that applications pursuant to this Section 2.10(a)(iii) shall not be duplicative of Section 2.10(a)(i) above); *provided*, *however*, that:

(x) an amount equal to the Net Available Proceeds from any Asset Sale pursuant to Section 10.05(c) shall not be required to be applied as provided above on such date if (1) no Event of Default then exists or would arise therefrom and (2) Borrower delivers an Officer's Certificate to Administrative Agent stating that an amount equal to such Net Available Proceeds is intended to be reinvested, directly or indirectly, in assets (which may be pursuant to an acquisition of Equity Interests of a Person that directly or indirectly owns such assets) otherwise permitted under this Agreement of (A) if such Asset Sale was effected by any Credit Party, any Credit Party, and (B) if such Asset Sale was effected by any other Company, any Company, in each case within (x) eighteen (18) months following receipt of such Net Available Proceeds or (y) if Borrower or the relevant Restricted Subsidiary enters into a legally binding commitment to reinvest such Net Available Proceeds within eighteen (18) months following receipt thereof, within the later of (A) six (6) months following the date of such legally binding commitment and (B) eighteen (18) months following receipt of such Net Available Proceeds (which certificate shall set forth the estimates of the proceeds to be so expended); and

(y) if all or any portion of such Net Available Proceeds is not reinvested in assets in accordance with the Officer's Certificate referred to in clause (x) above within the period specified by clause (x) above, such remaining portion shall be applied on the last day of such period as specified in Section 2.10(b).

Notwithstanding the foregoing provisions of this Section 2.10(a)(iii) or otherwise, no mandatory prepayment shall be required pursuant to this Section 2.10(a)(iii) in any fiscal year until the date on which the Net Available Proceeds required to be applied as mandatory prepayments pursuant to this Section 2.10(a)(iii) in such fiscal year shall exceed $15.0 million (and thereafter only Net Available Proceeds in excess of such amount shall be required be applied as mandatory prepayments pursuant to this Section 2.10(a)(iii)).

(iv) **Prepayments Not Required**. Notwithstanding any other provisions of this Section 2.10(a), to the extent that any of or all the Net Available Proceeds of any Asset Sale or Casualty Event with respect to any property or assets of Foreign Subsidiaries are prohibited or delayed by applicable local law from being repatriated to the United States, an amount equal to the portion of such Net Available Proceeds so affected will not be required to be applied to repay Loans at the times provided in this Section 2.10(a) so long as applicable local law does not permit repatriation to the United States (Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all commercially reasonable actions required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Available Proceeds

is permitted under the applicable local law, an amount equal to such Net Available Proceeds shall be reinvested pursuant to Section 2.10(a)(i) or 2.10(a)(iii), as applicable, or applied pursuant to Section 2.10(b). To the extent Borrower determines in good faith that repatriation of any of or all the Net Available Proceeds of any Asset Sale or Casualty Event with respect to any property or assets of Foreign Subsidiaries would result in a material Tax liability to Borrower or any of its Subsidiaries (including any material withholding Tax), the applicable mandatory prepayment shall be reduced by the Net Available Proceeds so affected (the "**Restricted Amount**") until such time as Borrower determines in good faith that repatriation of the Restricted Amount may occur without incurring such material Tax liability, at which time an amount equal to any such Net Available Proceeds shall be reinvested pursuant to Section 2.10(a)(i) or 2.10(a)(iii), as applicable, or applied pursuant to Section 2.10(b).

(v) **Prepayments of Other First Lien Indebtedness.** Notwithstanding the foregoing provisions of Section 2.10(a)(i), (ii), (iii) or otherwise, any Net Available Proceeds from any such Casualty Event, Debt Issuance or Asset Sale otherwise required to be applied to prepay the Loans may, at Borrower's option, be applied to prepay the principal amount of Other First Lien Indebtedness only to (and not in excess of) the extent to which a mandatory prepayment in respect of such Casualty Event, Debt Issuance or Asset Sale is required under the terms of such Other First Lien Indebtedness (with any remaining Net Available Proceeds applied to prepay outstanding Loans in accordance with the terms hereof), unless such application would result in the holders of Other First Lien Indebtedness receiving in excess of their *pro rata* share (determined on the basis of the aggregate outstanding principal amount of Term Loans and Other First Lien Indebtedness at such time) of such Net Available Proceeds relative to Lenders, in which case such Net Available Proceeds may only be applied to prepay the principal amount of Other First Lien Indebtedness on a *pro rata* basis with outstanding Term Loans. To the extent the holders of Other First Lien Indebtedness decline to have such indebtedness repurchased, repaid or prepaid with any such Net Available Proceeds, the declined amount of such Net Available Proceeds shall promptly (and, in any event, within ten (10) Business Days after the date of such rejection) be applied to prepay Loans in accordance with the terms hereof (to the extent such Net Available Proceeds would otherwise have been required to be applied if such Other First Lien Indebtedness was not then outstanding). Any such application to Other First Lien Indebtedness shall reduce any prepayments otherwise required hereunder by an equivalent amount.

(b) **Application**. The amount of any mandatory prepayments described in Section 2.10(a) shall be applied to prepay Loans as follows:

(i) *First*, to the outstanding Term Loans in order of amortization, in amounts and to Tranches, all as directed by Borrower; *provided* that mandatory prepayments may not be directed to a later maturing Class of Term Loans without at least *pro rata* repayment of any related earlier maturing Class of Term Loans;

(ii) *Second*, after such time as no Term Loans or Permitted First Priority Refinancing Debt remain outstanding, to prepay all outstanding Revolving Loans (in each case, without any reduction in Revolving Commitments); and

(iii) *Third*, after application of prepayments in accordance with clauses (i) and (ii) above, Borrower shall be permitted to retain any such remaining excess.

Notwithstanding the foregoing, any Lender holding Term Loans may elect, by written notice to Administrative Agent at least one (1) Business Day prior to the prepayment date, to decline all or any portion of any prepayment of its Term Loans, pursuant to this Section 2.10. Any such amounts rejected by such Lenders shall be retained by Borrower (any such retained amounts, "**Declined Amounts**").

Notwithstanding the foregoing, if the amount of any prepayment of Loans required under this Section 2.10 shall be in excess of the amount of the ABR Loans at the time outstanding, only the portion of the amount of such prepayment as is equal to the amount of such outstanding ABR Loans shall be immediately prepaid and, at the election of Borrower, the balance of such required prepayment shall be either (i) deposited in the Collateral Account and applied to the prepayment of LIBOR Loans on the last day of the then next-expiring Interest Period for LIBOR Loans (with

all interest accruing thereon for the account of Borrower) or (ii) prepaid immediately, together with any amounts owing to the Lenders under Section 5.05. Notwithstanding any such deposit in the Collateral Account, interest shall continue to accrue on such Loans until prepayment.

(c) **Revolving Credit Extension Reductions**. Until the final R/C Maturity Date, Borrower shall from time to time immediately prepay the Revolving Loans (and/or provide Cash Collateral in an amount equal to the Minimum Collateral Amount for, or otherwise backstop (with a letter of credit on customary terms reasonably acceptable to the applicable L/C Lender and Administrative Agent), outstanding L/C Liabilities) in such amounts as shall be necessary (I) so that at all times (a) the aggregate outstanding amount of the Revolving Loans, *plus*, the aggregate outstanding L/C Liabilities shall not exceed the Total Revolving Commitments as in effect at such time and (b) the aggregate outstanding amount of the Revolving Loans of any Tranche allocable to such Tranche, *plus* the aggregate outstanding L/C Liabilities under such Tranche shall not exceed the aggregate Revolving Commitments of such Tranche as in effect at such time and (II) to comply with Section 7.02(a)(iii).

(d) **Outstanding Letters of Credit**. If any Letter of Credit is outstanding on the 30th day prior to the next succeeding R/C Maturity Date which has an expiry date later than the third Business Day preceding such R/C Maturity Date (or which, pursuant to its terms, may be extended to a date later than the third Business Day preceding such R/C Maturity Date), then (i) if one or more Tranches of Revolving Commitments with a R/C Maturity Date after such R/C Maturity Date are then in effect, such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Lenders with Revolving Commitments to purchase participations therein and to make Revolving Loans and payments in respect thereof and the commissions applicable thereto), effective as of such R/C Maturity Date, solely under (and ratably participated by Revolving Lenders pursuant to) the Revolving Commitments in respect of such non-terminating Tranches of Revolving Commitments, if any, up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Revolving Commitments thereunder at such time, and (ii) to the extent not capable of being reallocated pursuant to clause (i) above, Borrower shall, on such 30th day (or on such later day as such Letters of Credit become incapable of being reallocated pursuant to clause (i) above due to the termination, reduction or utilization of any relevant Revolving Commitments), either (x) Cash Collateralize all such Letters of Credit in an amount not less than the Minimum Collateral Amount with respect to such Letters of Credit (it being understood that such Cash Collateral shall be released to the extent that the aggregate Stated Amount of such Letters of Credit is reduced upon the expiration or termination of such Letters of Credit, so that the Cash Collateral shall not exceed the Minimum Collateral Amount with respect to such Letters of Credit outstanding at any particular time) or (y) deliver to the applicable L/C Lender a standby letter of credit (other than a Letter of Credit) in favor of such L/C Lender in a stated amount not less than the Minimum Collateral Amount with respect to such Letters of Credit, which standby letter of credit shall be in form and substance, and issued by a financially sound financial institution, reasonably acceptable to such L/C Lender and Administrative Agent. Except to the extent of reallocations of participations pursuant to clause (i) above, the occurrence of a R/C Maturity Date shall have no effect upon (and shall not diminish) the percentage participations of the Revolving Lenders of the relevant Tranche in any Letter of Credit issued before such R/C Maturity Date. For the avoidance of doubt, the parties hereto agree that upon the occurrence of any reallocations of participations pursuant to clause (i) above and, if necessary, the taking of the actions in described clause (ii) above, all participations in Letters of Credit under the terminated Revolving Commitments shall terminate.

SECTION 2.11. Replacement of Lenders.

(a) Borrower shall have the right to replace any Lender (the "**Replaced Lender**") with one or more other Eligible Assignees (collectively, the "**Replacement Lender**"), if (x) such Lender is charging Borrower increased costs pursuant to Section 5.01 or requires Borrower or any other Credit Party to pay any Covered Taxes or additional amounts to such Lender or any Governmental Authority for the account of such Lender pursuant to Section 5.06 or such Lender becomes incapable of making LIBOR Loans as provided in Section 5.03 when other Lenders are generally able to do so, (y) such Lender is a Defaulting Lender, or (z) such Lender is subject to Disqualification (and such Lender is notified by Borrower and Administrative Agent in writing of such Disqualification); *provided*, *however*, that (i) at the time of any such replacement, the Replacement Lender shall enter into one or more Assignment Agreements (and with all fees payable pursuant to Section 13.05(b) to be paid by the Replacement Lender or Borrower) pursuant to which the Replacement Lender shall acquire all of the Commitments and outstanding Loans of, and in each case L/C Interests of, the Replaced Lender (or if the Replaced Lender is being replaced as a result of being a Defaulting Lender, then the

Replacement Lender shall acquire all Revolving Commitments, Revolving Loans and L/C Interests of such Replaced Lender under one or more Tranches of Revolving Commitments or, at the option of Borrower and such Replacement Lender, all other Loans and Commitments held by such Defaulting Lender), (ii) at the time of any such replacement, the Replaced Lender shall receive an amount equal to the sum of (A) the principal of, and all accrued interest on, all outstanding Loans of such Lender (other than any Loans not being acquired by a Replacement Lender), (B) all Reimbursement Obligations (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternate Currency) owing to such Lender, together with all then unpaid interest with respect thereto at such time, in the event Revolving Loans or Revolving Commitments owing to such Lender are being repaid and terminated or acquired, as the case may be, and (C) all accrued, but theretofore unpaid, fees owing to the Lender pursuant to Section 2.05 with respect to the Loans being assigned, as the case may be and (iii) all obligations of Borrower owing to such Replaced Lender (other than those specifically described in clause (i) above in respect of Replaced Lenders for which the assignment purchase price has been, or is concurrently being, paid, and other than those relating to Loans or Commitments not being acquired by a Replacement Lender, but including any amounts which would be paid to a Lender pursuant to Section 5.05 if Borrower were prepaying a LIBOR Loan), as applicable, shall be paid in full to such Replaced Lender, as applicable, concurrently with such replacement, as the case may be. Upon the execution of the respective Assignment Agreement, the payment of amounts referred to in clauses (i), (ii) and (iii) above, as applicable, and the receipt of any consents that would be required for an assignment of the subject Loans and Commitments to such Replacement Lender in accordance with Section 13.05, the Replacement Lender, if any, shall become a Lender hereunder and the Replaced Lender, as applicable, shall cease to constitute a Lender hereunder and be released of all its obligations as a Lender, except with respect to indemnification provisions applicable to such Lender under this Agreement, which shall survive as to such Lender and, in the case of any Replaced Lender, except with respect to Loans, Commitments and L/C Interests of such Replaced Lender not being acquired by the Replacement Lender; *provided*, that if the applicable Replaced Lender does not execute the Assignment Agreement within three (3) Business Days (or such shorter period as is acceptable to Administrative Agent) after Borrower's request, execution of such Assignment Agreement by the Replaced Lender shall not be required to effect such assignment.

(b) If any Lender is subject to a Disqualification (and such Lender is notified by Borrower and Administrative Agent in writing of such Disqualification), Borrower shall have the right to replace such Lender with a Replacement Lender in accordance with Section 2.11(a) or prepay the Loans held by such Lender, in each case, in accordance with any applicable provisions of Section 2.11(a), even if a Default or an Event of Default exists (notwithstanding anything contained in such Section 2.11(a) to the contrary). Any such prepayment shall be deemed an optional prepayment, as set forth inSection 2.09 and shall not be required to be made on a *pro rata* basis with respect to Loans of the same Tranche as the Loans held by such Lender. Notice to such Lender shall be given at least ten (10) days before the required date of transfer or prepayment (unless a shorter period is required by any Requirement of Law), as the case may be, and shall be accompanied by evidence demonstrating that such transfer or redemption is required pursuant to Gaming Laws. Upon receipt of a notice in accordance with the foregoing, the Replaced Lender shall cooperate with Borrower in effectuating the required transfer or prepayment within the time period set forth in such notice, not to be less than the minimum notice period set forth in the foregoing sentence (unless a shorter period is required under any Requirement of Law). Further, if the transfer or prepayment is triggered by notice from the Gaming Authority that the Lender is subject to a Disqualification, commencing on the date the Gaming Authority provides the notice of Disqualification upon to Borrower, to the extent prohibited by law: (i) such Lender shall no longer receive any interest on the Loans; (ii) such Lender shall no longer exercise, directly or through any trustee or nominee, any right conferred by the Loans; and (iii) such Lender shall not receive any remuneration in any form from Borrower for services or otherwise in respect of the Loans.

SECTION 2.12. Incremental Loan Commitments.

(a) **Borrower Request**. Borrower may, at any time, by written notice to Administrative Agent, request (i) the establishment of one or more new Tranches of Revolving Commitments ("**New Revolving Commitments**" and the related Revolving Loans, "**New Revolving Loans**"), (ii) an increase to any then-existing Tranche of Revolving Commitments (including the Closing Date Revolving Commitments) ("**Incremental Existing Tranche Revolving Commitments**"), (iii) the establishment of additional Term A Facility Loans with terms and conditions identical to the terms and conditions of existing Term A Facility Loans hereunder ("**Incremental Term A Loans**" and the related commitments, "**Incremental Term A Loan Commitments**"), and/or (iv) the establishment of one or more new Tranches

of term loans ("**New Term Loans**" and the related commitments, "**New Term Loan Commitments**"); *provided*, *however*, that (x) the aggregate amount of New Revolving Commitments, Incremental Existing Tranche Revolving Commitments, New Term Loans and Incremental Term A Loans incurred on such date shall not exceed the Incremental Loan Amount as of such date and (y) any such request for Incremental Commitments shall be in a minimum amount of $25.0 million and integral multiples of $1.0 million above such amount. Borrower may request Incremental Commitments from existing Lenders and from Eligible Assignees; *provided*, *however*, that (A) any existing Lender approached to provide all or a portion of the Incremental Commitments may elect or decline, in its sole discretion, to provide all or any portion of such Incremental Commitments offered to it and (B) any potential Lender that is not an existing Lender and agrees to make available an Incremental Commitment shall be required to be an Eligible Assignee and shall require approval by Administrative Agent to the extent such approval would be required for an assignment to such Eligible Assignee under Section 13.05 (such approval not to be unreasonably withheld or delayed).

(b) **Incremental Effective Date**. The Incremental Commitments shall be effected by a joinder agreement to this Agreement (the "**Incremental Joinder Agreement**") executed by Borrower and each Lender making or providing such Incremental Commitment, in form and substance reasonably satisfactory to each of them, and delivered to Administrative Agent, subject, however, to the satisfaction of the conditions precedent set forth in this Section 2.12. The Incremental Joinder Agreement may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the opinion of Administrative Agent, to effect the provisions of this Section 2.12. Administrative Agent and Borrower shall determine the effective date (each, an "**Incremental Effective Date**") of any Incremental Commitments and the final allocation of such Incremental Commitments. The effectiveness of any such Incremental Commitments shall be subject solely to the satisfaction of the following conditions to the reasonable satisfaction of Administrative Agent:

(i) Borrower shall deliver or cause to be delivered any legal opinions or other documents reasonably requested by Administrative Agent in connection with any such Incremental Commitments;

(ii) an Incremental Joinder Agreement shall have been duly executed and delivered by Borrower, Administrative Agent and each Lender making or providing such Incremental Commitment;

(iii) no Default or Event of Default shall have occurred and be continuing or would exist immediately after giving effect to such Incremental Commitments; *provided* that, if the proceeds of such Incremental Commitments are used primarily to fund a Limited Condition Transaction substantially concurrently upon the receipt thereof, the Lenders providing such Incremental Commitments may waive such condition (other than an Event of Default specified in Section 11.01(b) or 11.01(c) or an Event of Default specified in Section 11.01(g) or 11.01(h) with respect to Borrower);

(iv) the representations and warranties set forth herein and in the other Credit Documents shall be true and correct in all material respects on and as of such Incremental Effective Date as if made on and as of such date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date); *provided* that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects on such dates; *provided*, *further*, that, with respect to any Incremental Commitments the proceeds of which are being used in connection with a Limited Condition Transaction substantially concurrently upon the receipt thereof, the only representations and warranties the making of which shall be a condition to the effectiveness of such Incremental Commitments and the funding thereof shall be (except as otherwise agreed by Borrower and the Lenders providing such Incremental Commitments) (x) the Specified Representations and (y) if applicable, the representations and warranties contained in the acquisition agreement relating to such Permitted Acquisition or other Acquisition as are material to the interests of the Lenders, but only to the extent that Borrower or any of its Affiliates have the right to terminate its or their obligations under such acquisition agreement as a result of a breach of such representations and warranties in such acquisition agreement;

(v) without the written consent of the Required Tranche Lenders with respect to the Closing Date Revolving Facility, the final stated maturity of any New Revolving Commitments shall not be earlier than the then-existing Final Maturity Date with respect to the Closing Date Revolving Facility;

(vi) other than customary "bridge" facilities (so long as the long term debt into which any such customary "bridge" facility is to be converted satisfies the requirements of this clause (vi)), without the written consent of the Required Tranche Lenders with respect to the Term A Facility Loans, (x) the final stated maturity of any New Term Loans shall not be earlier than the then-existing Final Maturity Date with respect to the Term A Facility Loans, and (y) the Weighted Average Life to Maturity of any New Term Loans shall be no shorter than the Weighted Average Life to Maturity of the Term A Facility Loans (without giving effect to the effect of prepayments made under any existing Tranche of Term Loans on amortization); it being understood that, subject to the foregoing, the amortization schedule applicable to such New Term Loans shall be determined by Borrower and the lenders of such New Term Loans and set forth in the applicable Incremental Joinder Agreement;

(vii) the yields and interest rate margins and, except as set forth in clauses (v) and (vi) of this Section 2.12(b), amortization schedule, applicable to any New Revolving Commitments and New Term Loans shall be as determined by Borrower and the holders of such Indebtedness;

(viii) except as set forth in Section 2.12(a) and in clauses (i) – (vii) of this Section 2.12(b), the terms (excluding maturity, amortization, pricing, fees, rate floors, premiums, optional prepayment or optional redemption provisions) of any New Revolving Commitments or New Term Loans shall be (as determined by Borrower in good faith) substantially similar to the terms of the Revolving Commitments or the Term A Facility Loans, as applicable, as existing on the date of incurrence of such New Revolving Commitments or New Term Loans except, to the extent such terms (x) at the option of Borrower (1) reflect market terms and conditions (taken as a whole) at the time of incurrence or issuance (as determined by Borrower in good faith) or (2) are not materially more restrictive to Borrower (as determined by Borrower in good faith), when taken as a whole, than the terms of the Term A Facility Loans or the Revolving Facility, as the case may be (except for covenants or other provisions applicable only to periods after the Final Maturity Date applicable to the Term A Facility Loans or the Revolving Facility, as applicable) (it being understood that any New Revolving Commitments or New Term Loans may provide for the ability to participate (i) with respect to any borrowings, voluntary prepayments or voluntary commitment reductions, on a pro rata basis, greater than pro rata basis or less than pro rata basis with the applicable Loans or facility and (ii) with respect to any mandatory prepayments, on a pro rata basis or less than pro rata basis with the applicable Loans (and on a greater than pro rata basis with respect to prepayments of any such New Revolving Commitments or New Term Loans with the proceeds of permitted refinancing Indebtedness), or (y) are (1) added to the Term A Facility Loans or Revolving Facility, as applicable, (2) applicable only after the Final Maturity Date (in the case of term Indebtedness) or the latest R/C Maturity Date (in the case of revolving Indebtedness), or (3) otherwise reasonably satisfactory to Administrative Agent; *provided* that, in each of clauses (x) and (y) of this Section 2.12(b)(viii), if any financial maintenance covenant is added for the benefit of any New Term Loans or New Revolving Commitments that is more favorable to the Lenders under such facilities than the Financial Maintenance Covenant, then the Financial Maintenance Covenant shall be conformed to match such financial maintenance covenant (except to the extent such financial maintenance covenant applies only to periods after the Final Maturity Date (in the case of term Indebtedness) or the latest R/C Maturity Date (in the case of revolving Indebtedness)) (it being understood that to the extent any financial maintenance covenant or other provision is added for the benefit of any such New Revolving Commitments or New Term Loans, no consent shall be required from Administrative Agent or any of the Lenders to the extent that such financial maintenance covenant (together with any related "equity cure" provisions) or other provision is also added for the benefit of any corresponding existing facility);

(ix) any Incremental Term A Loans (and the corresponding Incremental Term A Loan Commitments) shall have terms substantially similar to the terms of the existing Term A Facility Loans (and the existing Term Loan Commitments); *provided*, *however*, that upfront fees or original issue discount may be paid to Lenders providing such Incremental Term A Loans as agreed by such Lenders and Borrower, and

the conditions applicable to the incurrence of such Incremental Term A Loans (and the corresponding Incremental Term A Loan Commitments) shall be as provided in this Section 2.12; *provided, further*, that the applicable Incremental Joinder Agreement shall make appropriate adjustments to Section 3.01(c) to address such Incremental Term A Loans, as applicable, including such adjustments as are necessary to provide for the "fungibility" of such Incremental Term A Loans with the existing Term A Facility Loans; and

(x) any Incremental Existing Tranche Revolving Commitments shall have terms substantially identical to the terms of the existing Revolving Commitments of the relevant Tranche hereunder; *provided*, *however*, that upfront fees may be paid to Lenders providing such Incremental Existing Tranche Revolving Commitments as agreed by such Lenders and Borrower, and the conditions applicable to the incurrence of such Incremental Existing Tranche Revolving Commitments shall be as provided in this Section 2.12.

Upon the effectiveness of any Incremental Commitment pursuant to this Section 2.12, any Person providing an Incremental Commitment that was not a Lender hereunder immediately prior to such time shall become a Lender hereunder. Administrative Agent shall promptly notify each Lender as to the effectiveness of any Incremental Commitments, and (i) in the case of Incremental Revolving Commitments, the Total Revolving Commitments under, and for all purpose of this Agreement, shall be increased by the aggregate amount of such Incremental Revolving Commitments, (ii) any New Revolving Loans shall be deemed to be additional Revolving Loans hereunder, (iii) any Revolving Loans made under Incremental Existing Tranche Revolving Commitments shall be deemed to be Revolving Loans of the relevant Tranche hereunder, (iv) any Incremental Term A Loans (to the extent funded) shall be deemed to be Term A Facility Loans hereunder and (v) any New Term Loans shall be deemed to be additional Term Loans hereunder. Notwithstanding anything to the contrary contained herein, Borrower, Collateral Agent and Administrative Agent may (and each of Collateral Agent and Administrative Agent are authorized by each other Secured Party to) execute such amendments and/or amendments and restatements of any Credit Documents as may be necessary or advisable to effectuate the provisions of this Section 2.12. Such amendments may include provisions allowing any Incremental Term A Loans or New Term Loans to be treated on the same basis as Term A Facility Loans in connection with declining prepayments. In connection with the incurrence of any Incremental Term A Loans, Borrower shall be permitted to terminate any Interest Period applicable to Term A Facility Loans on the date such Incremental Term A Loans are incurred without the payment of any amounts under Section 5.05 or to include such Incremental Term A Loans ratably in each outstanding Borrowing of LIBOR Loans under the Term A Facility. In connection with the incurrence of any Incremental Existing Tranche Revolving Commitments and related Revolving Loans, Borrower shall be permitted to terminate any Interest Period applicable to Revolving Loans under the applicable existing Tranche of Revolving Commitments without the payment of any amounts under Section 5.05 or to include such Revolving Loans ratably in each outstanding Borrowing of LIBOR Loans under such Tranche of Revolving Commitments on the date such Revolving Loans are first incurred under such Incremental Existing Tranche Revolving Commitments.

Notwithstanding anything to the contrary in this Section 2.12 or this Agreement, if the proceeds of any Incremental Commitments are being used to finance a Limited Condition Transaction or similar Investment permitted hereunder and the Incremental Lenders providing such Incremental Commitments so agree, the availability thereof shall be subject to customary "SunGard" or "certain funds" conditionality; *provided*, that the amount of any Incremental Commitments under the Incremental Incurrence-Based Amount determined at the time of signing of definitive documentation with respect to, or giving of notice with respect to, a Limited Condition Transaction may be recalculated, at the option of Borrower, at the time of funding.

(c) **Terms of Incremental Commitments and Loans**. The yield applicable to the Incremental Revolving Commitments (and related Revolving Loans) and Incremental Term Loans shall be determined by Borrower and the applicable new Lenders and shall be set forth in each applicable Incremental Joinder Agreement.

(d) **Adjustment of Revolving Loans**. To the extent the Revolving Commitments of a Tranche are being increased on the relevant Incremental Effective Date through Incremental Existing Tranche Revolving Commitments, then each of the Revolving Lenders having a Revolving Commitment under such Tranche prior to such Incremental Effective Date (such Revolving Lenders the "**Pre-Increase Revolving Lenders**") shall assign or transfer to any Revolving Lender which is acquiring a new or additional Revolving Commitment under such Tranche on the Incremental Effective Date (the "**Post-Increase Revolving Lenders**"), and such Post-Increase Revolving Lenders shall purchase

from each such Pre-Increase Revolving Lender, at the principal amount thereof, such interests in the Revolving Loans of such Tranche and participation interests in L/C Liabilities of such Tranche (but not, for the avoidance of doubt, the related Revolving Commitments) outstanding on such Incremental Effective Date as shall be necessary in order that, after giving effect to all such assignments or transfers and purchases, such Revolving Loans of such Tranche and participation interests in L/C Liabilities of such Tranche will be held by Pre-Increase Revolving Lenders and Post-Increase Revolving Lenders ratably in accordance with their Revolving Commitments of such Tranche after giving effect to such Incremental Revolving Commitments (and after giving effect to any Revolving Loans of such Tranche made on the relevant Incremental Effective Date). Such assignments or transfers and purchases shall be made pursuant to such procedures as may be designated by Administrative Agent and shall not be required to be effectuated in accordance with Section 13.05. For the avoidance of doubt, Revolving Loans and participation interests in L/C Liabilities assigned or transferred and purchased (or re-allocated) pursuant to this Section 2.12(d) shall, upon receipt thereof by the relevant Post-Increase Revolving Lenders, be deemed to be Revolving Loans and participation interests in L/C Liabilities in respect of the relevant new or additional Revolving Commitments of such Tranche acquired by such Post-Increase Revolving Lenders on the relevant Incremental Effective Date and the terms of such Revolving Loans and participation interests (including, without limitation, the interest rate and maturity applicable thereto) shall be adjusted accordingly. In addition, the L/C Sublimit may be increased by an amount not to exceed the amount of any increase in Revolving Commitments with the consent of the applicable L/C Lenders that agreed to provide Letters of Credit under such increase in the L/C Sublimit and the holders of Incremental Revolving Commitments providing such increase in Revolving Commitments.

(e) **Equal and Ratable Benefit**. Except in the case of any New Term Loans and New Revolving Commitments that are designated by Borrower as secured on a junior lien basis to the Obligations or unsecured, which shall be established pursuant to separate facilities, the Loans and Commitments established pursuant to this Section 2.12 shall (i) constitute Loans and Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Credit Documents, (ii) without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Security Documents, (iii) rank *pari passu* in right of payment and/or with respect to security with the then-existing Tranches of Term Loans and then-existing Tranches of Revolving Loans, (iv) not be secured by any assets other than the Collateral; and (v) not be guaranteed by any person other than a Guarantor. The Credit Parties shall take any actions reasonably required by Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Security Documents continue to secure all the Obligations and continue to be perfected under the UCC or otherwise after giving effect to the establishment of any Incremental Commitments or the funding of Loans thereunder. In the case of any New Term Loans and New Revolving Commitments that are designated by Borrower as secured on a junior lien basis to the Obligations, Borrower shall deliver a Second Lien Intercreditor Agreement executed by the administrative agent, collateral agent, or other representative of the lenders under such New Term Loans or New Revolving Commitments.

(f) **Incremental Joinder Agreements**. An Incremental Joinder Agreement may, subject to Section 2.12(b), without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be necessary or advisable, in the reasonable opinion of Administrative Agent and Borrower, to effect the provisions of this Section 2.12 (including, without limitation, (A) amendments to Sections 2.04(b)(ii) and 2.09(b)(i) to permit reductions of Tranches of Revolving Commitments (and prepayments of the related Revolving Loans) with an R/C Maturity Date prior to the R/C Maturity Date applicable to another Tranche of Revolving Commitments without a concurrent reduction of such other Tranche of Revolving Commitments and (B) such other technical amendments as may be necessary or advisable, in the reasonable opinion of Administrative Agent and Borrower, to give effect to the terms and provisions of any Incremental Commitments (and any Loans made in respect thereof)).

(g) **Supersede**. This Section 2.12 shall supersede any provisions in Section 13.04 to the contrary.

SECTION 2.13. Extensions of Loans and Commitments.

(a) Borrower may, at any time request that all or a portion of the Term Loans of any Tranche (an "**Existing Term Loan Tranche**") be modified to constitute another Tranche of Term Loans in order to extend the scheduled final maturity date thereof (any such Term Loans which have been so modified, "**Extended Term Loans**") and to provide

for other terms consistent with this Section 2.13. In order to establish any Extended Term Loans, Borrower shall provide a notice to Administrative Agent (who shall provide a copy of such notice to each of the Lenders of the applicable Existing Term Loan Tranche) (a "**Term Loan Extension Request**") setting forth the proposed terms of the Extended Term Loans to be established, which terms shall be substantially identical to those applicable to the Term Loans of the Existing Term Loan Tranche from which they are to be modified except (i) the scheduled final maturity date shall be extended to the date set forth in the applicable Extension Amendment and the amortization shall be as set forth in the Extension Amendment, (ii) (A) the Applicable Margins with respect to the Extended Term Loans may be higher or lower than the Applicable Margins for the Term Loans of such Existing Term Loan Tranche and/or (B) additional or reduced fees (including prepayment or termination premiums) may be payable to the Lenders providing such Extended Term Loans in addition to or in lieu of any increased or decreased Applicable Margins contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Extension Amendment, (iii) any Extended Term Loans may participate on a *pro rata* basis, a less than a *pro rata* basis, or a greater than a *pro rata* basis in any optional prepayments of Term Loans hereunder and on a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any mandatory prepayments of Term Loans hereunder in each case as specified in the respective Term Loan Extension Request, (iv) the final maturity date and the scheduled amortization applicable to the Extended Term Loans shall be set forth in the applicable Extension Amendment and the scheduled amortization of such Existing Term Loan Tranche shall be adjusted to reflect the amortization schedule (including the principal amounts payable pursuant thereto) in respect of the Term Loans under such Existing Term Loan Tranche that have been extended as Extended Term Loans as set forth in the applicable Extension Amendment; *provided*, *however*, that the Weighted Average Life to Maturity of such Extended Term Loans shall be no shorter than the Weighted Average Life to Maturity of the Term Loans of such Existing Term Loan Tranche, and (v) the covenant set forth in Section 10.08 may be modified in a manner acceptable to Borrower, Administrative Agent, and the Lenders party to the applicable Extension Amendment, such modifications to become effective only after the Final Maturity Date in effect immediately prior to giving effect to such Extension Amendment (it being understood that each Lender providing Extended Term Loans, by executing an Extension Amendment, agrees to be bound by such provisions and waives any inconsistent provisions set forth in Section 4.02, 4.07(b), or 13.04). Except as provided above, each Lender holding Extended Term Loans shall be entitled to all the benefits afforded by this Agreement (including, without limitation, the provisions set forth in Section 2.09(b) and 2.10(b) applicable to Term Loans) and the other Credit Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Security Documents. The Credit Parties shall take any actions reasonably required by Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Security Documents continue to secure all the Obligations and continue to be perfected under the UCC or otherwise after giving effect to the extension of any Term Loans. No Lender shall have any obligation to agree to have any of its Term Loans of any Existing Term Loan Tranche modified to constitute Extended Term Loans pursuant to any Term Loan Extension Request. Any Extended Term Loans of any Extension Tranche shall constitute a separate Tranche and Class of Term Loans from the Existing Term Loan Tranche from which they were modified.

(b) Borrower may, at any time request that all or a portion of the Revolving Commitments of any Tranche (an "**Existing Revolving Tranche**" and any related Revolving Loans thereunder, "**Existing Revolving Loans**") be modified to constitute another Tranche of Revolving Commitments in order to extend the termination date thereof (any such Revolving Commitments which have been so modified, "**Extended Revolving Commitments**" and any related Revolving Loans, "**Extended Revolving Loans**") and to provide for other terms consistent with this Section 2.13. In order to establish any Extended Revolving Commitments, Borrower shall provide a notice to Administrative Agent (who shall provide a copy of such notice to each of the Lenders of the applicable Existing Revolving Tranche) (a "**Revolving Extension Request**") setting forth the proposed terms of the Extended Revolving Commitments to be established, which terms shall be substantially identical to those applicable to the Revolving Commitments of the Existing Revolving Tranche from which they are to be modified except (i) the scheduled termination date of the Extended Revolving Commitments and the related scheduled maturity date of the related Extended Revolving Loans shall be extended to the date set forth in the applicable Extension Amendment, (ii) (A) the Applicable Margins with respect to the Extended Revolving Loans may be higher or lower than the Applicable Margins for the Revolving Loans of such Existing Revolving Tranche and/or (B) additional or reduced fees may be payable to the Lenders providing such Extended Revolving Commitments in addition to or in lieu of any increased or decreased Applicable Margins contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Extension Amendment, (iii) the Applicable Fee Percentage with respect to the Extended Revolving Commitments may be higher or lower than the Applicable Fee Percentage for the Revolving Commitments of such Existing Revolving Tranche, (iv) the covenant

set forth in Section 10.08 may be modified in a manner acceptable to Borrower, Administrative Agent, and the Lenders party to the applicable Extension Amendment, such modifications to become effective only after the Final Maturity Date in effect immediately prior to giving effect to such Extension Amendment, and (v) the L/C Commitments of any L/C Lender that is providing such Extended Revolving Commitments may be extended and the L/C Sublimit may be increased, subject to clause (d) below (it being understood that each Lender providing Extended Revolving Commitments, by executing an Extension Amendment, agrees to be bound by such provisions and waives any inconsistent provisions set forth in Section 4.02, 4.07(b), or 13.04). Except as provided above, each Lender holding Extended Revolving Commitments shall be entitled to all the benefits afforded by this Agreement (including, without limitation, the provisions set forth in Sections 2.09(b) and 2.10(b) applicable to existing Revolving Loans) and the other Credit Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Security Documents. The Credit Parties shall take any actions reasonably required by Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Security Documents continue to secure all the Obligations and continue to be perfected under the UCC or otherwise after giving effect to the extension of any Revolving Commitments. No Lender shall have any obligation to agree to have any of its Revolving Commitments of any Existing Revolving Tranche modified to constitute Extended Revolving Commitments pursuant to any Revolving Extension Request. Any Extended Revolving Commitments of any Extension Tranche shall constitute a separate Tranche and Class of Revolving Commitments from the Existing Revolving Tranche from which they were modified. If, on any Extension Date, any Revolving Loans of any Extending Lender are outstanding under the applicable Existing Revolving Tranche, such Revolving Loans (and any related participations) shall be deemed to be allocated as Extended Revolving Loans (and related participations) and Existing Revolving Loans (and related participations) in the same proportion as such Extending Lender's Extended Revolving Commitments bear to its remaining Revolving Commitments of the Existing Revolving Tranche.

(c) Borrower shall provide the applicable Extension Request at least five (5) Business Days prior to the date on which Lenders under the Existing Tranche are requested to respond (or such shorter period as is agreed to by Administrative Agent in its sole discretion). Any Lender (an "**Extending Lender**") wishing to have all or a portion of its Term Loans or Revolving Commitments of the Existing Tranche subject to such Extension Request modified to constitute Extended Term Loans or Extended Revolving Commitments, as applicable, shall notify Administrative Agent (an "**Extension Election**") on or prior to the date specified in such Extension Request of the amount of its Term Loans or Revolving Commitments of the Existing Tranche that it has elected to modify to constitute Extended Term Loans or Extended Revolving Commitments, as applicable. In the event that the aggregate amount of Term Loans or Revolving Commitments of the Existing Tranche subject to Extension Elections exceeds the amount of Extended Term Loans or Extended Revolving Commitments, as applicable, requested pursuant to the Extension Request, Term Loans or Revolving Commitments subject to such Extension Elections shall be modified to constitute Extended Term Loans or Extended Revolving Commitments, as applicable, on a *pro rata* basis based on the amount of Term Loans or Revolving Commitments included in such Extension Elections. Borrower shall have the right to withdraw any Extension Request upon written notice to Administrative Agent in the event that the aggregate amount of Term Loans or Revolving Commitments of the Existing Tranche subject to such Extension Request is less than the amount of Extended Term Loans or Extended Revolving Commitments, as applicable, requested pursuant to such Extension Request.

(d) Extended Term Loans or Extended Revolving Commitments, as applicable, shall be established pursuant to an amendment (an "**Extension Amendment**") to this Agreement (which shall be substantially in the form of Exhibit P or Exhibit Q to this Agreement, as applicable, or, in each case, such other form as is reasonably acceptable to Administrative Agent). Each Extension Amendment shall be executed by Borrower, Administrative Agent and the Extending Lenders (it being understood that such Extension Amendment shall not require the consent of any Lender other than (A) the Extending Lenders with respect to the Extended Term Loans or Extended Revolving Commitments, as applicable, established thereby and (B) with respect to any extension of the Revolving Commitments that results in an extension of an L/C Lender's obligations with respect to Letters of Credit, the consent of such L/C Lender). An Extension Amendment may, subject to Sections 2.13(a) and (b), without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be necessary or advisable, in the reasonable opinion of Administrative Agent and Borrower, to effect the provisions of this Section 2.13 (including, without limitation, (A) amendments to Section 2.04(b)(ii) and Section 2.09(b)(i) to permit reductions of Tranches of Revolving Commitments (and prepayments of the related Revolving Loans) with an R/C Maturity Date prior to the R/C Maturity Date applicable to a Tranche of Extended Revolving Commitments without a concurrent reduction of such Tranche of

Extended Revolving Commitments and (B) such other technical amendments as may be necessary or advisable, in the reasonable opinion of Administrative Agent and Borrower, to give effect to the terms and provisions of any Extended Term Loans or Extended Revolving Commitments, as applicable).

SECTION 2.14. Defaulting Lender Provisions.

(a) Notwithstanding anything to the contrary in this Agreement, if a Lender becomes, and during the period it remains, a Defaulting Lender, the following provisions shall apply:

(i) the L/C Liabilities of such Defaulting Lender will, subject to the limitation in the first proviso below, automatically be reallocated (effective on the day such Lender becomes a Defaulting Lender) among the Non-Defaulting Lenders *pro rata* in accordance with their respective Revolving Commitments; *provided* that (i) the sum of each Non-Defaulting Lender's total Revolving Exposure may not in any event exceed the Revolving Commitment of such Non-Defaulting Lender as in effect at the time of such reallocation, (ii) subject to Section 13.21, neither such reallocation nor any payment by a Non-Defaulting Lender pursuant thereto will constitute a waiver or release of any claim Borrower, Administrative Agent, any L/C Lender or any other Lender may have against such Defaulting Lender or cause such Defaulting Lender to be a Non-Defaulting Lender and (iii) no Event of Default shall exist and be continuing at the time of such reallocation (and, unless Borrower shall have otherwise notified Administrative Agent at such time, Borrower shall be deemed to have represented and warranted that no Event of Default exists and is continuing at such time);

(ii) to the extent that any portion (the "**un-reallocated portion**") of the Defaulting Lender's L/C Liabilities cannot be so reallocated, whether by reason of the first proviso in clause (a) above or otherwise, Borrower will, not later than three (3) Business Days after demand by Administrative Agent (at the direction of any L/C Lender), (i) Cash Collateralize the obligations of Borrower to the L/C Lender in respect of such L/C Liabilities, in an amount at least equal to the aggregate amount of the un-reallocated portion of such L/C Liabilities, or (ii) make other arrangements satisfactory to Administrative Agent, and to the applicable L/C Lender, as the case may be, in their sole discretion to protect them against the risk of non-payment by such Defaulting Lender;

(iii) Borrower shall not be required to pay any fees to such Defaulting Lender under Section 2.05(a); and

(iv) any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 11 or otherwise) or received by Administrative Agent from a Defaulting Lender pursuant to Section 4.07 shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder; *second*, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to any L/C Lender hereunder; *third*, if so determined by Administrative Agent or requested by the applicable L/C Lender, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Letter of Credit; *fourth*, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; *fifth*, if so determined by Administrative Agent and Borrower, to be held in a non-interest bearing deposit account and released *pro rata* in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders or the L/C Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender or any L/C Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or L/C Liabilities in respect of which such Defaulting Lender has not fully funded its appropriate

share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 7.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Liabilities owed to, all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or L/C Liabilities owed to, such Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.14(a)(iv) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) **Cure**. If Borrower, Administrative Agent, each L/C Lender agree in writing in their discretion that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any amounts then held in the segregated account referred to in Section 2.14(a)), (x) such Lender will, to the extent applicable, purchase at par such portion of outstanding Loans of the other Lenders and/or make such other adjustments as Administrative Agent may determine to be necessary to cause the Revolving Exposure and L/C Liabilities of the Lenders to be on a *pro rata* basis in accordance with their respective Commitments, whereupon such Lender will cease to be a Defaulting Lender and will be a Non-Defaulting Lender (and such exposure of each Lender will automatically be adjusted on a prospective basis to reflect the foregoing); *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while such Lender was a Defaulting Lender; and *provided*, *further*, that no change hereunder from Defaulting Lender to Non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender, and (y) all Cash Collateral provided pursuant to Section 2.14(a)(ii) shall thereafter be promptly returned to Borrower.

(c) **Certain Fees.** Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, such Defaulting Lender will not be entitled to any fees accruing during such period pursuant to Section 2.05 or Section 2.03(h) (without prejudice to the rights of the Non-Defaulting Lenders in respect of such fees), *provided* that (i) to the extent that all or a portion of the L/C Liability of such Defaulting Lender is reallocated to the Non-Defaulting Lenders pursuant to Section 2.14, such fees that would have accrued for the benefit of such Defaulting Lender will instead accrue for the benefit of and be payable to such Non-Defaulting Lenders, *pro rata* in accordance with their respective Commitments, and (ii) to the extent that all or any portion of such L/C Liability cannot be so reallocated, such fees will instead accrue for the benefit of and be payable to the L/C Lender except to the extent of any un-reallocated portion that is Cash Collateralized (and the *pro rata* payment provisions of Section 4.02 will automatically be deemed adjusted to reflect the provisions of this Section 2.14(c)).

SECTION 2.15. Refinancing Amendments.

(a) At any time after the Closing Date, Borrower may obtain Credit Agreement Refinancing Indebtedness in respect of all or any portion of the Term Loans and the Revolving Loans (or unused Revolving Commitments) then outstanding under this Agreement (which for purposes of this clause (a) will be deemed to include any then outstanding Other Term Loans, Incremental Term Loans, Extended Term Loans, Other Revolving Loans, Extended Revolving Loans, or Incremental Revolving Loans, or Other Revolving Commitments), in the form of Other Term Loans, Other Term Loan Commitments, Other Revolving Loans, or Other Revolving Commitments pursuant to a Refinancing Amendment. Each issuance of Credit Agreement Refinancing Indebtedness under this Section 2.15(a) shall be in an aggregate principal amount that is (x) not less than $5.0 million and (y) an integral multiple of $1.0 million in excess thereof.

(b) The effectiveness of any such Credit Agreement Refinancing Indebtedness shall, subject to the consent required pursuant to Section 2.15(d), be subject solely to the satisfaction of the following conditions to the reasonable satisfaction of Administrative Agent: (i) any Credit Agreement Refinancing Indebtedness in respect of Revolving Commitments or Other Revolving Commitments will have a maturity date that is not prior to the maturity date of the Revolving Loans (or unused Revolving Commitments) being refinanced; (ii) any Credit Agreement Refinancing Indebtedness in respect of Term Loans will have a maturity date that is not prior to the maturity date of, and a Weighted Average Life to Maturity that is not shorter than the Weighted Average Life to Maturity of, the Term Loans being refinanced (determined without giving effect to any amortization or prepayments of Term Loans being refinanced)

(*provided* that (A) this clause (ii) shall not apply to unsecured bridge facilities allowing extensions on customary terms to a date that is no earlier than the applicable maturity date and (B) the stated maturity or Weighted Average Life to Maturity may be shorter if the stated maturity is not earlier than the earlier of (1) the stated maturity of such Indebtedness in effect prior to such refinancing or (2) 91 days after the Final Maturity Date in effect at the time of issuance); (iii) the aggregate principal amount of any Credit Agreement Refinancing Indebtedness shall not exceed the principal amount so refinanced, *plus*, accrued interest, *plus*, any premium or other payment required to be paid in connection with such refinancing, *plus*, the amount of reasonable and customary fees and expenses of Borrower or any of its Restricted Subsidiaries incurred in connection with such refinancing, *plus*, any unutilized commitments thereunder; (iv) to the extent reasonably requested by Administrative Agent, receipt by Administrative Agent and the Lenders of customary legal opinions and other documents; and (v) execution and delivery of a Refinancing Amendment by the Credit Parties and the Lenders providing such Credit Agreement Refinancing Indebtedness to Administrative Agent.

(c) The Loans and Commitments established pursuant to this Section 2.15 shall constitute Loans and Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Credit Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Security Documents. The Credit Parties shall take any actions reasonably required by Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Security Documents continue to secure all the Obligations and continue to be perfected under the UCC or otherwise after giving effect to the applicable Refinancing Amendment.

(d) Upon the effectiveness of any Refinancing Amendment pursuant to this Section 2.15, any Person providing the corresponding Credit Agreement Refinancing Indebtedness that was not a Lender hereunder immediately prior to such time shall, subject to consent of each L/C Lender to the extent such consent would be required for an assignment to such Person pursuant to Section 13.04 (such consent not to be unreasonably withheld) in the case of Other Revolving Loans or Other Revolving Commitments, become a Lender hereunder. Administrative Agent shall promptly notify each Lender as to the effectiveness of such Refinancing Amendment, and (i) in the case any Other Revolving Commitments resulting from such Refinancing Amendment, the Total Revolving Commitments under, and for all purpose of this Agreement, shall be increased by the aggregate amount of such Other Revolving Commitments (net of any existing Revolving Commitments being refinanced by such Refinancing Amendment), (ii) any Other Revolving Loans resulting from such Refinancing Amendment shall be deemed to be additional Revolving Loans hereunder, (iii) any Other Term Loans resulting from such Refinancing Amendment shall be deemed to be Term Loans hereunder (to the extent funded) and (iv) any Other Term Loan Commitments resulting from such Refinancing Amendment shall be deemed to be Term Loan Commitments hereunder. Notwithstanding anything to the contrary contained herein, Borrower, Collateral Agent and Administrative Agent may (and each of Collateral Agent and Administrative Agent are authorized by each other Secured Party to) execute such amendments and/or amendments and restatements of any Credit Documents as may be necessary or advisable to effectuate the provisions of this Section 2.15. Such amendments may include provisions allowing any Other Term Loans to be treated on the same basis as Term A Facility Loans in connection with declining prepayments.

(e) Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Credit Agreement Refinancing Indebtedness incurred pursuant thereto (including any amendments necessary to treat the Loans and Commitments subject thereto as Other Term Loans, Other Term Loan Commitments, Other Revolving Loans and/or Other Revolving Commitments). Any Refinancing Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable opinion of Administrative Agent and Borrower, to effect the provisions of this Section 2.15. This Section 2.15 shall supersede any provisions in Section 4.02, 4.07(b) or 13.04 to the contrary.

SECTION 2.16. Cash Collateral.

(a) Certain Credit Support Events. Without limiting any other requirements herein to provide Cash Collateral, if (i) any L/C Lender has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an extension of credit hereunder which has not been refinanced as a Revolving Loan or reimbursed, in each case, in accordance with Section 2.03(d) or (ii) Borrower shall be required to provide Cash Collateral

pursuant to Section 11.01, Borrower shall, within one (1) Business Day (in the case of clause (i) above) or immediately (in the case of clause (ii) above) following any request by Administrative Agent or the applicable L/C Lender, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount.

(b) Grant of Security Interest. Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) Administrative Agent, for the benefit of Administrative Agent, the L/C Lenders and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as Cash Collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral (including Cash Collateral provided in accordance with Sections 2.03, 2.10(d), 2.10(d), 2.14, 2.16 or 11.01) may be applied pursuant toSection 2.16(c). If at any time Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person prior to the right or claim of Administrative Agent or the L/C Lenders as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, Borrower will, promptly upon demand by Administrative Agent, pay or provide to Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by any Defaulting Lenders). All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Administrative Agent or as otherwise agreed to by Administrative Agent. Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral in accordance with the account agreement governing such deposit account.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of thisSection 2.16 or Sections 2.03, 2.10(d), 2.10(d), 2.14 or 11.01 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Liabilities, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce un-reallocated portions or to secure other obligations shall, so long as no Event of Default then exists, be released promptly following (i) the elimination of the applicable un-reallocated portion or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, the assignment of such Defaulting Lender's Loans and Commitments to a Replacement Lender)) or (ii) the determination by Administrative Agent and the L/C Lenders that there exists excess Cash Collateral (which, in any event, shall exist at any time that the aggregate amount of Cash Collateral exceeds the Minimum Collateral Amount); *provided*, *however*, (x) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Credit Documents and the other applicable provisions of the Credit Documents, and (y) Borrower and the L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated un-reallocated portions or other obligations.

ARTICLE III.

PAYMENTS OF PRINCIPAL AND INTEREST

SECTION 3.01. Repayment of Loans.

(a) **Revolving Loans**. Borrower hereby promises to pay to Administrative Agent for the account of each applicable Revolving Lender on each R/C Maturity Date, the entire outstanding principal amount of such Revolving Lender's Revolving Loans of the applicable Tranche, and each such Revolving Loan shall mature on the R/C Maturity Date applicable to such Tranche.

(b) **Term A Facility Loans**. Borrower hereby promises to pay to Administrative Agent for the account of the Lenders with Term A Facility Loans in repayment of the principal of such Term A Facility Loans, (i) on the last Business Day of each fiscal quarter (commencing with the first full fiscal quarter following the Closing Date), an

aggregate amount equal to 1.25% of the aggregate principal amount of all Term A Facility Loans outstanding on the Closing Date (subject to adjustment for any prepayments made under Section 2.09, 2.10, 2.11(b), or 13.04(b)(B) or as provided in Section 2.12, 2.13, or 2.15), and (ii) the remaining principal amount of Term A Facility Loans on the Term A Facility Maturity Date.

(c) **New Term Loans; Extended Term Loans; Other Term Loans**. New Term Loans shall mature in installments as specified in the related Incremental Joinder Agreement pursuant to which such New Term Loans were made, subject, however, to Section 2.12(b). Extended Term Loans shall mature in installments as specified in the applicable Extension Amendment pursuant to which such Extended Term Loans were established, subject, however, to Section 2.13(a). Other Term Loans shall mature in installments as specified in the applicable Refinancing Amendment pursuant to which such Other Term Loans were established, subject, however, to Section 2.15(a).

SECTION 3.02. Interest.

(a) Borrower hereby promises to pay to Administrative Agent for the account of each Lender interest on the unpaid principal amount of each Loan made or maintained by such Lender to Borrower for the period from and including the date of such Loan to but excluding the date such Loan shall be paid in full at the following rates *per annum*:

(i) during such periods as such Loan is an ABR Loan, the Alternate Base Rate (as in effect from time to time), *plus* the Applicable Margin applicable to such Loan, and

(ii) during such periods as such Loan is a LIBOR Loan, for each Interest Period relating thereto, the LIBO Rate for such Loan for such Interest Period, *plus* the Applicable Margin applicable to such Loan.

(b) To the extent permitted by Law,

(i) upon the occurrence and during the continuance of an Event of Default under Section 11.01(b), 11.01(c), 11.01(g), or 11.01(h), all Obligations shall automatically and without any action by any Person, bear interest at the Default Rate; and

(ii) upon the occurrence and during the continuance of any other Event of Default, at the written direction of the Required Lenders, all Obligations shall bear interest at the Default Rate.

Interest which accrues under this paragraph shall be payable on demand.

(c) Accrued interest on each Loan shall be payable (i) in the case of each ABR Loan, (x) quarterly in arrears on each Quarterly Date, (y) on the date of any repayment or prepayment in full of all outstanding ABR Loans of any Tranche of Loans (but only on the principal amount so repaid or prepaid), and (z) at maturity (whether by acceleration or otherwise) and, after such maturity, on demand, and (ii) in the case of each LIBOR Loan, (x) on the last day of each Interest Period applicable thereto and, if such Interest Period is longer than three months, on each date occurring at three-month intervals after the first day of such Interest Period, (y) on the date of any repayment or prepayment thereof or the conversion of such Loan to a Loan of another Type (but only on the principal amount so paid, prepaid or converted) and (z) at maturity (whether by acceleration or otherwise) and, after such maturity, on demand. Promptly after the determination of any interest rate provided for herein or any change therein, Administrative Agent shall give notice thereof to the Lenders to which such interest is payable and to Borrower.

ARTICLE IV.

PAYMENTS; PRO RATA TREATMENT; COMPUTATIONS; ETC.

SECTION 4.01. Payments.

(a) All payments of principal, interest, Reimbursement Obligations and other amounts to be made by Borrower under this Agreement and the Notes, and, except to the extent otherwise provided therein, all payments to be made by the Credit Parties under any other Credit Document, shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to Administrative Agent at its account at the Principal Office, not later than 2:00 p.m., New York time, on the date on which such payment shall become due (each such payment made after such time on such due date may, at the discretion of Administrative Agent, be deemed to have been made on the next succeeding Business Day). Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof.

(b) Borrower shall, at the time of making each payment under this Agreement or any Note for the account of any Lender, specify (in accordance with Sections 2.09 and 2.10, if applicable) to Administrative Agent (which shall so notify the intended recipient(s) thereof) the Class and Type of Loans, Reimbursement Obligations or other amounts payable by Borrower hereunder to which such payment is to be applied.

(c) Except to the extent otherwise provided in the third sentence of Section 2.03(h), each payment received by Administrative Agent or by any L/C Lender (directly or through Administrative Agent) under this Agreement or any Note for the account of any Lender shall be paid by Administrative Agent or by such L/C Lender (through Administrative Agent), as the case may be, to such Lender, in immediately available funds, (x) if the payment was actually received by Administrative Agent or by such L/C Lender (directly or through Administrative Agent), as the case may be, prior to 12:00 p.m. (Noon), New York time on any day, on such day and (y) if the payment was actually received by Administrative Agent or by such L/C Lender (directly or through Administrative Agent), as the case may be, after 12:00 p.m. (Noon), New York time, on any day, by 1:00 p.m., New York time, on the following Business Day (it being understood that to the extent that any such payment is not made in full by Administrative Agent or by such L/C Lender (through Administrative Agent), as the case may be, Administrative Agent or such Lender (through Administrative Agent), as applicable, shall pay to such Lender, upon demand, interest at the Federal Funds Effective Rate from the date such amount was required to be paid to such Lender pursuant to the foregoing clauses until the date Administrative Agent or such L/C Lender (through Administrative Agent), as applicable, pays such Lender the full amount).

(d) If the due date of any payment under this Agreement or any Note would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, and interest shall be payable for any principal so extended for the period of such extension at the rate then borne by such principal.

SECTION 4.02. Pro Rata Treatment. Except to the extent otherwise provided herein: (a) each borrowing of Loans of a particular Class from the Lenders under Section 2.01 shall be made from the relevant Lenders, each payment of commitment fees under Section 2.05 in respect of Commitments of a particular Class shall be made for the account of the relevant Lenders, and each termination or reduction of the amount of the Commitments of a particular Class under Section 2.04 shall be applied to the respective Commitments of such Class of the relevant Lenders *pro rata* according to the amounts of their respective Commitments of such Class; (b) except as otherwise provided in Section 5.04, LIBOR Loans of any Class having the same Interest Period shall be allocated *pro rata* among the relevant Lenders according to the amounts of their respective Revolving Commitments and Term Loan Commitments (in the case of the making of Loans) or their respective Revolving Loans and Term Loans (in the case of conversions and continuations of Loans); (c) except as otherwise provided in Section 2.09(b), Section 2.10(b), Section 2.12, Section 2.13, Section 2.14, Section 2.15, Section 13.04 or Section 13.05(d), each payment or prepayment of principal of any Class of Revolving Loans or of any particular Class of Term Loans shall be made for the account of the relevant Lenders *pro rata* in accordance with the respective unpaid outstanding principal amounts of the Loans of such Class held by them; and (d) except as otherwise provided in Section 2.09(b), Section 2.10(b), Section 2.12, Section 2.13, Section 2.14, Section 2.15, Section 13.04 or Section 13.05(d), each payment of interest on Revolving Loans and Term Loans shall be made for the account of the relevant Lenders *pro rata* in accordance with the amounts of interest on such Loans then due and payable to the respective Lenders.

SECTION 4.03. Computations. Interest on LIBOR Loans, commitment fees and Letter of Credit fees shall be computed on the basis of a year of 360 days and actual days elapsed (including the first day but excluding the last day) occurring in the period for which such amounts are payable and interest on ABR Loans and Reimbursement

Obligations shall be computed on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed (including the first day but excluding the last day) occurring in the period for which such amounts are payable.

SECTION 4.04. Minimum Amounts. Except for mandatory prepayments made pursuant to Section 2.10 and conversions or prepayments made pursuant to Section 5.04, and Borrowings made to pay Reimbursement Obligations, each Borrowing, conversion and partial prepayment of principal of Loans shall be in an amount at least equal to (a) in the case of Term Loans, $5.0 million and in multiples of $100,000 in excess thereof or, if less, the remaining Term Loans and (b) in the case of Revolving Loans, $1.0 million and in multiples of $100,000 in excess thereof (borrowings, conversions, or prepayments of or into Loans of different Types or, in the case of LIBOR Loans, having different Interest Periods at the same time hereunder to be deemed separate borrowings, conversions and prepayments for purposes of the foregoing, one for each Type or Interest Period) or, if less, the remaining Revolving Loans. Anything in this Agreement to the contrary notwithstanding, the aggregate principal amount of LIBOR Loans having the same Interest Period shall be in an amount at least equal to $1.0 million and in multiples of $100,000 in excess thereof and, if any LIBOR Loans or portions thereof would otherwise be in a lesser principal amount for any period, such Loans or portions, as the case may be, shall be ABR Loans during such period.

SECTION 4.05. Certain Notices. Notices by Borrower to Administrative Agent of terminations or reductions of the Commitments, of Borrowings, conversions, continuations and optional prepayments of Loans and of Classes of Loans, of Types of Loans and of the duration of Interest Periods shall be irrevocable and shall be effective only if received by Administrative Agent by telephone not later than 1:00 p.m., New York time (promptly followed by written notice via facsimile or electronic mail), on at least the number of Business Days prior to the date of the relevant termination, reduction, Borrowing, conversion, continuation or prepayment or the first day of such Interest Period specified in the table below (unless otherwise agreed to by Administrative Agent in its sole discretion), *provided* that Borrower may make any such notice conditional upon the occurrence of a Person's acquisition or sale or any incurrence of indebtedness or issuance of Equity Interests.

NOTICE PERIODS

Notice	Number of Business Days Prior
Termination or reduction of Commitments	3
Optional prepayment of, or conversions into, ABR Loans	1
Borrowing or optional prepayment of, conversions into, continuations as, or duration of Interest Periods for, LIBOR Loans	3
Borrowing of ABR Loans	same day

Each such notice of termination or reduction shall specify the amount and the Class of the Commitments to be terminated or reduced. Each such Notice of Borrowing, conversion, continuation or prepayment shall specify the Class of Loans to be borrowed, converted, continued or prepaid and the amount (subject to Section 4.04) and Type of each Loan to be borrowed, converted, continued or prepaid and the date of borrowing, conversion, continuation or prepayment (which shall be a Business Day). Each such notice of the duration of an Interest Period shall specify the Loans to which such Interest Period is to relate. Administrative Agent shall promptly notify the Lenders of the contents of each such notice. In the event that Borrower fails to select the Type of Loan within the time period and otherwise as provided in this Section 4.05, such Loan (if outstanding as a LIBOR Loan) will be automatically converted into an ABR Loan on the last day of the then current Interest Period for such Loan or (if outstanding as an ABR Loan) will remain as, or (if not then outstanding) will be made as, an ABR Loan. In the event that Borrower has elected to borrow or convert Loans into LIBOR Loans but fails to select the duration of any Interest Period for any LIBOR Loans within the time period and otherwise as provided in this Section 4.05, such LIBOR Loan shall have an Interest Period of one month.

SECTION 4.06. Non-Receipt of Funds by Administrative Agent.

(a) Unless Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of LIBOR Loans (or, in the case of any Borrowing of ABR Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to Administrative Agent such Lender's share of such Borrowing, Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of ABR Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to Administrative Agent, then the applicable Lender and Borrower severally agree to pay to Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to Borrower to but excluding the date of payment to Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Federal Funds Effective Rate, plus any administrative, processing or similar fees customarily charged by Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by Borrower, the interest rate applicable to ABR Loans. If Borrower and such Lender shall pay such interest to Administrative Agent for the same or an overlapping period, Administrative Agent shall promptly remit to Borrower the amount of such interest paid by Borrower for such period. If such Lender pays its share of the applicable Borrowing to Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by Borrower shall be without prejudice to any claim Borrower may have against a Lender that shall have failed to make such payment to Administrative Agent.

(b) Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to Administrative Agent for the account of the Lenders or the L/C Lenders hereunder that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Lenders, as the case may be, the amount due. In such event, if Borrower has not in fact made such payment, then each of the Lenders or the L/C Lenders, as the case may be, severally agrees to repay to Administrative Agent forthwith on demand the amount so distributed to such Lender or L/C Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to Administrative Agent, at the Federal Funds Effective Rate. A notice of Administrative Agent to any Lender or Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

SECTION 4.07. Right of Setoff, Sharing of Payments; Etc.

(a) If any Event of Default shall have occurred and be continuing, each Credit Party agrees that, in addition to (and without limitation of) any right of setoff, banker's lien or counterclaim a Lender may otherwise have, each Lender shall be entitled, at its option (to the fullest extent permitted by law), subject to obtaining the prior written consent of Administrative Agent to set off and apply any deposit (general or special, time or demand, provisional or final), or other indebtedness, held by it for the credit or account of such Credit Party at any of its offices, in Dollars or in any other currency, against any principal of or interest on any of such Lender's Loans, Reimbursement Obligations or any other amount payable to such Lender hereunder that is not paid when due (regardless of whether such deposit or other indebtedness is then due to such Credit Party), in which case it shall promptly notify such Credit Party thereof; *provided*, *however*, that such Lender's failure to give such notice shall not affect the validity thereof; and *provided further* that no such right of setoff, banker's lien or counterclaim shall apply to any funds held for further distribution to any Governmental Authority.

(b) Each of the Lenders agrees that, if it should receive (other than pursuant to Section 2.09(b), Section 2.10(b), Section 2.11, Section 2.12, Section 2.13, Section 2.15, Article V, Section 13.04 or Section 13.05(d) or as otherwise specifically provided herein or in the Commitment Letter) any amount hereunder (whether by voluntary payment, by realization upon security, by the exercise of the right of setoff or banker's lien, by counterclaim or cross action, by the enforcement of any right under the Credit Documents (including any guarantee), or otherwise) which is applicable to the payment of the principal of, or interest on, the Loans, Reimbursement Obligations or fees, the sum of which with respect to the related sum or sums received by other Lenders is in a greater proportion than the total of such amounts then owed and due to such Lender bears to the total of such amounts then owed and due to all of the Lenders

immediately prior to such receipt, then such Lender receiving such excess payment shall purchase for cash without recourse or warranty from the other Lenders an interest in the Obligations of the respective Credit Party to such Lenders in such amount as shall result in a proportional participation by all of the Lenders in such amount; *provided*, *however*, that if all or any portion of such excess amount is thereafter recovered from such Lender, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. Borrower consents to the foregoing arrangements.

(c) Borrower agrees that any Lender so purchasing such participation may exercise all rights of setoff, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans or other amounts (as the case may be) owing to such Lender in the amount of such participation.

(d) Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other Indebtedness or obligation of any Credit Party. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section 4.07 applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section 4.07 to share in the benefits of any recovery on such secured claim.

(e) Notwithstanding anything to the contrary contained in this Section 4.07, in the event that any Defaulting Lender exercises any right of setoff, (i) all amounts so set off will be paid over immediately to Administrative Agent for further application in accordance with the provisions of Section 2.14 and, pending such payment, will be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent, each L/C Lender and the Lenders and (ii) the Defaulting Lender will provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

ARTICLE V.

YIELD PROTECTION, ETC.

SECTION 5.01. Increased Costs.

(a) If any Change in Law shall:

(i) subject any Lender to any Tax with respect to this Agreement, any Note, any Letter of Credit or any Lender's participation therein, any L/C Document or any Loan made by it, or any deposits, reserves, other liabilities or capital attributable thereto (except for any Covered Taxes or Excluded Taxes);

(ii) impose, modify or hold applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender, in each case, that is not otherwise included in the determination of the LIBO Rate hereunder; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or LIBOR Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing is to materially increase the cost to such Lender or L/C Lender of making, converting into, continuing or maintaining LIBOR Loans (or of maintaining its obligation to make any LIBOR Loans) or issuing, maintaining or participating in Letters of Credit (or maintaining its obligation to participate in or to issue any Letter of Credit), then, in any such case, Borrower shall, within 10 days of written demand therefor, pay such Lender or L/C Lender any additional amounts necessary to compensate such Lender or L/C Lender for such increased cost; *provided* that requests for additional compensation due to increased costs shall be limited to circumstances generally affecting the banking market and for which it is the general policy or practice of such requesting Lender to demand

such compensation in similar circumstances under comparable provisions of other similar agreements. If any Lender or L/C Lender becomes entitled to claim any additional amounts pursuant to this subsection, it shall promptly notify Borrower, through Administrative Agent, of the event by reason of which it has become so entitled.

(b) A certificate as to any additional amounts setting forth the calculation of such additional amounts pursuant to thisSection 5.01 submitted by such Lender or L/C Lender, through Administrative Agent, to Borrower shall be conclusive in the absence of clearly demonstrable error. Without limiting the survival of any other covenant hereunder, this Section 5.01 shall survive the termination of this Agreement and the payment of the Notes and all other Obligations payable hereunder.

(c) In the event that any Lender shall have determined that any Change in Law affecting such Lender or any Lending Office of such Lender or the Lender's holding company with regard to capital or liquidity requirements, does or shall have the effect of reducing the rate of return on such Lender's or such holding company's capital as a consequence of its obligations hereunder, the Commitments of such Lender, the Loans made by, or participations in Letters of Credit held by such Lender, or the Letters of Credit issued by such L/C Lender, to a level below that which such Lender or such holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time, after submission by such Lender or Borrower (with a copy to Administrative Agent) of a written request therefor (setting forth in reasonable detail the amount payable to the affected Lender and the basis for such request), Borrower shall promptly pay to such Lender such additional amount or amounts as will compensate such Lender for such reduction; *provided* that requests for additional compensation due to increased costs shall be limited to circumstances generally affecting the banking market and for which it is the general policy or practice of such requesting Lender to demand such compensation in similar circumstances under comparable provisions of other similar agreements.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to thisSection 5.01 shall not constitute a waiver of such Lender's right to demand such compensation; *provided*, *however*, that Borrower shall not be required to compensate a Lender pursuant to this Section 5.01 for any increased costs or reductions incurred more than ninety (90) days prior to the date that such Lender notifies Borrower of the change in law giving rise to such increased costs incurred or reductions suffered and of such Lender's intention to claim compensation therefor; *provided*, *further*, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 90-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 5.02. Inability To Determine Interest Rate.

(a) If prior to the first day of any Interest Period: (i) Administrative Agent shall have determined in good faith (which determination shall be conclusive and binding upon Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the LIBO Base Rate for such Interest Period, (ii) Administrative Agent shall have received notice from the Required Lenders that Dollar deposits are not available in the relevant amount and for the relevant Interest Period available to the Required Lenders in the London interbank market, or (iii) the Required Lenders determine in good faith that the LIBO Rate for any requested Interest Period with respect to a proposed LIBOR Loan does not adequately and fairly reflect the cost to such Lenders of funding such LIBOR Loans (in each case, "**Impacted Loans**"), Administrative Agent shall give electronic mail or telephonic notice thereof to Borrower and the Lenders as soon as practicable thereof. If such notice is given, Borrower may revoke any pending request for a Borrowing of, conversion to, or continuation of LIBOR Loans, or if Borrower does not make such revocation, (x) any LIBOR Loans requested to be made on the first day of such Interest Period shall be made as ABR Loans, (y) any Loans that were to have been converted on the first day of such Interest Period to LIBOR Loans shall be converted to, or continued as, ABR Loans, and (z) any outstanding LIBOR Loans shall be converted, on the first day of such Interest Period, to ABR Loans. Until such notice has been withdrawn by Administrative Agent (which Administrative Agent agrees to do if the circumstances giving rise to such notice cease to exist), no further LIBOR Loans shall be made, or continued as such, nor shall Borrower have the right to convert Loans to, LIBOR Loans.

(b) Notwithstanding the foregoing, if there are Impacted Loans as provided above, Administrative Agent, in consultation with Borrower and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans (to the extent

Borrower does not elect to maintain such Impacted Loans as ABR Loans) until (1) Administrative Agent revokes the notice delivered with respect to the Impacted Loans (which Administrative Agent agrees to do if the circumstances giving rise to Impacted Loans cease to exist), (2) Administrative Agent or the Required Lenders notify Administrative Agent and Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (3) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides Administrative Agent and Borrower written notice thereof.

(c) If prior to the commencement of any Interest Period for LIBOR Loans, (A) Borrower and Administrative Agent reasonably determine in good faith that adequate and reasonable means do not exist for ascertaining the LIBO Base Rate or LIBOR, as applicable, for such Interest Period and that (i) such circumstances are unlikely to be temporary or (ii) such circumstances have not arisen but the supervisor for the administrator of LIBOR or a Governmental Authority having jurisdiction over Administrative Agent has made a public statement identifying a specific date after which LIBOR shall no longer be used for determining interest rates for loans or (B) syndicated loans currently being executed, or that include language similar to that contained in this Section 5.02(c), are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR, then Administrative Agent and Borrower shall endeavor to establish an alternate rate of interest to LIBOR that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Margin) to this Agreement as may be applicable which shall include the spread or method for determining a spread or other adjustments or modifications that are generally accepted as the then prevailing market convention for determining such spread, method, adjustment, or modification. Notwithstanding anything to the contrary in Section 13.04, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as Administrative Agent shall not have received, within five Business Days of the date that such amendment is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this clause (c), (x) any Notice of Borrowing that requests the conversion of any Borrowing as, a LIBOR Loan shall be ineffective and (y) if any Notice of Borrowing requests a LIBOR Loan, such Borrowing shall be made as an ABR Loan; *provided* that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

SECTION 5.03. Illegality. Notwithstanding any other provision of this Agreement, in the event that any change after the date hereof in any Requirement of Law or in the interpretation or application thereof shall make it unlawful for any Lender or its Applicable Lending Office to honor its obligation to make or maintain LIBOR Loans or issue Letters of Credit hereunder (and, in the sole opinion of such Lender, the designation of a different Applicable Lending Office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify Borrower thereof (with a copy to Administrative Agent) and such Lender's obligation to make or continue, or to convert Loans of any other Type into, LIBOR Loans or issue Letters of Credit shall be suspended until such time as such Lender or L/C Lender may again make and maintain LIBOR Loans or issue Letters of Credit (in which case the provisions of Section 5.04 shall be applicable).

SECTION 5.04. Treatment of Affected Loans. If the obligation of any Lender to make LIBOR Loans or to continue, or to convert ABR Loans into, LIBOR Loans shall be suspended pursuant to Section 5.03, such Lender's LIBOR Loans shall be automatically converted into ABR Loans on the last day(s) of the then current Interest Period(s) for such LIBOR Loans (or on such earlier date as such Lender may specify to Borrower with a copy to Administrative Agent as is required by law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 5.03 which gave rise to such conversion no longer exist:

(i) to the extent that such Lender's LIBOR Loans have been so converted, all payments and prepayments of principal which would otherwise be applied to such Lender's LIBOR Loans shall be applied instead to its ABR Loans; and

(ii) all Loans which would otherwise be made or continued by such Lender as LIBOR Loans shall be made or continued instead as ABR Loans and all ABR Loans of such Lender which would otherwise be converted into LIBOR Loans shall remain as ABR Loans.

If such Lender gives notice to Borrower with a copy to Administrative Agent that the circumstances specified in Section 5.03 which gave rise to the conversion of such Lender's LIBOR Loans pursuant to this Section 5.04 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when LIBOR Loans are outstanding, such Lender's ABR Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding LIBOR Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding LIBOR Loans and by such Lender are held *pro rata* (as to principal amounts, Types and Interest Periods) in accordance with their respective Commitments.

SECTION 5.05. Compensation.

(a) Borrower agrees to indemnify each Lender and to hold each Lender harmless from any loss or expense (excluding any loss of profits or margin) which such Lender may sustain or incur as a consequence of (1) default by Borrower in payment when due of the principal amount of or interest on any LIBOR Loan, (2) default by Borrower in making a borrowing of, conversion into or continuation of LIBOR Loans after Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (3) Borrower making any prepayment other than on the date specified in the relevant prepayment notice, or (4) the conversion or the making of a payment or a prepayment (including any repayments or prepayments made pursuant to Section 2.09 or 2.10 or as a result of an acceleration of Loans pursuant to Section 11.01 or as a result of the replacement of a Lender pursuant to Section 2.11 or 13.04(b)) of LIBOR Loans on a day which is not the last day of an Interest Period with respect thereto, including in each case, any such loss (excluding any loss of profits or margin) or expense arising from the reemployment of funds obtained by it or from fees payable to terminate the deposits from which such funds were obtained; *provided* that no such amounts under this Section 5.05(a) shall be payable by Borrower in connection with any termination in accordance with Section 2.12(b) of any Interest Period of one month or shorter.

(b) For the purpose of calculation of all amounts payable to a Lender under this Section 5.05 each Lender shall be deemed to have actually funded its relevant LIBOR Loan through the purchase of a deposit bearing interest at the LIBO Base Rate in an amount equal to the amount of the LIBOR Loan and having a maturity comparable to the relevant Interest Period; *provided*, *however*, that each Lender may fund each of its LIBOR Loans in any manner it sees fit, and the foregoing assumption shall be utilized only for the calculation of amounts payable under this subsection. Any Lender requesting compensation pursuant to this Section 5.05 will furnish to Administrative Agent and Borrower a certificate setting forth the basis and amount of such request and such certificate, absent manifest error, shall be conclusive. Without limiting the survival of any other covenant hereunder, this covenant shall survive the termination of this Agreement and the payment of the Obligations and all other amounts payable hereunder.

SECTION 5.06. Net Payments.

(a) All payments by or on account of any obligation of any Credit Party under any Credit Document shall be made without deduction or withholding of any Taxes, except as required by applicable Laws. If any applicable Laws require the deduction or withholding of any Tax in respect of any such payment by Administrative Agent, a Credit Party or any other applicable withholding agent, then (i) the applicable withholding agent shall withhold or make such deductions as are determined by the applicable withholding agent to be required, (ii) the applicable withholding agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with applicable Law, and (iii) to the extent that the withholding or deduction is made on account of Covered Taxes, the sum payable by the applicable Credit Party shall be increased as necessary so that after any required withholding or deductions are made (including withholding or deductions applicable to additional sums payable under this Section 5.06), the applicable Lender (or, in the case of payments made to Administrative Agent for its own account, Administrative Agent) receives an amount equal to the sum it would have received had no such withholding or deduction been made. Borrower shall furnish to Administrative Agent within 45 days after the date the payment of any Taxes by a Credit Party pursuant to this Section 5.06 documentation reasonably satisfactory to Administrative Agent evidencing such payment by the applicable Credit Party. The Credit Parties shall jointly and severally indemnify and hold harmless Administrative

Agent and each Lender, and reimburse Administrative Agent or such Lender (as applicable) upon its written request, for the amount of any Covered Taxes payable or paid by such Lender or Administrative Agent (including Covered Taxes imposed or asserted on amounts payable under this Section 5.06) and for any other reasonable expenses arising therefrom or with respect thereto, in each case, whether or not such Covered Taxes were correctly or legally imposed, other than any interest or penalties that are determined by a final and nonappealable judgment of a court of competent jurisdiction to have resulted from the indemnitee's gross negligence or willful misconduct. Such written request shall include a certificate of such Lender or Administrative Agent setting forth in reasonable detail the basis of such request and such certificate, absent manifest error, shall be conclusive.

(b) In addition, Borrower agrees to (and shall timely) pay all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes which arise from any payment made under or from the execution, delivery, performance, enforcement filing, recordation or registration of, receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignee pursuant to a request by Borrower under Section 2.11(a)) (hereinafter referred to as "**Other Taxes**").

(c) (%4) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to Borrower and Administrative Agent, at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 5.06(c)(ii) and (c)(iv) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. Notwithstanding anything to the contrary in this Section 5.06(c), no Lender shall be required to provide any documentation that such Lender is not legally eligible to deliver.

(ii) Each Lender that is not a U.S. Person (a "**Non-U.S. Lender**") agrees to the extent it is legally eligible to do so to deliver to Borrower and Administrative Agent on or prior to the date it becomes a party to this Agreement, and from time to time upon the reasonable request of Borrower or Administrative Agent, whichever of the following is applicable: (1) in the case of a Non-U.S. Lender claiming the benefits of an income tax treaty to which the United States is a party, two executed original copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax; (2) two executed original copies of IRS Form W-8ECI; (3) in the case of a Non-U.S. Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) or 871(h) of the Code, (x) a certificate substantially in the form of Exhibit D-1 to the effect that such Non-U.S. Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a CFC related to Borrower as described in Section 881(c)(3)(C) of the Code and that no interest payments in connection with any Credit Documents are effectively connected with the Non-U.S. Lender's conduct of a U.S. trade or business (a "**U.S. Tax Compliance Certificate**") and (y) two executed original copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or (4) to the extent a Non-U.S. Lender is not the beneficial owner (for example, where such Foreign Lender is a partnership or a participating Lender), two executed original copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-2 or D-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Non-U.S. Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners of such Non-U.S. Lender are claiming the portfolio interest exemption, such Non-U.S. Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-4 on behalf of such direct and indirect partner(s). Any Non-U.S. Lender shall, to the extent it is legally eligible to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or about the date

on which such Non-U.S. Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed copies of any other documentation prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit Borrower or Administrative Agent to determine the withholding or deduction required to be made, if any.

(iii) Each Lender that is a U.S. Person shall deliver to Borrower and Administrative Agent, on or prior to the date it becomes a party to this Agreement, and from time to time upon the reasonable request of Borrower or Administrative Agent, a properly completed and duly executed IRS Form W-9, or any successor form, certifying that such Person is exempt from United States federal backup withholding.

(iv) If a payment made to a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by Law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has complied with such Lender's obligations under FATCA, and to determine the amount to deduct and withhold, if any, from such payment. For purposes of this Section 5.06(c)(iv), FATCA shall include any amendments made to FATCA after the date of this Agreement.

(v) Each Lender agrees that if any documentation it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such documentation or promptly notify Borrower and Administrative Agent in writing of its legal ineligibility to do so. Notwithstanding any other provision of this Section 5.06(c), a Lender shall not be required to deliver any documentation that such Lender is not legally eligible to deliver. Each Lender hereby authorizes Administrative Agent to deliver to the Credit Parties and to any successor Administrative Agent any documentation provided by such Lender to Administrative Agent pursuant to this Section 5.06(c).

(d) On or before the date Administrative Agent becomes a party to this Agreement, if Administrative Agent is a U.S. Person, it shall deliver to Borrower two executed originals of IRS Form W-9 certifying that it is exempt from U.S. federal backup withholding. Otherwise, Administrative Agent (including any successor Administrative Agent that is not a U.S. Person) shall deliver two duly completed copies of IRS Form W-8ECI (with respect to any payments to be received on its own behalf) and IRS Form W-8IMY (for all other payments) certifying that it is a "U.S. branch" and that the payments it receives for the account of Lenders are not effectively connected with the conduct of its trade or business in the United States and that it is using such form as evidence of its agreement with the Credit Parties to be treated as a U.S. Person with respect to such payments (and the Credit Parties and Administrative Agent agree to so treat Administrative Agent as a U.S. Person with respect to such payments). Notwithstanding anything to the contrary in this Section 5.06(d), Administrative Agent shall not be required to provide any documentation that Administrative Agent is not legally eligible to deliver as a result of a Change in Law after the Closing Date.

(e) As soon as practicable after any payment of Taxes by a Credit Party to a Governmental Authority pursuant to this Section 5.6, such Credit Party shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(f) Any Lender requiring Borrower or any other Credit Party to pay any Covered Taxes or additional amounts to such Lender or any Governmental Authority for the account of such Lender pursuant to this Section 5.06 agrees to use (at the Credit Parties' expense) reasonable efforts, if requested by Borrower, (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its Applicable Lending Office if, in the judgment

of such Lender, the making of such change would avoid the need for, or materially reduce the amount of, any such additional amounts that may thereafter accrue and would not be otherwise disadvantageous to such Lender.

(g) If Administrative Agent or any Lender receives a cash refund in respect of an overpayment of Taxes from a Governmental Authority with respect to, and actually resulting from, an amount of Taxes actually paid to or on behalf of Administrative Agent or such Lender by Borrower or any other Credit Party, then Administrative Agent or such Lender shall notify Borrower of such refund and forward the proceeds of such refund (or relevant portion thereof) to Borrower as reduced by any reasonable expense or liability incurred by Administrative Agent or such Lender in connection with obtaining such refund (including any Taxes imposed with respect to such refund); *provided*, *however*, that Borrower, upon the request of Administrative Agent or such Lender, shall repay the amount paid over to Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to Administrative Agent or such Lender in the event Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 5.06(g) shall not be construed to require Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to Borrower or any other Person. Notwithstanding anything to the contrary in this Section 5.06(g), in no event will Administrative Agent or any Lender be required to pay any amount to any Credit Party pursuant to this Section 5.06(g) the payment of which would place Administrative Agent or such Lender in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid.

(h) For the avoidance of doubt, for purposes of this Section 5.06, the term "Lender" includes any L/C Issuer and the term "applicable Law" includes FATCA.

ARTICLE VI.

GUARANTEES

SECTION 6.01. The Guarantees. Each (a) Guarantor, jointly and severally with each other Guarantor, hereby guarantees as primary obligor and not as surety to each Secured Party and its successors and assigns the prompt payment and performance in full when due (whether at stated maturity, by acceleration, demand or otherwise) of the principal of and interest (including any interest, fees, costs, expenses, or charges that would accrue but for the provisions of the Bankruptcy Code or other applicable Debtor Relief Law after the filing of any bankruptcy or insolvency petition) on the Loans made by the Lenders to, and the Notes held by each Lender of, Borrower, and (b) Credit Party, jointly and severally with each other Credit Party, hereby guarantees as primary obligor and not as surety to each Secured Party and its successors and assigns the prompt payment and performance in full when due (whether at stated maturity, by acceleration or otherwise) of all other Obligations (including any interest, fees, costs, expenses or charges that would accrue but for the provisions of the Bankruptcy Code or other applicable Debtor Relief Law after the filing of any bankruptcy or insolvency petition) from time to time owing to the Secured Parties by any other Credit Party under any Credit Document, any Credit Swap Contract entered into with a Swap Provider or any Secured Cash Management Agreement entered into with a Cash Management Bank, in each case now or hereinafter created, incurred or made, whether absolute or contingent, liquidated or unliquidated and strictly in accordance with the terms thereof; *provided*, that (i) the obligations guaranteed shall exclude obligations under any Swap Contract or Cash Management Agreements with respect to which the applicable Swap Provider or Cash Management Bank, as applicable, provides notice to Borrower that it does not want such Swap Contract or Cash Management Agreement, as applicable, to be secured, and (ii) as to each Guarantor the obligations guaranteed by such Guarantor hereunder shall not include any Excluded Swap Obligations in respect of such Guarantor (such obligations being guaranteed pursuant to clauses (a) and (b) above being herein collectively called the "**Guaranteed Obligations**" (it being understood that the Guaranteed Obligations of Borrower shall be limited to those referred to in clause (b) above and the Guaranteed Obligations of each other Guarantor shall not include any Obligations with respect to which such Guarantor is the primary obligor)). Each Credit Party, jointly and severally with each other Credit Party, hereby agrees that if any other Credit Party shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, such Credit Party will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

SECTION 6.02. Obligations Unconditional. The obligations of the Credit Parties under Section 6.01 shall constitute a guaranty of payment (and not of collection) and are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations under this Agreement, the Notes or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor (except for Payment in Full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of any of the Credit Parties with respect to its respective guaranty of the Guaranteed Obligations which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

(i) at any time or from time to time, without notice to the Credit Parties, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(ii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Credit Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(iii) the release of any other Credit Party pursuant to Section 6.08;

(iv) any renewal, extension or acceleration of, or any increase in the amount of the Guaranteed Obligations, or any amendment, supplement, modification or waiver of, or any consent to departure from, the Credit Documents;

(v) any failure or omission to assert or enforce or agreement or election not to assert or enforce, delay in enforcement, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under any Credit Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations;

(vi) any settlement, compromise, release, or discharge of, or acceptance or refusal of any offer of payment or performance with respect to, or any substitutions for, the Guaranteed Obligations or any subordination of the Guaranteed Obligations to any other obligations;

(vii) the validity, perfection, non-perfection or lapse in perfection, priority or avoidance of any security interest or lien, the release of any or all collateral securing, or purporting to secure, the Guaranteed Obligations or any other impairment of such collateral;

(viii) any exercise of remedies with respect to any security for the Guaranteed Obligations (including, without limitation, any collateral, including the Collateral securing or purporting to secure any of the Guaranteed Obligations) at such time and in such order and in such manner as Administrative Agent and the Secured Parties may decide and whether or not every aspect thereof is commercially reasonable and whether or not such action constitutes an election of remedies and even if such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy that any Credit Party would otherwise have and without limiting the generality of the foregoing or any other provisions hereof, each Credit Party hereby expressly waives any and all benefits which might otherwise be available to such Credit Party as a surety under applicable law, including, without limitation, California Civil Code Sections 2809, 2810, 2819, 2939, 2845, 2848, 2849, 2850, 2855, 2899, and 3433, and in the event that Nevada law applies to this Agreement or any portion hereof, Guarantors, and each of them, hereby waive the provisions of Section 40.430 of the Nevada Revised Statutes; or

(ix) any other circumstance whatsoever which may or might in any manner or to any extent vary the risk of any Credit Party as a guarantor in respect of the Guaranteed Obligations or which constitutes, or might be construed to constitute, an equitable or legal discharge of any Credit Party as a guarantor of the Guaranteed Obligations, or of such Credit Party under the guarantee contained in this Article VI or of any security interest granted by any Credit Party in its capacity as a guarantor of the Guaranteed Obligations, whether in a proceeding under the Bankruptcy Code or under any other federal, state or foreign bankruptcy, insolvency, receivership, or similar law, or in any other instance.

The Credit Parties hereby expressly waive diligence, presentment, demand of payment, protest, marshaling and all notices whatsoever, and any requirement that any Secured Party thereof exhaust any right, power or remedy or proceed against any Credit Party under this Agreement, the Notes, the Credit Swap Contracts or the Secured Cash Management Agreements or any other agreement or instrument referred to herein or therein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Credit Parties waive any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party thereof upon this guarantee or acceptance of this guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this guarantee, and all dealings between the Credit Parties and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this guarantee. This guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment and performance without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by the Secured Parties, and the obligations and liabilities of the Credit Parties hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other Person at any time of any right or remedy against any Credit Party or against any other Person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Credit Parties and the successors and assigns thereof, and shall inure to the benefit of the Secured Parties, and their respective successors and

assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

For the avoidance of doubt, nothing in this Section 6.02 shall permit amendments to the Credit Documents or an acceleration of the Obligations other than as set forth in the Credit Documents.

SECTION 6.03. Reinstatement. The obligations of the Credit Parties under this Article VI shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Credit Party in respect of the Guaranteed Obligations is rescinded or avoided or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise. The Credit Parties jointly and severally agree that they will indemnify each Secured Party on demand for all reasonable costs and expenses (including reasonable fees of counsel) incurred by such Secured Party in connection with such rescission, avoidance or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law, other than any costs or expenses resulting from the gross negligence, bad faith or willful misconduct of, or material breach by, such Secured Party.

SECTION 6.04. Subrogation; Subordination. Each Credit Party hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement it shall not exercise any right or remedy arising by reason of any performance by it of its guarantee in Section 6.01, whether by subrogation, contribution or otherwise, against any Credit Party of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. The payment of any amounts due with respect to any indebtedness of any Credit Party now or hereafter owing to any Credit Party by reason of any payment by such Credit Party under the Guarantee in this Article VI is hereby subordinated to the prior Payment in Full in cash of the Guaranteed Obligations. Upon the occurrence and during the continuance of an Event of Default, each Credit Party agrees that it will not demand, sue for or otherwise attempt to collect any such indebtedness of any other Credit Party to such Credit Party until the Obligations shall have been Paid in Full in cash. If an Event of Default has occurred and is continuing, and any amounts are paid to the Credit Parties in violation of the foregoing limitation, such amounts shall be collected, enforced and received by such Credit Party as trustee for the Secured Parties and be paid over to Administrative Agent on account of the Guaranteed Obligations without affecting in any manner the liability of such Credit Party under the other provisions of the guaranty contained herein.

SECTION 6.05. Remedies. The Credit Parties jointly and severally agree that, as between the Credit Parties and the Lenders, the obligations of any Credit Party under this Agreement and the Notes may be declared to be forthwith due and payable as provided in Article XI (and shall be deemed to have become automatically due and payable in the circumstances provided in said Article XI) for purposes of Section 6.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable arising under the Bankruptcy Code or any other federal or state bankruptcy, insolvency or other law providing for protection from creditors) as against such other Credit Parties and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by Borrower) shall forthwith become due and payable by the other Credit Parties for purposes of Section 6.01.

SECTION 6.06. Continuing Guarantee. The guarantee in this Article VI is a continuing guarantee of payment and performance, and shall apply to all Guaranteed Obligations whenever arising.

SECTION 6.07. General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Credit Party under Section 6.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 6.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Credit Party, any Secured Party or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

SECTION 6.08. Release of Guarantors. If, in compliance with the terms and provisions of the Credit Documents, (i) the Equity Interests of any Guarantor are directly or indirectly sold or otherwise transferred such that such Guarantor no longer constitutes a Restricted Subsidiary (a "**Transferred Guarantor**") to a Person or Persons, none of which is Borrower or a Restricted Subsidiary, or (ii) any Restricted Subsidiary is designated as or becomes an Excluded Subsidiary, such Transferred Guarantor or Excluded Subsidiary, as applicable, upon the consummation of such sale, transfer or designation or such Person becoming an Excluded Subsidiary, as applicable, shall be automatically

released from its obligations under this Agreement (including under Section 13.03 hereof) and the other Credit Documents, and its obligations to pledge and grant any Collateral owned by it pursuant to any Security Document, and the pledge of Equity Interests in any Transferred Guarantor or any Unrestricted Subsidiary to Collateral Agent pursuant to the Security Documents shall be automatically released, and, so long as Borrower shall have provided the Agents such certifications or documents as any Agent shall reasonably request, Collateral Agent shall take such actions as are necessary to effect and evidence each release described in this Section 6.08 in accordance with the relevant provisions of the Security Documents and this Agreement.

SECTION 6.09. Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Credit Party to honor all of its obligations under the Guarantee in respect of Swap Obligations (*provided*, *however*, that each Qualified ECP Guarantor shall only be liable under this Section 6.09 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 6.09, or otherwise under the Guarantee, as it relates to such Credit Party, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the Payment in Full of the Guaranteed Obligations. Each Qualified ECP Guarantor intends that this Section 6.09 constitute, and this Section 6.09 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

SECTION 6.10. Right of Contribution. Each Credit Party hereby agrees that to the extent that a Credit Party (a **Funding Credit Party**") shall have paid more than its Fair Share (as defined below) of any payment made hereunder, such Credit Party shall be entitled to seek and receive contribution from and against any other Credit Party hereunder which has not paid its Fair Share of such payment. Each Credit Party's right of contribution shall be subject to the terms and conditions of Section 6.04. The provisions of this Section 6.10 shall in no respect limit the obligations and liabilities of any Credit Party to the Secured Parties, and each Credit Party shall remain liable to the Secured Parties for the full amount guaranteed by such Credit Party hereunder. "**Fair Share**" means, with respect to a Credit Party as of any date of determination, an amount equal to (i) the ratio of (A) the Adjusted Maximum Amount (as defined below) with respect to such Credit Party to (B) the aggregate of the Adjusted Maximum Amounts with respect to all Credit Parties multiplied by (ii) the aggregate amount paid or distributed on or before such date by all Funding Credit Parties under this Article VI in respect of the Guaranteed Obligations. "**Adjusted Maximum Amount**" means, with respect to a Credit Party as of any date of determination, the maximum aggregate amount of the obligations of such Credit Party under this Article VI; *provided* that, solely for purposes of calculating the "Adjusted Maximum Amount" with respect to any Credit Party for purposes of this Section 6.10, any assets or liabilities of such Credit Party arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Credit Party. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Credit Party.

ARTICLE VII.

CONDITIONS PRECEDENT

SECTION 7.01. Conditions to Initial Extensions of Credit. The obligations of Lenders to enter into this Agreement on the Closing Date are subject to the satisfaction of the following:

(a) **Corporate Documents**. Administrative Agent shall have received copies of the Organizational Documents of each Credit Party and evidence of all corporate or other applicable authority for each Credit Party (including resolutions or written consents and incumbency certificates) with respect to the execution, delivery and performance of such of the Credit Documents to which each such Credit Party is intended to be a party as of the Closing Date, certified as of the Closing Date as complete and correct copies thereof by the Secretary or an Assistant Secretary of each such Credit Party (or the member or manager or general partner of such Credit Party, as applicable).

(b) **Officer's Certificate**. Administrative Agent shall have received an Officer's Certificate of Borrower, dated the Closing Date, certifying that the conditions set forth in Section 7.01(o) have been satisfied.

(c) **Opinions of Counsel**. Administrative Agent shall have received the following opinions, each of which shall be addressed to Administrative Agent, Collateral Agent, and the Lenders, dated the Closing Date and covering such matters as Administrative Agent shall reasonably request in a manner customary for transactions of this type:

(i) an opinion of Latham & Watkins LLP, special counsel to the Credit Parties; and

(ii) opinions of local counsel to the Credit Parties in such jurisdictions as are set forth in Schedule 7.01.

(d) **Notes**. Administrative Agent shall have received copies of the Notes, duly completed and executed, for each Lender that requested a Note at least three (3) Business Days prior to the Closing Date.

(e) **Credit Agreement**. Administrative Agent shall have received this Agreement (a) executed and delivered by a duly authorized officer of each Credit Party and (b) executed and delivered by a duly authorized officer of each Person that is a Lender on the Closing Date.

(f) **Filings and Lien Searches**. Administrative Agent shall have received (i) UCC financing statements in form appropriate for filing in the jurisdiction of organization of each Credit Party, (ii) results of lien searches conducted in the jurisdictions in which Borrower and its Restricted Subsidiaries are organized and such other jurisdictions as may be requested by Administrative Agent and (iii) security agreements or other agreements in appropriate form for filing in the United States Patent and Trademark Office and United States Copyright Office with respect to intellectual property of Borrower to the extent required pursuant to the Security Agreement.

(g) **Security Agreement**. (i) Administrative Agent shall have received the Security Agreement and the Initial Perfection Certificate, in each case duly authorized, executed and delivered by the applicable Credit Parties, and (ii) Collateral Agent shall have received, to the extent required pursuant to the Security Agreement and not prohibited by applicable Requirements of Law (including, without limitation, any Gaming Laws), (1) original certificates representing the certificated Pledged Securities (as defined in the Security Agreement) required to be delivered to Collateral Agent pursuant to the Security Agreement, accompanied by original undated stock powers executed in blank, and (2) the promissory notes, intercompany notes, instruments, and chattel paper identified under the name of such Credit Parties in Schedule 7 to the Initial Perfection Certificate (other than such certificates, promissory notes, intercompany notes, instruments and chattel paper that constitute "Excluded Property" (as such term is defined in the Security Agreement)), accompanied by undated notations or instruments of assignment executed in blank, and all of the foregoing shall be reasonably satisfactory to Administrative Agent in form and substance (in each case to the extent required to be delivered to Collateral Agent pursuant to the terms of the Security Agreement).

(h) **Credit Documents in Full Force and Effect; Commitment Letter**. The Credit Documents required to be executed and delivered on or prior to the Closing Date shall be in full force and effect. Borrower shall have complied, or shall comply substantially concurrently with the funding of the Loans hereunder, in all respects with its payment obligations under the Commitment Letter required to be performed on the Closing Date.

(i) **Consummation of Transactions**. The Transactions shall have been consummated and the consummation thereof shall be in compliance in all material respects with all applicable Laws (including Gaming Laws and Regulation T, Regulation U and Regulation X) and all applicable Gaming Approvals and other applicable regulatory approvals. After giving effect to the Transactions, there shall be no conflict with, or default under, any material Contractual Obligation of Borrower and its Restricted Subsidiaries (except as Administrative Agent shall otherwise agree)).

(j) **Approvals**. Other than as set forth on Schedule 7.01(j) or in Section 8.06 or Section 8.15, all necessary Governmental Authority approvals (including Gaming Approvals) and/or consents in connection with the Transactions

shall have been obtained and shall remain in full force and effect. In addition, there shall not exist any judgment, order, injunction or other restraint, and there shall be no pending litigation or proceeding by any Governmental Authority, prohibiting, enjoining or imposing materially adverse conditions upon the Transactions, or on the consummation thereof.

(k) **Solvency**. Administrative Agent shall have received a certificate in the form of Exhibit G from a Responsible Officer of Borrower with respect to the Solvency of Borrower (on a consolidated basis with its Restricted Subsidiaries), immediately after giving effect to the consummation of the Transactions.

(l) **Payment of Fees and Expenses**. To the extent invoiced at least five (5) Business Days prior to the closing date, all reasonable costs, fees, expenses of Administrative Agent, Lead Arrangers, and (in the case of fees only) the Lenders required to be paid by this Agreement, the Commitment Letter or as otherwise agreed by Borrower, in each case, payable to Administrative Agent, Lead Arrangers, and/or Lenders in respect of the Transactions, shall have been paid to the extent due.

(m) **Patriot Act; Beneficial Ownership Regulation**. Administrative Agent shall have received at least five (5) days prior to the Closing Date all documentation and other information reasonably requested in writing at least ten (10) days prior to the Closing Date by Administrative Agent that Administrative Agent reasonably determines is required by regulatory authorities from the Credit Parties under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the Patriot Act. Administrative Agent shall have received at least five (5) days prior to the Closing Date, a Beneficial Ownership Certification in relation to Borrower if it qualifies as a "legal entity customer" under the Beneficial Ownership Regulation and is not subject to any exemption thereunder, to the extent requested in writing not less than ten (10) days prior to the Closing Date.

(n) **Wynn Resorts Financials**. Borrower has delivered to Administrative Agent or made publically available (i) the audited consolidated balance sheets and related statements of income, equity, and cash flows for the fiscal years ended December 31, 2016, 2017, and 2018 and (ii) the unaudited interim consolidated balance sheets and related statements of income and cash flows for each fiscal quarter ending after December 31, 2018 and at least 40 days prior to the Closing Date.

(o) **Representations and Warranties**. The Specified Representations shall be true and correct in all material respects; *provided* that, any Specified Representation that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects.

(p) **Repayment of Indebtedness**. Borrower and its Restricted Subsidiaries shall have effected (or will, on the Closing Date, effect) the repayment in full of all obligations and indebtedness of Borrower and its Restricted Subsidiaries in respect of the Existing Credit Agreements, including, without limitation, the termination of all outstanding commitments in effect under the Existing Credit Agreements (with the exception of obligations relating to each applicable Existing Letter of Credit issued thereunder), on customary terms and conditions and pursuant to documentation reasonably satisfactory to Administrative Agent. All Liens and guarantees in respect of such obligations shall have been terminated or released (or arrangements for such termination or release reasonably satisfactory to Administrative Agent shall have been made) (with the exception of obligations relating to each applicable Existing Letter of Credit issued thereunder), and Administrative Agent shall have received (or will, on the Closing Date, receive) evidence thereof reasonably satisfactory to Administrative Agent and a "pay-off" letter or letters reasonably satisfactory to Administrative Agent with respect to such obligations and such UCC termination statements, mortgage releases, and other instruments, in each case in proper form for recording, as Administrative Agent shall have reasonably requested to release and terminate of record the Liens securing such obligations (or arrangements for such termination or release reasonably satisfactory to Administrative Agent shall have been made).

(q) Wynn Resorts Finance Notes. Substantially concurrently with the funding of the Loans hereunder, the indenture for the Wynn Resorts Finance Notes shall be executed and delivered by the parties thereto.

SECTION 7.02. Conditions to All Extensions of Credit. Subject to the limitations set forth in Section 2.12 and the applicable Incremental Joinder Agreement, the obligations of the Lenders to make any Loan or otherwise extend

any credit to Borrower upon the occasion of each Borrowing or other extension of credit (whether by making a Loan or issuing a Letter of Credit) hereunder after the Closing Date is subject to the conditions precedent that:

(a) **No Default or Event of Default; Representations and Warranties True**. Both immediately prior to the making of such Loan or other extension of credit and also after giving effect thereto and to the intended use thereof:

(i) no Default or Event of Default shall have occurred and be continuing (*provided* that this clause (i) shall not apply to any extensions of credit pursuant to (x) an Incremental Commitment to the extent provided in Section 2.12 and the applicable Incremental Joinder Agreement or (y) Extended Term Loans and/or Extended Revolving Commitments, as applicable, to the extent provided in Section 2.13 and the applicable Extension Amendment);

(ii) each of the representations and warranties made by the Credit Parties in Article VIII or by each Credit Party in each of the other Credit Documents to which it is a party shall be true and correct in all material respects on and as of the date of the making of such Loan or other extension of credit with the same force and effect as if made on and as of such date (it being understood and agreed that any such representation or warranty which by its terms is made as of an earlier date shall be required to be true and correct in all material respects only as such earlier date, and that any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects on the applicable date) (*provided* that this clause (ii) shall not apply to any extensions of credit pursuant to (x) an Incremental Commitment to the extent provided in Section 2.12 and the applicable Incremental Joinder Agreement or (y) Extended Term Loans and/or Extended Revolving Commitments, as applicable, to the extent provided in Section 2.13 and the applicable Extension Amendment); and

(iii) the sum of the aggregate amount of the outstanding Revolving Loans *plus* the aggregate outstanding L/C Liabilities shall not exceed the Total Revolving Commitments then in effect.

(b) **Notice of Borrowing**. Administrative Agent shall have received a Notice of Borrowing and/or Letter of Credit Request, as applicable, duly completed and complying with Section 4.05. Each Notice of Borrowing or Letter of Credit Request delivered by Borrower hereunder shall constitute a representation and warranty by Borrower that on and as of the date of such notice and on and as of the relevant borrowing date or date of issuance of a Letter of Credit (both immediately before and after giving effect to such borrowing or issuance and the application of the proceeds thereof) that the applicable conditions in Section 7.01 or 7.02, as the case may be, have been satisfied.

ARTICLE VIII.

REPRESENTATIONS AND WARRANTIES

Each Credit Party represents and warrants to Administrative Agent, Collateral Agent, and the Lenders that, at and as of each Funding Date, in each case immediately before and immediately after giving effect to the transactions to occur on such date (*provided*, that such representations and warranties made on the Closing Date shall be made giving effect to the Transactions):

SECTION 8.01. Corporate Existence; Compliance with Law.

(a) Borrower and each Restricted Subsidiary (i) is a corporation, partnership, limited liability company or other entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (ii)(A) has all requisite corporate or other power and authority and (B) has all governmental licenses, authorizations, consents, and approvals necessary to own its Property and carry on its business as now being conducted, and (iii) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary; except, in the case of clauses (ii)(B) and (iii) where the failure thereof individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

(b) Neither Borrower nor any Restricted Subsidiary nor any of its Property is in violation of, nor will the continued operation of Borrower's or such Restricted Subsidiary's Property as currently conducted violate, any Requirement of Law or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority, where such violations or defaults would reasonably be expected to have a Material Adverse Effect.

SECTION 8.02. Material Adverse Effect. (x) On the Closing Date, with respect to the Credit Parties on the Closing Date (but prior to giving effect to the Wynn Group Reorganization), since December 31, 2018, there shall not have occurred any event or circumstance that has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect and (y) after the Closing Date, since the Closing Date, there shall not have occurred any event or circumstance that has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

SECTION 8.03. Litigation. Except as set forth on Schedule 8.03, there is no Proceeding (other than any (a) *qui tam* Proceeding, to which this Section 8.03 is limited to knowledge of any Responsible Officer of Borrower, and (b) normal overseeing reviews of the Gaming Authorities) pending against, or to the knowledge of any Responsible Officer of Borrower, threatened in writing against, Borrower or any of its Restricted Subsidiaries before any Governmental Authority or private arbitrator that (i) either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect or (ii) as of the Closing Date only, challenges the validity or enforceability of any of the Credit Documents.

SECTION 8.04. No Breach; No Default.

(a) None of the execution, delivery and performance by any Credit Party of any Credit Document to which it is a party nor the consummation of the transactions herein and therein contemplated (including the Transactions) do or will (i) conflict with or result in a breach of, or require any consent (which has not been obtained and is in full force and effect) under (x) any Organizational Document of any Credit Party or (y) subject to Section 13.13, any applicable Requirement of Law (including, without limitation, any Gaming Law) or (z) any order, writ, injunction or decree of any Governmental Authority binding on any Credit Party or (ii) constitute (with due notice or lapse of time or both) a default under any Contractual Obligation or (iii) result in or require the creation or imposition of any Lien (except for the Liens created pursuant to the Security Documents and other Permitted Liens) upon any Property of any Credit Party pursuant to the terms of any such Contractual Obligation, except with respect to clauses (i)(y), (i)(z), (ii), or (iii) which would not reasonably be expected to result in a Material Adverse Effect.

(b) No Default or Event of Default has occurred and is continuing.

SECTION 8.05. Action. Borrower and each Restricted Subsidiary has all necessary corporate or other organizational power, authority and legal right to execute, deliver and perform its obligations under each Credit Document to which it is a party and to consummate the transactions herein and therein contemplated; the execution, delivery and performance by Borrower and each Restricted Subsidiary of each Credit Document to which it is a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all necessary corporate, partnership or other organizational action on its part; and this Agreement has been duly and validly executed and delivered by each Credit Party and constitutes, and each of the Credit Documents to which it is a party when executed and delivered by such Credit Party will constitute, its legal, valid and binding obligation, enforceable against each Credit Party, as applicable, in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws of general applicability from time to time in effect affecting the enforcement of creditors' rights and remedies and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

SECTION 8.06. Approvals. No authorizations, approvals or consents of, and no filings or registrations with, any Governmental Authority or any securities exchange are necessary for the execution, delivery or performance by Borrower or any Restricted Subsidiary of the Credit Documents to which it is a party or for the legality, validity or enforceability hereof or thereof or for the consummation of the Transactions, except for: (i) authorizations, approvals or consents of, and filings or registrations with any Governmental Authority or any securities exchange previously obtained, made, received or issued, (ii) filings and recordings in respect of the Liens created pursuant to the Security

Documents, (iii) the delivery of executed copies of this Agreement, the Security Agreement and the Notes executed on the Closing Date to the relevant Gaming Authorities, (iv) the filings referred to in Section 8.14, (v) satisfaction of or waiver by the Gaming Authorities of any qualification requirement on the part of the Lenders who do not otherwise qualify, (vi) to the extent required, prior approval of the Transactions by the Gaming Authorities, which approval has been obtained on or prior to the Closing Date, (vii) consents, authorizations and filings that have been obtained or made and are in full force and effect or the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect, (viii) any required approvals (including prior approvals) of the requisite Gaming Authorities that any Agent, Lender or participant is required to obtain from, or any required filings with, requisite Gaming Authorities to exercise their respective rights and remedies under this Agreement and the other Credit Documents (as set forth in Section 13.13) and (ix) prior approval from the Nevada Gaming Commission of the pledge of any Pledged Nevada Gaming Interests (as defined in the Security Agreement).

SECTION 8.07. ERISA and Employee Benefit Plan Matters. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events which have occurred or are reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect. Except as set forth on Schedule 8.07, as of the Closing Date, no ERISA Entity maintains or contributes to any Pension Plan. Each ERISA Entity is in compliance with the presently applicable provisions of ERISA and the Code with respect to each Employee Benefit Plan (other than to the extent such failure(s) to comply would not reasonably be expected to have a Material Adverse Effect). Except as would not reasonably be expected to result in a Material Adverse Effect, no ERISA Entity has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

SECTION 8.08. Taxes. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) all Tax returns, statements, reports and forms required to be filed with any Governmental Authority by, or with respect to, Borrower and each of its Restricted Subsidiaries have been timely filed (taking into account any applicable extensions) in accordance with all applicable laws; and (ii) Borrower and each of its Restricted Subsidiaries has timely paid or made provision for payment of all Taxes shown as due and payable on such returns that have been so filed or that are otherwise due and payable, including in its capacity as a withholding agent (other than Taxes which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP).

SECTION 8.09. Investment Company Act. Neither Borrower nor any of its Restricted Subsidiaries (excluding EBH Holdings, LLC) is an "investment company," or a company "controlled" by an "investment company" required to be regulated under the Investment Company Act of 1940, as amended.

SECTION 8.10. Environmental Matters. Except as set forth on Schedule 8.10 or as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect: (i) each of Borrower and its Restricted Subsidiaries and each of their businesses, operations and Real Property is in material compliance with, and each has no liability under, any Environmental Law; (ii) each of Borrower and its Restricted Subsidiaries has obtained all Permits material to, and required for, the conduct of their businesses and operations, and the ownership, operation and use of their assets, all as currently conducted, under any Environmental Law; (iii) there has been no Release or threatened Release of Hazardous Material on, at, under or from any real property or facility presently or formerly owned, leased or operated by Borrower or any of its Restricted Subsidiaries that would reasonably be expected to result in liability to Borrower or any of its Restricted Subsidiaries under any Environmental Law; (iv) there is no Environmental Action pending or, to the knowledge of any Responsible Officer of Borrower or any of its Restricted Subsidiaries, threatened, against Borrower or any of its Restricted Subsidiaries or, relating to real property currently or formerly owned, leased or operated by Borrower or any of its Restricted Subsidiaries or relating to the operations of Borrower or its Restricted Subsidiaries; and (v) no circumstances exist that would reasonably be expected to form the basis of an Environmental Action against Borrower or any of its Restricted Subsidiaries, or any of their Real Property, facilities or assets.

SECTION 8.11. Use of Proceeds.

(a) Borrower will use the proceeds of:

(i) Term A Facility Loans and Revolving Loans made on the Closing Date to finance the Transactions and for working capital, capital expenditures, Permitted Acquisitions, Restricted Payments permitted by this Agreement, general corporate purposes, and for any other purposes not prohibited by this Agreement, and

(ii) Revolving Loans and Term Loans made after the Closing Date for working capital, capital expenditures, Permitted Acquisitions, Restricted Payments permitted by this Agreement, general corporate purposes, and for any other purposes not prohibited by this Agreement.

(b) Neither Borrower nor any of its Restricted Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock. No part of the proceeds of any extension of credit (including any Loans and Letters of Credit) hereunder will be used directly or indirectly and whether immediately, incidentally or ultimately to purchase or carry any Margin Stock or to extend credit to others for such purpose or to refund Indebtedness originally incurred for such purpose or for any other purpose, in each case, that entails a violation of, or is inconsistent with, the provisions of Regulation T, Regulation U or Regulation X. The pledge of any Equity Interests by any Credit Party pursuant to the Security Agreement does not violate such regulations.

SECTION 8.12. Subsidiaries.

(a) Schedule 8.12(a) sets forth a true and complete list of the following: (i) all the Subsidiaries of Borrower (other than Unrestricted Subsidiaries) as of the Closing Date; (ii) the name and jurisdiction of incorporation or organization of each such Subsidiary as of the Closing Date; and (iii) as to each such Subsidiary, the percentage and number of each class of Equity Interests of such Subsidiary owned by Borrower and its Subsidiaries as of the Closing Date.

(b) Schedule 8.12(b) sets forth a true and complete list of all the Immaterial Subsidiaries as of the Closing Date.

(c) Schedule 8.12(c) sets forth a true and complete list of all the Unrestricted Subsidiaries as of the Closing Date.

SECTION 8.13. Ownership of Property; Liens. Except as set forth on Schedule 8.13, (a) Borrower and each of its Restricted Subsidiaries has good and valid title to, or a valid (with respect to Real Property) leasehold interest in (or subleasehold interest in or other right to occupy), all assets and Property (including Mortgaged Real Property) (tangible and intangible) owned or occupied by it except where the failure to have such title would not reasonably be expected to result in a Material Adverse Effect and (b) all such assets and Property are subject to no Liens other than Permitted Liens. All of the assets and Property owned by, leased to or used by Borrower and each of its Restricted Subsidiaries in its respective businesses are in good operating condition and repair in all material respects (ordinary wear and tear and casualty and force majeure excepted) except in each case where the failure of such asset to meet such requirements would not reasonably be expected to result in a Material Adverse Effect.

SECTION 8.14. Security Interest; Absence of Financing Statements; Etc. The Security Documents, once executed and delivered, will create, in favor of Collateral Agent for the benefit of the Secured Parties, as security for the obligations purported to be secured thereby, a valid and enforceable security interest in and Lien upon all of the Collateral (subject to applicable Gaming Laws and any applicable provisions set forth herein or in the Security Documents with respect to limitations or exclusions from the requirement to perfect the security interests and Liens on the collateral described therein), and upon (i) filing, recording, registering or taking such other actions as may be necessary with the appropriate Governmental Authorities (including payment of applicable filing and recording taxes), (ii) the taking of possession or control by Collateral Agent of the Pledged Collateral with respect to which a security interest may be perfected only by possession or control which possession or control shall be given to Collateral Agent to the extent possession or control by Collateral Agent is required by the Security Agreement and (iii) delivery of the applicable documents to Collateral Agent in accordance with the provisions of the applicable Security Documents, for the benefit of the Secured Parties, such security interest shall be a perfected security interest in and Lien upon all of

the Collateral (subject to any applicable provisions set forth herein or in the Security Documents with respect to limitations or exclusions from the requirement to perfect the security interests and Liens on the collateral described therein) superior to and prior to the rights of all third Persons and subject to no Liens, in each case, other than Permitted Liens.

SECTION 8.15. Licenses and Permits. Except as set forth on Schedule 8.15, Borrower and each of its Restricted Subsidiaries hold all material governmental permits, licenses, authorizations, consents and approvals necessary for Borrower and its Restricted Subsidiaries to own, lease, and operate their respective Properties and to operate their respective businesses as presently conducted (collectively, the "**Permits**"), except for Permits the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect.

SECTION 8.16. Disclosure. The information, reports, financial statements, exhibits and schedules furnished in writing by or on behalf of any Credit Party to any Secured Party prior to the Closing Date in connection with this Agreement and the other Credit Documents or included or delivered pursuant thereto, but in each case excluding all projections and general industry or economic data, whether prior to or after the date of this Agreement, when taken as a whole and giving effect to all supplements and updates, do not contain any untrue statement of material fact or omit to state a material fact necessary in order to make the statements herein or therein, in light of the circumstances under which they were made, not materially misleading. The projections and *pro forma* financial information furnished prior to the Closing Date by any Credit Party to any Secured Party in connection with this Agreement have been prepared in good faith based on assumptions believed by Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount and no Credit Party, however, makes any representation as to the ability of any Company to achieve the results set forth in any such projections. As of the Closing Date, the information included in any Beneficial Ownership Certification is true and correct in all material respects.

SECTION 8.17. Solvency. As of the Closing Date, immediately prior to and immediately following the consummation of the Transactions and the extensions of credit to occur on the Closing Date, Borrower (on a consolidated basis with its Restricted Subsidiaries) is and will be Solvent (after giving effect to Section 6.07).

SECTION 8.18. Intellectual Property. Except as set forth on Schedule 8.18, Borrower and each of its Restricted Subsidiaries owns or possesses adequate licenses or otherwise has the right to use all of the patents, patent applications, trademarks, trademark applications, service marks, service mark applications, trade names, copyrights, trade secrets, know-how and processes (collectively, "**Intellectual Property**") (including, as of the Closing Date, all Intellectual Property listed in Schedules 9(a), 9(b), and 9(c) to the Initial Perfection Certificate) that are necessary for the operation of its business as presently conducted except where failure to own or have such right would not reasonably be expected to have a Material Adverse Effect and, as of the Closing Date, all registrations listed in Schedules 9(a), 9(b), and 9(c) to the Initial Perfection Certificate are valid and in full force and effect, except where the invalidity of such registrations would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 8.18, as of the Closing Date, no claim is pending or, to the knowledge of any Responsible Officer of Borrower, threatened to the effect that Borrower or any of its Restricted Subsidiaries infringes or conflicts with the asserted rights of any other Person under any material Intellectual Property, except for such claims that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 8.18, as of the Closing Date, no claim is pending or, to the knowledge of any Responsible Officer of Borrower, threatened to the effect that any such material Intellectual Property owned or licensed by Borrower or any of its Restricted Subsidiaries or which Borrower or any of its Restricted Subsidiaries otherwise has the right to use is invalid or unenforceable, except for such claims that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

SECTION 8.19. Regulation H. Except for the Real Property listed on Schedule 8.19 attached hereto, as of the Closing Date, no Mortgage encumbers improved real property which is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968.

SECTION 8.20. Insurance. Borrower and each of its Restricted Subsidiaries are insured by insurers of recognized financial responsibility (determined as of the date such insurance was obtained) against such losses and risks (other than wind and flood damage) and in such amounts as are prudent and customary in the businesses in which it is engaged, except to the extent that such insurance is not available on commercially reasonable terms. Borrower and each of its Restricted Subsidiaries maintain all insurance required by Flood Insurance Laws (but shall not, for the avoidance of doubt, be required to obtain insurance with respect to wind and flood damage unless and to the extent required by such Flood Insurance Laws).

SECTION 8.21. Real Estate.

(a) Schedule 8.21(a) sets forth a true, complete and correct list of all material Real Property owned and all material Real Property leased by Borrower or any of its Restricted Subsidiaries as of the Closing Date, including a brief description thereof, including, in the case of leases, the street address (to the extent available) and landlord name.

(b) Except as set forth on Schedule 8.21(b), as of the Closing Date, to the best of knowledge of any Responsible Officer of Borrower no Taking has been commenced or is contemplated with respect to all or any portion of the Real Property or for the relocation of roadways providing access to such Real Property that either individually or in the aggregate would reasonably be expected to have a Material Adverse Effect.

SECTION 8.22. Anti-Terrorism Law and Sanctions.

(a) No Credit Party and, to the knowledge of any Responsible Officer of Borrower, none of its Affiliates, or any broker or other agent of any Credit Party acting in any capacity in connection with the Loans or Letters of Credit, is in violation in any material respect of any Requirement of Law relating to terrorism or money laundering ("**Anti-Terrorism Laws**"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "**Executive Order**"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (the "**Patriot Act**").

(b) No Credit Party and, to the knowledge of any Responsible Officer of Borrower, no Affiliate, officer, director, employee or broker or other agent of any Credit Party acting or benefiting in any capacity in connection with the Loans or Letter of Credit is any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Sanctions or Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order;

(v) a Person that is named as a "specially designated national and blocked Person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control ("**OFAC**") at its official website or any replacement website or other replacement official publication of such list, or that is owned 50% or more by any such Persons; or

(vi) a Person that is located, organized or resident in a Designated Jurisdiction.

(c) None of Borrower, any Subsidiary or, to the knowledge of any Responsible officer of Borrower, any of their respective directors, officers, agents, employees or Affiliates is currently the subject of Sanctions, or is located, organized or resident in a country or territory that is the subject of Sanctions; and Borrower and its Subsidiaries will

not directly or knowingly indirectly use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any Subsidiary, Joint Venture or other Person, for the purpose of financing the activities of any Person subject to any Sanctions. Borrower has implemented and maintains in effect policies and procedures reasonably designed to promote material compliance by Borrower, its Subsidiaries and their respective directors, officers, agents and employees with applicable Sanctions.

SECTION 8.23. Anti-Corruption Laws/Bribery. Neither Borrower, nor any of its Subsidiaries nor, to the knowledge of any Responsible Officer of Borrower, none of its Affiliates, directors, officers, employees, brokers, or agents acting in any capacity on behalf of Borrower or its Subsidiaries, is in violation in any material respect of any Requirement of Law relating to any anti-bribery or anti-corruption laws or regulations in any applicable jurisdiction. No Borrowing or Letter of Credit, use of proceeds or other transaction contemplated by this Agreement will violate in any material respect of any Requirement of Law relating to any anti-bribery or anti-corruption laws or regulations in any applicable jurisdiction. Borrower has implemented and maintains in effect policies and procedures reasonably designed to promote material compliance by Borrower, its Subsidiaries and their respective directors, officers, agents and employees with anti-bribery and anti-corruption laws or regulations in applicable jurisdictions.

SECTION 8.24. Labor Matters. Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (a) there are no strikes or other labor disputes against Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of Borrower, threatened and (b) the hours worked by and payments made to employees of Borrower or any of its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters.

ARTICLE IX.

AFFIRMATIVE COVENANTS

Each Credit Party, for itself and on behalf of its Restricted Subsidiaries, covenants and agrees with Administrative Agent, Collateral Agent, and the Lenders that until the Obligations have been Paid in Full, (and each Credit Party covenants and agrees that it will cause its Restricted Subsidiaries to observe and perform the covenants herein set forth applicable to any such Restricted Subsidiary until the Obligations have been Paid in Full):

SECTION 9.01. Existence; Business Properties.

(a) Borrower and each of its Restricted Subsidiaries shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except in a transaction permitted by Section 10.05 or, in the case of any Restricted Subsidiary, where the failure to perform such obligations, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(b) Borrower and each of its Restricted Subsidiaries shall do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; comply with all applicable Requirements of Law (including any and all Gaming Laws and any and all zoning, building, ordinance, code or approval or any building permits or any restrictions of record or agreements affecting the Real Property) and decrees and orders of any Governmental Authority, whether now in effect or hereafter enacted, except where the failure to comply, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect and at all times maintain and preserve all of its property and keep such property in good repair, working order and condition (ordinary wear and tear and casualty and force majeure excepted) except where the failure to do so individually or in the aggregate would not reasonably be expected to result in a Material Adverse Effect; *provided*, *however*, that nothing in this Section 9.01(b) shall prevent (i) sales, conveyances, transfers or other dispositions of assets, consolidations or mergers by or involving any Company or any other transaction in accordance with Section 10.05; (ii) the withdrawal by any Company of its qualification as a foreign corporation in any jurisdiction where such withdrawal, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect;

or (iii) the abandonment by any Company of any rights, permits, authorizations, copyrights, trademarks, trade names, franchises, licenses and patents that such Company reasonably determines are not useful to its business.

SECTION 9.02. Insurance.

(a) Borrower and its Restricted Subsidiaries shall maintain with insurers of recognized financial responsibility (determined at the time such insurance is obtained) not Affiliates of Borrower insurance on its Property in at least such amounts and against at least such risks as are customarily insured against by companies engaged in the same or a similar business and operating similar properties in localities where Borrower or the applicable Restricted Subsidiary operates; and furnish to Administrative Agent, upon written request, information as to the insurance carried; *provided* that Borrower and its Restricted Subsidiaries shall not be required to maintain insurance with respect to wind and flood damage on any property for any insurance coverage period unless, and to the extent, such insurance is required by an applicable Requirement of Law. Subject to Sections 9.08, 9.11, and 9.16, Collateral Agent shall be named as an additional insured on all third-party liability insurance policies of Borrower and each of its Restricted Subsidiaries (other than directors and officers liability insurance, insurance policies relating to employment practices liability, crime or fiduciary duties, kidnap and ransom insurance policies, and insurance as to fraud, errors and omissions), and Collateral Agent shall be named as mortgagee/loss payee on all property insurance policies of each such Person.

(b) If any portion of any Mortgaged Real Property is at any time is located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then Borrower shall, or shall cause the applicable Credit Party to (i) to the extent required pursuant to Flood Insurance Laws, maintain, or cause to be maintained, with a financially sound and reputable insurer (determined at the time such insurance is obtained), flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to such Flood Insurance Laws and (ii) deliver to Administrative Agent evidence of such compliance in form and substance reasonably acceptable to Administrative Agent.

SECTION 9.03. Taxes. Borrower and each of its Restricted Subsidiaries shall timely pay and discharge before the same shall become delinquent all Taxes imposed upon it or upon its income or profits or in respect of its property (including in its capacity as a withholding agent), before the same shall become delinquent; provided, however, that (a) such payment and discharge shall not be required with respect to any such Taxes so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and Borrower and each of its Subsidiaries shall have set aside on its books adequate reserves with respect thereto in accordance with GAAP or (b) such payment and discharge shall not be required in the event the failure to make payment and discharge would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

SECTION 9.04. Financial Statements, Etc. Borrower shall deliver to Administrative Agent for distribution by Administrative Agent to the Lenders (unless a Lender expressly declines in writing to accept):

(a) **Quarterly Financials**. As soon as available and in any event within 45 days (or, in the case of the fiscal quarter ending September 30, 2019, within 75 days following the end of such fiscal quarter) after the end of each of the first three quarterly fiscal periods of each fiscal year beginning with the fiscal quarter ending September 30, 2019, consolidated statements of operations, cash flows and stockholders' equity of Consolidated Companies for such period and for the period from the beginning of the respective fiscal year to the end of such period, and the related consolidated balance sheet of Consolidated Companies as at the end of such period, setting forth in each case in comparative form the corresponding consolidated statements of operations, cash flows and stockholders' equity for the corresponding period in the preceding fiscal year to the extent such financial statements are available, accompanied by a certificate of a Responsible Officer of Borrower, which certificate shall state that said consolidated financial statements fairly present in all material respects the consolidated financial condition, results of operations and cash flows of Consolidated Companies in accordance with GAAP, consistently applied, as at the end of, and for, such period (subject to normal year-end audit adjustments and except for the absence of footnotes);

(b) **Annual Financials**. As soon as available and in any event within 90 days (or, in the case of the fiscal year ending December 31, 2019, within 120 days following the end of such fiscal year) after the end of each fiscal year beginning with the fiscal year ending December 31, 2019, consolidated statements of operations, cash flows and stockholders' equity of Consolidated Companies for such year and the related consolidated balance sheet of Consolidated Companies as at the end of such year, setting forth in each case in comparative form the corresponding information as of the end of and for the preceding fiscal year to the extent such financial statements are available, and, in the case of such consolidated financial statements, accompanied by an opinion, without a going concern or similar qualification or exception as to scope (other than any going concern or similar qualification or exception related to (i) an upcoming maturity date within twelve (12) months under any Indebtedness or (ii) any prospective or actual default of any financial covenant or event of default under Section 10.08 or any other financial covenant with respect to the credit facilities hereunder or any other Indebtedness), thereon of Ernst & Young LLP or other independent certified public accountants of recognized national standing which opinion shall state that said consolidated financial statements fairly present in all material respects the consolidated financial condition, results of operations and cash flows of Consolidated Companies as at the end of, and for, such fiscal year in conformity with GAAP, consistently applied (except as noted therein);

(c) **Compliance Certificate**. At the time Borrower furnishes each set of financial statements pursuant to Section 9.04(a) or 9.04(b), a certificate of a Responsible Officer of Borrower in the form of Exhibit E hereto (I) to the effect that no Default has occurred and is continuing (or, if any Default has occurred and is continuing, describing the same in reasonable detail and describing the action that the Companies have taken and propose to take with respect thereto) and (II) setting forth in reasonable detail the computations necessary to determine whether Borrower and its Restricted Subsidiaries are in compliance with Section 10.08 as of the end of the respective fiscal quarter or fiscal year; *provided* that if such certificate demonstrates an Event of Default with respect to the Financial Maintenance Covenant, Borrower may deliver, prior to or together with such certificate, a notice of intent to cure (a "**Notice of Intent to Cure**") pursuant to Section 11.03 to the extent permitted thereunder;

(d) **Notice of Default**. Promptly after any Responsible Officer of any Company knows that any Default has occurred, a notice of such Default, breach or violation describing the same in reasonable detail and a description of the action that the Companies have taken and propose to take with respect thereto;

(e) **Environmental Matters**. Written notice of any claim, release of Hazardous Material, condition, circumstance, occurrence or event arising under Environmental Law which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(f) **Annual Budgets**. Beginning with the fiscal year of Borrower commencing on January 1, 2020, as soon as practicable and in any event within 10 days after the approval thereof by the Board of Directors of Borrower (but not later than 90 days after the beginning of each fiscal year of Borrower), a consolidated plan and financial forecast for such fiscal year, including a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of Consolidated Companies for such fiscal year and for each quarter of such fiscal year, together with an Officer's Certificate containing an explanation of the assumptions on which such forecasts are based and stating that such plan and projections have been prepared using assumptions believed in good faith by management of Borrower to be reasonable at the time made (it being recognized by the Lenders that such plan and projections are not to be viewed as fact and that actual results during the period or periods covered by such plan and projections may differ from the forecasted results set forth therein by a material amount and no Company makes any representation as to the ability of any Company to achieve the results set forth in any such plan or projections);

(g) **Auditors' Reports**. Promptly upon receipt thereof, copies of all annual, interim or special reports issued to Borrower or any Restricted Subsidiary by independent certified public accountants in connection with each annual, interim or special audit of Borrower's or such Restricted Subsidiary's books made by such accountants, including any management letter commenting on Borrower's or such Restricted Subsidiary's internal controls issued by such accountants to management in connection with their annual audit; *provided*, *however*, that such reports shall only be made available to Administrative Agent and to those Lenders who request such reports through Administrative Agent;

(h) **Casualty and Damage to Collateral; Perfection Certificate Updates**

(i) Prompt written notice of any Casualty Event or other insured damage to any material portion of the Collateral; and

(ii) Each year, at the time of delivery of annual financial statements with respect to the preceding fiscal year pursuant to Section 9.04(b), a certificate of a Responsible Officer of Borrower setting forth the information required pursuant to Schedules 1(a), 1(b), 1(c), 2, 3, 4(a), 4(b), 5, 6, 7(a), 7(b), 7(c), 8, and 9 to the Perfection Certificate or confirming that there has been no change in such information since the date of the Initial Perfection Certificate or the date of the most recent certificate delivered pursuant to this Section 9.04(h)(ii);

(i) **Notice of Material Adverse Effect or Covenant Suspension Period** Written notice (i) of the occurrence of any event or occurrence that has had or would reasonably be expected to have a Material Adverse Effect or (ii) Borrower's determination of the commencement or termination of a Covenant Suspension Period;

(j) **ERISA Information**. Promptly after the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect, a written notice specifying the nature thereof, what action the Companies or other ERISA Entity have taken, are taking or propose to take with respect thereto, and, when known, any action taken or threatened by the IRS, Department of Labor, PBGC or Multiemployer Plan sponsor with respect thereto;

(k) **Beneficial Ownership Regulation**. Promptly after Borrower's knowledge thereof, notice of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in such certification; *provided* that this clause (k) shall not apply at any time unless Borrower then qualifies as a "legal entity customer" under the Beneficial Ownership Regulation and is not subject to any exemption thereunder; and

(l) **Miscellaneous**. Promptly, such financial information, reports, documents and other information with respect to Borrower or any of its Restricted Subsidiaries as Administrative Agent or the Required Lenders may from time to time reasonably request;

provided that, notwithstanding the foregoing, nothing in this Section 9.04 shall require delivery of financial information, reports, documents or other information which constitutes attorney work product or is subject to confidentiality agreements or to the extent disclosure thereof would reasonably be expected to result in loss of attorney client privilege with respect thereto.

Reports and documents required to be delivered pursuant to Section 9.04 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Borrower posts such reports and/or documents, or provides a link thereto on Borrower's website on the Internet at the website address specified below Borrower's name on the signature hereof or such other website address as provided in accordance with Section 13.02; or (ii) on which such reports and/or documents are posted on Borrower's behalf on an Internet or intranet website, if any, to which each Lender and Administrative Agent have access (whether a commercial, third-party website (including the website of the SEC) or whether sponsored by Administrative Agent); *provided* that: Borrower shall provide to Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such reports and/or documents and Administrative Agent shall post such reports and/or documents and notify (which may be by facsimile or electronic mail) each Lender of the posting of any such reports and/or documents. Notwithstanding anything contained herein, in every instance Borrower shall be required to provide the compliance certificate required by Section 9.04(c)(ii) to Administrative Agent in the form of an original paper copy or a.pdf or facsimile copy of the original paper copy.

Concurrently with the delivery of financial statements pursuant to Sections 9.04(a) and 9.04(b) above, in the event that, in the aggregate, the Unrestricted Subsidiaries account for greater than 10% of the Consolidated EBITDA of Borrower and its Subsidiaries on a consolidated basis with respect to the Test Period ended on the last day of the period covered by such financial statements, Borrower shall provide revenues, net income, Consolidated EBITDA (including the component parts thereof), Consolidated Indebtedness and cash and Cash Equivalents on hand of Borrower and its Restricted Subsidiaries, on the one hand, and (y) the Unrestricted Subsidiaries, on the other hand (with

Consolidated EBITDA to be determined for such Unrestricted Subsidiaries as if references in the definition of Consolidated EBITDA were deemed to be references to the Unrestricted Subsidiaries).

Notwithstanding anything to the contrary set forth in this Agreement or any other Credit document, for so long as Wynn Resorts reports on a consolidated basis, then such consolidated reporting by Wynn Resorts in a manner consistent with that described in Sections 9.04(a) and 9.04(b) will satisfy the requirements of such paragraphs; provided that, such financial statements are accompanied by consolidating information (which may be unaudited) that explains in reasonable detail the differences between the information relating to Wynn Resorts and any of its Subsidiaries other than Borrower and its Restricted Subsidiaries, on the one hand, and the information relating to Borrower and its Restricted Subsidiaries on a standalone basis, on the other hand, in each case on a balance sheet, statement of operations, statement of cash flows and statement of stockholders' equity basis, which consolidating information shall be certified by a Responsible Officer as having been fairly presented in all material respects.

Borrower hereby acknowledges that (a) Administrative Agent will make available to the Lenders and the L/C Lenders materials and/or information provided by or on behalf of Borrower hereunder (collectively, "**Borrower Materials**") by posting Borrower Materials on IntraLinks/IntraAgency or another similar electronic system (the "**Platform**") and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," Borrower shall be deemed to have authorized Administrative Agent, the L/C Lenders and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to Borrower or its securities for purposes of United States Federal and state securities laws (*provided* however, that to the extent such Borrower Materials constitute information of the type subject to Section 13.10, they shall be treated as set forth in Section 13.10); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

SECTION 9.05. Maintaining Records; Access to Properties and Inspections. Borrower and its Restricted Subsidiaries shall keep proper books of record and account in which entries true and correct in all material respects and in material conformity with GAAP and all material Requirements of Law are made. Borrower and its Restricted Subsidiaries will, subject to applicable Gaming Laws, permit any representatives designated by Administrative Agent to visit and inspect the financial records and the property of Borrower or such Restricted Subsidiary at reasonable times, upon reasonable notice and as often as reasonably requested, and permit any representatives designated by Administrative Agent to discuss the affairs, finances and condition of such Restricted Subsidiaries with the officers thereof and independent accountants therefor (provided Borrower has the opportunity to participate in such meetings); *provided* that, in the absence of a continuing Event of Default, only one such inspection by such representatives shall be permitted in any fiscal year (and such inspection shall be at Administrative Agent's expense). Notwithstanding anything to the contrary in this Agreement, no Company will be required to disclose, permit the inspection, examination or making of extracts, or discussion of, any document, information or other matter that (i) in respect of which disclosure to Administrative Agent (or its designated representative) is then prohibited by law or contract or (ii) is subject to attorney-client or similar privilege or constitutes attorney work product.

SECTION 9.06. Use of Proceeds; FCPA. Borrower shall use the proceeds of the Loans only for the purposes set forth in Section 8.11. No part of the proceeds of the Loans or Letters of Credit will be used by Borrower, directly or indirectly, and Borrower will not lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, in any case for the purpose of (i) furthering an offer, payment, promise to pay, or authorization of payment of money or giving anything of value to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of any applicable law related to bribery

or corruption, including the United States Foreign Corrupt Practices Act of 1977, as amended, (ii) funding, financing or facilitating any activities, transaction or business of or with any Person, or in any country or territory, that, at the time of such funding, is, subject to Sanctions or in any Designated Jurisdiction, or (iii) any other use that would result in a violation of Sanctions by any Person (including any Person participating in the Loans or Letters of Credit hereunder, whether as underwriter, advisor, investor, or otherwise). Borrower has implemented and will maintain in effect policies and procedures reasonably designed to promote material compliance by Borrower, its Subsidiaries and their respective directors, officers, employees and agents with applicable Sanctions and laws related to bribery and anti-corruption.

SECTION 9.07. Compliance with Environmental Law. Borrower and its Restricted Subsidiaries shall (a) comply with Environmental Law, and will keep or cause all Real Property to be kept free of any Liens imposed under Environmental Law, unless, in each case, failure to do so would not reasonably be expected to have a Material Adverse Effect; (b) in the event of any Hazardous Material at, on, under or emanating from any Real Property which could result in liability under or a violation of any Environmental Law, in each case which would reasonably be expected to have a Material Adverse Effect, undertake, and/or cause any of their respective tenants or occupants to undertake, at no cost or expense to Administrative Agent, Collateral Agent or any Lender, an appropriate response (as reasonably determined by Borrower) to such event; *provided*, *however*, that no Company shall be required to comply with any order or directive which is being contested in good faith and by proper proceedings so long as it has maintained adequate reserves with respect to such compliance to the extent required in accordance with GAAP; and (c) at the written request of Administrative Agent, in its reasonable discretion, provide, at no cost or expense to Administrative Agent, Collateral Agent or any Lender, an environmental site assessment (including, without limitation, the results of any soil or groundwater or other testing conducted at Administrative Agent's request) concerning any Real Property now or hereafter owned, leased or operated by Borrower or any of its Restricted Subsidiaries, conducted by an environmental consulting firm proposed by such Credit Party and approved by Administrative Agent in its reasonable discretion indicating the presence or absence of Hazardous Material and the potential cost of any required action in connection with any Hazardous Material on, at, under or emanating from such Real Property; *provided*, *however*, that such request may be made only if (i) there has occurred and is continuing an Event of Default, or (ii) circumstances exist that reasonably could be expected to form the basis of an Environmental Action against Borrower or any Restricted Subsidiary or any Real Property of Borrower or any of its Restricted Subsidiaries which would reasonably be expected to have a Material Adverse Effect; if Borrower or any of its Restricted Subsidiaries fails to provide the same within sixty (60) days after such request was made (or in such longer period as may be approved by Administrative Agent, in its reasonable discretion), Administrative Agent may but is under no obligation to conduct the same, and Borrower or its Restricted Subsidiary shall grant and hereby grants to Administrative Agent and its agents, advisors and consultants access at reasonable times, and upon reasonable notice to Borrower, to such Real Property and specifically grants Administrative Agent and its agents, advisors and consultants an irrevocable non-exclusive license, subject to the rights of tenants, to undertake such an assessment, all at no cost or expense to Administrative Agent, Collateral Agent or any Lender. Administrative Agent will use its commercially reasonable efforts to obtain from the firm conducting any such assessment usual and customary agreements to secure liability insurance and to treat its work as confidential and shall promptly provide Borrower with all documents relating to such assessment.

SECTION 9.08. Pledge of Property or Mortgage of Real Property.

(a) Subject to compliance with applicable Gaming Laws, if, after the Closing Date, any Credit Party shall acquire any Property (other than any Real Property or any Property that is subject to a Lien permitted under Section 10.02(i) or 10.02(k) to the extent and for so long as the contract or other agreement in which such Lien is granted validly prohibits the creation of Liens securing the Obligations on such Property and to the extent such prohibition is not superseded by the applicable provisions of the UCC), including, without limitation, pursuant to any Permitted Acquisition, or as to which Collateral Agent, for the benefit of the Secured Parties, does not have a perfected Lien and as to which the Security Documents are intended to cover, such Credit Party shall (subject to any applicable provisions set forth in the Security Agreement with respect to limitations on grant of security interests in certain types of assets or Pledged Collateral and limitations or exclusions from the requirement to perfect Liens on such assets or Pledged Collateral) promptly (i) execute and deliver to Collateral Agent such amendments to the Security Documents or such other documents as Collateral Agent deems necessary or advisable in order to grant to Collateral Agent, for the benefit of the Secured Parties, security interests in such Property and (ii) take all actions Collateral Agent deems necessary or advisable to grant to Collateral Agent, for the benefit of the Secured Parties, a perfected security interest (except to the

extent limited by applicable Requirements of Law (including, without limitation, any Gaming Laws)), superior to and prior to the rights of all third Persons and subject to no Liens, in each case, other than Permitted Liens, in each case, to the extent such actions are required by the Security Agreement.

(b) If, after the Closing Date, any Credit Party (x) acquires, including, without limitation, pursuant to any Permitted Acquisition, a fee or leasehold interest in Real Property located in the United States which Real Property (or, in the case of a leasehold, such leasehold interest or estate) has a fair market value in excess of $100.0 million or (y) develops a Facility on any fee or leasehold interest in Real Property located in the United States which Real Property (including the reasonably anticipated fair market value of the Facility or other improvements to be developed thereon) has a fair market value in excess of $200.0 million, determined on an as-developed basis, in each case, with respect to which a Mortgage was not previously entered into in favor of Collateral Agent (in each case, other than to the extent such Real Property is subject to a Lien permitted under Section 10.02(i) or 10.02(k) securing Indebtedness to the extent and for so long as the contract or other agreement in which such Lien is granted validly prohibits the creation of Liens securing the Obligations on such Real Property), such Credit Party shall, within ninety (90) days (or such longer period that is reasonably acceptable to Administrative Agent), (i) take such actions and execute such documents as Collateral Agent shall reasonably require to confirm the Lien of an existing Mortgage, if applicable, or to create a new Mortgage on such additional Real Property and (ii) cause to be delivered to Collateral Agent, for the benefit of the Secured Parties, all documents and instruments reasonably requested by Collateral Agent or as shall be necessary in the opinion of counsel to Collateral Agent to create on behalf of the Secured Parties a valid, perfected, mortgage Lien, subject only to Permitted Liens, including the following:

(1) a Mortgage in favor of Collateral Agent, for the benefit of the Secured Parties, in form for recording in the recording office of the jurisdiction where such Mortgaged Real Property is situated, together with such other documentation as shall be required to create a valid mortgage Lien under applicable law, which Mortgage and other documentation shall be reasonably satisfactory to Collateral Agent and shall be effective to create in favor of Collateral Agent for the benefit of the Secured Parties a valid, perfected, Mortgage Lien on such Mortgaged Real Property subject to no Liens other than Permitted Liens;

(2) with respect to each such Mortgaged Real Property (other than, for the avoidance of doubt, the Wynn Las Vegas Convention Center in the event of the occurrence of the Wynn Las Vegas Convention Center Acquisition) that exceeds the Title Insurance Threshold Amount, a policy or policies or marked-up unconditional binder of title insurance, as applicable, paid for by Borrower or its Restricted Subsidiaries, issued by a nationally recognized title insurance company insuring the Lien of each Mortgage entered into pursuant to clause (1) above as a valid first Lien on the Mortgaged Real Property described therein, free of any other Liens except Permitted Liens, together with such customary endorsements available on commercially reasonable terms as Collateral Agent may reasonably request.

(3) with respect to each such Mortgaged Real Property, Collateral Agent shall have received a completed "Life-of-Loan" Federal Emergency Management Agency standard flood hazard determination with respect to such Mortgaged Real Property for which a Mortgage is delivered pursuant to clause (1) above (together with a notice about special flood hazard area status and flood disaster assistance duly executed by Borrower and the applicable Credit Party relating thereto);

(4) a survey of each Mortgaged Real Property in such form as shall (x) to the extent title insurance is being provided with respect to such Mortgaged Real Property in accordance with the terms hereof, be required by the title company to remove the standard survey exceptions from the title policy with respect to such Mortgaged Real Property and (y) other than in the case of an aerial survey reasonably acceptable to Collateral Agent (in the case of any Closing Date Mortgaged Real Property, only with respect to the Closing Date Mortgaged Real Property located in Las Vegas, Nevada), comply with the minimum detail requirements of the American Land Title Association and locate all improvements, public streets and recorded easements affecting such Mortgaged Real Property; and

(5) with respect to each Mortgage entered into pursuant to clause (1) above, opinions addressed to Administrative Agent and Collateral Agent for its benefit and for the benefit of the Secured Parties of

(A) local counsel for Borrower or its Restricted Subsidiaries in each jurisdiction where such Mortgaged Real Property is located with respect to the enforceability of each such Mortgage and other matters customarily included in such opinions and (B) counsel for Borrower and its Restricted Subsidiaries regarding due authorization, execution and delivery of each such Mortgage, in each case, in form and substance reasonably satisfactory to Administrative Agent;

provided, that notwithstanding the foregoing, (A) the Credit Parties shall not be required to grant a Mortgage on (x)(i) any leasehold interest in any Real Property entered into after the date hereof that has a fair market value (including the reasonably anticipated fair market value of the Facility or other improvements to be developed thereon) of less than $300.0 million or a remaining term (including options to extend) of less than 10 years or (ii) any leasehold interest in any Real Property if after the exercise of commercially reasonable efforts by the Credit Parties (which shall not include the payment of consideration other than reasonable attorneys' fees and other expenses incidental thereto), the landlord under such lease has not consented to the granting of a Mortgage or (y) any leasehold interest acquired or otherwise obtained from another Credit Party and (B) if any Credit Party shall be required to deliver a Mortgage on any new or additional Mortgaged Real Property pursuant to this Agreement or any other Credit Document, no such Mortgage shall be (nor be required to be) granted by the applicable Credit Party nor accepted by Collateral Agent until the later of (x) 45 days after the delivery of the information required pursuant to clause (b)(3) above and (y) receipt of confirmation from Administrative Agent that each Lender has confirmed to Administrative Agent that it has completed its flood insurance due diligence to its reasonable satisfaction.

(c) Notwithstanding anything contained in Sections 9.08(a) and 9.08(b) to the contrary, in each case, it is understood and agreed that no Lien(s) and/or Mortgage(s) in favor of Collateral Agent on any after acquired Property of the applicable Credit Party shall be required to be granted or delivered at such time as provided in such Sections (as applicable) as a result of such Lien(s) and/or Mortgage(s) being prohibited by (i) the applicable Gaming Authorities or applicable Law; *provided, however,* that Borrower has used its commercially reasonable efforts to obtain such approvals or (ii) Contractual Obligation (except to the extent invalidated by the applicable provisions of the UCC).

(d) With respect to Lien(s) and/or Mortgage(s) relating to any Property acquired by any Credit Party after the Closing Date or any Property of any Additional Credit Party or with respect to any Guarantee of any Additional Credit Party, in each case that were not granted or delivered pursuant to Section 9.08(c) or to the second paragraph in Section 9.11, as the case may be, at such time as Borrower reasonably believes such prohibition no longer exists, Borrower shall (and with respect to any items requiring approval from Gaming Authorities, Borrower shall use commercially reasonable efforts to seek the approval from the applicable Gaming Authorities for such Lien(s), Mortgage(s) and/or Guarantee and, if such approval is so obtained), comply with Sections 9.08(a) and/or 9.08(b) or with Section 9.11, as the case may be.

SECTION 9.09. Security Interests; Further Assurances. Each Credit Party shall, promptly, upon the reasonable request of Collateral Agent, and so long as such request (or compliance with such request) does not violate any Gaming Law (or, if such request is subject to an approval by the Gaming Authority, Borrower hereby agrees to use commercially reasonable efforts to obtain such approval), at Borrower's expense, execute, acknowledge and deliver, or cause the execution, acknowledgment and delivery of, and thereafter register, file or record, or cause to be registered, filed or recorded, in an appropriate governmental office, any document or instrument supplemental to or confirmatory of the Security Documents or otherwise deemed by Collateral Agent reasonably necessary or desirable to create, protect or perfect or for the continued validity, perfection and priority of the Liens on the Collateral covered or purported to be covered thereby (subject to any applicable provisions set forth herein and in the Security Agreement with respect to limitations on grant of security interests in certain types of Pledged Collateral and limitations or exclusions from the requirement to perfect Liens on such Pledged Collateral and any applicable Requirements of Law including, without limitation, any Gaming Laws) subject to no Liens other than Permitted Liens; *provided* that, notwithstanding anything to the contrary herein or in any other Credit Document, in no event shall any Company be required to enter into control agreements with respect to its deposit accounts, securities accounts or commodity accounts. In the case of the exercise by Collateral Agent or the Lenders or any other Secured Party of any power, right, privilege or remedy pursuant to any Credit Document following the occurrence and during the continuation of an Event of Default which requires any consent, approval, registration, qualification or authorization of any Governmental Authority, Borrower and each of its Restricted Subsidiaries shall use commercially reasonable efforts to promptly execute and deliver all applications,

certifications, instruments and other documents and papers that Collateral Agent or the Lenders may be so required to obtain.

SECTION 9.10. [Reserved].

SECTION 9.11. Additional Credit Parties. Upon (i) any Credit Party creating or acquiring any Subsidiary that is a Wholly Owned Restricted Subsidiary (other than any Excluded Subsidiary) after the Closing Date, (ii) any Wholly Owned Restricted Subsidiary of a Credit Party ceasing to be an Excluded Subsidiary (including, without limitation, an Immaterial Subsidiary being designated pursuant to Section 9.13 as an Excluded Immaterial Subsidiary) or (iii) any Revocation that results in an Unrestricted Subsidiary becoming a Wholly Owned Restricted Subsidiary (other than any Excluded Subsidiary) of a Credit Party (such Wholly Owned Restricted Subsidiary referenced in clause (i), (ii) or (iii) above, an "**Additional Credit Party**"), such Credit Party shall, assuming and to the extent that it does not violate any Gaming Law or assuming and to the extent it obtains the approval of the Gaming Authority to the extent such approval is required by applicable Gaming Laws (which Borrower hereby agrees to use commercially reasonable efforts to obtain), (A) cause each such Wholly Owned Restricted Subsidiary to promptly (but in any event within 45 days (or 95 days, in the event of any Discharge of any Indebtedness in connection with the acquisition of any such Subsidiary) after the later of such event described in clause (i), (ii) or (iii) above or receipt of such approval (or such longer period of time as Administrative Agent may agree to in its sole discretion), execute and deliver all such agreements, guarantees, documents and certificates (including Joinder Agreements, any amendments to the Credit Documents, lien searches and a Perfection Certificate) as Administrative Agent may reasonably request in order to have such Wholly Owned Restricted Subsidiary become a Guarantor and (B)(I) execute and deliver to Collateral Agent such amendments to or additional Security Documents as Collateral Agent deems necessary or advisable in order to grant to Collateral Agent for the benefit of the Secured Parties, a perfected security interest in the Equity Interests of such Additional Credit Party which are owned by any Credit Party and required to be pledged pursuant to the Security Agreement, (II) deliver to Collateral Agent the certificates (if any) representing such Equity Interests together with in the case of such Equity Interests, undated stock powers endorsed in blank, (III) cause such Additional Credit Party to take such actions necessary or advisable (including executing and delivering a Joinder Agreement) to grant to Collateral Agent for the benefit of the Secured Parties, a perfected security interest in the collateral described in (subject to any requirements set forth in the Security Agreement with respect to limitations on grant of security interests in certain types of assets or Pledged Collateral and limitations or exclusions from the requirement to perfect Liens on such Pledged Collateral and excluding acts with respect to perfection of security interests and Liens not required under, or excluded from the requirements under, the Security Agreement) the Security Agreement and all other Property (limited, in the case of any first-tier Foreign Subsidiary that is a CFC or any CFC Holdco, to 65% of the voting Equity Interests and 100% of the non-voting Equity Interests of such Foreign Subsidiary or CFC Holdco) of such Additional Credit Party in accordance with the provisions of Section 9.08 hereof with respect to such Additional Credit Party, or as necessary under applicable law or as may be reasonably requested by Collateral Agent, and (IV) deliver to Collateral Agent all legal opinions reasonably requested by Collateral Agent with respect to such Additional Credit Party relating to the matters described above covering matters similar to those covered in the opinions delivered on the Closing Date; *provided*, however, that Borrower shall use its commercially reasonable efforts to obtain such approvals for any Mortgage(s) and Lien(s) (including pledge of the Equity Interests of such Subsidiary) to be granted by such Additional Credit Party and for the Guarantee of such Additional Credit Party as soon as reasonably practicable. All of the foregoing actions shall be at the sole cost and expense of the Credit Parties.

Notwithstanding the foregoing in this Section 9.11 to the contrary, it is understood and agreed that no Lien(s), Mortgage(s) and/or Guarantee of the applicable Additional Credit Party shall be required to be granted or delivered at such time as provided in the paragraph above in this Section 9.11 as a result of such Lien(s), Mortgage(s) and/or Guarantee being prohibited (i) by the applicable Gaming Authorities, any other applicable Governmental Authorities or applicable Law; provided, however, that Borrower has used its commercially reasonable efforts to obtain such approvals for such Lien(s), Mortgage(s) and/or Guarantee or (ii) any Contractual Obligation (except to the extent superseded by the applicable provisions of the UCC).

SECTION 9.12. Limitation on Designations of Unrestricted Subsidiaries.

(a) Borrower may designate any Subsidiary of Borrower (other than (x) a Subsidiary of Borrower which owns one or more Principal Assets and (y) Wynn Group Asia) as an "Unrestricted Subsidiary" under this Agreement (a "**Designation**") only if:

(i) no Event of Default shall have occurred and be continuing at the time of or immediately after giving effect to such Designation;

(ii) Borrower would be permitted under this Agreement to make an Investment at the time of Designation (assuming the effectiveness of such Designation) in an amount (the "**Designation Amount**") equal to the sum of (A) the fair market value of the Equity Interest of such Subsidiary owned by Borrower and/or any of the Restricted Subsidiaries on such date and (B) the aggregate amount of Indebtedness of such Subsidiary owed to Borrower and the Restricted Subsidiaries on such date; and

(iii) after giving effect to such Designation, Borrower shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenant (whether or not then in effect) as of the most recent Calculation Date.

Upon any such Designation, Borrower and its Restricted Subsidiaries shall be deemed to have made an Investment in such Unrestricted Subsidiary in an amount equal to the Designation Amount.

(b) Borrower may revoke any Designation of a Subsidiary as an Unrestricted Subsidiary (a "**Revocation**"), whereupon such Subsidiary shall then constitute a Restricted Subsidiary, if:

(i) no Event of Default shall have occurred and be continuing at the time and immediately after giving effect to such Revocation;

(ii) after giving effect to such Revocation, Borrower shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenant (whether or not then in effect) as of the most recent Calculation Date; and

(iii) all Liens and Indebtedness of such Unrestricted Subsidiary and its Subsidiaries outstanding immediately following such Revocation would, if incurred at the time of such Revocation, have been permitted to be incurred for all purposes of this Agreement.

(c) All Designations and Revocations occurring after the Closing Date must be evidenced by an Officer's Certificate of Borrower delivered to Administrative Agent with the Responsible Officer so executing such certificate certifying compliance with the foregoing provisions of Section 9.12(a) (in the case of any such Designations) and of Section 9.12(b) (in the case of any such Revocations).

(d) If Borrower designates a Guarantor as an Unrestricted Subsidiary in accordance with this Section 9.12, the Obligations of such Guarantor under the Credit Documents shall terminate and be of no further force and effect and all Liens granted by such Guarantor under the applicable Security Documents shall terminate and be released and be of no further force and effect, and all Liens on the Equity Interests and debt obligations of such Guarantor shall be terminated and released and of no further force and effect, in each case, without any action required by Administrative Agent or Collateral Agent. At Borrower's request, Administrative Agent and Collateral Agent will execute and deliver any instrument evidencing such termination and Collateral Agent shall take all actions appropriate in order to effect such termination and release of such Liens and without recourse or warranty by Collateral Agent (including the execution and delivery of appropriate UCC termination statements and such other instruments and releases as may be necessary and appropriate to effect such release). Any such foregoing actions taken by Administrative Agent and/or Collateral Agent shall be at the sole cost and expense of Borrower.

SECTION 9.13. Limitation on Designation of Immaterial Subsidiaries.

(a) If for any reason the aggregate fair market value of the assets of all the Immaterial Subsidiaries exceeds the Immaterial Subsidiary Threshold Amount, then, promptly after the occurrence of such event that causes the aggregate fair market value of all Immaterial Subsidiaries to exceed the Immaterial Subsidiary Threshold Amount, Borrower shall designate (an "**Excluded Designation**") one or more Immaterial Subsidiaries as no longer constituting Immaterial Subsidiaries for all purposes of this Agreement (an "**Excluded Immaterial Subsidiary**") as may be necessary to ensure that the Immaterial Subsidiary Threshold Amount is satisfied. Borrower may redesignate (a "**Redesignation**") an Excluded Immaterial Subsidiary as constituting an Immaterial Subsidiary for purposes of this Agreement so long as such redesignated Excluded Immaterial Subsidiary is in compliance with the requirements of the definition of Immaterial Subsidiary and such Redesignation does not cause or otherwise result in the aggregate fair market value of the assets of all Immaterial Subsidiaries (after giving effect to the Redesignation of the Excluded Immaterial Subsidiary as an Immaterial Subsidiary) to exceed the Immaterial Subsidiary Threshold Amount. For purposes of this Section 9.13(a), fair market value shall be determined as of the most recent Calculation Date.

(b) Any such Excluded Designation or Redesignation must be evidenced by an Officer's Certificate of Borrower delivered to Administrative Agent with the Responsible Officer executing such certificate certifying compliance with the foregoing provisions of Section 9.13(a).

(c) If Borrower redesignates an Excluded Immaterial Subsidiary as an Immaterial Subsidiary in accordance with this Section 9.13, so long as no Default or Event of Default exists, the Obligations of such Excluded Immaterial Subsidiary (as a Guarantor) under the Credit Documents shall terminate and be of no further force and all Liens granted by such Excluded Immaterial Subsidiary (as a Guarantor) under the applicable Security Documents shall terminate and be released and be of no further force and effect, in each case, without any action required by Administrative Agent or Collateral Agent. At Borrower's request, Administrative Agent and Collateral Agent will execute and deliver any instrument evidencing such termination and Collateral Agent shall take all actions appropriate in order to effect the termination and release of such Lien and without recourse or warranty by Collateral Agent (including the execution and delivery of appropriate UCC termination statements and such other instruments and releases as may be necessary and appropriate to effect such release). Any such foregoing actions taken by Administrative Agent and/or Collateral Agent shall be at the sole cost and expense of Borrower.

SECTION 9.14. [Reserved].

SECTION 9.15. Ratings. Borrower shall use commercially reasonable efforts to obtain and maintain, at all times on and after the date that is 270 days after the Closing Date, ratings from each of Moody's and S&P for the Term A Facility Loans.

SECTION 9.16. Post-Closing Matters.

(a) Borrower will cause to be delivered or performed, as applicable, each of the items set forth on Schedule 9.16 within the time period set forth therein (or such longer period of time as Administrative Agent may agree in its reasonable discretion). To the extent there is any conflict between the provisions of any Credit Document and Schedule 9.16, the provisions of Schedule 9.16 shall control.

(b) With respect to all Mortgaged Real Property identified on Schedule 1.01(c) that will be subject to mortgages no later than ninety (90) days after the Closing Date (such properties, the "**Closing Date Mortgaged Real Property**"), which date may be extended at the Administrative Agent's sole discretion, Borrower or its Restricted Subsidiaries shall cause to be delivered to the Administrative Agent, each of the items set forth in Section 9.08(b)(1) through (5): *provided,* that with respect to the Closing Date Mortgaged Real Property, Borrower and the Restricted Subsidiaries shall not be required to obtain or maintain title insurance in favor of the Secured Parties in an amount greater than $1,100.0 million in the aggregate.

ARTICLE X.

NEGATIVE COVENANTS

Each Credit Party, for itself and on behalf of its Restricted Subsidiaries, covenants and agrees with Administrative Agent, Collateral Agent, and the Lenders that until the Obligations have been Paid in Full (and each Credit Party covenants and agrees that it will cause its Restricted Subsidiaries to observe and perform the covenants herein set forth applicable to any such Restricted Subsidiary until the Obligations have been Paid in Full):

SECTION 10.01. Indebtedness. Borrower and its Restricted Subsidiaries will not incur any Indebtedness, except:

(a) Indebtedness incurred pursuant to this Agreement and the other Credit Documents (including pursuant to Sections 2.12, 2.13, and 2.15) and any Permitted Refinancings thereof;

(b) Indebtedness outstanding on the Closing Date (and to the extent in excess of $2.5 million individually, listed on Schedule 10.01), and any Permitted Refinancings thereof;

(c) Indebtedness under any Swap Contracts (including, without limitation, any Interest Rate Protection Agreements); *provided* that such Swap Contracts are entered into for bona fide hedging activities and not for speculative purposes;

(d) intercompany Indebtedness of Borrower and the Restricted Subsidiaries to Borrower or other Restricted Subsidiaries;

(e) Indebtedness under the Wynn Las Vegas Notes and Permitted Refinancings thereof;

(f) Indebtedness in respect of workers' compensation claims, self-insurance obligations, performance bonds, surety, appeal or similar bonds, bank guarantees, warehouse receipts, completion guarantees, letters of credit and similar instruments provided by Borrower or any of its Restricted Subsidiaries in the ordinary course of its business (including to support Borrower's or any of its Restricted Subsidiaries' performance obligations, trade letters of credit and applications for Gaming Licenses or for the purposes referenced in this clause (f));

(g) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; *provided*, *however*, that such Indebtedness is extinguished within five (5) Business Days of its incurrence;

(h) Indebtedness (other than Indebtedness referred to in Section 10.01(b)) in respect of Purchase Money Obligations and Capital Lease Obligations and refinancings or renewals thereof in an aggregate principal amount not to exceed at any time outstanding $200.0 million and Permitted Refinancings thereof;

(i) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(j) guarantees by Borrower or Restricted Subsidiaries of Indebtedness otherwise permitted to be incurred by Borrower or any Restricted Subsidiary under this Section 10.01;

(k) Indebtedness of a Person that becomes a Subsidiary of Borrower or any of its Restricted Subsidiaries after the date hereof in connection with a Permitted Acquisition or other Acquisition or Investment permitted hereunder; *provided*, *however*, that such Indebtedness existed at the time such Person became a Subsidiary and was not created in anticipation or contemplation thereof, and Permitted Refinancings thereof;

(l) Indebtedness that has been Discharged;

(m) Escrowed Indebtedness;

(n) unsecured Indebtedness of the kind described in clause (d) of the definition of "Indebtedness" so long as, in the case of any such Indebtedness other than earn-out obligations, at the time of incurrence thereof, (i) no Event of Default shall have occurred and be continuing after giving effect thereto and (ii) Borrower and its Restricted Subsidiaries shall be in compliance with the Financial Maintenance Covenant (whether or not then in effect) on a Pro Forma Basis as of the most recent Calculation Date;

(o) Permitted Unsecured Refinancing Debt, Permitted First Priority Refinancing Debt, and Permitted Second Priority Refinancing Debt;

(p) Indebtedness of Restricted Subsidiaries that are Foreign Subsidiaries in an aggregate principal amount not to exceed $150.0 million at any time outstanding, so long as such Indebtedness is not guaranteed by any Credit Party and Permitted Refinancings thereof;

(q) Indebtedness of Borrower or any Restricted Subsidiary in an aggregate principal amount not to exceed at any time outstanding the greater of (i) $500.0 million and (ii) 50% of Consolidated EBITDA calculated on a Pro Forma Basis as of the most recently ended Test Period and Permitted Refinancings thereof;

(r) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply agreements, in each case, in the ordinary course of business;

(s) Investments under Sections 10.04(l), 10.04(q), 10.04(s), and 10.04(w) consisting of guarantees;

(t) (i) Indebtedness of Borrower or any Restricted Subsidiaries in respect of one or more series of senior unsecured notes or loans, senior secured first lien notes or loans, senior secured junior lien notes or loans or subordinated notes or loans that may be secured by the Collateral on a *pari passu* or junior basis with the Obligations, as applicable, that are issued or made pursuant to an indenture, a loan agreement, or a note purchase agreement or otherwise (any such Indebtedness, "**Ratio Debt**"); *provided* that (A) the aggregate principal amount of all Ratio Debt issued or incurred pursuant to this Section 10.01(t) on such date shall not exceed the Ratio Debt Amount as of such date; (B) no Event of Default shall have occurred and be continuing or would exist immediately after giving effect to such Ratio Debt; *provided* that, if the proceeds of such Ratio Debt are being used in connection with a Limited Condition Transaction substantially concurrently upon the receipt thereof (including repayment of Indebtedness of the Person acquired, or that is secured by the assets acquired, in such Limited Condition Transaction), the absence of an Event of Default shall not constitute a condition to the issuance or incurrence of such Ratio Debt; (C) if such Ratio Debt is (x) secured on a *pari passu* basis with the Obligations, such Ratio Debt shall have a maturity date and Weighted Average Life to Maturity (without giving effect to any prepayments that reduce scheduled amortization) no shorter than the Term A Facility Loans (provided that this clause (C)(x) shall not apply to unsecured bridge facilities providing for extensions on customary terms to a date that is no earlier than the applicable maturity date and (B) the stated maturity or Weighted Average Life to Maturity may be shorter if the stated maturity is not earlier than the earlier of (1) the stated maturity of such Indebtedness in effect prior to such refinancing or (2) 91 days after the Final Maturity Date in effect at the time of issuance) or (y) secured on a second lien (or other junior lien) basis or is unsecured, such Ratio Debt shall satisfy the definition of Permitted Junior Debt Conditions; (D) if such Ratio Debt is secured (x) on *pari passu* basis with the Obligations, the holders of such Indebtedness (or their representative) shall execute and deliver the *Pari Passu* Intercreditor Agreement or (y) or second lien (or other junior lien) basis to the Obligations, the holders of such Indebtedness (or their representative) execute and deliver the Second Lien Intercreditor Agreement (as "Second Priority Debt Parties"); (E) except as set forth in clauses (A) – (D) of this paragraph (t), the terms (excluding maturity, amortization, pricing, fees, rate floors, premiums, optional prepayment or optional redemption provisions) of such Indebtedness are (as determined by Borrower in good faith) substantially similar to the terms of the Revolving Commitments or the Term A Facility Loans, as applicable, as existing on the date of incurrence of such Ratio Debt except, to the extent such terms (x) at the option of Borrower (1) reflect market terms and conditions (taken as a whole) at the time of incurrence or issuance (as determined by Borrower in good faith), (2) with respect to any Ratio Debt that is unsecured, are customary for issuances of "high yield" securities, or (3) are not materially more restrictive to Borrower (as reasonably determined by Borrower in good faith), when taken as a whole, than the terms of the Term A Facility

Loans or the Revolving Facility, as the case may be (except for covenants or other provisions applicable only to periods after the Final Maturity Date (in the case of term Indebtedness) or the latest R/C Maturity Date (in the case of revolving Indebtedness) (it being understood that any Ratio Debt may provide for the ability to participate (i) with respect to any borrowings, voluntary prepayments or voluntary commitment reductions, on a pro rata basis, greater than pro rata basis or less than pro rata basis with the applicable Loans or facility and (ii) with respect to any mandatory prepayments, on a pro rata basis (only in respect of Ratio Debt that ranks pari passu with the Obligations) or less than pro rata basis with the applicable Loans (and on a greater than pro rata basis with respect to prepayments of any such Ratio Debt with the proceeds of permitted refinancing Indebtedness), or (y) are (1) added to the Term A Facility Loans or Revolving Facility, (2) applicable only after the Final Maturity Date (in the case of term Indebtedness) or the latest R/C Maturity Date (in the case of revolving Indebtedness), or (3) otherwise reasonably satisfactory to Administrative Agent; *provided* that, in each of clauses (i)(E)(x) and (i)(E)(y) of this Section 10.01(t), if any financial maintenance covenant is added for the benefit of any Ratio Debt that is more favorable to the Lenders under such facilities than the Financial Maintenance Covenant, then the Financial Maintenance Covenant shall be conformed to match such financial maintenance covenant (except to the extent such financial maintenance covenant applies only to periods after the Final Maturity Date (in the case of term Indebtedness) or the latest R/C Maturity Date (in the case of revolving Indebtedness)) (it being understood that to the extent any financial maintenance covenant or other provision is added for the benefit of any such Ratio Debt, no consent shall be required from Administrative Agent or any of the Lenders to the extent that such financial maintenance covenant (together with any related "equity cure" provisions) or other provision is also added for the benefit of any corresponding existing facility); and (F) the aggregate principal amount of all Ratio Debt issued or incurred pursuant to this Section 10.01(t) by Restricted Subsidiaries that are not (and do not concurrently become) Credit Parties shall not exceed $150.0 million; and (ii) Permitted Refinancings thereof (for the avoidance of doubt, the usual and customary terms of convertible or exchangeable debt instruments issued in a registered offering or under Rule 144A of the Securities Act and the terms of the Wynn Resorts Finance Notes shall be deemed to be no more restrictive in any material respect to Borrower and its Restricted Subsidiaries than the terms set forth in this Agreement);

(u) Indebtedness constituting, or the proceeds of which constitute, Development Expenses in an aggregate principal amount not to exceed $500.0 million at any time outstanding (including Permitted Refinancings thereof);

(v) the Wynn Resorts Finance Notes and Permitted Refinancings thereof;

(w) Intercompany Contribution Indebtedness;

(x) to the extent constituting Indebtedness, agreements to pay service fees to professionals (including architects, engineers and designers) in furtherance of and/or in connection with any project or Facility, in each case to the extent such agreements and related payment provisions are reasonably consistent with commonly accepted industry practices (*provided* that no such agreements shall give rise to Indebtedness for borrowed money);

(y) Indebtedness consisting of promissory notes issued by Borrower to recent or former officers, directors or employees (or heirs of, estates of or trusts formed by such Persons) to finance the purchase or redemption of Equity Interests of Borrower permitted by Section 10.06(f); *provided* that the aggregate amount of all cash payments (whether principal or interest) made by Borrower in respect of such notes, when combined with the aggregate amount of Restricted Payments made pursuant to Section 10.06(f), shall not exceed $20.0 million in any fiscal year of Borrower;

(z) Indebtedness incurred by Borrower or the Restricted Subsidiaries in (i) a Permitted Acquisition, (ii) any other Investment expressly permitted hereunder, or (iii) any Asset Sale or other disposition permitted under this Agreement, in the case of each of the foregoing clauses (i), (ii), and (iii), constituting customary indemnification, adjustment of purchase price or similar obligations;

(aa) Indebtedness of, or incurred on behalf of, or representing Guarantees of Indebtedness of, joint ventures not in excess, at any one time outstanding, of $50.0 million and any Permitted Refinancing Indebtedness thereof;

(bb) Indebtedness supported by a Letter of Credit, in a principal amount not in excess of the stated amount of such Letter of Credit;

(cc) Indebtedness of Borrower and the Subsidiaries incurred under lines of credit or overdraft facilities (including, but not limited to, intraday, ACH and purchasing card/T&E services) extended by one or more financial institutions and (in each case) established for Borrower's and its Restricted Subsidiaries' ordinary course of operations (such Indebtedness, the "**Overdraft Line**"), which Indebtedness may be secured under the Security Documents;

(dd) Indebtedness of Borrower or any Restricted Subsidiary to or on behalf of any joint venture (regardless of the form of legal entity) that is not a Restricted Subsidiary or any Unrestricted Subsidiary arising in the ordinary course of business in connection with the cash management, tax and accounting operations (including with respect to intercompany self-insurance arrangements) of Borrower and its Subsidiaries and any Permitted Refinancing Indebtedness in respect thereof; and

(ee) all premium (if any, including tender premiums), expenses, defeasance costs, interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in paragraphs (a) through (dd) above.

For purposes of determining compliance with this Section 10.01, the amount of any Indebtedness denominated in any currency other than Dollars shall be calculated based on customary currency exchange rates in effect, in the case of such Indebtedness incurred (in respect of term Indebtedness) or committed (in respect of revolving Indebtedness) on or prior to the Closing Date, on the Closing Date and, in the case of such Indebtedness incurred (in respect of term Indebtedness) or committed (in respect of revolving Indebtedness) after the Closing Date, on the date that such Indebtedness was incurred (in respect of term Indebtedness) or committed (in respect of revolving Indebtedness); *provided* that if such Indebtedness is incurred to refinance other Indebtedness denominated in a currency other than Dollars (or in a different currency from the Indebtedness being refinanced), and such refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed (i) the outstanding or committed principal amount, as applicable, of such Indebtedness being refinanced plus (ii) the aggregate amount of fees, underwriting discounts, premiums (including tender premiums), defeasance costs and other costs and expenses incurred in connection with such refinancing.

Additionally, for purposes of determining compliance with this Section 10.01 and the calculation of the Incremental Loan Amount and Ratio Debt Amount, if the use of proceeds from any incurrence, issuance or assumption of Indebtedness is to fund the refinancing of any Indebtedness, then such refinancing shall be deemed to have occurred substantially simultaneously with such incurrence, issuance or assumption so long as (1) such refinancing occurs on the same Business Day as such incurrence, issuance or assumption, (2) if such proceeds will be offered (through a tender offer or otherwise) to the holders of such Indebtedness to be refinanced, the proceeds thereof are deposited with a trustee, agent or other representative for such holders pending the completion of such offer on the same Business Day as such incurrence, issuance or assumption (and such proceeds are ultimately used in the consummation of such offer or otherwise used to refinance Indebtedness), (3) if such proceeds will be used to fund the redemption, discharge or defeasance of such Indebtedness to be refinanced, the proceeds thereof are deposited with a trustee, agent or other representative for such Indebtedness pending such redemption, discharge or defeasance on the same Business Day as such incurrence, issuance or assumption, or (4) the proceeds thereof are otherwise set aside to fund such refinancing pursuant to procedures reasonably agreed with Administrative Agent.

With respect to any Indebtedness that was permitted to be incurred hereunder on the date of such incurrence, any Increased Amount of such Indebtedness shall also be permitted hereunder after the date of such incurrence.

SECTION 10.02. Liens. Neither Borrower nor any Restricted Subsidiary shall create, incur, grant, assume or permit to exist, directly or indirectly, any Lien on any Property now owned or hereafter acquired by it, except (the "**Permitted Liens**"):

(a) Liens for Taxes not yet due and payable or delinquent by more than 45 days, or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP;

(b) Liens in respect of property of Borrower or any Restricted Subsidiary imposed by law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers', warehousemen's, materialmen's, landlord's and mechanics' liens, maritime liens and other similar Liens arising in the ordinary course of business (i) for amounts not yet overdue for a period of ninety (90) days, (ii) for amounts that are overdue for a period in excess of ninety (90) days that are being contested in good faith by appropriate proceedings (inclusive of amounts that remain unpaid as a result of bona fide disputes with contractors, including where the amount unpaid is greater than the amount in dispute), so long as adequate reserves have been established in accordance with GAAP or (iii) for amounts that are overdue for a period in excess of ninety (90) days not to exceed $15.0 million in the aggregate;

(c) Liens existing on the Closing Date (and to extent securing obligations in excess of $2.5 million individually, listed on Schedule 10.02) and any modifications, replacements, extensions or renewals thereof; *provided*, *however*, that (i) such Liens do not encumber any Property of Borrower or any Restricted Subsidiary other than (x) any such Property subject thereto on the Closing Date, (y) after-acquired property that is affixed or incorporated into Property covered by such Lien and (z) proceeds and products thereof, and (ii) the amount of Indebtedness secured by such Liens does not increase, except as contemplated by Section 10.01(b);

(d) easements, rights-of-way, restrictions (including zoning restrictions), covenants, conditions, encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies on or with respect to any Real Property, in each case whether now or hereafter in existence, not (i) securing Indebtedness and (ii) individually or in the aggregate materially interfering with the conduct of the business of Borrower and its Restricted Subsidiaries, taken as a whole; *provided* that upon request by Borrower, Administrative Agent shall, in its reasonable discretion, direct Collateral Agent on behalf of the Secured Parties to subordinate its Mortgage on any related Real Property to such easements, rights-of-way, restrictions (including zoning restrictions), covenants, encroachments, protrusions, and other similar charges or encumbrances in such form as is reasonably satisfactory to Administrative Agent and Borrower;

(e) Liens arising out of judgments or awards not resulting in an Event of Default and notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(f) Liens (other than any Lien imposed by ERISA) (i) imposed by law or deposits made in connection therewith in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, (ii) incurred in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise taxes), surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, rental obligations (limited, in the case of rental obligations, to security deposits and deposits to secure obligations for taxes, insurance, maintenance and similar obligations), utility services, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money), (iii) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers or for reimbursement or indemnification obligations to insurance carriers, or (iv) Liens on deposits made to secure Borrower's or any of its Subsidiaries' Gaming License applications or to secure the performance of surety or other bonds issued in connection therewith; *provided*, *however*, that to the extent such Liens are not imposed by Law, such Liens shall in no event encumber any Property other than cash and Cash Equivalents or, in the case of clause (iii), proceeds of insurance policies;

(g) (i) Leases with respect to the assets or properties of any Credit Party or its respective Subsidiaries (including Leases of any portion of any Facility to persons who, either directly or through Affiliates of such persons, intend to operate or manage nightclubs, bars, restaurants, recreation areas, spas, pools, exercise or gym facilities, or entertainment or retail venues or similar, related or other establishments or facilities within any Facility), in each case entered into in the ordinary course of such Credit Party's or Subsidiary's business so long as each of the Leases entered into after the date hereof with respect to Real Property constituting Collateral (for purposes of clarification, excluding any such Leases on Real Property acquired in connection with an Acquisition) are subordinate in all respects to the Liens granted and evidenced by the Security Documents and do not, individually or in the aggregate, (x) interfere in any material respect with the ordinary conduct of the business of the Credit Parties and their respective Subsidiaries,

taken as a whole, or (y) materially impair the use (for its intended purposes) or the value of the Properties of the Credit Parties and their respective Subsidiaries, taken as a whole and (ii) without limiting the foregoing, Venue Easements; *provided* that upon the request of Borrower, Collateral Agent shall enter into a customary subordination and non-disturbance and attornment agreement in connection with any such Lease or Venue Easement contemplated by this clause (g);

(h) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by Borrower or such Restricted Subsidiary in the ordinary course of business;

(i) Liens arising pursuant to Purchase Money Obligations or Capital Lease Obligations (and refinancings or renewals thereof), in each case, incurred pursuant to Section 10.01(h); *provided*, *however*, that (i) the Indebtedness secured by any such Lien (including refinancings thereof) does not exceed 100% of the cost of the property being acquired, constructed, improved or leased at the time of the incurrence of such Indebtedness *plus*, the fees and expenses related thereto (*plus*, in the case of refinancings, accrued interest on the Indebtedness refinanced and fees and expenses relating thereto) and (ii) any such Liens attach only to the property being financed pursuant to such Purchase Money Obligations or Capital Lease Obligations (or in the case of refinancings which were previously financed pursuant to such Purchase Money Obligations or Capital Lease Obligations) (and directly related assets, including proceeds and replacements thereof and proceeds of such financing and any account solely used to hold such proceeds) and do not encumber any other Property of Borrower or any Restricted Subsidiary (it being understood that all Indebtedness to a single lender shall be considered to be a single Purchase Money Obligation, whether drawn at one time or from time to time but that individual financings provided by one lender may be cross-collateralized to other financings provided by such lender and incurred under Section 10.01(h));

(j) (i) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by Borrower or any Restricted Subsidiary, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; *provided*, *however*, that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness, (ii) contractual rights of setoff relating to purchase orders and other agreements entered into with customers, suppliers or service providers of Borrower or any Subsidiary in the ordinary course of business, and (iii) Liens attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business or encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(k) Liens on assets of a Person existing at the time such Person is acquired or merged with or into or consolidated with Borrower or any Restricted Subsidiary (and not created in connection with or in anticipation or contemplation thereof) and any modifications, replacements, extensions, or renewals thereof; *provided*, *however*, that such Liens do not extend to assets not subject to such Liens at the time of acquisition (other than improvements and attachments thereon, accessions thereto and proceeds thereof) and are no more favorable to the lienholders than the existing Lien;

(l) in addition to Liens otherwise permitted by this Section 10.02, other Liens incurred with respect to any Indebtedness or other obligations of Borrower or any of its Subsidiaries; *provided*, *however*, that the aggregate principal amount of such Indebtedness secured by such Liens shall not exceed as of the time of incurrence the greater of (i) $350.0 million and (ii) 35% of Consolidated EBITDA calculated on a Pro Forma Basis as of the most recently ended Test Period;

(m) licenses of Intellectual Property granted by Borrower or any Restricted Subsidiary in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of Borrower and its Restricted Subsidiaries, taken as a whole;

(n) Liens pursuant to the Credit Documents, including, without limitation, Liens related to Cash Collateralizations, Secured Cash Management Agreements, Credit Swap Contracts, and Overdraft Lines;

(o) Liens associated with the Wynn Las Vegas Pledge;

(p) Liens arising under applicable Gaming Laws; *provided*, *however*, that no such Lien constitutes a Lien securing repayment of Indebtedness for borrowed money;

(q) (i) Liens pursuant to leases entered into for the purpose of, or with respect to, operating or managing Facilities, which Liens are limited to the leased property under the applicable lease and granted to the landlord under such lease for the purpose of securing the obligations of the tenant under such lease to such landlord and (ii) Liens on cash and Cash Equivalents (and on the related escrow accounts or similar accounts, if any) required to be paid to the lessors (or lenders to such lessors) under such leases or maintained in an escrow account or similar account pending application of such proceeds in accordance with the applicable lease;

(r) Liens to secure Indebtedness incurred pursuant to Section 10.01(p); *provided* that such Liens do not encumber any Property of Borrower or any Restricted Subsidiary other than any Foreign Subsidiary and Equity Interests in such Foreign Subsidiary;

(s) Prior Mortgage Liens with respect to the applicable Mortgaged Real Property;

(t) Liens on cash and Cash Equivalents (i) deposited to Discharge, redeem, or defease Indebtedness that was permitted to so be repaid or (ii) on any cash and Cash Equivalents held by a trustee under any indenture or other debt agreement issued in escrow pursuant to customary escrow arrangements pending the release thereof;

(u) Liens arising from precautionary UCC financing statements filings regarding operating leases or consignment of goods entered into in the ordinary course of business;

(v) Liens on the Collateral securing (i) Permitted First Priority Refinancing Debt and subject to the *Pari Passu* Intercreditor Agreement or (ii) Permitted Second Priority Refinancing Debt and subject to the Second Lien Intercreditor Agreement (as "Second Priority Liens");

(w) Liens securing Ratio Debt permitted to be secured under Section 10.01(t) and subject to the Pari Passu Intercreditor Agreement or the Second Lien Intercreditor Agreement (in the case of Liens intended to be subordinated to the Liens securing the Obligations, as "Second Priority Liens"), as and to the extent applicable;

(x) Liens solely on any cash earnest money deposits made by Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement in respect of a Permitted Acquisition or Investment (including any other Acquisition) not prohibited by this Agreement;

(y) in the case of any non-Wholly Owned Subsidiary or Joint Venture, any put and call arrangements or restrictions on disposition related to its Equity Interests set forth in its organizational documents or any related joint venture or similar agreement and, in the case of any Joint Venture or Unrestricted Subsidiary, Liens on its Equity Interests securing obligations of such Joint Venture or Unrestricted Subsidiary;

(z) Liens arising in connection with transactions relating to the selling, factoring or discounting of accounts receivable in the ordinary course of business;

(aa) licenses, leases or subleases granted to other Persons not materially interfering with the conduct of the business of Borrower and its Subsidiaries taken as a whole;

(bb) any interest or title of a lessor, sublessor, licensee or licensor under any lease or license agreement permitted by this Agreement;

(cc) Liens securing obligations of any Person in respect of employee deferred compensation and benefit plans in connection with "rabbi trusts" or other similar arrangements;

(dd) Liens securing obligations in respect of trade-related letters of credit, bank guarantees or similar obligations permitted under Section 10.01 and covering the property (or the documents of title in respect of such property) financed by such letters of credit, bank guarantees or similar obligations and the proceeds and products thereof;

(ee) Liens on goods or inventory the purchase, shipment or storage price of which is financed by a documentary letter of credit, bank guarantee or bankers' acceptance issued or created for the account of Borrower or any Subsidiary in the ordinary course of business; *provided* that such Lien secures only the obligations of Borrower or such Subsidiaries in respect of such letter of credit, bank guarantee or banker's acceptance to the extent permitted under Section 10.01;

(ff) Liens arising pursuant to Indebtedness incurred pursuant to Section 10.01(u); *provided* that (i) if such Liens are (or are intended to be) secured by Liens on the Collateral that are *pari passu* with the Liens securing the Obligations, such Liens shall be subject to a *Pari Passu* Intercreditor Agreement, and (ii) if such Liens are (or are intended to be) secured by Liens on the Collateral that are junior in priority to the Liens securing the Obligations, such Liens shall be subject to a Second Lien Intercreditor Agreement;

(gg) Liens on cash and Cash Equivalents on deposit with financial institutions securing obligations to such persons owing under Cash Management Agreements and Overdraft Lines;

(hh) the filing of a reversion, subdivision or final map(s), record(s) of survey and/or amendments to any of the foregoing over Real Property the gross acreage and footprint of any applicable Mortgaged Real Property remains unaffected in any material respect;

(ii) from and after the disposition or lease or sublease of any interest in Real Property otherwise permitted pursuant to this Agreement, any reciprocal easement or similar agreement entered into between Borrower or any Restricted Subsidiary and the acquirer or holder of such interest;

(jj) Liens to secure Indebtedness incurred pursuant to Section 10.01(aa); *provided* that such Liens do not encumber any Property other than Property of any Joint Venture and the Equity Interests in the Joint Venture;

(kk) Liens securing Indebtedness or other obligations (i) of Borrower or a Restricted Subsidiary in favor of any Credit Party, and (ii) of any Restricted Subsidiary that is not a Credit Party in favor of any Restricted Subsidiary that is not a Credit Party;

(ll) Liens securing insurance premiums financing arrangements; *provided* that such Liens are limited to the applicable unearned insurance premiums and proceeds thereof;

(mm) Liens created by the applicable Transfer Agreement; and

(nn) Liens to secure any refinancing, refunding, extension, renewal, or replacement (or successive refinancings, refundings, extensions, renewals, or replacements) as a whole, or in part, of any Indebtedness secured by any Lien permitted by this Section 10.02; provided, however, that (x) such new Lien shall be limited to all or part of the same type of property that secured the original Lien (plus improvements on and accessions to such property, proceeds and products thereof, customary security deposits and any other assets pursuant to after-acquired property clauses to the extent such assets secured (or would have secured) the Indebtedness being refinanced), (y) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount (or accreted value, if applicable) of such Indebtedness or, if greater, committed amount of the applicable Indebtedness at the time the original Lien became a Lien permitted hereunder and (B) any unpaid accrued interest and premium (including tender premiums) thereon and an amount necessary to pay associated underwriting discounts, defeasance costs, fees, commissions and expenses related to such refinancing, refunding, extension, renewal or replacement, and (z) Indebtedness secured by Liens ranking junior to the Liens securing the Obligations may not be refinanced pursuant to this clause (nn) with Liens ranking *pari passu* to the Liens securing the Obligations.

In connection with the granting of Liens of the types described in this Section 10.02 by Borrower of any of its Restricted Subsidiaries, Administrative Agent and Collateral Agent shall be authorized to take any actions deemed appropriate by it in connection therewith (including, without limitation, by entering into or amending appropriate lien subordination, non-disturbance, attornment, or intercreditor agreements). In addition, with respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness.

SECTION 10.03. [Reserved].

SECTION 10.04. Investments, Loans and Advances. Neither Borrower nor any Restricted Subsidiary will, directly or indirectly, make any Investment, except for the following:

(a) (i) Investments in connection with the Wynn Group Reorganization and (ii) Investments committed or outstanding on the Closing Date (and to the extent in excess of $2.5 million individually, identified on Schedule 10.04), any extensions, renewals, or reinvestments thereof, and any Investments received in respect thereof without the payment of additional consideration (other than through the issuance of or exchange of Qualified Capital Stock);

(b) Investments in cash and Cash Equivalents (including Investments that were Cash Equivalents when made);

(c) Borrower may enter into Swap Contracts to the extent permitted by Section 10.01(c);

(d) Investments (i) by Borrower in any Restricted Subsidiary or Joint Venture, (ii) by any Restricted Subsidiary or Joint Venture in Borrower, and (iii) by a Restricted Subsidiary or Joint Venture in another Restricted Subsidiary or Joint Venture; *provided* that, in each case, any intercompany loan (it being understood and agreed that intercompany receivables, liabilities, or advances made in the ordinary course of business, including for cash management, tax, and accounting operations, do not constitute loans) in excess of $20.0 million individually shall be evidenced by a promissory note and, to the extent that the payee, holder or lender of such intercompany loan is a Credit Party, such promissory note shall be pledged (and delivered) by such Credit Party to Collateral Agent on behalf of the Secured Parties;

(e) Borrower and its Restricted Subsidiaries may sell or transfer assets to the extent permitted by Section 10.05;

(f) Investments in securities of trade creditors or customers or suppliers received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers or suppliers or in settlement of delinquent or overdue accounts in the ordinary course of business or Investments acquired by Borrower as a result of a foreclosure by Borrower or any of its Subsidiaries with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

(g) Investments made by Borrower or any Restricted Subsidiary with, or as a result of, consideration received in connection with an Asset Sale or other disposition made in compliance with Section 10.05;

(h) Investments made to officers, directors and employees in the ordinary course of business not to exceed $20.0 million in the aggregate at any time outstanding;

(i) Permitted Acquisitions;

(j) accounts receivable, security deposits, prepayments (including prepayments of expenses), credits and extensions of trade credit (including to gaming customers) in the ordinary course of business;

(k) Investments resulting from pledges and deposits permitted under Section 10.02;

(l) in addition to Investments otherwise permitted by this Section 10.04, Investments by Borrower or any of its Restricted Subsidiaries; *provided* that (i) the amount of such Investments to be made pursuant to this Section 10.04(l) do not exceed the Available Amount determined at the time such Investment is made and (ii) immediately before and after giving effect thereto, no Event of Default has occurred and is continuing; *provided* that if any Investment pursuant to this clause (l) is made in any person that is not a Restricted Subsidiary of Borrower at the date of the making of such Investment and such person becomes a Restricted Subsidiary of Borrower after such date, such Investment shall, upon the election of Borrower, thereafter be deemed to have been made pursuant to clause (d) above and shall cease to have been made pursuant to this clause (l) for so long as such person continues to be a Restricted Subsidiary of Borrower;

(m) the Wynn Las Vegas Convention Center Acquisition;

(n) payments with respect to any Qualified Contingent Obligations, so long as, at the time such Qualified Contingent Obligation was incurred or, if earlier, the agreement to incur such Qualified Contingent Obligations was entered into, such Investment was permitted under this Agreement;

(o) Investments of a Restricted Subsidiary acquired after the Closing Date or of a Person merged or consolidated with or into Borrower or a Restricted Subsidiary, in each case in accordance with the terms of this Agreement to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, or consolidation and were committed or in existence on the date of such acquisition, merger or consolidation;

(p) Investments in the nature of pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business;

(q) Investments in Unrestricted Subsidiaries in an amount as of the time of incurrence not to exceed $150.0 million (plus (x) the amounts received by Borrower and its Restricted Subsidiaries with respect to such Investments (including with respect to contracts related to such Investments and including principal, interest, dividends, distributions, sale proceeds, payments under contracts relating to such Investments or other amounts), and (y) reductions in the amount of such Investments as provided in the definition of "Investment");

(r) the occurrence of a Reverse Trigger Event under any applicable Transfer Agreement;

(s) Borrower and its Restricted Subsidiaries may make additional Investments in an aggregate amount not in excess of an amount equal to $1,000.0 million (plus the Specified 10.04(s) Investment Returns received on or prior to such date); *provided* that if any Investment pursuant to this clause (s) is made in any person that is not a Restricted Subsidiary of Borrower at the date of the making of such Investment and such person becomes a Restricted Subsidiary of Borrower after such date, such Investment shall, upon the election of Borrower, thereafter be deemed to have been made pursuant to clause (d) above and shall cease to have been made pursuant to this clause (s) for so long as such person continues to be a Restricted Subsidiary of Borrower;

(t) Investments to the extent that payment for such Investments is made with (or such Investments are received substantially contemporaneously in exchange for or are funded with the proceeds of) Qualified Capital Stock of Borrower or any parent entity of Borrower;

(u) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;

(v) Investments consisting of the licensing or contribution of intellectual property pursuant to joint marketing or other arrangements with other persons in the ordinary course of business; and

(w) [Reserved];

(x) Borrower and its Restricted Subsidiaries may make Investments in an aggregate amount not in excess of an amount equal to the Initial Base Restricted Payments Amount on such date (plus the amounts received by Borrower and its Restricted Subsidiaries with respect to such Investments (including with respect to contracts related to such Investments and including principal, interest, dividends, distributions, sale proceeds, payments under contracts relating to such Investments or other amounts)); *provided* that if any Investment pursuant to this clause (x) is made in any person that is not a Subsidiary of Borrower at the date of the making of such Investment and such person becomes a Subsidiary of Borrower after such date, such Investment shall, upon the election of Borrower, thereafter be deemed to have been made pursuant to clause (d) above and shall cease to have been made pursuant to this clause (x) for so long as such person continues to be a Subsidiary of Borrower;

(y) in addition to Investments otherwise permitted by this Section 10.04, Investments by Borrower or any of its Restricted Subsidiaries; provided that the amount of such Investments to be made pursuant to this Section 10.04(y) do not exceed the Available Equity Amount determined at the time such Investment is made; provided that if any Investment pursuant to this clause (y) is made in any person that is not a Restricted Subsidiary of Borrower at the date of the making of such Investment and such person becomes a Restricted Subsidiary of Borrower after such date, such Investment shall, upon the election of Borrower, thereafter be deemed to have been made pursuant to clause (d) above and shall cease to have been made pursuant to this clause (y) for so long as such person continues to be a Restricted Subsidiary of Borrower;

(z) Borrower and its Restricted Subsidiaries may make Investments in an aggregate amount not in excess of an amount equal to the Initial Base Junior Financing Prepayments Amount on such date (plus the amounts received by Borrower and its Restricted Subsidiaries with respect to such Investments (including with respect to contracts related to such Investments and including principal, interest, dividends, distributions, sale proceeds, payments under contracts relating to such Investments or other amounts)); provided that if any Investment pursuant to this clause (z) is made in any person that is not a Subsidiary of Borrower at the date of the making of such Investment and such person becomes a Subsidiary of Borrower after such date, such Investment shall, upon the election of Borrower, thereafter be deemed to have been made pursuant to clause (d) above and shall cease to have been made pursuant to this clause (z) for so long as such person continues to be a Subsidiary of Borrower;

(aa) Guarantees by Borrower or any Restricted Subsidiary of operating leases (other than Capital Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case entered into by Borrower or any Subsidiary in the ordinary course of business; and

(bb) additional Investments so long as, at the time such Investment is made and after giving effect thereto, (i) no Event of Default under Section 11.01(b), 11.01(c), 11.01(g), or 11.01(h) has occurred and is continuing and (ii) the Consolidated Total Net Leverage Ratio will not exceed 6.00:1.00 calculated on a Pro Forma Basis as of the most recent Calculation Date.

Any Investment in any person other than a Restricted Subsidiary that is otherwise permitted by this Section 10.04 may be made through intermediate Investments in Subsidiaries that are not Restricted Subsidiaries and such intermediate Investments shall be disregarded for purposes of determining the outstanding amount of Investments pursuant to any clause set forth above. The amount of any Investment made other than in the form of cash or cash equivalents shall be the fair market value thereof (as determined by Borrower in good faith) valued at the time of the making thereof, and without giving effect to any subsequent write-downs or write-offs thereof.

SECTION 10.05. Mergers, Consolidations and Sales of Assets. Neither Borrower nor any Restricted Subsidiary will wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation (other than solely to change the jurisdiction of organization or type of organization (to the extent in compliance with the applicable provisions of the Security Agreement)), or convey, sell, lease or sublease (as lessor or sublessor), transfer or otherwise dispose of any substantial part of its business, property or assets, except for:

(a) expenditures constituting Capital Expenditures, Expansion Capital Expenditures and Development Expenses by Borrower and the Restricted Subsidiaries;

(b) sales or dispositions of used, worn out, obsolete or surplus Property or Property no longer useful in the business of Borrower by Borrower and the Restricted Subsidiaries in the ordinary course of business and the abandonment or other sale of Intellectual Property that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the conduct of the business of Borrower and its Restricted Subsidiaries taken as a whole; and the termination or assignment of Contractual Obligations to the extent such termination or assignment does not have a Material Adverse Effect;

(c) Asset Sales by Borrower or any Restricted Subsidiary; *provided* that (i) at the time of such Asset Sale (or, at Borrower's election, at the time of entering into a binding contractual obligation or letter of intent with respect to such Asset Sale), no Event of Default then exists or would arise therefrom, (ii) Borrower or any of its Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of (x) cash or Cash Equivalents or (y) Permitted Business Assets (in each case, free and clear of all Liens at the time received other than Permitted Liens) (it being understood that for the purposes of clause (c)(ii)(x), the following shall be deemed to be cash: (A) any liabilities (as shown on Borrower's or such Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to the applicable Asset Sale and for which Borrower and all of its Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities received by Borrower or such Restricted Subsidiary from such transferee that are converted by Borrower or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within one hundred and eighty (180) days following the closing of the applicable disposition, (C) any Designated Non-Cash Consideration received in respect of such disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (C) that is at that time outstanding, not in excess of $150.0 million, with the fair market value of each item of Designated Non-Cash Consideration being measured at such date of receipt or such agreement, as applicable, and without giving effect to subsequent changes in value) and (iii) the Net Available Proceeds therefrom shall be applied as specified in Section 2.10(a)(iii) to the extent required thereby;

(d) Liens permitted by Section 10.02, Investments may be made to the extent permitted by Sections 10.04, Restricted Payments may be made to the extent permitted by Section 10.06, and Junior Prepayment may be made to the extent permitted by Section 10.09;

(e) Borrower and the Restricted Subsidiaries may dispose of cash and Cash Equivalents;

(f) Borrower and the Restricted Subsidiaries may lease (as lessor or sublessor) real or personal property to the extent permitted under Section 10.02;

(g) licenses and sublicenses by Borrower or any of its Restricted Subsidiaries of software and Intellectual Property in the ordinary course of business shall be permitted;

(h) (A) Borrower or any Restricted Subsidiary or Joint Venture may transfer or lease property (other than one or more Principal Assets in the case of a transfer or lease to a Joint Venture) to or acquire or lease property (other than one or more Principal Assets in the case of an acquisition by or lease to a Joint Venture) from Borrower or any Restricted Subsidiary or Joint Venture; (B) any Restricted Subsidiary may merge or consolidate with or into Borrower (as long as Borrower is the surviving Person) or any Guarantor (as long as the surviving Person is, or becomes substantially concurrently with such merger or consolidation, a Guarantor); (C) any Restricted Subsidiary may merge or consolidate with or into any other Restricted Subsidiary (so long as, if either Restricted Subsidiary is a Guarantor, the surviving Person is, or becomes substantially concurrently with such merger or consolidation, a Guarantor); and (D) any Restricted Subsidiary may be voluntarily liquidated, voluntarily wound up or voluntarily dissolved (so long as any such liquidation or winding up does not constitute or involve an Asset Sale to any Person other than to Borrower or any other Restricted Subsidiary or any other owner of Equity Interests in such Restricted Subsidiary unless such Asset Sale is otherwise permitted pursuant to this Section 10.05); *provided*, *however*, that, in each case with respect to clauses (A), (B) and (C) of this Section 10.05(h) (other than in the case of a transfer to a Restricted Subsidiary or Joint Venture that is not a Credit Party permitted under clause (A) above), the Lien on such property granted in favor of

Collateral Agent under the Security Documents shall be maintained in accordance with the provisions of this Agreement and the applicable Security Documents;

(i) voluntary terminations of Swap Contracts and other assets or contracts in the ordinary course of business;

(j) conveyances, sales, leases, transfers or other dispositions which do not constitute Asset Sales;

(k) any taking by a Governmental Authority of assets or property, or any part thereof, under the power of eminent domain or condemnation;

(l) Borrower and its Restricted Subsidiaries may make sales, transfers or other dispositions of property subject to a Casualty Event;

(m) Borrower and its Restricted Subsidiaries may make sales, transfers or other dispositions of Investments in Joint Ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(n) selling, factoring or discounting of accounts receivable (including defaulted receivables) in the ordinary course of business;

(o) any merger, consolidation or amalgamation in order to effect a Permitted Acquisition;

(p) (i) the lease, sublease or license of any portion of any Property to Persons who, either directly or through Affiliates of such Persons, intend to operate or manage nightclubs, bars, restaurants, recreation areas, spas, pools, exercise or gym facilities, or entertainment or retail venues or similar or related establishments or facilities and (ii) the grant of declarations of covenants, conditions and restrictions and/or easements with respect to common area spaces and similar instruments benefiting such tenants of such leases, subleases and licenses (collectively, the "**Venue Easements**," and together with any such leases, subleases or licenses, collectively the "**Venue Documents**"); *provided* that no Venue Document or operations conducted pursuant thereto would reasonably be expected to materially interfere with, or materially impair or detract from, the operations of Borrower and the Restricted Subsidiaries taken as a whole; provided further that upon request by Borrower, Collateral Agent on behalf of the Secured Parties shall provide the tenant, subtenant or licensee under any Venue Document with a subordination, non-disturbance and attornment agreement in form reasonably satisfactory to Collateral Agent and the applicable Credit Party;

(q) the dedication of space or other dispositions of Property in connection with and in furtherance of constructing structures or improvements reasonably related to the development, construction, and operation of any project; *provided* that in each case such dedication or other dispositions are in furtherance of, and do not materially impair or interfere with the operations of Borrower and the Restricted Subsidiaries;

(r) dedications of, or the granting of easements, rights of way, rights of access and/or similar rights, to any Governmental Authority, utility providers, cable or other communication providers and/or other parties providing services or benefits to any project, any Real Property held by Borrower or the Restricted Subsidiaries or the public at large that would not reasonably be expected to interfere in any material respect with the operations of Borrower and the Restricted Subsidiaries; *provided* that upon request by Borrower, Administrative Agent shall, in its reasonable discretion, direct Collateral Agent on behalf of the Secured Parties to subordinate its Mortgage on such Real Property to such easement, right of way, right of access or similar agreement in such form as is reasonably satisfactory to Administrative Agent and Borrower;

(s) dispositions of non-core assets acquired in connection with a Permitted Acquisition or other permitted Investment; *provided*, that (i) the amount of non-core assets that are disposed of in connection with any such Permitted Acquisition or other permitted Investment pursuant to this Section 10.05(s) does not exceed 25% of the aggregate purchase price for such Permitted Acquisition or other permitted Investment and (ii) to the extent that any such Permitted Acquisition or other permitted Investment is financed with the proceeds of Indebtedness of Borrower or its Restricted

Subsidiaries, then any proceeds from such disposition shall be used to prepay such Indebtedness (to the extent otherwise permitted hereunder) or the Loans in accordance with Section 2.10(iii) hereof;

(t) any disposition of Equity Interests of a Subsidiary pursuant to an agreement or other obligation with or to a person from whom such Subsidiary was acquired or from whom such Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition;

(u) any disposition in connection with the Wynn Group Reorganization;

(v) any transfer of Equity Interests of any Restricted Subsidiary or any Gaming Facility in connection with the occurrence of a Trigger Event; and

(w) any exchange of assets for other assets used or useful in a Permitted Business that are of comparable or greater value (as determined by Borrower in good faith).

To the extent any Collateral is sold, transferred, distributed, conveyed, or otherwise disposed of as permitted by this Section 10.05 or in connection with a transaction approved by the Required Lenders, in each case, to a Person other than a Credit Party, such Collateral (unless sold to Borrower or a Guarantor) shall, except as set forth in the proviso to Section 10.05(h), be sold, transferred or otherwise disposed of free and clear of the Liens created by the Security Documents, and Collateral Agent shall take all actions appropriate or reasonably requested by Borrower in order to effect the foregoing at the sole cost and expense of Borrower and without recourse or warranty by Collateral Agent (including the execution and delivery of appropriate UCC termination statements and such other instruments and releases as may be necessary and appropriate to effect such release). To the extent any such sale, transfer, or other disposition results in a Guarantor no longer constituting a Subsidiary of Borrower or becoming an Excluded Subsidiary, the Obligations of such Guarantor and all obligations of such Guarantor under the Credit Documents shall terminate and be of no further force and effect, and each of Administrative Agent and Collateral Agent shall take such actions, at the sole expense of Borrower, as are appropriate or requested by Borrower in connection with such termination.

SECTION 10.06. Restricted Payments. Neither Borrower nor any of its Restricted Subsidiaries shall, directly or indirectly, declare or make any Restricted Payment at any time, except, without duplication:

(a) Borrower or any Restricted Subsidiary may make Restricted Payments to the extent permitted pursuant to Section 2.09(b)(ii);

(b) any Restricted Subsidiary of Borrower may declare and make Restricted Payments to Borrower or any Wholly Owned Subsidiary of Borrower which is a Restricted Subsidiary;

(c) any Restricted Subsidiary of Borrower, if such Restricted Subsidiary is not a Wholly Owned Subsidiary, may declare and make Restricted Payments in respect of its Equity Interests to all holders of such Equity Interests generally so long as Borrower or its respective Restricted Subsidiary that owns such Equity Interest or interests in the Person making such Restricted Payments receives at least its proportionate share thereof (based upon its relative ownership of the subject Equity Interests and the terms thereof);

(d) Borrower and its Restricted Subsidiaries may (i) make Restricted Payments in connection with the Wynn Group Reorganization and (ii) engage in transactions to the extent permitted by Section 10.04 and Section 10.05;

(e) Borrower and its Restricted Subsidiaries may make Restricted Payments in respect of Disqualified Capital Stock issued in compliance with the terms hereof;

(f) Borrower may repurchase (or make Restricted Payments in respect thereof) common stock or common stock options (including those issued by Wynn Resorts or such other parent entity of Borrower) from present or former officers, directors or employees (or heirs of, estates of or trusts formed by such Persons) of any Company or Wynn Resorts upon the death, disability, retirement or termination of employment of such officer, director or employee or

pursuant to the terms of any stock option plan or like agreement;*provided, however*, that the aggregate amount of payments under this clause (f) shall not exceed $20.0 million in any fiscal year of Borrower;

(g) Borrower and its Restricted Subsidiaries may (i) repurchase (or make Restricted Payments in respect thereof) Equity Interests (including those issued by Wynn Resorts or such other parent entity of Borrower) to the extent deemed to occur upon exercise of stock options, warrants or rights in respect thereof to the extent such Equity Interests represent a portion of the exercise price of such options, warrants or rights in respect thereof and (ii) make payments in respect of (or make Restricted Payments in respect thereof) withholding or similar taxes payable or expected to be payable by any present or former member of management, director, officer, employee, or consultant of Borrower or any of its Subsidiaries or Wynn Resorts or such other parent entity of Borrower or family members, spouses or former spouses, heirs of, estates of or trusts formed by such Persons in connection with clause (i);

(h) Borrower and its Restricted Subsidiaries may make Restricted Payments to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or, warrants or rights or upon the conversion or exchange of or into Equity Interests, or payments or distributions to dissenting stockholders pursuant to applicable law (in each case, including with respect to Wynn Resorts or such other parent entity of Borrower);

(i) so long as immediately before and after giving effect thereto (A) no Event of Default has occurred and is continuing and (B) the Consolidated Fixed Charge Coverage Ratio is greater than or equal to 2.00:1.00 on a Pro Forma Basis as of the most recent Calculation Date, Borrower and its Restricted Subsidiaries may make Restricted Payments in an aggregate amount not to exceed (i) the Initial Base Restricted Payments Amount on such date, *plus* (ii) the Available Amount;

(j) to the extent constituting Restricted Payments, Borrower may make payments to counterparties under Swap Contracts entered into in connection with the issuance of convertible or exchangeable debt;

(k) Borrower and its Restricted Subsidiaries may make Tax Payments to the direct or indirect owners of Borrower or any of the Restricted Subsidiaries;

(l) Borrower and its Restricted Subsidiaries may make Restricted Payments in an aggregate amount not to exceed the Initial Base Junior Financing Prepayments Amount;

(m) Borrower may pay Allocable Overhead to Wynn Resorts in respect of each Qualifying Project of Borrower and its Restricted Subsidiaries;

(n) Borrower and its Restricted Subsidiaries may pay Management Fees and IP Licensing Fees;

(o) Borrower may on the Closing Date make Restricted Payments in order to consummate the Closing Date Refinancing;

(p) Borrower and its Restricted Subsidiaries may make Restricted Payments in an aggregate amount not to exceed the Available Equity Amount;

(q) Borrower may make ordinary course dividends or distributions to Wynn Resorts in an amount not to exceed $1,000.0 million in the aggregate in any fiscal year; *provided* that with respect to any unused amounts in any fiscal year, the unused amount from such fiscal year may be carried forward to the immediately subsequent two fiscal years; *provided further*, that during any such subsequent fiscal year, Borrower shall utilize any carried over amount before using the permitted amount for such fiscal year;

(r) so long as (i) immediately before and after giving effect thereto no Event of Default underSection 11.01(b), 11.01(c), 11.01(g), or 11.01(h) has occurred and is continuing and (ii) after giving effect thereto the Consolidated Total Net Leverage Ratio will not exceed 5.50:1.00 calculated on a Pro Forma Basis as of the most recent Calculation Date, Borrower and its Restricted Subsidiaries may make additional Restricted Payments;

(s) so long as (i) immediately before and after giving effect thereto no Event of Default has occurred and is continuing and (ii) after giving effect thereto Borrower is in compliance with the Financial Maintenance Covenant (regardless of whether then applicable) on a Pro Forma Basis as of the most recent Calculation Date, Borrower and its Restricted Subsidiaries may make additional Restricted Payments in an amount not to exceed the Excess Dividend Amount on such date; and

(t) Borrower and the Restricted Subsidiaries may make payments of amounts necessary to repurchase or retire Equity Interests of Borrower or any Subsidiary (or of Wynn Resorts or any applicable parent entity) to the extent required by any Gaming Authority in order to avoid the suspension, revocation or denial of a Gaming License by that Gaming Authority; provided that, in the case of any such repurchase of Equity Interests of Borrower or any Subsidiary (or of Wynn Resorts or any applicable parent entity), if such efforts do not jeopardize any Gaming License, Borrower or any such Subsidiary will have previously used commercially reasonable efforts to attempt to find a suitable purchaser for such Equity Interests and no suitable purchaser acceptable to the applicable Gaming Authority and Borrower was willing to purchase such Equity Interests on terms acceptable to the holder thereof within a time period acceptable to such Gaming Authority.

SECTION 10.07. Transactions with Affiliates. Neither Borrower nor any of its Restricted Subsidiaries shall enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than Borrower or any Restricted Subsidiary) involving aggregate consideration in excess of $25.0 million unless such transaction (a) is required under this Agreement, or (b) is upon fair and reasonable terms no less favorable to Borrower or such Restricted Subsidiary, as the case may be, than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate (such arms' length standard being deemed to have been satisfied if such transaction is approved by a majority of the Disinterested Directors of Borrower); *provided*, *however*, that notwithstanding the foregoing, Borrower and its Restricted Subsidiaries (i) may enter into indemnification and employment agreements and arrangements with directors, officers and employees (including for the provision of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, equity purchase agreements, stock options and stock ownership plans), subscription agreements or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with directors, officers and employees and any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees and, in each case any reasonable transactions pursuant thereto, (ii) may make Investments and Restricted Payments permitted hereunder, (iii) may enter into transactions with Unaffiliated Joint Ventures and Wholly Owned Subsidiaries of Unaffiliated Joint Ventures, in each case, relating to the provision of management services, overhead, sharing of customer lists and customer loyalty programs and, so long as in the ordinary course of business, the purchase or sale of goods, equipment, products, parts and services, (iv) may enter into agreements and other arrangements providing for the payment of Management Fees and IP Licensing Fees; (v) may issue, sell or transfer Equity Interests of Borrower to any parent entity, including in connection with capital contributions by such parent entity to Borrower or any Subsidiary; (vi) may enter into transactions undertaken for the purpose of improving the consolidated tax efficiency of any parent entity of Borrower, Borrower and/or the Subsidiaries (*provided* that such transactions, taken as a whole, are not materially adverse to Borrower and the Restricted Subsidiaries (as determined by Borrower in good faith); (vi) may enter into any transaction subject to Section 13.05; (vii) may enter into any transactions described on Schedule 10.07 or any amendment thereto or replacement thereof or similar arrangement to the extent such amendment, replacement or arrangement is not adverse to the Lenders when taken as a whole in any material respect (as determined by Borrower in good faith); (viii) may pay Allocable Overhead to Wynn Resorts in respect of each Qualifying Project of Borrower and its Restricted Subsidiaries; (ix) may incur any Indebtedness permitted pursuant to Section 10.01(w), and (x) may consummate the Wynn Las Vegas Convention Center Acquisition.

SECTION 10.08. Financial Maintenance Covenant. Borrower shall not permit the Consolidated First Lien Net Leverage Ratio as of the last day of any fiscal quarter of Borrower commencing with the first full fiscal quarter ending after the Closing Date to exceed 3.75 to 1.00.

SECTION 10.09. Certain Payments of Indebtedness. None of Borrower or any of its Restricted Subsidiaries will, nor will they permit any Restricted Subsidiary to voluntarily prepay, redeem, purchase, defease, or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly

scheduled principal and interest and mandatory prepayments shall be permitted and prepayments within one year of the scheduled maturity shall be permitted) any Disqualified Capital Stock or Other Junior Indebtedness (including Intercompany Contribution Indebtedness) or make any payment in violation of any subordination terms or intercreditor agreement applicable to any such Indebtedness (such payments, "**Junior Prepayments**"), except:

(a) so long as immediately before and after giving effect thereto (A) no Event of Default has occurred and is continuing and (B) the Consolidated Fixed Charge Coverage Ratio is greater than or equal to 2.00:1.00 on a Pro Forma Basis as of the most recent Calculation Date, Borrower and its Restricted Subsidiaries may make Junior Prepayments in an aggregate amount not to exceed (i) the Initial Base Restricted Payments Amount on such date, *plus* (ii) the Available Amount;

(b) Borrower and its Restricted Subsidiaries may make a Permitted Refinancing of any such Indebtedness (including through exchange offers and similar transactions);

(c) Borrower and its Restricted Subsidiaries may make the conversion of any such Indebtedness to Equity Interests (or exchange of any such Indebtedness for Equity Interests) of Borrower or any direct or indirect parent of Borrower (other than Disqualified Capital Stock);

(d) with respect to intercompany subordinated indebtedness, Borrower and its Restricted Subsidiaries may make Junior Prepayments to the extent consistent with the subordination terms thereof and permitted under this Section 10.09 (other than pursuant to this clause (d));

(e) Borrower and its Restricted Subsidiaries may make exchanges of Indebtedness issued in private placements and resold in reliance on Regulation S or Rule 144A for Indebtedness having substantially equivalent terms pursuant to customary exchange offers;

(f) Borrower and its Restricted Subsidiaries may make prepayment, redemption, purchase, defeasance or satisfaction of Indebtedness of Persons acquired pursuant to, or Indebtedness assumed in connection with, Permitted Acquisition or Investment (including any other Acquisition) not prohibited by this Agreement;

(g) Borrower and its Restricted Subsidiaries may make Junior Prepayments made pursuant toSection 2.09(b)(ii);

(h) Borrower and its Restricted Subsidiaries may make Junior Prepayments in respect of intercompany Indebtedness owing to Borrower or its Restricted Subsidiaries will be permitted;

(i) Borrower and its Restricted Subsidiaries may make scheduled payments thereon necessary to avoid the Other Junior Indebtedness constituting "applicable high yield discount obligations" within the meaning of Section 163(i)(1) of the Code;

(j) Borrower and its Restricted Subsidiaries may make Junior Prepayments in an aggregate amount not to exceed the Initial Base Junior Financing Prepayments Amount on such date;

(k) Borrower and its Restricted Subsidiaries may make prepayments, redemptions, purchases, defeasance or satisfaction of Disqualified Capital Stock with the proceeds of any issuance of Disqualified Capital Stock permitted to be issued hereunder or in exchange for Disqualified Capital Stock or other Equity Interests permitted to be issued hereunder; and

(l) Borrower and its Restricted Subsidiaries may make Junior Prepayments in an aggregate amount not to exceed the Available Equity Amount; and

(m) so long as (i) immediately before and after giving effect thereto no Event of Default underSection 11.01(b), 11.01(c), 11.01(g), or 11.01(h) has occurred and is continuing and (ii) after giving effect thereto the

Consolidated Total Net Leverage Ratio will not exceed 5.50:1.00 calculated on a Pro Forma Basis as of the most recent Calculation Date, Borrower and its Restricted Subsidiaries may make additional Junior Prepayments.

SECTION 10.10. Limitation on Certain Restrictions Affecting Subsidiaries. None of Borrower or any of its Restricted Subsidiaries shall, directly or indirectly, create any consensual encumbrance or restriction on the ability of any Restricted Subsidiary (other than any Foreign Subsidiary or Immaterial Subsidiary) of Borrower to (i) pay dividends or make any other distributions on such Restricted Subsidiary's Equity Interests or any other interest or participation in its profits owned by Borrower or any of its Restricted Subsidiaries, or pay any Indebtedness or any other obligation owed to Borrower or any of its Restricted Subsidiaries, (ii) make Investments in or to Borrower or any of its Restricted Subsidiaries, (iii) transfer any of its Property to Borrower or any of its Restricted Subsidiaries, or (iv) in the case of any Guarantor, guarantee the Obligations hereunder or, in the case of any Credit Party, subject its portion of the Collateral to the Liens securing the Obligations in favor of the Secured Parties, except that each of the following shall be permitted:

(a) any such encumbrances or restrictions existing under or by reason of (x) applicable Law (including any Gaming Law and any regulations, order or decrees of any Gaming Authority or other applicable Governmental Authority) or (y) the Credit Documents;

(b) restrictions on the transfer of Property, or the granting of Liens on Property, in each case, subject to Permitted Liens;

(c) customary restrictions on subletting or assignment of any lease or sublease governing a leasehold interest of any Company;

(d) restrictions on the transfer of any Property, or the granting of Liens on Property, subject to a contract with respect to an Asset Sale or other transfer, sale, conveyance or disposition permitted under this Agreement,

(e) restrictions contained in the existing Indebtedness listed on Schedule 10.01 and Permitted Refinancings thereof, provided, that the restrictive provisions in any such Permitted Refinancing, taken as a whole and as determined by Borrower in good faith, are not materially more restrictive than the restrictive provisions in the Indebtedness being refinanced;

(f) restrictions contained in Indebtedness of Persons acquired pursuant to, or assumed in connection with, Permitted Acquisitions or other Acquisitions not prohibited hereunder after the Closing Date and Permitted Refinancings thereof, provided, that the restrictive provisions in any such Permitted Refinancing, taken as a whole and as determined by Borrower in good faith, are not materially more restrictive than the restrictive provisions in the Indebtedness being refinanced and such restrictions are limited to the Persons or assets being acquired and of the Subsidiaries of such Persons and their assets;

(g) with respect to clauses (i), (ii), and (iii) above, restrictions contained in any Indebtedness permitted hereunder, in each case, taken as a whole and as determined by Borrower in good faith, to the extent not materially more restrictive than those contained in this Agreement;

(h) with respect to clauses (i), (ii), and (iii) above, restrictions contained in any Ratio Debt and Permitted Refinancings thereof, in each case, taken as a whole and as determined by Borrower in good faith, to the extent not materially more restrictive than those contained in this Agreement;

(i) customary restrictions in joint venture arrangements or management contracts; provided, that such restrictions are limited to the assets of such joint ventures and the Equity Interests of the Persons party to such joint venture arrangements or the assignment of such management contract, as applicable;

(j) customary non-assignment provisions or other customary restrictions arising under licenses, leases and other contracts entered into in the ordinary course of business; provided, that such restrictions are limited to the

assets subject to such licenses, leases and contracts and the Equity Interests of the Persons party to such licenses and contracts;

(k) restrictions contained in Indebtedness of Foreign Subsidiaries incurred pursuant to Section 10.01 and Permitted Refinancings thereof; *provided* that such restrictions apply only to the Foreign Subsidiaries incurring such Indebtedness and their Subsidiaries (and the assets thereof and Equity Interests in such Foreign Subsidiaries);

(l) restrictions contained in Indebtedness used to finance, or incurred for the purpose of financing (including Development Expenses), Expansion Capital Expenditures and/or Investments, Capital Expenditures or other expenditures with respect to Development Projects and Permitted Refinancings thereof, provided, that such restrictions apply only to the asset (or the Person owning such asset) being financed pursuant to such Indebtedness;

(m) restrictions contained in subordination provisions applicable to intercompany debt owed by the Credit Parties; provided, that such intercompany debt is subordinated to the Obligations on terms at least as favorable to the Lenders as the subordination of such intercompany debt to any other obligations as determined by Borrower in good faith; and

(n) restrictions contained in the documentation governing the Wynn Las Vegas Notes and Permitted Refinancings thereof (so long as the restrictions in any such Permitted Refinancing, taken as a whole and as determined by Borrower in good faith, are no more restrictive in any material respect than those in the Wynn Las Vegas 2023 Notes).

SECTION 10.11. Limitation on Lines of Business. Neither Borrower nor any Restricted Subsidiary shall directly or indirectly engage to any material extent (determined on a consolidated basis) in any line or lines of business activity other than Permitted Business.

SECTION 10.12. Limitation on Changes to Fiscal Year. Neither Borrower nor any Restricted Subsidiary shall change its fiscal year end to a date other than December 31 of each year (*provided* that any Restricted Subsidiary acquired or formed, or Person designated as an Unrestricted Subsidiary, in each case, after the Closing Date may change its fiscal year to match the fiscal year of Borrower).

ARTICLE XI.

EVENTS OF DEFAULT

SECTION 11.01. Events of Default. If one or more of the following events (herein called "**Events of Default**") shall occur and be continuing:

(a) any representation or warranty made or deemed made by or on behalf of Borrower or any other Credit Party pursuant to any Credit Document or the borrowings or issuances of Letters of Credit hereunder, or any representation, warranty or statement of fact made or deemed made by or on behalf of Borrower or any other Credit Party in any report, certificate, financial statement or other instrument furnished pursuant to any Credit Document, shall prove to have been false or misleading (i) in any material respect, if such representation and warranty is not qualified as to "materiality," "Material Adverse Effect" or similar language, or (ii) in any respect, if such representation and warranty is so qualified, in each case when such representation or warranty is made, deemed made or furnished;

(b) default shall be made in the payment of (i) any principal of any Loan or the reimbursement with respect to any Reimbursement Obligation when and as the same shall become due and payable (whether at the stated maturity upon prepayment or repayment or by acceleration thereof or otherwise) or (ii) any interest on any Loans when and as the same shall become due and payable, and such default under this clause (ii) shall continue unremedied for a period of five (5) Business Days;

(c) default shall be made in the payment of any fee or any other amount (other than an amount referred to in (b) above) due under any Credit Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five (5) Business Days;

(d) default shall be made in the due observance or performance by Borrower or any Restricted Subsidiary of any covenant, condition, or agreement contained in Section 9.01(a) (with respect to Borrower only) or 9.04(d), 9.06 or in Article X (subject to, in the case of the Financial Maintenance Covenant, the cure rights contained in Section 11.03); *provided* that in the case of Section 10.08 only, in no case shall any default in the due observance or performance thereof during a Covenant Suspension Period constitute a Default or Event of Default);

(e) default shall be made in the due observance or performance by Borrower or any of its Restricted Subsidiaries of any covenant, condition or agreement contained in any Credit Document (other than those specified in Section 11.01(b), 11.01(c) or 11.01(d)) and, unless such default has been waived, such default shall continue unremedied for a period of thirty (30) days (or 60 days if such default results solely from an Immaterial Subsidiary's or a Foreign Subsidiary's failure to observe or perform any such covenant, condition, or agreement) after written notice thereof from Administrative Agent to Borrower;

(f) Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Indebtedness (other than the Obligations), when and as the same shall become due and payable (after giving effect to any applicable grace period), or (ii) fail to observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness or any event or condition occurs, if the effect of any failure or occurrence referred to in this clause (ii) is to cause, or to permit the holder or holders of such Indebtedness or a trustee on its or their behalf (with or without the giving of notice but giving effect to applicable grace periods) to cause, such Indebtedness (other than Qualified Contingent Obligations) to become due, or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise) or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made prior to its stated maturity; *provided*, *however*, that (x) clauses (i) and (ii) shall not apply to any offer to repurchase, prepay or redeem Indebtedness of a Person acquired in an Acquisition permitted hereunder, to the extent such offer is required as a result of, or in connection with, such Acquisition, (y) any event or condition causing or permitting the holders of any Indebtedness to cause such Indebtedness to be converted into Qualified Capital Stock (including any such event or condition which, pursuant to its terms may, at the option of Borrower, be satisfied in cash in lieu of conversion into Qualified Capital Stock) shall not constitute an Event of Default pursuant to this paragraph (f) and (z) it shall not constitute an Event of Default pursuant to this paragraph (f) unless the aggregate amount of all such Indebtedness referred to in clauses (i) and (ii) exceeds $125.0 million at any one time;

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction in either case under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, in each case seeking (i) relief in respect of Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary), or of a substantial part of the property or assets of Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary); (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) or for a substantial part of the property or assets of Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary); or (iii) the winding-up or liquidation of Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary); and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) shall (i) voluntarily commence any proceeding or file any petition seeking relief under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in Section 11.01(g); (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) or for a substantial part of the property or assets of Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) in any proceeding under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership, or

similar law; (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding; (v) make a general assignment for the benefit of creditors; (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due; (vii) take any action for the purpose of effecting any of the foregoing; or (viii) wind up or liquidate (except as permitted hereunder);

(i) one or more judgments for the payment of money in an aggregate amount in excess of $125.0 million (to the extent not covered by third party insurance) shall be rendered against Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) or any combination thereof and the same shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed, or any action (to the extent such action is not effectively stayed) shall be legally taken by a judgment creditor to levy upon assets or properties of Borrower or any of its Restricted Subsidiaries to enforce any such judgment;

(j) an ERISA Event shall have occurred that, when taken together with all other such ERISA Events, would reasonably be expected to result in a Material Adverse Effect;

(k) with respect to any material Collateral, any security interest and Lien purported to be created by the applicable Security Document shall cease to be in full force and effect, or shall cease to give Collateral Agent, for the benefit of the Secured Parties, the first priority Liens and rights, powers, and privileges in each case purported to be created and granted under such Security Document in favor of Collateral Agent, or shall be asserted by any Credit Party or any Affiliate thereof not to be a valid, perfected security interest in or Lien on the Collateral covered thereby, in each case, except (x) to the extent that any such perfection or priority is not required pursuant to this Agreement or the Security Documents or any loss thereof results from an act or omission (to the extent such Person is required to act) of Administrative Agent, Collateral Agent, or any other Secured Party and (y) as to Collateral consisting of Real Property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage;

(l) any Guarantee shall cease to be in full force and effect or any of the Guarantors repudiates, or attempts to repudiate, any of its obligations under any of the Guarantees (except to the extent such Guarantee ceases to be in effect in connection with any transaction permitted pursuant to Sections 9.12 or 10.05);

(m) any Credit Document or any material provisions thereof shall at any time and for any reason be declared by a court of competent jurisdiction to be null and void, or a proceeding shall be commenced by any Credit Party seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or any Credit Party shall repudiate or deny that it has any liability or obligation for the payment of principal or interest purported to be created under any Credit Document;

(n) there shall have occurred a Change of Control;

(o) there shall have occurred a License Revocation by any Gaming Authority in one or more jurisdictions in which Borrower or any of its Restricted Subsidiaries owns or operates Gaming Facilities, which License Revocation (in the aggregate with any other License Revocations then in existence) would reasonably be expected to have a Material Adverse Effect (for purposes of clarification, without giving effect to the first proviso to the definition of Material Adverse Effect); *provided*, *however*, that such License Revocation continues for at least ninety (90) consecutive days after the earlier of (x) the date of cessation of the affected operations as a result of such License Revocation and (y) the date that none of Borrower, nor any of its Restricted Subsidiaries nor the Lenders receive the net cash flows generated by any such operations; or

(p) the provisions of any *Pari Passu* Intercreditor Agreement or Second Lien Intercreditor Agreement shall, in whole or in part, following such *Pari Passu* Intercreditor Agreement or Second Lien Intercreditor Agreement being entered into, terminate, cease to be effective or cease to be legally valid, binding and enforceable against the Persons party thereto, except in accordance with its terms;

then, and in every such event (other than an event described inSection 11.01(g) or 11.01(h) with respect to Borrower), and at any time thereafter during the continuance of such event, Administrative Agent, at the request of the Required Lenders, shall, by notice to Borrower, take any or all of the following actions, at the same or different times: (i) terminate

forthwith the Commitments, (ii) declare the Loans and Reimbursement Obligations then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans and Reimbursement Obligations so declared to be due and payable, together with accrued interest thereon and any unpaid accrued fees and all other liabilities and Obligations of Borrower accrued hereunder and under any other Credit Document (other than Credit Swap Contracts and Secured Cash Management Agreements), shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrower, anything contained herein or in any other Credit Document (other than Credit Swap Contracts and Secured Cash Management Agreements) to the contrary notwithstanding; (iii) exercise any other right or remedy provided under the Credit Documents or at law or in equity and (iv) direct Borrower to pay (and Borrower hereby agrees upon receipt of such notice, or upon the occurrence of any Event of Default specified in Section 11.01(g) or 11.01(h) with respect to Borrower, to pay) to Collateral Agent at the Principal Office such additional amounts of cash, to be held as security by Collateral Agent for L/C Liabilities then outstanding, equal to the aggregate L/C Liabilities then outstanding; and in any event described in Section 11.01(g) or 11.01(h) above with respect to Borrower, the Commitments shall automatically terminate and the principal of the Loans and Reimbursement Obligations then outstanding, together with accrued interest thereon and any unpaid accrued fees and all other liabilities and Obligations of Borrower accrued hereunder and under any other Credit Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrower, anything contained herein or in any other Credit Document to the contrary notwithstanding. Notwithstanding anything to the contrary, if the only Event of Default then having occurred and continuing is an Event of Default with respect to the Financial Maintenance Covenant, then neither Administrative Agent, Collateral Agent, nor any other Secured Parties may take any of the actions set forth in this Section 11.01 during the period commencing on the date that Administrative Agent receives a Notice of Intent to Cure and ending on the Cure Expiration Date with respect thereto in accordance with and to the extent permitted by Section 11.03.

SECTION 11.02. Application of Proceeds. Subject to the provisions of the Collateral Agency Intercreditor Agreement and any Pari Passu Intercreditor Agreement, the proceeds received by Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by Collateral Agent of its remedies, or otherwise received after acceleration of the Loans, shall be applied, in full or in part, together with any other sums then held by Collateral Agent pursuant to this Agreement, promptly by Collateral Agent as follows:

(a) *First*, to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization including compensation to Administrative Agent and Collateral Agent and their respective agents and counsel, and all expenses, liabilities and advances made or incurred by Administrative Agent or Collateral Agent in connection therewith and all amounts for which Administrative Agent or Collateral Agent, as applicable is entitled to indemnification pursuant to the provisions of any Credit Document;

(b) *Second*, to the payment of all other reasonable costs and expenses of such sale, collection or other realization and of any receiver of any part of the Collateral appointed pursuant to the applicable Security Documents including compensation to the other Secured Parties and their agents and counsel and all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith;

(c) *Third*, without duplication of amounts applied pursuant to clauses (a) and(b) above, to the indefeasible payment in full in cash,*pro rata*, of interest and other amounts constituting Obligations (other than principal, reimbursement obligations in respect of L/C Liabilities and obligations to Cash Collateralize L/C Liabilities and amounts specified in clause (d)(y) below) and any fees, premiums and scheduled periodic payments due under Obligations arising under Secured Cash Management Agreements and Credit Swap Contracts that constitute Secured Obligations (as defined in the Security Agreement) and any interest accrued thereon, in each case equally and ratably in accordance with the respective amounts thereof then due and owing;

(d) *Fourth*, to the indefeasible payment in full in cash,*pro rata*, of (x) principal amount of the Obligations and any premium thereon (including reimbursement obligations in respect of L/C Liabilities and obligations to Cash Collateralize L/C Liabilities) and (y) any breakage, termination or other payments under Obligations arising under Secured Cash Management Agreements and Credit Swap Contracts that constitute Secured Obligations (as defined in the Security Agreement) and any interest accrued thereon; and

(e) *Fifth*, the balance, if any, to the Person lawfully entitled thereto (including the applicable Credit Party or its successors or assigns) or as a court of competent jurisdiction may direct.

In the event that any such proceeds are insufficient to pay in full the items described in clauses (a) through (c) of this Section 11.02, the Credit Parties shall remain liable, jointly and severally, for any deficiency.

Notwithstanding the foregoing, Obligations arising under Secured Cash Management Agreements and Credit Swap Contracts shall be excluded from the application described above if Administrative Agent has not received written notice thereof, together with such supporting documentation as Administrative Agent may request, from the applicable Cash Management Bank or Swap Provider, as the case may be. Each Cash Management Bank or Swap Provider not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of Administrative Agent and Collateral Agent pursuant to the terms of Article XII hereof for itself and its Affiliates as if a "Lender" party hereto.

SECTION 11.03. Borrower's Right to Cure. Notwithstanding anything to the contrary contained in Section 10.08 or 11.01, in the event that Borrower shall fail to comply with the Financial Maintenance Covenant, (i) any equity contribution (in the form of common equity or other equity having terms reasonably acceptable to Administrative Agent) made or contributed to Borrower after the last day of any fiscal quarter and on or prior to the day that is ten (10) Business Days after the day on which financial statements are required to be delivered for that fiscal quarter (such date, the "**Cure Expiration Date**") will, at the request of Borrower, increase Consolidated EBITDA with respect to such applicable fiscal quarter solely for the purposes of determining compliance with the Financial Maintenance Covenant at the end of such fiscal quarter and any subsequent period that includes such fiscal quarter (any such equity contribution or cash proceeds, a "**Specified Equity Contribution**"); *provided* that (a) no Lender shall be required to make any extension of credit during the ten (10) Business Day period referred to above if Borrower has not received the proceeds of such Specified Equity Contribution, (b) Borrower shall not be permitted to so request that a Specified Equity Contribution be included in the calculation of Consolidated EBITDA with respect to any fiscal quarter unless, after giving effect to such requested Specified Equity Contribution, there will be a period of at least two (2) fiscal quarters in the Relevant Four Fiscal Quarter Period in which no Specified Equity Contribution has been made and there shall be no more than five (5) Specified Equity Contributions in total, (c) the amount of any Specified Equity Contribution and the use of proceeds therefrom will be no greater than the amount required to cause Borrower to be in compliance with the Financial Maintenance Covenant, (d) all proceeds of Specified Equity Contributions will be disregarded for all other purposes under the Credit Documents (including calculating Consolidated EBITDA for purposes of determining basket levels and other items governed by reference to Consolidated EBITDA, and for purposes of negative covenants (other than the Financial Maintenance Covenant)), (e) the proceeds of each Specified Equity Contributions shall have been contributed to Borrower as equity solely in exchange for Qualified Capital Stock of Borrower or as Intercompany Contribution Indebtedness, and (f) there shall be no reduction in Indebtedness (whether on a pro forma basis or otherwise) with the proceeds of any Specified Equity Contribution for purposes of determining compliance with the Financial Maintenance Covenant for the fiscal quarter for which such Specified Equity Contribution was made.

ARTICLE XII.

AGENTS

SECTION 12.01. Appointment. Each of the Lenders hereby irrevocably appoints DB to act on its behalf as Administrative Agent and Collateral Agent hereunder and under the other Credit Documents, and authorizes Administrative Agent and Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent or Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto, including pursuant to regulatory requirements of any Gaming Authority consistent with the intents and purposes of this Agreement and the other Credit Documents. DB is hereby appointed Auction Manager hereunder, and each Lender hereby authorizes the Auction Manager to act as its agent in accordance with the terms hereof and of the other Credit Documents; *provided*, that Borrower shall have the right to select and appoint a replacement Auction Manager from time to time by written notice to Administrative Agent, and any such replacement shall also be so authorized to act in such capacity. Each Lender agrees that the Auction Manager shall have solely the obligations in its capacity as the Auction Manager as are specifically described in this Agreement and shall be entitled

to the benefits of Article XII, as applicable. Each of the Lenders hereby irrevocably authorize each of the Agents (other than Administrative Agent, Collateral Agent and the Auction Manager) to take such action on its behalf under the provisions of this Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated to such Agent by the terms of this Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. The provisions of this Article XII are solely for the benefit of the Agents and the Lenders, and neither Borrower nor any other Credit Party shall have rights as a third party beneficiary of any of the provisions of this Article XII, except to the extent set forth in thisSection 12.01, Section 12.06 and Section 12.07(b). It is understood and agreed that the use of the term "agent" herein or in any other Credit Documents (or any other similar term) with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

SECTION 12.02. Rights as a Lender. Any Person serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender (if applicable) as any other Lender and may exercise the same as though it were not an Agent, and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as such Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders. Each Lender and L/C Issuer (i) acknowledges that, in connection with this Agreement and the transactions contemplated hereby, such Person and its Affiliates may have interests that differ from those of such Lender or L/C Issuer, as applicable, and (ii) agrees that it will not assert any claim against Administrative Agent or its Affiliates based on an alleged conflict of interest of such Person in connection with this Agreement and the transactions contemplated hereby.

SECTION 12.03. Exculpatory Provisions. No Agent shall have any duties or obligations except those expressly set forth herein and in the other Credit Documents, and each Agent's duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, no Agent:

(a) shall be subject to any fiduciary or other implied duties with respect to any Credit Party, any Lender or any other Person, regardless of whether a Default has occurred and is continuing;

(b) shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents), *provided* that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Credit Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any of Borrower or any of its respective Affiliates that is communicated to or obtained by the Person serving as such Agent or any of its Affiliates in any capacity.

No Agent shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or, such other number or percentage of the Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 13.04) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. No Agent shall be deemed to have knowledge of any Default unless and until notice describing such Default is given in writing to such Agent by Borrower or a Lender.

No Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document, (ii) the contents of any

certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article VII or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent or (vi) any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of Collateral Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall any Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders. Without limiting the generality of the foregoing, Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is (i) a Disqualified Lender, (ii) a Person subject to Disqualification or (iii) a Net Short Lender and (y) have any liability with respect to or arising out of any assignment or participation of Loans or Commitments, or disclosure of confidential information, to (i) any Disqualified Lender, (ii) a Person subject to Disqualification or (iii) a Net Short Lender. Administrative Agent does not warrant, nor accept responsibility, nor shall Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "LIBO Rate" or with respect to any comparable or successor rate thereto.

SECTION 12.04. Reliance by Agents. Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender, each Agent may presume that such condition is satisfactory to such Lender unless such Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or the issuance of such Letter of Credit. Each Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 12.05. Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub agents appointed by such Agent. Each Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article XII shall apply to any such sub agent and to the Related Parties of each Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as an Agent. No Agent shall be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that an Agent acted with gross negligence, bad faith or willful misconduct in the selection of such sub-agents.

SECTION 12.06. Resignation of Administrative Agent and Collateral Agent.

(a) Administrative Agent and Collateral Agent may at any time give notice of their resignation to the Lenders and Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the prior written consent of Borrower (unless an Event of Default specified in Section 11.01(b) or 11.01(c) or an Event of Default specified in Section 11.01(g) or 11.01(h) with respect to Borrower has occurred and is continuing) to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent and Collateral Agent gives notice of their resignation (or such earlier day as shall be agreed by the Required Lenders and Borrower (unless an Event of Default

specified in Section 11.01(b) or 11.01(c) or an Event of Default specified in Section 11.01(g) or 11.01(h) with respect to Borrower has occurred and is continuing)) (the "**Resignation Effective Date**"), then the retiring Administrative Agent and Collateral Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent and Collateral Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent and Collateral Agent is a Defaulting Lender pursuant to clause (iii) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to Borrower and such Person remove such Person as Administrative Agent and Collateral Agent and, in consultation with Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "**Removal Effective Date**"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent and Collateral Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by Administrative Agent or Collateral Agent on behalf of the Secured Parties under any of the Credit Documents, the retiring or removed Administrative Agent or Collateral Agent, as applicable, shall continue to hold such collateral security until such time as a successor Administrative Agent and Collateral Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent or Collateral Agent, all payments, communications and determinations provided to be made by, to or through Administrative Agent or Collateral Agent shall instead be made by or to each Secured Party directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent and Collateral Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent and Collateral Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent and Collateral Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent or Collateral Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent and Collateral Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this Section 12.06(c)). The fees payable by Borrower to a successor Administrative Agent and Collateral Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring or removed Administrative Agent's and Collateral Agent's resignation or removal hereunder and under the other Credit Documents, the provisions of this Article XII and Section 13.03 shall continue in effect for the benefit of such retiring or removed Administrative Agent and Collateral Agent, their sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent and Collateral Agent was acting as Administrative Agent or Collateral Agent.

(d) Any resignation by DB as Administrative Agent and Collateral Agent pursuant to this Section 12.06(d) shall also constitute its resignation as L/C Lender. If DB resigns as an L/C Lender, it shall retain all the rights, powers, privileges and duties of an L/C Lender hereunder with respect to all of its Letters of Credit outstanding as of the effective date of its resignation as L/C Lender and all L/C Liability with respect thereto, including the right to require the Revolving Lenders to make ABR Loans or fund risk participations in Unreimbursed Amounts pursuant to Sections 2.03(e) and (f). Upon the appointment by Borrower of a successor L/C Lender hereunder and such successor's acceptance of such appointment (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Lender, (b) the retiring L/C Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Credit Documents, and (c) the successor L/C Lender shall issue letters of credit in substitution for the Letters of Credit of the retiring L/C Lender, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Lender to effectively assume the obligations of the retiring L/C Lender with respect to such Letters of Credit.

(e) To the extent required by applicable Gaming Laws or the conditions of any Gaming Approval, Administrative Agent and Collateral Agent shall notify the applicable Gaming Authorities of any change in Administrative Agent or Collateral Agent. Borrower shall provide advice and assistance to Administrative Agent and Collateral Agent in making such notifications.

SECTION 12.07. Nonreliance on Agents and Other Lenders.

(a) Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender acknowledges that in connection with Borrower Loan Purchases, (i) Borrower may purchase or acquire Term Loans or Revolving Loans hereunder from the Lenders from time to time, subject to the restrictions set forth in the definition of "Eligible Assignee" and in Section 13.05(d), (ii) Borrower currently may have, and later may come into possession of, information regarding such Term Loans or Revolving Loans or the Credit Parties hereunder that is not known to such Lender and that may be material to a decision by such Lender to enter into an assignment of such Loans hereunder ("**Excluded Information**"), (iii) such Lender has independently and without reliance on any other party made such Lender's own analysis and determined to enter into an assignment of such Loans and to consummate the transactions contemplated thereby notwithstanding such Lender's lack of knowledge of the Excluded Information and (iv) Borrower shall have no liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by law, any claims such Lender may have against Borrower, under applicable laws or otherwise, with respect to the nondisclosure of the Excluded Information; *provided*, *however*, that the Excluded Information shall not and does not affect the truth or accuracy of the representations or warranties of Borrower in the "Standard Terms and Conditions" set forth in the applicable assignment agreement. Each Lender further acknowledges that the Excluded Information may not be available to Administrative Agent, Auction Manager or the other Lenders hereunder.

SECTION 12.08. Indemnification. The Lenders agree to reimburse and indemnify each Agent in its capacity as such ratably according with its "percentage" as used in determining the Required Lenders at such time or, if the Commitments have terminated and all Loans have been repaid in full, as determined immediately prior to such termination and repayment (with such "percentages" to be determined as if there are no Defaulting Lenders), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, reasonable expenses or disbursements of any kind whatsoever which may at any time (including, without limitation, at any time following the payment of the Obligations) be imposed on, incurred by or asserted against such Agent in its capacity as such in any way relating to or arising out of this Agreement or any other Credit Document, or any documents contemplated by or referred to herein or the transactions contemplated hereby or any action taken or omitted to be taken by such Agent under or in connection with any of the foregoing, but only to the extent that any of the foregoing is not paid by Borrower or any of its Subsidiaries; *provided*, *however*, that no Lender shall be liable to any Agent for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (x) resulting primarily from the gross negligence, or willful misconduct of such Agent (as determined by a court of competent jurisdiction in a final and non-appealable decision) or (y) relating to or arising out of the Commitment Letter. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished. The agreements in this Section 12.08 shall survive the payment of all Obligations.

SECTION 12.09. No Other Duties. Anything herein to the contrary notwithstanding, none of Administrative Agent, Collateral Agent, or Lead Arrangers shall have any powers, duties or responsibilities under this Agreement or any of the other Credit Documents, except in its capacity, as applicable, as Administrative Agent, Collateral Agent, an L/C Lender, the Auction Manager or a Lender hereunder.

SECTION 12.10. Holders. Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes hereof unless and until a written notice of the assignment, transfer or endorsement thereof, as the case may be, shall have been filed with Administrative Agent. Any request, authority or consent of any Person or entity who, at the time of making such request or giving such authority or consent, is the holder of any Note shall be conclusive and binding on any subsequent holder, transferee, assignee or indorsee, as the case may be, of such Note or of any Note or Notes issued in exchange therefor.

SECTION 12.11. Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, Administrative Agent (irrespective of whether the principal of any Loan or L/C Liability shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Liabilities and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Secured Parties and their respective agents and counsel and all other amounts due the Secured Parties under Sections 2.03, 2.05 and 13.03) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender (and each Secured Party by accepting the benefits of the Collateral) to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Secured Parties, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Sections 2.03, 2.05 and 13.03.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Secured Party any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Secured Party to authorize Administrative Agent to vote in respect of the claim of any Secured Party in any such proceeding.

SECTION 12.12. Collateral Matters.

(a) Each Lender (and each other Secured Party by accepting the benefits of the Collateral) authorizes and directs Collateral Agent to enter into the Security Documents for the benefit of the Secured Parties and to hold and enforce the Liens on the Collateral on behalf of the Secured Parties. Collateral Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time, to take any action with respect to any Collateral or Security Documents which may be necessary to perfect and maintain perfected the security interest in and liens upon the Collateral granted pursuant to the Security Documents. The Lenders hereby authorize Collateral Agent to take the actions set forth in Section 13.04(g). Upon request by Administrative Agent at any time, the Lenders will confirm in writing Collateral Agent's authority to release particular types or items of Collateral pursuant to Section 13.04(g).

(b) Collateral Agent shall have no obligation whatsoever to the Lenders, the other Secured Parties or any other Person to assure that the Collateral exists or is owned by any Credit Party or is cared for, protected or insured or that the Liens granted to Collateral Agent pursuant to the applicable Security Documents have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to Collateral Agent in Section 12.01 or in this Section 12.12 or in any of the Security Documents, it being understood and agreed that in respect of the Collateral or any part thereof, or any act,

omission or event related thereto, Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given Collateral Agent's own interest in the Collateral or any part thereof as one of the Lenders and that Collateral Agent shall have no duty or liability whatsoever to the Lenders or the other Secured Parties, except for its gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

SECTION 12.13. Withholding Tax. To the extent required by any applicable Requirement of Law, Administrative Agent may withhold from any payment to any Lender, an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 5.06, each Lender shall, indemnify the relevant Administrative Agent (to the extent that Administrative Agent has not already been reimbursed by the Credit Parties and without limiting or expanding the obligation of the Credit Parties to do so), and shall make payable in respect thereof within thirty (30) calendar days after demand therefor, against all Taxes and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for Administrative Agent) incurred by or asserted against Administrative Agent by the Internal Revenue Service or any other Governmental Authority as a result of the failure of Administrative Agent to properly withhold Tax from amounts paid to or for the account of such Lender for any reason (including, without limitation, because the appropriate form was not delivered or not property executed, or because such Lender failed to notify Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), whether or not such Taxes were correctly or legally imposed or asserted. A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Security Document against any amount due Administrative Agent under this Section 12.13. The agreements in this Section 12.13 shall survive the resignation and/or replacement of Administrative Agent, any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of any Loans and all other amounts payable hereunder. For the avoidance of doubt, for purposes of this Section 12.13, the term "Lender" includes any L/C Lender.

SECTION 12.14. Secured Cash Management Agreements and Credit Swap Contracts. Except as otherwise expressly set forth herein or in any Security Document, no Cash Management Bank or Swap Provider that obtains the benefits of Section 11.02, Article VI or any Collateral by virtue of the provisions hereof or of any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Credit Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Credit Documents. Notwithstanding any other provision of this Article XII to the contrary, Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Credit Swap Contracts unless Administrative Agent has received written notice of such Obligations, together with such supporting documentation as Administrative Agent may request, from the applicable Cash Management Bank or Swap Provider, as the case may be.

SECTION 12.15. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Administrative Agent, Collateral Agent, the Companies, and their respective Affiliates, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the prohibited transaction exemption set forth in one or more prohibited transaction class exemptions issued by the U.S. Department of Labor ("PTEs"), such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a

class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14, and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative and Collateral Agents, in their sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Administrative Agent, Collateral Agent and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any of the Companies, that none of Administrative Agent, Collateral Agent, or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by Administrative Agent under this Agreement or any documents related to hereto or thereto).

ARTICLE XIII.

MISCELLANEOUS

SECTION 13.01. Waiver. No failure on the part of Administrative Agent, Collateral Agent or any other Secured Party to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Credit Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

SECTION 13.02. Notices.

(a) **General**. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including by facsimile or electronic mail). All such written notices shall be mailed certified or registered mail, faxed or delivered to the applicable address, telecopy or facsimile number or (subject to Section 13.02(b) below) electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to any Credit Party, any Agent, and L/C Lender to the address, facsimile number, electronic mail address or telephone number specified for such Person below its name on the signature pages hereof;

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person below its name on the signature pages hereof or, in the case of any assignee Lender, the applicable Assignment Agreement.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in Section 13.02(b) below, shall be effective as provided in such Section 13.02(b).

(b) **Electronic Communications**. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent; *provided*, *however*, that the foregoing shall not apply to notices to any Lender pursuant to Article II, Article III or Article IV if such Lender has notified Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. Each Agent or any Credit Party may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an electronic mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return electronic mail address or other written acknowledgement); *provided, however*, that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address (as described in the foregoing clause (i)) of notification that such notice or communication is available and identifying the website address therefor.

(c) **Change of Address, Etc**. Each Credit Party, each Agent and each L/C Lender may change its respective address, facsimile number, electronic mail address or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile number, electronic mail address or telephone number for notices and other communications hereunder by notice to Borrower, Administrative Agent and each L/C Lender.

(d) **Reliance by Agents and Lenders**. Agents and the Lenders shall be entitled to rely and act upon any notices (including telephonic Notices of Borrowing and Letter of Credit Requests) purportedly given by or on behalf of Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Borrower shall indemnify each Indemnitee from all Losses resulting from the reliance by such Indemnitee on each notice purportedly given by or on behalf of Borrower (except to the extent resulting from such Indemnitee's own gross negligence, bad faith or willful misconduct or material breach of any Credit Document) and believed by such Indemnitee in good faith to be genuine. All telephonic notices to and other communications with Administrative Agent or Collateral Agent may be recorded by Administrative Agent or Collateral Agent, as the case may be, and each of the parties hereto hereby consents to such recording.

(e) **The Platform**. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY 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 AGENT PARTY IN CONNECTION WITH BORROWER MATERIALS OR THE PLATFORM. In no event shall any Agent or any of their respective Affiliates, directors, officers, employees, counsel, agents, trustees, investment advisors and attorneys-in-fact (collectively, the

"**Agent Parties**") have any liability to Borrower, any other Credit Party, any Lender, any L/C Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of Borrower's or Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of, or material breach of any Credit Document by, such Agent Party; *provided* however, that in no event shall any Agent Party have any liability to Borrower, any other Credit Party, any Lender, any L/C Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

SECTION 13.03. Expenses, Indemnification, Etc.

(a) The Credit Parties, jointly and severally, agree to pay or reimburse:

(i) Agents for all of their reasonable and documented out-of-pocket costs and expenses (including, but limited to in the case of counsel, the reasonable fees, expenses, and disbursements of one primary legal counsel for Lenders and Agents selected by Administrative Agent and one local counsel in each applicable jurisdiction reasonably deemed necessary by Agents and any "ClearPar" costs and expenses) in connection with (1) the negotiation, preparation, execution and delivery of the Credit Documents and the extension and syndication of credit (including the Loans and Commitments) hereunder and (2) the negotiation, preparation, execution and delivery of any modification, supplement, amendment or waiver of any of the terms of any Credit Document (whether or not consummated or effective) requested by the Credit Parties;

(ii) each Agent and each Lender for all reasonable and documented out-of-pocket costs and expenses of such Agent or Lender (*provided* that any legal expenses shall be limited to the reasonable fees, expenses and disbursements of one primary legal counsel for Lenders and Agents selected by Administrative Agent and of one local counsel in each applicable jurisdiction reasonably deemed necessary by Agents) (and solely in the case of an actual or perceived conflict of interest, where the Persons affected by such conflict inform Borrower in writing of the existence of an actual or perceived conflict of interest prior to retaining additional counsel, one additional of each such counsel for each group of similarly situated Secured Parties)) in connection with (1) any enforcement or collection proceedings resulting from any Event of Default, including all manner of participation in or other involvement with (x) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings, (y) judicial or regulatory proceedings and (z) workout, restructuring or other negotiations or proceedings (whether or not the workout, restructuring or transaction contemplated thereby is consummated), (2) following the occurrence and during the continuance of an Event of Default, the enforcement of any Credit Document and (3) the enforcement of this Section 13.03; and

(iii) Administrative Agent or Collateral Agent, as applicable but without duplication, for all reasonable and documented costs, expenses, assessments and other charges (including reasonable fees and disbursements of one counsel in each applicable jurisdiction) incurred in connection with any filing, registration, recording or perfection of any security interest contemplated by any Credit Document or any other document referred to therein.

Without limiting the rights of any Agent under this Section 13.03(a), each Agent, promptly after a request of Borrower from time to time, will advise Borrower of an estimate of any amount anticipated to be incurred by such Agent and reimbursed by Borrower under this Section 13.03(a).

(b) The Credit Parties, jointly and severally, hereby agree to indemnify each Agent, each Lender and their respective Affiliates and their and their respective affiliates, directors, trustees, officers, employees, representatives, advisors, partners and agents (each, an "**Indemnitee**") from, and hold each of them harmless against, any and all Losses incurred by, imposed on or asserted against any of them directly or indirectly arising out of or by reason of or relating to the negotiation, execution, delivery, performance, administration or enforcement of any Credit Document, any of the transactions contemplated by the Credit Documents (including the Transactions), any breach by any Credit Party of any representation, warranty, covenant or other agreement contained in any Credit Document in connection with any of the Transactions, the use or proposed use of any of the Loans or Letters of Credit, the issuance of or performance

under any Letter of Credit or, the use of any collateral security for the Obligations (including the exercise by any Agent or Lender of the rights and remedies or any power of attorney with respect thereto or any action or inaction in respect thereof), including all amounts payable by any Lender pursuant to Section 12.08 (and, in the case of an actual or perceived conflict of interest, of another firm of counsel for each group of similarly affected Indemnitees in each relevant jurisdiction)), but excluding (i) any such Losses relating to matters referred to in Sections 5.01 or 5.06 (which shall be the sole remedy in respect of matters referred to therein), (ii) any such Losses arising from the gross negligence, bad faith or willful misconduct or material breach of any Credit Documents by such Indemnitee or its Related Indemnified Persons (as determined by a court of competent jurisdiction in a final and non-appealable decision) and (iii) any such Losses relating to any dispute between and among Indemnitees that does not involve an act or omission by any Company (other than any claims against Administrative Agent, Collateral Agent, any other agent or bookrunner named on the cover page hereto or any L/C Lender, in each case, acting in such capacities or fulfilling such roles); *provided*, *however*, this Section 13.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim. For purposes of this Section 13.03(b), a "**Related Indemnified Person**" of an Indemnitee means (1) any controlling person or controlled affiliate of such Indemnitee, (2) the respective directors, officers, or employees of such Indemnitee or any of its controlling persons or controlled Affiliates and (3) the respective agents of such Indemnitee or any of its controlling persons or controlled Affiliates, in the case of this clause (3), acting at the instructions of such Indemnitee, controlling person or such controlled Affiliate; *provided* that each reference to a controlled Affiliate or controlling person in this sentence pertains to a controlled Affiliate or controlling person involved in the performance of the Indemnitee's obligations under the facilities.

Without limiting the generality of the foregoing, the Credit Parties, jointly and severally, will indemnify each Agent, each Lender and each other Indemnitee from, and hold each Agent, each Lender and each other Indemnitee harmless against, any Losses incurred by, imposed on or asserted against any of them arising under any Environmental Law as a result of (i) the past, present or future operations of any Company (or any predecessor-in-interest to any Company), (ii) the past, present or future condition of any site or facility owned, operated, leased or used at any time by any Company (or any such predecessor-in-interest) to the extent such Losses arise from or relate to the parties' relationship under the Credit Documents or to any Company's (or such predecessor-in-interest's) (A) ownership, operation, lease or use of such site or facility or (B) any aspect of the respective business or operations of such parties, and, in each case shall include, without limitation, any and all such Losses for which any Company could be found liable, or (iii) any Release or threatened Release of any Hazardous Materials at, on, under or from any such site or facility to the extent such Losses arise from or relate to the parties' relationship under the Credit Documents or to any Company's (or such predecessor-in-interest's) (A) ownership, operation, lease or use of such site or facility or (B) any aspect of the respective business or operations of such parties, and, in each case shall include, without limitation, any and all such Losses for which any Company could be found liable, including any such Release or threatened Release that shall occur during any period when any Agent or Lender shall be in possession of any such site or facility following the exercise by such Agent or Lender, as the case may be, of any of its rights and remedies hereunder or under any of the Security Documents; *provided*, *however*, that the indemnity hereunder shall be subject to the exclusions from indemnification set forth in the preceding sentence.

To the extent that the undertaking to indemnify and hold harmless set forth in thisSection 13.03 or any other provision of any Credit Document providing for indemnification is unenforceable because it is violative of any law or public policy or otherwise, the Credit Parties, jointly and severally, shall contribute the maximum portion that each of them is permitted to pay and satisfy under applicable law to the payment and satisfaction of all indemnified liabilities incurred by any of the Persons indemnified hereunder.

To the fullest extent permitted by applicable law, no party hereto shall assert, and the parties hereto hereby waive, any claim against any Person, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof; *provided* that nothing contained in this sentence shall limit the Credit Parties' indemnity and reimbursement obligations to the extent set forth in this Section 13.03 (including the Credit Parties' indemnity and reimbursement obligations to indemnify the Indemnitees for indirect, special, punitive or consequential damage that are included in any third party claim in connection with which such Indemnitee is entitled to indemnification hereunder). No Indemnitee referred to in subsection (b) above shall be liable for any damages arising

from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence, bad faith or willful misconduct or material breach of any Credit Document by such Indemnitee as determined by a final and non-appealable judgment of a court of competent jurisdiction.

SECTION 13.04. Amendments and Waiver.

(a) Neither this Agreement nor any other Credit Document nor any terms hereof or thereof may be amended, modified, changed or waived, unless such amendment, modification, change or waiver is in writing signed by each of the Credit Parties that is party thereto and the Required Lenders (or Administrative Agent with the consent of the Required Lenders); *provided* that no such amendment, modification, change or waiver shall (and any such amendment, modification, change or waiver set forth below in clauses (i) through (vii) of this Section 13.04(a) shall only require the approval of the Agents and/or Lenders whose consent is required therefor pursuant to such clauses):

(i) extend the date for any scheduled payment of principal on any Loan or Note or extend the stated maturity of any Letter of Credit beyond any R/C Maturity Date (unless such Letter of Credit is required to be cash collateralized or otherwise backstopped (with a letter of credit on customary terms) to Administrative Agent's and applicable L/C Lender's reasonable satisfaction or the participations therein are required to be assumed by Lenders that have Revolving Commitments which extend beyond such R/C Maturity Date) or extend the termination date of any of the Commitments, or reduce the rate or extend the time of payment of interest (other than as a result of any waiver of the applicability of any post-default increase in interest rates) or fees thereon, or forgive or reduce the principal amount thereof, without the consent of each Lender directly and adversely affected thereby (it being understood that the waiver of (or amendment to the terms of) any Default or Event of Default or of any mandatory prepayment of the Loans or mandatory reduction in Commitments shall not constitute a postponement of any date scheduled for the payment of principal or interest or an extension or increase of any Commitment and any amendment or modification to the financial definitions in this Agreement shall not constitute a reduction in any rate of interest or fees for purposes of this clause (i), notwithstanding the fact that such amendment or modification actually results in such a reduction);

(ii) release (x) all or substantially all of the Collateral (except as provided in the Security Documents) under all the Security Documents or (y) all or substantially all of the Guarantors from the Guarantees (except as expressly provided in this Agreement), without the consent of each Lender;

(iii) amend, modify, change, or waive (x) any provision of Section 11.02 or this Section 13.04 without the consent of each Lender, (y) any other provision of any Credit Document or any other provision of this Agreement that expressly provides that the consent of all Lenders or all affected Lenders is required, without the consent of each Lender directly and adversely affected thereby, or (z) any provision of any Credit Document that expressly provides that the consent of the Required Tranche Lenders of a particular Tranche or Required Revolving Lenders is required, without the consent of the Required Tranche Lenders of each Tranche or the Required Revolving Lenders, as the case may be (in each case, except for technical amendments with respect to additional extensions of credit (including Extended Term Loans or Extended Revolving Loans) pursuant to this Agreement which afford the benefits or protections to such additional extensions of credit of the type provided to the Term Loans and/or the Revolving Commitments and Revolving Loans, as applicable);

(iv) (x) reduce the percentage specified in the definition of Required Lenders or Required Tranche Lenders or otherwise amend the definition of Required Lenders or Required Tranche Lenders without the consent of each Lender or (y) reduce the percentage specified in the definition of Required Revolving Lenders or otherwise amend the definition of Required Revolving Lenders without the consent of each Revolving Lender (*provided* that, (x) no such consent shall be required for technical amendments with respect to additional extensions of credit pursuant to this Agreement (including Extended Term Loans and Extended Revolving Loans), and (y) with the consent of the Required Lenders, additional extensions of credit (including Extended Term Loans and Extended Revolving Loans) pursuant to this Agreement may be included in the

determination of the Required Lenders, Required Tranche Lenders and/or Required Revolving Lenders on substantially the same basis as the extensions of Loans and Commitments are included on the Closing Date);

(v) amend, modify, change, or waive Section 4.02 or 4.07(b) in a manner that would alter the*pro rata* sharing of payments required thereby, without the consent of each Lender directly affected thereby (except for technical amendments with respect to additional extensions of credit (including Extended Term Loans or Extended Revolving Loans) pursuant to this Agreement which afford the protections to such additional extensions of credit of the type provided to the Term Loans and/or the Revolving Commitments and Revolving Loans, as applicable);

(vi) impose any greater restriction on the ability of any Lender under a Tranche to assign any of its rights or obligations hereunder without the written consent of the Required Tranche Lenders for such Tranche; or

(vii) amend, modify, change or waive any provision in Section 7.02 or waive any Default or Event of Default (or amend any Credit Document to effectively waive any Default or Event of Default), excluding any general waiver of any Default or Event of Default by the Required Lenders (as opposed to a waive only for the purpose of making such extension of credit), if the effect of such amendment, modification, change or waiver would require Lenders under a Tranche to fund its Loans when such Lenders would otherwise not be required to do so, without the written consent of the Required Tranche Lenders for such Tranche;

provided, *further*, that no such amendment, modification, change or waiver shall (A) increase the Commitments of any Lender over the amount thereof then in effect without the consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the total Commitments or Total Revolving Commitments or a waiver of a mandatory prepayment shall not constitute an increase of the Commitment of any Lender), (B) without the consent of each L/C Lender, amend, modify, change or waive any provision of Section 2.03 or alter such L/C Lender's rights or obligations with respect to Letters of Credit, (C) without the consent of any applicable Agent, amend, modify, change or waive any provision as same relates to the rights or obligations of such Agent, (D) amend, modify, change or waive Section 2.10(b) in a manner that by its terms adversely affects the rights in respect of prepayments due to Lenders holding Loans of one Tranche differently from the rights of Lenders holding Loans of any other Tranche without the prior written consent of the Required Tranche Lenders of each adversely affected Tranche (such consent being in lieu of the consent of the Required Lenders required above in this Section 13.04(a)) (except for technical amendments with respect to additional extensions of credit pursuant to this Agreement (including Extended Term Loans or Extended Revolving Loans) so that such additional extensions may share in the application of prepayments (or commitment reductions) with any Tranche of Term Loans or Revolving Loans, as applicable); *provided*, *however*, the Required Lenders may waive, in whole or in part, any prepayment so long as the application, as between Tranches, of any portion of such prepayment which is still required to be made is not altered or (E) amend or modify the definition of "Alternate Currency" or Section 1.05 without the prior written consent of all the Revolving Lenders (such consent being in lieu of the consent of the Required Lenders required above in this Section 13.04(a)). Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (x) the Commitment of such Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender, (y) the principal and accrued and unpaid interest of such Defaulting Lender's Loans shall not be reduced or forgiven (other than as a result of any waiver of the applicability of any post-default increase in interest rates), nor shall the date for any scheduled payment of any such amounts be postponed, without the consent of such Defaulting Lender (it being understood that any amendment or modification to the financial definitions in this Agreement shall not constitute a reduction in any rate of interest or fees for purposes of this clause (y), notwithstanding the fact that such amendment or modification actually results in such a reduction) and (z) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender (other than in the case of a consent by Administrative Agent to permit Borrower and its Subsidiaries

to purchase Revolving Commitments (and Revolving Loans made pursuant thereto) of Defaulting Lenders in excess of the amount permitted pursuant to Section 13.04(h)).

In addition, notwithstanding the foregoing, the Commitment Letter may only be amended or changed, or rights or privileges thereunder waived, only by the parties thereto in accordance with the respective provisions thereof.

(b) If, in connection with any proposed amendment, modification, change or waiver of or to any of the provisions of this Agreement, the consent of the Required Lenders (or in the case of a proposed amendment, modification, change or waiver affecting a particular Class or Tranche, the Lenders holding a majority of the Loans and Commitments with respect to such Class or Tranche) is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then Borrower shall have the right, so long as all non-consenting Lenders whose individual consent is required are treated as described in either clause (A) or (B) below, to either:

(A) replace each such non-consenting Lender or Lenders (or, at the option of Borrower, if such non-consenting Lender's consent is required with respect to a particular Class or Tranche of Loans (or related Commitments), to replace only the Classes or Tranches of Commitments and/or Loans of such non-consenting Lender with respect to which such Lender's individual consent is required (such Classes or Tranches, the "**Affected Classes**")) with one or more Replacement Lenders, so long as, at the time of such replacement, each such Replacement Lender consents to the proposed amendment, modification, change or waiver; *provided, further,* that (i) at the time of any such replacement, the Replacement Lender shall enter into one or more Assignment Agreements (and with all fees payable pursuant to Section 13.05(b) to be paid by the Replacement Lender) pursuant to which the Replacement Lender shall acquire all of the Commitments and outstanding Loans of, and in each case L/C Interests of, the Replaced Lender (or, at the option of Borrower if the respective Lender's consent is required with respect to less than all Classes or Tranches of Loans (or related Commitments), the Commitments, outstanding Loans and L/C Interests of the Affected Classes), (ii) at the time of any replacement, the Replaced Lender shall receive an amount equal to the sum of (A) the principal of, and all accrued interest on, all outstanding Loans of such Lender (other than any Loans not being acquired by the Replacement Lender), (B) all Reimbursement Obligations (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in the Alternate Currency) owing to such Lender, together with all then unpaid interest with respect thereto at such time, in the event Revolving Loans or Revolving Commitments owing to such Lender are being acquired and (C) all accrued, but theretofore unpaid, fees and other amounts owing to the Lender with respect to the Loans being so assigned and (iii) all obligations of Borrower owing to such Replaced Lender (other than those specifically described in clause (ii) above in respect of Replaced Lenders for which the assignment purchase price has been, or is concurrently being, paid, and other than those relating to Loans or Commitments not being acquired by the Replacement Lender, but including any amounts which would be paid to a Lender pursuant to Section 5.05 if Borrower were prepaying a LIBOR Loan), as applicable, shall be paid in full to such Replaced Lender, as applicable, concurrently with such replacement. Upon the execution of the respective Assignment Agreement, the payment of amounts referred to in clauses (i), (ii), and (iii) above, as applicable, and the receipt of any consents that would be required for an assignment of the subject Loans and Commitments to such Replacement Lender in accordance with Section 13.05, the Replacement Lender, if any, shall become a Lender hereunder and the Replaced Lender, as applicable, shall cease to constitute a Lender hereunder and be released of all its obligations as a Lender, except with respect to indemnification provisions applicable to such Lender under this Agreement, which shall survive as to such Lender and, in the case of any Replaced Lender, except with respect to Loans, Commitments and L/C Interests of such Replaced Lender not being acquired by the Replacement Lender; *provided*, that if the applicable Replaced Lender does not execute the Assignment Agreement within three (3) Business Days (or such shorter period as is acceptable to Administrative Agent) after Borrower's request, execution of such Assignment Agreement by the Replaced Lender shall not be required to effect such assignment; or

(B) terminate such non-consenting Lender's Commitment and/or repay Loans held by such Lender (or, if such non-consenting Lender's consent is required with respect to a particular Class or Tranche of Loans, the Commitment and Loans of the Affected Class) and, if applicable, Cash Collateralize its applicable R/C Percentage of the L/C Liability, in either case, upon three (3) Business Days' (or such shorter period as

is acceptable to Administrative Agent) prior written notice to Administrative Agent at the Principal Office (which notice Administrative Agent shall promptly transmit to each of the Lenders). Any such prepayment of the Loans or termination of the Commitments of such Lender shall be made together with accrued and unpaid interest, fees and other amounts owing to such Lender (including all amounts, if any, owing pursuant to Section 5.05) (or if the applicable consent requires approval of all Lenders of a particular Tranche but not all Lenders, then Borrower shall terminate all Commitments and/or repay all Loans, in each case together with payment of all accrued and unpaid interest, fees and other amounts owing to such Lender (including all amounts, if any, owing pursuant to Section 5.05) under such Tranche), so long as (i) in the case of the repayment of Revolving Loans of any Lender pursuant to this Section 13.04(b)(B), (A) the Revolving Commitment of such Lender is terminated concurrently with such repayment and (B) such Lender's R/C Percentage of all outstanding Letters of Credit is Cash Collateralized or backstopped by Borrower in a manner reasonably satisfactory to Administrative Agent and the L/C Lenders. Immediately upon any repayment of Loans by Borrower pursuant to this Section 13.04(b)(B), such Loans repaid or acquired pursuant hereto shall be cancelled for all purposes and no longer outstanding (and may not be resold, assigned or participated out by Borrower) for all purposes of this Agreement and all other Credit Documents (*provided*; that such purchases and cancellations shall not constitute prepayments or repayments of the Loans (including, without limitation, pursuant to Section 2.09 or 2.10 or Article IV)), including, but not limited to (A) the making of, or the application of, any payments to the Lenders under this Agreement or any other Credit Document, (B) the making of any request, demand, authorization, direction, notice, consent or waiver under this Agreement or any other Credit Document, (C) the providing of any rights to Borrower as a Lender under this Agreement or any other Credit Document, and (D) the determination of Required Lenders, or for any similar or related purpose, under this Agreement or any other Credit Document.

(c) Administrative Agent and Borrower may (without the consent of Lenders) amend any Credit Document to the extent (but only to the extent) necessary to reflect the existence and terms of Incremental Revolving Commitments, Incremental Term Loans, Other Term Loans, Other Revolving Loans, Extended Term Loans and Extended Revolving Commitments. Notwithstanding anything to the contrary contained herein, such amendment shall become effective without any further consent of any other party to such Credit Document. In addition, upon the effectiveness of any Refinancing Amendment, Administrative Agent, Borrower and the Lenders providing the relevant Credit Agreement Refinancing Indebtedness may amend this Agreement to the extent (but only to the extent) necessary to reflect the existence and terms of the Credit Agreement Refinancing Indebtedness incurred pursuant thereto (including any amendments necessary to treat the Loans and Commitments subject thereto as Other Term Loans, Other Revolving Loans, Other Revolving Commitments and/or Other Term Loan Commitments). Administrative Agent and Borrower may effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable opinion of Administrative Agent and Borrower, to effect the terms of any Refinancing Amendment. Administrative Agent and Collateral Agent may enter into amendments to this Agreement and the other Credit Documents with Borrower as may be necessary in order to establish new tranches or sub-tranches in respect of the Loans and/or Commitments extended pursuant to Section 2.13 or incurred pursuant to Section 2.12 or 2.15 and such technical amendments as may be necessary or appropriate in the reasonable opinion of Administrative Agent and Borrower in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with Section 2.13, 2.12, or 2.15.

(d) Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, Administrative Agent and Borrower (a) to add one or more additional credit facilities to this Agreement and to permit extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Credit Documents with the Term Loans (or any Tranche thereof in the case of additional Term Loans) and the Revolving Loans and Revolving Commitments (or any Tranche of Revolving Loans and Revolving Commitments in the case of additional Revolving Loans or Revolving Commitments) and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders, Required Tranche Lenders, and/or Required Revolving Lenders, as applicable.

(e) Notwithstanding anything to the contrary herein, (i) upon five (5) Business Days' prior written notice to the Lenders, any Credit Document may be waived, amended, supplemented, or modified pursuant to an agreement

or agreements in writing entered into by Borrower and Administrative Agent (without the consent of any Lender, unless the Required Lenders shall have objected within such five (5) Business Day period) solely to effect administrative changes or to correct administrative errors or omissions or to cure an ambiguity, defect or error (including, without limitation, to revise the legal description of any Mortgaged Real Property based on surveys), or to grant a new Lien for the benefit of the Secured Parties or extend an existing Lien over additional property or to make modifications which are not materially adverse to the Lenders and are requested or required by Gaming Authorities or Gaming Laws and (ii) any Credit Document may be waived, amended, supplemented, or modified pursuant to an agreement or agreements in writing entered into by Borrower and Administrative Agent (without the consent of any Lender) to permit any changes requested or required by any Governmental Authority that are not materially adverse to the Lenders (including any changes relating to qualifications as a permitted holder of debt, licensing or limits on Property that may be pledged as Collateral or available remedies). Notwithstanding anything to the contrary herein, (A) additional extensions of credit consented to by Required Lenders shall be permitted hereunder on a ratable basis with the existing Loans (including as to proceeds of, and sharing in the benefits of, Collateral and sharing of prepayments), (B) Collateral Agent shall enter into the *Pari Passu* Intercreditor Agreement upon the request of Borrower in connection with the incurrence of Permitted First Priority Refinancing Debt or Ratio Debt (and Permitted Refinancings thereof that satisfy Sections 10.01(t)(i)(D) and 10.01(t)(i)(E), as applicable (or any amendments and supplements thereto in connection with the incurrence of additional Permitted First Priority Refinancing Debt or Ratio Debt (and Permitted Refinancings thereof that thereof that satisfy Sections 10.01(t)(i)(D) and 10.01(t)(i)(E))), and (C) Collateral Agent shall enter into the Second Lien Intercreditor Agreement upon the request of Borrower in connection with the incurrence of Permitted Second Priority Refinancing Debt or Ratio Debt (and Permitted Refinancings thereof that thereof that satisfy Sections 10.01(t)(i)(D) and 10.01(t)(i)(E) (or any amendments and supplements thereto in connection with the incurrence of additional Permitted Second Priority Refinancing Debt or Ratio Debt (and Permitted Refinancings thereof that thereof that satisfy Sections 10.01(t)(i)(D) and 10.01(t)(i)(E))).

(f) Notwithstanding anything to the contrary herein, the applicable Credit Party or Credit Parties and Administrative Agent and/or Collateral Agent may (in its or their respective sole discretion, or shall, to the extent required by any Credit Document) enter into any amendment or waiver of any Credit Document, or enter into any new agreement or instrument, without the consent of any other Person, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable Requirements of Law or to release any Collateral which is not required under the Security Documents.

(g) Notwithstanding anything to the contrary herein, Administrative Agent and Collateral Agent shall (A) release any Lien granted to or held by Administrative Agent or Collateral Agent upon any Collateral (i) upon Payment in Full of the Obligations (other than (x) obligations under any Swap Contracts as to which acceptable arrangements have been made to the satisfaction of the relevant counterparties and (y) Cash Management Agreements not yet due and payable), (ii) upon the sale, transfer or other disposition of Collateral to the extent required pursuant to the last paragraph in Section 10.05 (and Administrative Agent or Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Credit Party upon its reasonable request without further inquiry) to any Person other than a Credit Party, (iii) if approved, authorized or ratified in writing by the Required Lenders (or all of the Lenders to the extent required by Section 13.04(a)), (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guarantee pursuant to Section 6.08, (v) constituting Equity Interests in or property of an Unrestricted Subsidiary, (vi) subject to Liens permitted under Sections 10.02(i) or 10.02(k), in each case, to the extent the documents governing such Liens do not permit such Collateral to secure the Obligations, or (vii) as otherwise may be provided herein or in the relevant Security Documents, and (B) consent to and enter into (and execute documents permitting the filing and recording, where appropriate) the grant of easements and covenants and subordination rights with respect to real property, conditions, restrictions and declarations on customary terms, and subordination, non-disturbance and attornment agreements on customary terms reasonably requested by Borrower with respect to leases entered into by Borrower and its Restricted Subsidiaries, to the extent requested by Borrower and not materially adverse to the interests of the Lenders.

(d) If any Lender is a Defaulting Lender, Borrower shall have the right to terminate such Defaulting Lender's Revolving Commitment and repay the Loans related thereto as provided below so long as Borrower Cash

Collateralizes or backstops such Defaulting Lender's applicable R/C Percentage of the L/C Liability to the reasonable satisfaction of the L/C Issuer and Administrative Agent; *provided* that such terminations of Revolving Commitments shall not exceed 20% of the sum of (x) the initial aggregate principal amount of the Revolving Commitments on the Closing Date *plus* (y) the initial aggregate principal amount of all Incremental Revolving Commitments incurred after the Closing Date and prior to such date of determination; *provided*, *further*, that Borrower and its Subsidiaries may terminate additional Revolving Commitments of Defaulting Lenders and repay the Loans related thereto pursuant to this Section 13.04(h) with the consent of Administrative Agent. At the time of any such termination and/or repayment, and as a condition thereto, the Replaced Lender shall receive an amount equal to the sum of (A) the principal of, and all accrued interest on, all outstanding Loans of such Lender provided pursuant to such Revolving Commitments, (B) all Reimbursement Obligations (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternate Currency) owing to such Lender, together with all then unpaid interest with respect thereto at such time, in the event Revolving Loans or Revolving Commitments owing to such Lender are being repaid and terminated or acquired, as the case may be, and (C) all accrued, but theretofore unpaid, fees owing to the Lender pursuant to Section 2.05 with respect to the Loans being so repaid, as the case may be and all other obligations of Borrower owing to such Replaced Lender (other than those relating to Loans or Commitments not being terminated or repaid) shall be paid in full to such Defaulting Lender concurrently with such termination. At such time, unless the respective Lender continues to have outstanding Loans or Commitments hereunder, such Lender shall no longer constitute a "Lender" for purposes of this Agreement, except with respect to indemnifications under this Agreement (including, without limitation, Sections 4.02, 5.01, 5.03, 5.05, 5.06 and 13.03), which shall survive as to such repaid Lender. Immediately upon any repayment of Loans by Borrower pursuant to this Section 13.04(h), such Loans repaid pursuant hereto shall be cancelled for all purposes and no longer outstanding (and may not be resold, assigned or participated out by Borrower) for all purposes of this Agreement and all other Credit Documents (*provided*; that such purchases and cancellations shall not constitute prepayments or repayments of the Loans (including, without limitation, pursuant to Section 2.09, Section 2.10 or Article IV) for any purpose hereunder), including, but not limited to (A) the making of, or the application of, any payments to the Lenders under this Agreement or any other Credit Document, (B) the making of any request, demand, authorization, direction, notice, consent or waiver under this Agreement or any other Credit Document, (C) the providing of any rights to Borrower as a Lender under this Agreement or any other Credit Document, and (D) the determination of Required Lenders, or for any similar or related purpose, under this Agreement or any other Credit Document.

(e) Notwithstanding anything to the contrary herein, in connection with any determination as to whether the Required Lenders, Required Revolving Lenders, Required Tranche Lenders, as applicable, have (A) consented (or not consented) to any amendment or waiver of any provision of this Agreement or any other Credit Document or any departure by any Credit Party therefrom, (B) otherwise acted on any matter related to any Credit Document, or (C) directed or required Administrative Agent, Collateral Agent, or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Credit Document, any Lender (other than (x) any Lender that is a Regulated Bank and (y) any Lender as of the Closing Date (each, an "**Excluded Lender**")) that, as a result of its interest in any total return swap, total rate of return swap, credit default swap or other derivative contract (other than any such total return swap, total rate of return swap, credit default swap or other derivative contract entered into pursuant to bona fide market making activities), has a net short position with respect to the Loans and/or Commitments (each, a "**Net Short Lender**"), shall not, without the consent of Borrower, have any right to vote any of its Loans and Commitments and shall be deemed to have voted its interest as a Lender without discretion in the same proportion as the allocation of voting with respect to such matter by Lenders who are not Net Short Lenders. For purposes of determining whether a Lender (other than an Excluded Lender) has a "net short position" on any date of determination: (i) derivative contracts with respect to the Loans and Commitments and such contracts that are the functional equivalent thereof shall be counted at the notional amount thereof in Dollars, (ii) the notional amounts in other currencies shall be converted to the dollar equivalent thereof by such Lender in a commercially reasonable manner consistent with generally accepted financial practices and based on the prevailing conversion rate (determined on a mid-market basis) on the date of determination, (iii) derivative contracts in respect of an index that includes any of Borrower or other Credit Parties or any instrument issued or guaranteed by any of Borrower or other Credit Parties shall not be deemed to create a short position with respect to the Loans and/or Commitments, so long as (x) such index is not created, designed, administered or requested by such Lender or its Affiliates and (y) Borrower and the other Credit Parties and any instrument issued or guaranteed by any of Borrower or other Credit Parties, collectively, shall represent less than five percent (5%) of the components of such index, (iv) derivative transactions that are documented using either the 2014 ISDA Credit Derivatives Definitions

or the 2003 ISDA Credit Derivative Definitions (collectively, the "**ISDA CDS Definitions**") shall be deemed to create a short position with respect to the Loans and/or Commitments if such Lender is a protection buyer or the equivalent thereof for such derivative transaction and (x) the Loans or the Commitments are a "Reference Obligation" under the terms of such derivative transaction (whether specified by name in the related documentation, included as a "Standard Reference Obligation" on the most recent list published by Markit, if "Standard Reference Obligation" is specified as applicable in the relevant documentation or in any other manner), (y) the Loans or the Commitments would be a "Deliverable Obligation" under the terms of such derivative transaction, or (z) any of Borrower or other Credit Parties (or its successor) is designated as a "Reference Entity" under the terms of such derivative transaction, and (v) credit derivative transactions or other derivatives transactions not documented using the ISDA CDS Definitions shall be deemed to create a short position with respect to the Loans and/or Commitments if such transactions are functionally equivalent to a transaction that offers the Lender protection in respect of the Loans or the Commitments, or as to the credit quality of any of Borrower or other Credit Parties other than, in each case, as part of an index so long as (x) such index is not created, designed, administered or requested by such Lender and (y) Borrower and other Credit Parties and any instrument issued or guaranteed by any of Borrower or other Credit Parties, collectively, shall represent less than five percent (5%) of the components of such index. In connection with any such determination, each Lender (other than an Excluded Lender) shall promptly notify Administrative Agent in writing that it is a Net Short Lender, or shall otherwise be deemed to have represented and warranted to Borrower and Administrative Agent that it is not a Net Short Lender (it being understood and agreed that Borrower and Administrative Agent shall be entitled to rely on each such representation and deemed representation).

(f) Notwithstanding anything in this Agreement or any other Credit Document to the contrary, Borrower and Administrative Agent may enter into any amendment, waiver, consent or supplement to this Agreement and such other related changes (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Margin) to this Agreement as may be applicable to amend the definition of "LIBO Base Rate" with the consents, if any, and in the manner, as set forth in Section 5.02(c).

SECTION 13.05. Benefit of Agreement; Assignments; Participations.

(a) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; *provided* that no Credit Party may assign or transfer any of its rights, obligations, or interest hereunder or under any other Credit Document (it being understood that a merger or consolidation not prohibited by this Agreement shall not constitute an assignment or transfer) without the prior written consent of all of the Lenders and *provided*, *further*, that, although any Lender may transfer, assign, or grant participations in its rights hereunder, such Lender shall remain a "Lender" for all purposes hereunder (and may not transfer or assign all or any portion of its Commitments, Loans, or related Obligations hereunder except as provided in Section 13.05(b)) and the participant shall not constitute a "Lender" hereunder; and *provided*, *further*, that no Lender shall transfer, assign or grant any participation (w) to a natural person, (x) to a Person that is a Disqualified Lender as of the applicable Trade Date (unless consented to by Borrower), (y) any Person that is subject to a Disqualification, or (z) under which the participant shall have rights to approve any amendment to or waiver of this Agreement or any other Credit Document except to the extent such amendment or waiver would (i) extend the date for any scheduled payment on, or the final scheduled maturity of, any Loan, Note or Letter of Credit (unless such Letter of Credit is not extended beyond any applicable R/C Maturity Date (unless such Letter of Credit is required to be cash collateralized or otherwise backstopped (with a letter of credit on customary terms) to the applicable L/C Lender's and Administrative Agent's reasonable satisfaction or the participations therein are required to be assumed by Lenders that have commitments which extend beyond such R/C Maturity Date)) in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the total Commitments or Total Revolving Commitments or of a mandatory prepayment shall not constitute a change in the terms of such participation, that an increase in any Commitment (or the available portion thereof) or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof and that any amendment or modification to the financial definitions in this Agreement shall not constitute a reduction in any rate of interest or fees for purposes of this clause (i), notwithstanding the fact that such amendment or modification actually results in such a reduction), (ii) consent to the assignment or transfer by any Credit Party of

any of its rights and obligations under this Agreement or other Credit Document to which it is a party, or (iii) release all or substantially all of the Collateral under all of the Security Documents (except as expressly provided in the Credit Documents) supporting the Loans or Letters of Credit hereunder in which such participant is participating. In the case of any such participation, the participant shall not have any rights under this Agreement or any of the other Credit Documents (the participant's rights against such Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the participant relating thereto). Subject to the last sentence of this paragraph (a), Borrower agrees that each participant shall be entitled to the benefits of Sections 5.01 and 5.06 (subject to the obligations and limitations of such Sections, including Sections 5.06(c), (it being understood that the documentation required under Sections 5.06(c) shall be delivered solely to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 13.05. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 4.07 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and related interest amounts) of each participant's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"). The entries in the Participant Register shall be conclusive, absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. No Lender shall have any obligation to disclose all or any portion of a Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) or Proposed Section 1.163-5(b) of the United States Treasury Regulations (or, in each case, any amended or successor version). A participant shall not be entitled to receive any greater payment under Sections 5.01 or 5.06 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, unless the entitlement to a greater payment results from any change in applicable Laws after the date the participant became a participant.

(b) No Lender (or any Lender together with one or more other Lenders) may assign all or any portion of its Commitments, Loans and related outstanding Obligations (or, if the Commitments with respect to the relevant Tranche have terminated, outstanding Loans and Obligations) hereunder, except to one or more Eligible Assignees (treating any fund that invests in loans and any other fund that invests in loans and is managed or advised by the same investment advisor of such fund or by an Affiliate of such investment advisor as a single Eligible Assignee) without the consent of Administrative Agent and in the case of an assignment of Revolving Loans or Revolving Commitments, the consent of each L/C Lender (*provided* that neither the consent of Administrative Agent nor of any L/C Lender shall be required for any assignment between Goldman Sachs Bank USA and Goldman Sachs Lending Partners LLC) and, so long as no Event of Default pursuant to Section 11.01(b) or 11.01(c), or, with respect to Borrower, 11.01(g) or 11.01(h), has occurred and is continuing, Borrower (each such consent not to be unreasonably withheld or delayed); *provided* that (x) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitments and Loans at the time owing to it, the aggregate amount of the Commitments or Loans subject to such assignment shall not be less than $5.0 million; (y) no such consent of Borrower shall be necessary in the case of (i) an assignment of Revolving Loans or Revolving Commitments by a Revolving Lender to another Revolving Lender, (ii) an assignment of Term A Facility Loans by a Term A Facility Lender to another Term A Facility Lender or an Affiliate or Approved Fund of a Term A Facility Lender, (iii) an assignment of Term Loans (other than a Term A Facility Loan) by a Lender of Term Loans to another Lender or an Affiliate or Approved Fund of a Lender, or (iv) any assignment between Goldman Sachs Bank USA and Goldman Sachs Lending Partners LLC, and (z) Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Administrative Agent within ten (10) Business Days after having received notice thereof. Notwithstanding the foregoing, so long as no Event of Default pursuant to Section 11.01(b) or 11.01(c), or, with respect to Borrower, 11.01(g) or 11.01(h), has occurred and is continuing, no assignment will be permitted to any Lender that will result in such Lender holding, collectively with its Affiliates (including any Person deemed to be an Affiliate for purposes of sub-clause (x)(ii)(B) above), Loans and Commitments having an aggregate principal amount of $300.0 million, or greater, without the prior written consent of Borrower (such consent not to be unreasonably withheld, conditioned or delayed); *provided* that Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Administrative Agent within ten (10) Business Days after a Responsible Officer has received notice thereof. Each assignee shall become a party to this Agreement as a Lender by execution of an Assignment Agreement; *provided* that (I) Administrative Agent

shall, unless it otherwise agrees in its sole discretion, receive at the time of each such assignment, from the assigning or assignee Lender, the payment of a non-refundable assignment fee of $3,500, (II) no such transfer or assignment will be effective until recorded by Administrative Agent on the Register pursuant to Section 2.08, and (III) such assignments may be made on a pro rata basis among Commitments and/or Loans (and related Obligations). To the extent of any assignment permitted pursuant to this Section 13.05(b), the assigning Lender shall be relieved of its obligations hereunder with respect to its assigned Commitments and outstanding Loans (*provided* that such assignment shall not release such Lender of any claims or liabilities that may exist against such Lender at the time of such assignment). At the time of each assignment pursuant to this Section 13.05(b) to a Person which is not already a Lender hereunder, the respective assignee Lender shall, to the extent legally eligible to do so, provide to Borrower and Administrative Agent the appropriate Internal Revenue Service Forms and other information as described in Sections 5.06(b) and 5.06(d), as applicable. To the extent that an assignment of all or any portion of a Lender's Commitments, Loans and related outstanding Obligations pursuant to Section 2.11, 13.04(b)(B), or this Section 13.05(b) would, under the laws in effect at the time of such assignment, result in increased costs under Section 5.01 or 5.03 from those being charged by the respective assigning Lender prior to such assignment, then Borrower shall not be obligated to pay such increased costs (although Borrower, in accordance with and pursuant to the other provisions of this Agreement, shall be obligated to pay any other increased costs of the type described above resulting from Changes in Law after the date of the respective assignment).

(c) Nothing in this Agreement shall prevent or prohibit any Lender from pledging or assigning a security interest in its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment of a security interest to a Federal Reserve Bank or other central banking authority. No pledge pursuant to this Section 13.05(c) shall release the transferor Lender from any of its obligations hereunder or permit the pledgee to become a lender hereunder without otherwise complying with Section 13.05(b).

(d) Notwithstanding anything to the contrary contained in this Section 13.05 or any other provision of this Agreement, Borrower and its Subsidiaries may, but shall not be required to, purchase (x) outstanding Loans pursuant to the Auction Procedures established for each such purchase in an auction managed by Auction Manager and (y) outstanding Term Loans through open market purchases, subject solely to the following conditions:

(i) (x) with respect to any Borrower Loan Purchase pursuant to the Auction Procedures, at the time of the applicable Purchase Notice (as defined in Exhibit N), no Event of Default under Section 11.01(a) or 11.01(b) or, with respect to Borrower, Section 11.01(g) or 11.01(h), has occurred and is continuing or would result therefrom, and (y) with respect to any Borrower Loan Purchase consummated through an open market purchase, at the Trade Date of the applicable assignment, no Event of Default under Section 11.01(a) or 11.01(b) or, with respect to Borrower, Section 11.01(g) or 11.01(h) has occurred and is continuing or would result therefrom;

(ii) immediately upon any Borrower Loan Purchase, the Loans purchased pursuant thereto shall be cancelled for all purposes and no longer outstanding (and may not be resold, assigned, or participated out by Borrower) for all purposes of this Agreement and all other Credit Documents (*provided*; that such purchases and cancellations shall not constitute prepayments or repayments of the Loans (including, without limitation, pursuant to Section 2.09, Section 2.10 or Article IV) for any purpose hereunder), including, but not limited to (A) the making of, or the application of, any payments to the Lenders under this Agreement or any other Credit Document, (B) the making of any request, demand, authorization, direction, notice, consent or waiver under this Agreement or any other Credit Document, (C) the providing of any rights to Borrower as a Lender under this Agreement or any other Credit Document, and (D) the determination of Required Lenders, or for any similar or related purpose, under this Agreement or any other Credit Document;

(iii) with respect to each Borrower Loan Purchase, Administrative Agent shall receive (x) if such Borrower Loan Purchase is consummated pursuant to the Auction Procedures, a fully executed and completed Borrower Assignment Agreement effecting the assignment thereof, and (y) if such Borrower Loan Purchase is consummated pursuant to an open market purchase, a fully executed and completed Open Market Assignment and Assumption Agreement effecting the assignment thereof;

(iv) with respect to any Borrower Loan Purchase of Revolving Loans under any Revolving Facility (x) there shall occur a corresponding reduction in the Revolving Commitments of each applicable Revolving Lender and (y) after giving effect to such Borrower Loan Purchase, there shall be sufficient aggregate Revolving Commitments among the Revolving Lenders to apply to the aggregate amount of L/C Liabilities outstanding as of such date, unless Borrower shall concurrently with the payment of the purchase price by Borrower for such Revolving Loans, deposit cash collateral in an account with Administrative Agent pursuant to Section 2.16 in the amount of any such excess L/C Liabilities;

(v) Borrower may not use the proceeds of any Revolving Loan to fund the purchase of outstanding Loans pursuant to this Section 13.05(d); and

(vi) neither Borrower nor any of its Subsidiaries will be required to represent or warrant that they are not in possession of non-public information with respect to Borrower and/or any Subsidiary thereof and/or their respective securities in connection with any purchase permitted by this Section 13.05(d).

The assignment fee set forth in Section 13.05(b) shall not be applicable to any Borrower Loan Purchase consummated pursuant to this Section 13.05(d).

(e) Each Lender who is an Affiliate of Borrower (excluding (x) Borrower and its Subsidiaries and (y) any Debt Fund Affiliate Lenders) (each, an "**Affiliate Lender**"; it being understood that (x) neither Borrower nor any of its Subsidiaries may be Affiliate Lenders and (y) Debt Fund Affiliate Lenders and Affiliate Lenders may be lenders in accordance with this Section 13.05 subject, in the case of Affiliate Lenders, to this Section 13.05(e) and Section 13.05(f)), in connection with any (i) consent (or decision not to consent) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Credit Document, (ii) other action on any matter related to any Credit Document or (iii) direction to Administrative Agent, Collateral Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Credit Document, agrees that, except with respect to any amendment, modification, waiver, consent or other action (1) described in clauses (i) through (vi) of Section 13.04(a) or (2) that adversely affects such Affiliate Lender (in its capacity as a Lender) in a disproportionately adverse manner as compared to other Lenders, such Affiliate Lender shall be deemed to have voted its interest as a Lender without discretion in such proportion as the allocation of voting with respect to such matter by Lenders who are not Affiliate Lenders. Each Affiliate Lender hereby irrevocably appoints Administrative Agent (such appointment being coupled with an interest) as such Affiliate Lender's attorney-in-fact, with full authority in the place and stead of such Affiliate Lender and in the name of such Affiliate Lender, from time to time in Administrative Agent's discretion to take any action and to execute any instrument that Administrative Agent may deem reasonably necessary to carry out the provisions of this clause (e). In furtherance of the foregoing, (i) Affiliate Lenders will not be required to represent or warrant that they are not in possession of non-public information with respect to Borrower and/or any Subsidiary thereof and/or their respective securities in connection with any assignment permitted by this Section 13.05(e) and (ii) any Term Loans acquired by any Affiliate Lender may (but shall not be required to), with the consent of Borrower, be contributed to Borrower or any of its Restricted Subsidiaries (it being understood that any such Term Loans shall, to the extent permitted by applicable Law, be retired and cancelled promptly upon such contribution) and which may be converted into or exchanged for debt or equity securities that are permitted to be issued by such Person at such time; provided that upon any such cancellation, of the aggregate outstanding principal amount of the Term Loans of the applicable Tranche shall be deemed reduced, as of the date of such contribution, by the full par value of the aggregate principal amount of the Term Loans so contributed and cancelled, and each principal repayment installment with respect to the Term Loans of such Tranche pursuant to Section 3.01 shall be reduced pro rata by the full par value of the aggregate principal amount of Term Loans so contributed and cancelled.

(f) Notwithstanding anything to the contrary in this Agreement, no Affiliate Lender shall have any right to (i) attend (including by telephone) any meeting or discussions (or portion thereof) among Administrative Agent or any Lender to which representatives of Borrower are not then present, (ii) receive any information or material prepared by Administrative Agent or any Lender or any communication by or among Administrative Agent and/or one or more Lenders, except to the extent such information or materials have been made available to Borrower or its representatives, (iii) make or bring (or participate in, other than as a passive participant in or recipient of its pro rata benefits of) any claim, in its capacity as a Lender, against Administrative Agent, Collateral Agent, or any other Lender with respect to

any duties or obligations or alleged duties or obligations of such Agent or any other such Lender under the Credit Documents, (iv) purchase any Term Loan if, immediately after giving effect to such purchase, Affiliate Lenders in the aggregate would own Term Loans with an aggregate principal amount in excess of 25% of the aggregate principal amount of all Term Loans then outstanding, or (v) purchase any Revolving Loans or Revolving Commitments.

(g) (i) No assignment or participation shall be made to any Person that was a Disqualified Lender as of the date (the "**Trade Date**") on which the assigning or participating Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless Borrower has consented to such assignment or participation in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Lender for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any assignee or participant that becomes a Disqualified Lender after the applicable Trade Date (including as a result of the delivery of a notice pursuant to, and/or the expiration of the notice period referred to in, the definition of "Disqualified Lender"), (x) such assignee or participant shall not retroactively be disqualified from becoming a Lender or participant and (y) the execution by Borrower of an Assignment Agreement with respect to such assignee will not by itself result in such assignee no longer being considered a Disqualified Lender. Any assignment in violation of this clause (g)(i) shall not be void, but the other provisions of this clause (g) shall apply, and nothing in this subsection (g) shall limit any rights or remedies available to the Credit Parties at law or in equity with respect to any Disqualified Lender and any Person that makes an assignment or participation to a Disqualified Lender in violation of this clause (g)(i).

(ii) If any assignment or participation is made to any Disqualified Lender without Borrower's prior written consent in violation of clause (g)(i) above, or if any Person becomes a Disqualified Lender after the applicable Trade Date, Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Lender and Administrative Agent, (A) terminate any Revolving Commitment of such Disqualified Lender and repay all obligations of Borrower owing to such Disqualified Lender in connection with such Revolving Commitment, (B) in the case of outstanding Term Loans held by Disqualified Lenders, purchase or prepay such Term Loan by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Lender paid to acquire such Term Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (C) require such Disqualified Lender to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 13.05), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Lender paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Lenders (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by Borrower, Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Credit Document, each Disqualified Lender will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Lenders consented to such matter, and (y) for purposes of voting on any plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws, each Disqualified Lender party hereto hereby agrees (1) not to vote on such plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws, (2) if such Disqualified Lender does vote on such plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(iv) Administrative Agent shall have the right, and Borrower hereby expressly authorizes Administrative Agent, to provide the list of Disqualified Lenders to each Lender specifically requesting the same.

SECTION 13.06. Survival. The obligations of the Credit Parties under Sections 5.01, 5.05, 5.06, 13.03 and 13.20, the obligations of each Guarantor under Section 6.03, and the obligations of the Lenders and Administrative Agent under Sections 5.06 and 12.08, in each case shall survive the repayment of the Loans and the other Obligations and the termination of the Commitments and, in the case of any Lender that may assign any interest in its Commitments, Loans or L/C Interest (and any related Obligations) hereunder, shall (to the extent relating to such time as it was a Lender) survive the making of such assignment, notwithstanding that such assigning Lender may cease to be a "Lender" hereunder. In addition, each representation and warranty made, or deemed to be made by a notice of any extension of credit, herein or pursuant hereto shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the Notes and the making of any extension of credit hereunder, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty.

SECTION 13.07. Captions. The table of contents and captions and Section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

SECTION 13.08. Counterparts; Interpretation; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Credit Documents, constitute the entire contract among the parties thereto relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, other than the Commitment Letter, which are not superseded and survive solely as to the parties thereto (to the extent provided therein). This Agreement shall become effective when the Closing Date shall have occurred, and this Agreement shall have been executed and delivered by the Credit Parties and when Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 13.09. Governing Law; Submission to Jurisdiction; Waivers; Etc.

(a) **GOVERNING LAW**. THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND ANY CLAIMS, CONTROVERSIES, DISPUTES, OR CAUSES OF ACTION (WHETHER ARISING UNDER CONTRACT LAW, TORT LAW OR OTHERWISE) BASED UPON OR RELATING TO THIS AGREEMENT OR THE OTHER CREDIT DOCUMENTS (EXCEPT AS TO ANY OTHER CREDIT DOCUMENT, AS EXPRESSLY SET FORTH IN SUCH OTHER CREDIT DOCUMENT), SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW PRINCIPLES THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

(b) **SUBMISSION TO JURISDICTION**. EACH CREDIT PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER AT LAW OR IN EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST ADMINISTRATIVE AGENT, ANY LENDER, ANY OF THEIR RESPECTIVE AFFILIATES, OR ANY OF THE PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR ADVISORS OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND

DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER CREDIT DOCUMENT SHALL AFFECT ANY RIGHT THAT ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT AGAINST ANY CREDIT PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) **WAIVER OF VENUE**. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION 13.09. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) **SERVICE OF PROCESS**. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 13.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(d) **WAIVER OF JURY TRIAL**. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13.09(e).

SECTION 13.10. Confidentiality. Each Agent and each Lender agrees to keep information obtained by it pursuant to the Credit Documents confidential in accordance with such Agent's or such Lender's customary practices and agrees that it will only use such information in connection with the transactions contemplated hereby and not disclose any of such information other than (a) to such Agent's or such Lender's employees, representatives, directors, attorneys, auditors, agents, professional advisors, credit insurers, trustees or Affiliates who are advised of the confidential nature thereof and instructed to keep such information confidential or to any direct or indirect, actual or prospective, creditor or contractual counterparty in swap agreements or derivative or securitization transactions or such creditor's or contractual counterparty's professional advisor (so long as such creditor, contractual counterparty or professional advisor to such creditor or contractual counterparty agrees in writing to be bound by the provision of this Section 13.10, such Agent or such Lender being liable for any breach of confidentiality by any Person described in this clause (a) and with respect to disclosures to Affiliates to the extent disclosed by such Lender to such Affiliate), (b) to the extent such information presently is or hereafter becomes available to such Agent or such Lender on a non-confidential basis from a Person not an Affiliate of such Agent or such Lender not known to such Agent or such Lender to be violating a confidentiality obligation by such disclosure, (c) to the extent disclosure is required by any Law, subpoena or judicial order or process (*provided* that notice of such requirement or order shall be promptly furnished to Borrower unless such notice is legally prohibited) or requested or required by bank, securities, insurance or investment company regulations or auditors or any administrative body or commission or self-regulatory organization (including the Securities Valuation Office of the NAIC) to whose jurisdiction such Agent or such Lender is subject, (d) to any rating agency to the extent required in connection with any rating to be assigned to such Agent or such Lender; *provided* that

prior notice thereof is furnished to Borrower, (e) to pledgees under Section 13.05(c), assignees, participants, prospective assignees or prospective participants, in each case who agree in writing to be bound by the provisions of this Section 13.10 or by provisions at least as restrictive as the provisions of this Section 13.10 (it being understood that any electronically recorded agreement from any Person listed above in this clause (e) in respect to any electronic information (whether posted or otherwise distributed on Intralinks or any other electronic distribution system) shall satisfy the requirements of this clause (e)), (f) in connection with the exercise of remedies hereunder or under any Credit Document or to the extent required in connection with any litigation with respect to the Loans or any Credit Document or (g) with Borrower's prior written consent.

SECTION 13.11. Independence of Representations, Warranties and Covenants. The representations, warranties and covenants contained herein shall be independent of each other and no exception to any representation, warranty or covenant shall be deemed to be an exception to any other representation, warranty or covenant contained herein unless expressly provided, nor shall any such exception be deemed to permit any action or omission that would be in contravention of applicable law.

SECTION 13.12. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

SECTION 13.13. Gaming Laws.

(a) Notwithstanding anything to the contrary in this Agreement or any other Credit Document, this Agreement and the other Credit Documents are subject to the Gaming Laws and the laws involving the sale, distribution and possession of alcoholic beverages and/or tobacco, as applicable (the "**Liquor Laws**"). Without limiting the foregoing, Administrative Agent, Collateral Agent, each other Agent, each Lender, each other Secured Party and each participant acknowledges that (i) it and each of its successors and assigns is subject to being called forward by any Gaming Authority or any Governmental Authority enforcing the Liquor Laws (each, a "**Liquor Authority**"), in each of their discretion, for licensing or a finding of suitability or to file or provide other information, and (ii) all rights, remedies and powers under this Agreement and the other Credit Documents, including with respect to Pledged Collateral and the entry into and ownership and operation of the Gaming Facilities, and the possession, control, transfer or disposition of gaming equipment, alcoholic beverages or a gaming or liquor license, may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Laws and Liquor Laws and only to the extent that required approvals (including prior approvals) are obtained from the requisite Governmental Authorities.

(b) Notwithstanding anything to the contrary in this Agreement or any other Credit Document, Administrative Agent, Collateral Agent, each other Agent, each Lender, each other Secured Party and each participant agrees to cooperate with each Gaming Authority and each Liquor Authority (and, in each case, to be subject to Section 2.11) in connection with the administration of their regulatory jurisdiction over Borrower and the other Credit Parties, including, without limitation, the provision of such documents or other information as may be requested by any such Gaming Authorities and/or Liquor Authorities relating to Administrative Agent, Collateral Agent, any other Agent, any of the Lenders, any other Secured Party or any participants, Borrower and its Subsidiaries or to the Credit Documents.

(c) Notwithstanding anything to the contrary in this Agreement or any other Credit Document, to the extent any provision of this Agreement or any other Credit Document excludes any assets from the scope of the Pledged Collateral, or from any requirement to take any action to make effective or perfect any security interest in favor of Collateral Agent or any other Secured Party in the Pledged Collateral, the representations, warranties and covenants made by Borrower or any Restricted Subsidiary in this Agreement with respect to the creation, perfection or priority (as applicable) of the security interest granted in favor of Collateral Agent or any other Secured Party (including, without limitation, Article VIII of this Agreement) shall be deemed not to apply to such assets.

SECTION 13.14. USA Patriot Act. Each Lender that is subject to the Act (as hereinafter defined) to the extent required hereby, notifies Borrower and the Guarantors that pursuant to the requirements of the USA Patriot Act

(Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Act**"), it is required to obtain, verify and record information that identifies Borrower and the Guarantors, which information includes the name and address of Borrower and the Guarantors and other information that will allow such Lender to identify Borrower and the Guarantors in accordance with the Act, and Borrower and the Guarantors agree to provide such information from time to time to any Lender.

SECTION 13.15. Judgment Currency.

(a) Borrower's obligations hereunder and under the other Credit Documents to make payments in Dollars (the "**Obligation Currency**") shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than the Obligation Currency, except to the extent that such tender or recovery results in the effective receipt by Administrative Agent, Collateral Agent, the respective L/C Lender or the respective Lender of the full amount of the Obligation Currency expressed to be payable to Administrative Agent, Collateral Agent, such L/C Lender or such Lender under this Agreement or the other Credit Documents. If, for the purpose of obtaining or enforcing judgment against Borrower in any court or in any jurisdiction, it becomes necessary to convert into or from any currency other than the Obligation Currency (such other currency being hereinafter referred to as the "**Judgment Currency**") an amount due in the Obligation Currency, the conversion shall be made at the Dollar Equivalent thereof and, in the case of other currencies the rate of exchange (as quoted by Administrative Agent or if Administrative Agent does not quote a rate of exchange on such currency, by a known dealer in such currency designated by Administrative Agent) determined, in each case, as of the day on which the judgment is given (such day being hereinafter referred to as the "**Judgment Currency Conversion Date**").

(b) If there is a change in the rate of exchange prevailing between the Judgment Currency Conversion and the date of actual payment of the amount due by Borrower, Borrower covenants and agrees to pay, or cause to be paid, such additional amounts, if any (but in any event not a lesser amount), as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate or exchange prevailing on the Judgment Currency Conversion Date.

(c) For purposes of determining the Dollar Equivalent or any other rate of exchange for this Section 13.15, such amounts shall include any premium and costs payable in connection with the purchase of the Obligation Currency.

SECTION 13.16. Waiver of Claims. Notwithstanding anything in this Agreement or the other Credit Documents to the contrary, the Credit Parties hereby agree that Borrower shall not acquire any rights as a Lender under this Agreement as a result of any Borrower Loan Purchase and may not make any claim as a Lender against any Agent or any Lender with respect to the duties and obligations of such Agent or Lender pursuant to this Agreement and the other Credit Documents; *provided*, *however*, that, for the avoidance of doubt, the foregoing shall not impair Borrower's ability to make a claim in respect of a breach of the representations or warranties or obligations of the relevant assignor in a Borrower Loan Purchase, including in the standard terms and conditions set forth in the assignment agreement applicable to a Borrower Loan Purchase.

SECTION 13.17. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document), Borrower and each other Credit Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by Administrative Agent, Collateral Agent, the Lead Arrangers, and the Lenders are arm's-length commercial transactions between Borrower , each other Credit Party and their respective Affiliates, on the one hand, and Administrative Agent, Collateral Agent, the Lead Arrangers, and the Lenders, on the other hand, (B) each of Borrower and the other Credit Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) Borrower and each other Credit Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents; (ii) (A) Administrative Agent, Collateral Agent, the Lead Arrangers, and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent

or fiduciary for Borrower, any other Credit Party or any of their respective Affiliates, or any other Person and (B) none of Administrative Agent, Collateral Agent, the Lead Arrangers, or the Lenders has any obligation to Borrower, any other Credit Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents or in other written agreements between Administrative Agent, Collateral Agent, the Lead Arrangers, or any Lender on one hand and Borrower, any other Credit Party or any of their respective Affiliates on the other hand; and (iii) Administrative Agent, Collateral Agent, the Lead Arrangers, and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, or conflict with, those of Borrower, the other Credit Parties and their respective Affiliates, and none of Administrative Agent, Collateral Agent, the Lead Arrangers, or the Lenders has any obligation to disclose any of such interests to Borrower, any other Credit Party or any of their respective Affiliates. Each Credit Party agrees that nothing in the Credit Documents will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between Administrative Agent, Collateral Agent, the Lead Arrangers, and the Lenders, on the one hand, and such Credit Party, its stockholders or its affiliates, on the other. To the fullest extent permitted by law, each of Borrower and each other Credit Party hereby waives and releases any claims that it may have against Administrative Agent, Collateral Agent, the Lead A rrangers, or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby (other than any agency or fiduciary duty expressly set forth in an any engagement letter referenced in clause (ii)(A)).

SECTION 13.18. Lender Action. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Credit Party or any other obligor under any of the Credit Documents or the Swap Contracts or (with respect to the exercise of rights against the collateral) Cash Management Agreements (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Credit Party, without the prior written consent of Administrative Agent. The provisions of this Section 13.18 are for the sole benefit of the Agents and the Lenders and shall not afford any right to, or constitute a defense available to, any Credit Party.

SECTION 13.19. Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Credit Document, the interest paid or agreed to be paid under the Credit Documents (collectively, the "**Charges**") shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "**Maximum Rate**"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder. To the extent permitted by applicable Law, the interest and other Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 13.19 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment, shall have been received by such Lender. Thereafter, interest hereunder shall be paid at the rate(s) of interest and in the manner provided in this Agreement, unless and until the rate of interest again exceeds the Maximum Rate, and at that time this Section 13.19 shall again apply. In no event shall the total interest received by any Lender pursuant to the terms hereof exceed the amount that such Lender could lawfully have received had the interest due hereunder been calculated for the full term hereof at the Maximum Rate. If the Maximum Rate is calculated pursuant to this Section 13.19, such interest shall be calculated at a daily rate equal to the Maximum Rate divided by the number of days in the year in which such calculation is made. If, notwithstanding the provisions of this Section 13.19, a court of competent jurisdiction shall finally determine that a Lender has received interest hereunder in excess of the Maximum Rate, Administrative Agent shall, to the extent permitted by applicable Law, promptly apply such excess in the order specified in this Agreement and thereafter shall refund any excess to Borrower or as a court of competent jurisdiction may otherwise order.

SECTION 13.20. Payments Set Aside. To the extent that any payment by or on behalf of Borrower is made to any Agent, any L/C Lender or any Lender, or any Agent, any L/C Lender or any Lender exercises its right of setoff,

and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent, such L/C Lender or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred and the Agents', the L/C Lender's and the Lenders' Liens, security interests, rights, powers and remedies under this Agreement and each Credit Document shall continue in full force and effect, and (b) each Lender severally agrees to pay to Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent or L/C Lender, *plus* interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. In such event, each Credit Document shall be automatically reinstated (to the extent that any Credit Document was terminated) and Borrower shall take (and shall cause each other Credit Party to take) such action as may be requested by Administrative Agent, the L/C Lenders and the Lenders to effect such reinstatement.

SECTION 13.21. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

SECTION 13.22. Acknowledgement Regarding any Supported QFCs To the extent that the Credit Documents provide support, through a guarantee or otherwise, for swap agreements or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**" and each such QFC a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the " **U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Credit Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of

a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Credit Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Credit Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER:

WYNN RESORTS FINANCE, LLC

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By: /s/ Craig. S Billings
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

SUBSIDIARY GUARANTORS:

EVERETT PROPERTY, LLC

By: Wynn America Group, LLC, its sole member

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By:/s/ Craig. S Billings
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN MA, LLC

By: Wynn America Group, LLC, its sole member

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By:/s/ Craig. S Billings
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

EBH HOLDINGS, LLC

By: Wynn MA, LLC, its sole member

By: Wynn America Group, LLC, its sole member

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By:/s/ Craig. S Billings
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

EBH MA PROPERTY, LLC

By: Wynn MA, LLC, its managing member

By: Wynn America Group, LLC, its sole member

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By:/s/ Craig. S Billings
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN AMERICA GROUP, LLC

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By:/s/ Craig. S Billings
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN LAS VEGAS HOLDINGS, LLC

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By:/s/ Craig. S Billings
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN LAS VEGAS, LLC

By: Wynn Las Vegas Holdings, LLC, its sole member

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By:/s/ Craig. S Billings
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN SUNRISE, LLC

By: Wynn Las Vegas, LLC its sole member

By: Wynn Las Vegas Holdings, LLC, its sole member

By: Wynn Resorts Finance, LLC, its sole member

By: Wynn Resorts Holdings, LLC, its sole member

By: Wynn Resorts, Limited, its sole member

By:/s/ Craig. S Billings
Name: Craig S. Billings
Title: President, Chief Financial Officer and Treasurer

WYNN GROUP ASIA, INC.

By:/s/ Craig. S Billings
Name: Craig S. Billings
Title: Treasurer

DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent and Collateral Agent

By:/s/ Michael Strobel
Name: Michael Strobel
Title: Vice President

By:/s/ Yumi Okabe
Name: Yumi Okabe
Title: Vice President

DEUTSCHE BANK AG NEW YORK BRANCH, as L/C Lender

By:/s/ Michael Strobel
Name: Michael Strobel
Title: Vice President

By:/s/ Yumi Okabe
Name: Yumi Okabe
Title: Vice President

DEUTSCHE BANK AG NEW YORK BRANCH, as Lender

By:/s/ Michael Strobel
Name: Michael Strobel
Title: Vice President

By:/s/ Yumi Okabe
Name: Yumi Okabe
Title: Vice President

GOLDMAN SACHS BANK USA, as Lender

By:/s/ Charles D. Johnston
Name: Charles D. Johnston
Title: Authorized Signatory

GOLDMAN SACHS BANK USA, as L/C Lender

By:/s/ Charles D. Johnston
Name: Charles D. Johnston
Title: Authorized Signatory

THE BANK OF NOVA SCOTIA, as Lender

By:/s/ Winston Lug
Name: Winston Lug
Title: Director

THE BANK OF NOVA SCOTIA, as L/C Lender

By:/s/ Winston Lug
Name: Winston Lug
Title: Director

BANK OF AMERICA, N.A., as Lender

By:/s/ Brian D. Corum
Name: Brian D. Corum
Title: Managing Director

BANK OF AMERICA, N.A., as an L/C Lender of Existing Letters of Credit

By:/s/ Brian D. Corum
Name: Brian D. Corum
Title: Managing Director

BNP PARIBAS, as Lender

By:/s/ Aadil Zuberi
Name: Aadil Zuberi
Title: Vice President

By:/s/ David L. Berger
Name: David L. Berger
Title: Managing Director

FIFTH THIRD BANK, as Lender

By:/s/ Andy Tessema
Name: Andy Tessema
Title: Vice President

JPMORGAN CHASE BANK, N.A., as Lender

By:/s/ Nadeige Dang
Name: Nadeige Dang
Title: Executive Director

SUMITOMO MITSUI BANKING CORPORATION, as Lender

By:/s/ Keith Connolly
Name: Keith Connolly
Title: Managing Director

SUNTRUST BANK, as Lender

By:/s/ Thomas Parrott
Name: Thomas Parrott
Title: Managing Director

CITIZENS BANK, NATIONAL ASSOCIATION, as Lender

By:/s/ Sean McWhinnie
Name: Sean McWhinnie
Title: Director

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, as Lender

By:/s/ Steven Jonassen
Name: Steven Jonassen
Title: Managing Director

By:/s/ Hayden Arnoux
Name: Hayden Arnoux
Title: Director

MIZUHO BANK, LTD., as Lender

By:/s/ John Davies
Name: John Davies
Title: Authorized Signatory

Exhibit 31.1

Certification of the Chief Executive Officer

Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Matt Maddox, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Wynn Resorts, Limited;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external 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 fiscal 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 the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 6, 2019

/s/ Matt Maddox

Matt Maddox

Director, Chief Executive Officer

(Principal Executive Officer)

Exhibit 31.2

Certification of the Chief Financial Officer

Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Craig S. Billings, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Wynn Resorts, Limited;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external 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 fiscal 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 the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 6, 2019

/s/ Craig S. Billings

Craig S. Billings

President, Chief Financial Officer and Treasurer

(Principal Financial and Accounting Officer)

Exhibit 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

In connection with the Quarterly Report on Form 10-Q of Wynn Resorts, Limited (the "Company") for the quarter ended September 30, 2019 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Matt Maddox, as Chief Executive Officer of the Company, and Craig S. Billings, 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 their 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/ Matt Maddox

Name:	Matt Maddox
Title:	Director, Chief Executive Officer
	(Principal Executive Officer)
Date:	November 6, 2019

/s/ Craig S. Billings

Name:	Craig S. Billings
Title:	President, Chief Financial Officer and Treasurer
	(Principal Financial and Accounting Officer)
Date:	November 6, 2019

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.